

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

Chair Bierbaum called the meeting to order at 1:35 p.m. at the Coast Wenatchee Center Hotel and Convention Center located in Wenatchee and introduced the members present.

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum**, Quilcene
Commissioner Keven Rojecki, Tacoma
Commissioner Alan Parker, Olympia
Commissioner John Ellis, Seattle
Senator Margarita Prentice, Seattle
Senator Jerome Delvin, Richland
Representative Gary Alexander, Olympia

STAFF PRESENT: **Rick Day**, Director
Mark Harris, Assistant Director – Field Operations
David Trujillo, Assistant Director – Licensing Operations
Amy Hunter, Administrator – Communications & Legal
Jerry Ackerman, Senior Counsel – Attorney General’s Office
Gail Grate, Executive Assistant

Chair Bierbaum explained it was necessary to have an Executive Session and adjourned the meeting at 1:40 p.m. **Chair Bierbaum** called the meeting back to order at 2:45 p.m. and immediately adjourned for a break. The meeting was called back to order at 3:05 p.m.

Staff Accomplishments

Director Rick Day introduced Shanna Lingel from the agency’s Tribal Gaming Unit and presented her with a certificate and pin for recognition of 20 years of state service, all with the Gambling Commission. Director Day then introduced Cam Dightman from the agency’s Business Operations Division, explaining this would be Mr. Dightman’s last meeting, and thanked him for his support of the Gambling Commission budget process over the years.

Agenda Review / Director’s Report

Director Day reviewed the agenda for Thursday and Friday. Because of the late start time, Director Day asked the approval of the Chair to move the Spokane Tribe Compact Amendment presentation to Friday and to hold the tribal gaming background presentation over to next month. Director Day noted he would not need to go into any detail on the correspondence or news articles. **Chair Bierbaum** nodded her approval.

Tribal Gaming Background (PowerPoint Presentation)

Held over to September Commission meeting.

Fiscal Year 2009-2011 Biennium Budget (PowerPoint Presentation)

Mr. Terry Westhoff, Business Operations Administrator, asked for the Commissioners direction on an emerging issue. Last week the Governor sent a letter to all agencies, boards, and commissions directing all executive agencies to make reductions in certain expenditures and encouraged higher education institutions and boards and commissions, such as the Gambling Commission, to take similar steps. The reduction steps included a freeze on all new hiring. Public safety and revenue collecting positions and executive agencies were provided a specific exemption that included special jurisdiction enforcement officers, such as liquor control board agents, park agents, and fish and wildlife officers. Revenue producing positions such as tax collectors and fee collectors were specifically excluded. Equivalent in our agency would be the gambling special agents and licensing technicians. The Governor also put a freeze on non-emergency out-of-state travel, non-emergency personal service contracts, non-essential equipment purchases, and asked for reduced fuel consumption by 5 percent from the 2007 usage. The Office of Financial Management and Department of Personnel sent a letter to State agencies to provide more specific instructions to implement the Governor's request and encouraged boards and commissions to take similar steps. Mr. Westhoff explained this affects the current FY09 fiscal year. The Commission approved a budget for FY09 last month that included a reduction of 8 FTEs and nearly \$900,000 from the previous authorized level, which is about a 5 percent reduction; a reduction of 8 percent in the personal service contracts allotment; a 5 percent reduction in our equipment allotment; and nearly 10 percent reduction in our travel allotment. Over the past years the Commission has reduced its vehicle fleet size and purchased more fuel efficient vehicles such as hybrids, resulting in a decline in our 2008 fuel usage of about 9 percent from the FY07 amount. The Commission has been reducing FTEs since 2002. Because the agency took steps in addressing these issues in the budget approved last month, and will continue to take steps in FY09-11, staff feels the Commission is above and beyond the Governor's requested expenditure reductions and requests the Commission take no additional action beyond its approval of the FY09 budget last month.

Chair Bierbaum asked if Mr. Westhoff was asking for specific direction from the Commissioners. **Mr. Westhoff** affirmed staff would like direction on any other steps the Commissioners would like staff to take. **Director Day** explained that a formal motion was not necessary, just confirmation that staff's recommended approach was generally agreeable to the Commissioners or a request to go in a different direction. **Chair Bierbaum** said her opinion was the Commission has gone further than what the Governor encouraged. To keep the Commission aware and to ensure staff continues to act in compliance with the Governor's request, Chair Bierbaum asked that a very brief update be presented each month on how many positions have been filled. **Commissioner Ellis** agreed that sounded like a good approach. **Director Day** affirmed staff would prepare a brief report each month.

Mr. Westhoff reported the purpose of the next presentation was to request approval of the proposed Fiscal Year 2009-2011 biennium budget, which begins July 1, 2009, and goes through June 30, 2011. Mr. Westhoff reviewed the PowerPoint presentation:

- Fiscal year 2008 actual FTE levels are 164.3, which is more than 5 FTEs under the management plan level of 169.7 and 12 under the allotted level of 176.4. Because of the long-term estimated revenue stream, the 175.3 average FTEs originally allotted were not supported and staff adjusted FTEs from 174.2 to 166.4 last month. Attrition will continue to be used to bring the FTE numbers down slightly in FY 09-11.
- The Commission asked staff last fiscal year to manage expenditures to ensure an adequate working capital balance is maintained. Allotments were under-expended by almost \$1.1 million in FY08. Because of the FTE savings discussed in the last slide and partially due to implementation of the fee increase approved by the Commission in November 2007, revenue projections for the year were slightly exceeded.
- The preliminary ending working capital balance for FY08 was over \$2.5 million, which is only about \$170,000 short of the two months average operating expenditures recommended by the Office of Financial Management (OFM). The FY08 results should help ensure a healthy working capital balance and get revenues and expenditures in line with each other.
- The Business Operations Division annually reviews historical revenue and future trend information and meets with experts in areas that generate revenue for the agency, which was done in February 2008 and staff determined some changes that needed to be made.
- The agency is anticipating approximately \$4.2 million in seized funds from the federal government. Those funds are required to be kept separate from the operating fund, and will be deposited in an interest-bearing account and used to reimburse the operating fund for qualified expenditures. Because of the FY08 fee increase, the seizure funds, and the expenditure management of the agency, staff is not requesting any additional new fees or license fee increases in the FY09-11 biennium budget. However, statewide adjustments in salaries or benefits or changes in workload or revenue streams may result in recommendations for new fees or fee increases in the coming years.
- The increase in revenue in FY07 through FY09 was a result of hourly rate and license fee increases and the forfeiture funds. Without those, revenues would be relatively flat during the next three fiscal years due to anticipated leveling off of some activities such as house-banked card rooms and the expected decline in pull-tabs. Most of the growth is in tribal gaming; however there are no plans to add additional staff to regulate tribal gaming at this time. No significant increase in revenue would be seen with that growth; however, there could be some growth in tribal certifications as more employees come in.
- In FY07, punchboard and pull-tabs were still the number one individual revenue source of about \$3.8 million; card room employees and house banked card rooms combined totaled about \$4 million (29%); and tribal regulation certification fees were \$3.1 million (24%).
- Some changes in FY08 occurred because cost allocation rates were instituted and some rates became significantly higher than in FY07. Punch boards and pull-tabs declined from 28 percent to 26 percent, even though total revenue from that source increased by about \$100,000. House-banked card rooms fell off about 4 percent and tribal certification and regulation increased about 4 percent to just over \$3.9 million because of additional tribal employees and the increase in billing rates. The electronic gambling lab revenue almost doubled to about 8 percent as a result of additional time billed and the Appendix X2 system reviews.

- The budget approved last month for FY09 was about \$862,000 lower than the one approved in August 2007, despite the salary increases that will occur in September.
- As staff looked for ways to enhance communications for agents, advances in technology was found to have made wireless communication an affordable alternative and provide greater communication, flexibility, and connectivity to the agency, internet, website, and servers when the agents are in the field.

Commissioner Ellis assumed there were no known security issues with the use of wireless technology in law enforcement. **Mr. Westhoff** replied staff would be looking at the risks but did not think they were great.

Mr. Westhoff reported that in response to a question last month by Representative Simpson a chart was prepared comparing certain expenditures over the past five years. The chart shows that between FY04 and FY08, FTEs were decreased about 9 percent, salaries jumped 6 percent, benefits went up 40 percent, and rentals and leases went up. Agency vehicles were being replaced at 5 years and 75,000 miles but are now being replaced at 6 years and 90,000 miles. About 17 percent fewer vehicles are being purchased, but vehicle maintenance costs have gone up about 10 percent primarily due to the large increase in fuel costs. Carry forward levels are a starting point for the biennium budget and carries over current biennium allotments less one time costs. The carry forward level then adds in costs of statewide adjustments such as salaries, benefits, and service agency charges. The carry forward level calculated by OFM and the Commission staff may differ. OFM's level for FY 09-11 is higher than staff's by about \$300,000; however, these variances do not affect the ending recommended budgets as adjustments are made in the body of the budget to get to the necessary expenditure level. The proposed budget for FY 09-11 is \$32,501,000, and the proposed budget for next biennium would be about 2.5 percent lower than the Commission's original budget for the current biennium. Assuming the receipt of the \$4.2 million in seized funds, the biennium would start with an estimated working capital balance of about \$6 million. Revenue estimates would be about \$15 million in both FY 10 and FY 11 and the expenditure plan of \$16.2 million in FY 10 and \$16.3 million in FY 11 would leave an estimated working capital balance of about \$4.8 million in FY 10 and \$3.5 million in FY 11. Without receipt of the seized funds and related interest, the estimated working capital balance would be down to -\$735,000 by FY 11. . Staff requests approval of the FY 09-11 biennium budget of \$32,501,000 and 160.4 FTEs. **Mr. Westhoff** pointed out the budget needs to be submitted to OFM by September 2, 2008.

Commissioner Ellis asked if there was a realistic expectation of similar forfeiture funds being received in future bienniums. **Mr. Westhoff** replied there was not, adding that this was the only one staff expected to get right now. There are a few others with notification and paperwork in with the Department of Treasury, one of which could potentially be a couple million dollars. At this point, there is nothing solid enough to know whether it would be next year, the year after, or even later. **Director Day** pointed out that with the current forfeiture, the alleged owner did not dispute ownership of the funds and signed them over, but with subsequent potential seizures, that may not be the case and the process could go on for a number of years.

Mr. Westhoff reported that staff requests approval of the FY 09-11 biennium budget of \$32,501,000 and 160.4 FTEs. The budget needs to be submitted to OFM by September 2, 2008.

Chair Bierbaum called for public comment on the budget.

Mr. Chris Kealy, Iron Horse Casino, testified he had watched the presentation and asked about the expected revenue windfall, or federal seizure and distribution of work already done, of \$4.2 million, which he heard has to go in a separate account and can only be accessed for approved items. Mr. Kealy asked if this budget has the approved items in it. **Mr. Westhoff** affirmed, adding that staff knows what uses are allowed and have included them in the budget. That money will be in a separate account, but can be used to reimburse the gambling revolving fund for permissible expenses, like gambling equipment and leases.

Chair Bierbaum thought Mr. Kealy had a good question, and asked if, as the Commission spends those forfeited funds, there was a procedure to get approval ahead of time or if the agency can spend the funds as long as it meets the requirements. **Mr. Westhoff** explained the Department of Treasury provides a guide that lists the preapproved expenditures and requires approval to use the funds outside of those preapproved items, although staff does not anticipate needing to do that. **Director Day** added that was largely because we are a law enforcement agency and generally the things that would not be preapproved would be non-law enforcement activity.

Mr. Kealy asked about the charts showing \$547,000 one year and minus \$734,000 the other year. With gaming still declining, we hear about how we have 9 percent less gas usage, but revenue streams are off 9 percent to 20 percent. Mr. Kealy said facilities are closing more than opening and the bottom line is the industry is actually shrinking and in that shrinkage, Mr. Kealy thought the industry was understanding it might be greater than shown. Everybody has done a great job over the years trying to adjust for that, but if you back up to 2007 and see that revenue line and the million and a half or more under the expense line, if that trend is run any further forward, it is going to end up negative no matter what is done. It seems like the cost needs to be brought in line with the regular revenue, and any extra revenue could be spent when it was received. Mr. Kealy said he was asking that question and pointing it out just as a person that runs businesses in the public or the private sector.

Commissioner Ellis thought Mr. Westhoff addressed that point by explaining the extra revenue gives the Commission staff a period of time in which to make those kinds of adjustments to ensure that, down the road, revenues cover our basic expenditures. **Mr. Kealy** clarified he was looking at where it was expected that attrition was going to try to soften the blow, but ultimately it is an issue of looking straight up from FY08 and that the income level and the workload are at a crossroad there. Yet the real workload has already been done on the next revenue component that brings it up. Mr. Kealy thought he would have probably devised a work plan that had to cut a little harder, simply because the real operating revenue stream is significantly below that line and dipping further. Mr. Kealy was reading that the real revenue line is significantly below the operating line and that is what is picking it up when going straight up from 2010. Mr. Kealy felt

staff was just utilizing a reserve and trying to soften something that ultimately the workload apparently is not there.

Chair Bierbaum thanked Mr. Kealy, noting his comments were useful. Chair Bierbaum said she agreed with his observations, but pointed out that Mr. Westhoff made the correct determination to make pretty severe cuts in the short term, which were possibly not as much as would have to be cut without the forfeited funds. Two years is a long time in the life of any industry and Chair Bierbaum was sure they would be monitoring this as the years go on. If more significant cuts need to be made than were made today, it sounds like Mr. Westhoff has taken that into account. Chair Bierbaum felt okay with the situation even though the Commission probably made the same observations that Mr. Kealy had about the gap in revenue and expenditures.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to approve the Fiscal Year 2009-2011 biennium budget in the amount of \$32,501,000. *Vote taken; the motion passed unanimously.*

Request for Approval of Agency-Request Legislation

Ms. Amy Hunter requested the Commission's formal approval to submit agency request legislation for the 2009 session to the Governor's office. Ms. Hunter reported the first bill would impose penalties against minors who gamble and would allow agents to issue civil infractions to underage gamblers. Currently the Director can bring administrative charges against operators and dealers, but current laws do not have any penalty against the minor who gambles. Language was added in Section 5 that requires the minor who is gambling to forfeit any winnings; although, they would still have the right to a hearing. Some of the stakeholder comments addressed the addition of the seizure forfeiture language. In response to James Williams, the individual who has contacted the Gambling Commission over the past couple of years with concerns about how the bill had been drafted because parents allow their children to buy raffle tickets at different fund raisers that he's attended, the word "raffle" was added in Section 1. There is currently an exception like this for bingo. Currently those under 18 are not allowed to buy raffle tickets; they can sell the tickets if certain restrictions have been met. Basically, this would allow Mr. Williams to petition the Commission for a rule change to allow children to buy raffle tickets if they are with their parent or guardian. Ms. Hunter thought this change may help move the legislation along. The language was forwarded to Mr. Williams and, as of yesterday, staff had not heard back from him. This word change would basically put that policy discussion at the Commission level. Ms. Hunter reported that staff sent letters to about ten different stakeholders for their comments, several of whom supported the legislation in 2007 and 2008. Four letters of support were received:

- The Office of Administrative Hearings, the agency that would be holding the seizure forfeiture hearings, responded they did not believe the bill would have any impact on them.
- The Division of Alcohol and Substance Abuse (DASA) handles problem gambling issues and responded in support of the bill. They thought the component to disallow minors from collecting winnings or recovering losses was a welcome addition to last year's proposal.

- The Recreational Gaming Association (RGA) has supported the bill the past couple of years and would continue to support it. The RGA raised two questions in their letter:
 - ♦ Whether law enforcement would be able to issue the civil infractions. The short answer is that with the way the bill is drafted, yes they could. It would then be up to the local jurisdictions whether they want to do that. Staff think a better solution might be for local law enforcement to have that authority if they want to use it, but if the card room thinks there is someone under 18 who has been gambling, the card room can collect the contact information and inform the Commission, who could then issue the civil infraction later on, as opposed to having to call local law enforcement out to do it.
 - ♦ The second question would require additional language in the bill. The RGA would rather see funds from a minor who has gambled and won money go back to the licensee or, if not to the licensee, then to the Evergreen Council on Problem Gambling or to DASA. Under the current process, a licensee could put in a request for the funds, which is what happens with regular seizure forfeiture cases. Staff is comfortable with this request. If the Commissioners are comfortable with that idea, then staff requests authorization to work with Mr. Ackerman on language between now and September 2 when this has to be submitted to OFM. There will not be a meeting between now and the deadline for the Commissioners to see that language.
- The Evergreen Council on Problem Gambling made two suggestions:
 - ♦ That the seized funds go towards an education, awareness, or other type of prevention program.
 - ♦ That part of the penalty be a mandated education element. Staff is not as supportive of this provision, in part because there is not an obvious mandated education element that a judge would automatically know to refer the person to and because the more things added to the bill, the more it can jeopardize the bill. That is what happened two years ago when a Senator added an amendment that the driver's license would be suspended or revoked and ended up helping to kill that bill. Staff do not feel adding in the mandated education element is something that needs to be done right now.

Chair Bierbaum asked if Ms. Hunter wanted the Commission to take formal action on whether to move forward with this. **Ms. Hunter** affirmed that they could either do it now or after they hear the second proposal. **Chair Bierbaum** thought it might be easier to deal with them one at a time and asked if the Commissioners had any questions.

Commissioner Ellis asked what staff thought about the RGA proposal with regard to how the seized funds should be used. **Ms. Hunter** replied that staff would be okay with adding language that the money would go to a problem gambling treatment program. Staff would like to work on that language with Mr. Ackerman, and then submit the proposal that way. Because there is no Commission meeting before the deadline, there really would not be a way to formally bring the language back to the Commission. **Commissioner Ellis** said that was fine.

Chair Bierbaum suggested asking Ms. Chiechi about her opinion with respect to keeping this language in, despite Ms. Hunter's assessment that it may cause problems. **Ms. Hunter** clarified

that staff's concerns were with the suggestion from Maureen Greeley with the Evergreen Council on Problem Gambling.

Ms. Dolores Chiechi, Recreational Gaming Association, clarified that she understood staff was amenable to the changes allowing for the funds to be transferred either to the licensee, or to the Council on Problem Gambling, or to the State's program for education, awareness, training, and treatment. Ms. Chiechi thought that if the Commissioners approved, staff would work with the Attorney General to tweak that language and include it in a version. Ms. Chiechi said the RGA would encourage that to happen and thanked the Commission for their consideration.

Chair Bierbaum asked if there were any other comments from members of the public about this proposed request legislation; there were none.

Commissioner Ellis made a motion seconded by **Commissioners Rojecki and Parker** to authorize staff to proceed to submit the proposed legislation imposing penalties against minors who gamble, with the caveat that Commission staff work with stakeholders and counsel to develop language that would provide the forfeited funds either be retained by the licensee or transmitted to the Evergreen Council on Problem Gambling or the State's problem gambling agency, DASA. *Vote taken; the motion passed unanimously.*

Ms. Hunter reported the second proposal allows the Commission to set the amusement game locations. Staff will be revising the fiscal note to show there is no fiscal impact; this bill would actually just preserve the status quo. Ms. Hunter explained that staff discovered that the law pertaining to who determines where amusement games can be located is not clear. There has been a long-standing interpretation that the Commission can authorize locations in addition to those authorized by the Legislature. Staff is proposing that legislation be requested that would clearly allow the Commission to set locations. If the legislation is not successful, the Commission will probably need to repeal the rules that currently allow amusement games at four specific locations: department stores, grocery stores, skating facilities, and family sports complexes. This would result in a loss of revenue to the Commission of about \$82,000 a year. There would also be a loss to local governments because many local governments tax amusement games and there would be impacts on B&O and other areas. There are about 400 locations where these amusement games are, and based on current stakeholder research and outreach, staff believe the industry would support this legislative proposal to preserve the status quo. Letters were sent to about 370 licensees who have amusement games at their locations, which generated about 30 phone calls and 8 e-mails mostly in support of the proposal:

- Randy Lais, from Total Service, Inc., who does most of their business with these locations, was very much in support, and pleaded that this bill could get passed.
- Pete Marney, with Bumpers, asked questions rather than stating a position.
- JukeJim noted that revenues are already in decline, so staff thought he would support this proposal based on preserving the status quo.
- Ram Restaurants were in support of this proposal and had additional questions and suggestions about minors. Ms. Hunter will be following up with them because most of their questions are currently addressed in WACs or laws.

- Russ Hunt, with Go Bowl and Stardust Lanes, noted the industry is already hurting. Staff thought he would be in support because this preserves the status quo.
- David Stelzer, with SEGA Entertainment, had questions about wagering limits and Mr. Trujillo talked with him.
- Ron Burbach, President of Fun Enterprise, supported the proposal and noted he felt the Carnival Guild would also support it.
- Maurice Haworth, with J&M Amusement Rides, was in support.

Staff would recommend that the Commission vote to pass this on to the Governor's office.

Chair Bierbaum indicated that, as she read the materials and listened to Ms. Hunter's report, she gleaned the Commission has always assumed it had the authority to designate locations for these amusement games and have been acting under that assumption. Nobody has challenged that authority or informed the Commission that it was wrong. If this legislation is put forward and fails, for whatever reason, those four types of locations that currently have amusement games will have to pull the games. That seems like a huge risk, so why not just leave it alone. **Commissioner Rojecki** responded because they would be operating illegally. **Chair Bierbaum** asked whether somebody had told us that the Commission does not have the authority to do that, maybe the interaction of the two RCWs is being misread. **Director Day** explained our Assistant Attorney General advised staff it appeared the Commission did not have authority to designate locations that were outside the statutory list, so staff moved forward to correct the situation. There was a similar situation relative to summary suspensions and temporary licenses where the Commission had for some time issued temporary licenses under all licensees when it was actually only those specifically listed under a couple of the statutes and legislation was brought forward to cure that problem. The situation **Chair Bierbaum** described is correct and the rule has been left in place pending receiving clarification from the Legislature, and staff would be taking a risk that someone might object.

Chair Bierbaum called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to authorize staff to submit the proposed legislation clarifying the ability for the Commission to add to the list of authorized locations where amusement games can be operated. *Vote taken; the motion passed unanimously.*

Correspondence

- > Summary of Recreational Gaming Association's Petition
- > News Release from Governor's Office Regarding Tribal Gaming

Monthly Update Reports

- > Administrative Cases
- > Federal

News Articles

New Licenses and Class III Certifications

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

Default – Loi Van Nguyen, Card Room Employee, Revocation

Ms. Hunter reported Loi Van Nguyen, while working as a dealer, took \$47 in casino gambling chips and also admitted to taking approximately \$600 more over a six-day period by taking a double rake. Mr. Nguyen put the extra rake in his tip box and at the end of his shift cashed them out. The Director issued an order of summary suspension. The papers were served to the licensee's home address on file. The licensee was not home, but a person who said she lived at the address and was in constant contact with Mr. Nguyen accepted service and said she would make sure he was aware of the order. She said Mr. Nguyen was out of the area but not out of the country. Staff made a courtesy call to the licensee and spoke with a woman who said Mr. Nguyen was in a different state, but understood that by not responding his license would be revoked. By not responding, Mr. Nguyen waived his right to a hearing and the Commission can enter a final order in default. Staff would recommend the Commission revoke Loi Van Nguyen's license.

Chair Bierbaum asked if Mr. Van Nguyen or a representative was present; no one responded

Commissioner Parker made a motion seconded by **Commissioner Ellis** to enter a default order revoking Loi Van Nguyen's card room employee license. *Vote taken; the motion passed unanimously.*

Other Business/General Discussion/Comments From The Public

Chair Bierbaum called for public comment.

Mr. Max Faulkner, speaking for the Clearwater Poker Room, a Class F poker room in East Wenatchee, invited everyone to a free poker tournament being held at 8:00 p.m. that evening. The tournament should last about an hour or two. \$100 will be donated to the Mike Utley Foundation in the name of the winner. Mike Utley is an ex-NFL player who runs a foundation to help paralysis victims, and also runs a dam-to-dam bicycle fundraiser. Clearwater Poker Room is across the river in East Wenatchee; there are maps on the flyers on the back table. Mr. Faulkner said he would be there to help give tips before hand to anybody who needs the basic poker tips. Card rooms are legal in East Wenatchee, but not in Wenatchee, so the tournament is across the bridge and is easy to find.

Ms. Chiechi, Recreational Gaming Association, clarified it was the RGA's intention to request to withdraw their petition relating to card tournaments; WAC 230-15-210 and WAC 230-15-225. These are indicated on correspondence from Susan Arland with the indication that the RGA would be working with staff on some revisions to card tournaments. Ms. Chiechi wanted to

make it clear for the record that the RGA is going to ask to withdraw those petitions and resubmit them at a later time after working with staff on revised language.

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

At 4:15 p.m. **Chair Bierbaum** called for an Executive Session to address pending investigations, tribal negotiations, and litigations. **Chair Bierbaum** called the meeting back to order at 5:50 p.m. and immediately adjourned.

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

Chair Bierbaum called the meeting to order at 9:30 a.m. at the Coast Wenatchee Center Hotel and Convention Center located in Wenatchee and introduced the members present.

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum**, Quilcene
Commissioner Keven Rojecki, Tacoma
Commissioner Alan Parker, Olympia
Commissioner John Ellis, Seattle
Senator Margarita Prentice, Seattle
Senator Jerome Delvin, Richland
Representative Gary Alexander, Olympia

STAFF PRESENT: **Rick Day**, Director
Mark Harris, Assistant Director – Field Operations
David Trujillo, Assistant Director – Licensing Operations
Amy Hunter, Administrator – Communications & Legal
Jerry Ackerman, Senior Counsel – Attorney General’s Office
Gail Grate, Executive Assistant

Chair Bierbaum indicated it was necessary to have a short Executive Session to talk about tribal negotiations, ongoing investigations, and pending litigation and adjourned the meeting at 9:35 a.m. **Chair Bierbaum** called the meeting back to order at 9:45 a.m.

Approval of Minutes – Regular Meeting, July 10 and 11, 2008

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to approve the minutes of the July 10 and 11, 2008, regular commission meeting. *Vote taken; the motion passed unanimously.*

Spokane Tribe Compact Amendment (*PowerPoint Presentation*) (*Moved from Thursday’s Agenda, Item #2*)

Director Day explained he was the person responsible for fulfilling the Commission’s role to negotiate tribal compacts on behalf of the State and identified Lead Staff Attorney Melinda Froud, Senior Counsel Jerry Ackerman, and himself as the negotiation team. Director Day introduced Chairman Greg Abrahamson of the Spokane Tribe and congratulated him on his election to Chair. The Commission should have in their agenda packets a copy of the PowerPoint presentation, a summary of the proposed Amendment, the Amendment, and Appendix X2. Director Day reviewed the PowerPoint presentation.

- About one-and-a-half years ago the Tribe and the State set aside a 20-year history of negotiation and litigation to approve a Tribal-State Compact and have since worked to build a positive relationship as the Compact has been implemented. The Tribe has successfully converted and upgraded its casino operations to authorized machines and is fully transitioned into the Tribal-State Compact.
- The Commission will be considering the proposed First Amendment to the Spokane Tribe's Class III Gaming Compact, which is primarily housekeeping and is intended to incorporate Appendix X2 into the Spokane Compact. Appendix X2 is already part of the 27 other Tribal-State Compacts and was effective in May of 2007.
- The Legislative hearing was conducted on July 31, 2008, as required by State law. The Gambling Commission has received no comments from the legislative committees. The Commission decides whether to forward the Amendment to the Governor. After the Governor reviews and makes a decision on final execution, the Tribe must still forward the Amendment to the Secretary of Interior for publication and approval. The Department of Interior must take action before the Compact Amendment would be finally approved.
- It is through the Tribal-State Compacts that the State is able to work to ensure there is no criminal involvement in Indian gaming, that the gaming is conducted fairly and honestly, that it is limited to the authorized activities, and that the gaming and community impacts for emergency services in the area are addressed.
- The foundation for the negotiation and implementation of State Gaming Compacts is the federal law and Indian Gaming Regulatory Act of 1988. The California v. Cabazon decision that took place in 1987 was instrumental in bringing Congress and the Indian Gaming Regulatory Act (IGRA) we now operate under into existence. IGRA establishes the framework for tribal gaming in response to state concerns by requiring tribes to have compacts with states to conduct casino style gambling.
- If any gaming activity is not specifically prohibited in this State, it is a subject of negotiation without the limits within state law and the Commission is required as a state to negotiate in good faith.
- IGRA was established with its primary purpose to promote tribal economic development and self-sufficiency, IGRA has the same intention to assure that gaming is conducted fairly and honestly.
- Three classifications of gaming under the federal law are traditional tribal gambling, Class II gaming (bingo, pull-tabs), and Class III gaming (casino style). Traditional Indian gambling is totally within the Tribe's jurisdiction, not within the Commission's or the federal government's jurisdiction. Class II gaming is federal and tribal jurisdiction. The only subject of a Compact negotiation is Class III gambling or anything that is not Class I or Class II.
- There have been 17 years of cooperation with Tribes through the Tribal-State Compacts, which has led to an effective respect-based regulatory partnership.
- The Tribes are the primary onsite regulators, but the Commission has concurrent jurisdiction over Class III gambling.
- 18,225 was the maximum number of machines the Tribes could place in play under the original Appendix X. By the end of May 2007, most of the machine allocations were either

in play or leased, which is the environment the Spokane Tribe came into as they attempted to develop their Compact.

- 27,225 is the maximum number of machines that can be put in play under X2. There is a system of leasing between Tribes so the Tribes that are rural and have minimal opportunity for casino development are able to share in the revenue supplied from other Tribes.
- The Spokane Tribal-State Compact has been effective for about 16 months. The effective date was the date of approval by the Department of Interior and the transition date is following full certification and pre-operation inspection, which the Tribe has successfully completed.
- The Spokane Compact contains a player terminal allocation similar to the 27 other Tribes, and it is one of the topics of the Amendment. The Spokane Tribe agreed to an allocation of 900, but during the negotiation the Tribe requested and the Commission agreed to a provision that would amend the allocation established by Section 5 to provide an equivalent number of player terminals in the event another agreement followed the Spokane Tribe agreement.
- The Amendment basically incorporates X2 into the Spokane Tribal-State Compact, but is also designed to make some key clarifications:
 - ♦ Incorporates X2 as was done for 27 other Tribes.
 - ♦ Confirms the allocation of 975 machines, which was agreed to as part of the original Compact.
 - ♦ Clarifies the Tribe can lease player terminals to other Tribes, which has been an important provision to rural Tribes and was designed to ensure the benefits of gaming revenue went to all Tribes instead of just a few with better locations.
 - ♦ Supports the federal law.
 - ♦ The Tribe would now be under the same moratorium as all the other Tribes, preventing negotiation regarding X2 and the number of machines until June 30, 2009.
 - ♦ Incorporates a prior agreement for the Tribe to delay offering higher table game wagers.
 - ♦ Preserves the locations, machine limits, and regulatory fees.
 - ♦ Continues the Tribe's obligation to make problem gambling and smoking cessation payments. The Tribe made a \$20,000 payment to the Evergreen Council on Problem Gambling, which is the first problem gambling payment made under the new combination of Compacts approved in 2007.
 - ♦ Continues the Tribe's commitment to invest in the community and provide a community investment report.

Director Day indicated staff and negotiators would recommend the Commission forward the proposed Compact Amendment to the Governor for review and final execution.

Chair Bierbaum asked if the Chair of the Spokane Tribe would like to come forward and introduce the other members present.

Chairman Greg Abrahamson, Spokane Indian Tribe, thanked Chair Bierbaum and members for the opportunity to answer any questions and help educate if needed. Chairman Abrahamson introduced Richard Garry, a member of the Council; Andy Matherly, the Chair of the Gaming Commission; and Scott Crowell, Scott Wheat, and Bruce Tower, legal counsel. Chairman

Abrahamson thanked the Gambling Commission staff for their efforts with the Compact negotiations, which lasted for about two years. There were some good negotiations and there were some times that got heated, but discussions went really well and the Tribe appreciates the Commission staff. The staff did a great job as the Compact was negotiated the first time and they did just as well the second time. As our Tribe made this transition, it had to remove all of the existing machines (just under 800 machines), which had quite a bit of cost involved to get the buildings and everything up to codes which the Tribe was not aware of. For the machines alone, it ran at \$12 or \$13 million for the Tribe to take the old ones out and put the new ones in. The Tribe has stuck to all of its agreements and done all that it said it would do within its Compact and have associated these extra costs; although, it has made the Tribe struggle a little bit. When the Compact was gone over line-by-line, the negotiators do not know how they forgot a couple things. Chair Abrahamson asked if anyone had any questions and thanked the Commission for allowing him to be there.

Chair Bierbaum asked if anyone had any questions or if there was any public comment.

Senator Prentice made a motion seconded by Commissioner Ellis that the Spokane Tribe Compact Amendment be approved as presented and forwarded to the Governor with a recommendation to approve it for addition to the existing Spokane Compact.

Senator Prentice wanted to be sure that everyone realized that she has made some distinct changes in her position. One of the things she had to keep coming back to was the original goal of IGRA. Gambling law is confusing in this State because there are distinct laws that apply to different things and arise at different times. Senator Prentice thought in every one of these negotiations, the goal of IGRA was economic development, and, as part of that, meant involvement of state government with the Tribes who historically have not necessarily welcomed State involvement. Senator Prentice had felt at the time that it was pretty hard for the Tribes to swallow. We are all trapped by our histories and probably most of us are trapped by ignorance of tribal history. Senator Prentice did not think she needed to know a lot of it, but believed that our State has handled it well from the very beginning because of having the Gambling Commission in place. In fact, it is because of IGRA that there are the four ex-officio members on the Commission. Senator Prentice was also struck as to all of the silly discussion about revenue sharing and her question was: what revenue – this non-existent revenue? Senator Prentice wanted the Spokane Tribe to be aware that over the years when there was almost no communication, Bruce Tower was always there. Mr. Tower and Senator Prentice would have brief chats. Mr. Tower may not have understood that, but communication was not totally broken and Senator Prentice wanted to acknowledge that.

Commissioner Ellis said that having gone through the process in connection with the existing Spokane Compact of being briefed on the negotiations as they went along with regard to two separate Compact drafts, and ultimately the decision before the Commission to approve the Compact, there is nothing in this Amendment that surprises him or that could not have been anticipated when the Spokane Compact was approved. Commissioner Ellis did not find it difficult to second the motion and vote in favor of the amendment.

Senator Delvin thought some of the angst that happened yesterday was caused from our own process and we need to do something about that, but that is a discussion for other times. Some of the arguments that were being put forth on the language, when Senator Delvin thought about it, that language was there in the first Compact. Senator Delvin knew that language had been discussed in the first Compact and he had voted no on that Compact for the reasons he had stated then. After thinking about it, Senator Delvin did not think that was a valid argument to not move this forward. Senator Delvin thought the Spokane's have taken the opportunity to come into the Compact system, work in that system, and showed good efforts in adhering to their side of the agreement. Senator Delvin thought it would send the wrong message to the Spokane's if the Commission refused to recommend it to the Governor, and the Tribe might go back outside the Compact system again. Senator Delvin was being swayed both ways on the vote for this, but after reflecting on it, said he was going to be voting yes on the Amendment.

Representative Gary Alexander thanked Chair Bierbaum for the opportunity to be on this council, adding this would be one of his first votes. In being new, Representative Alexander wanted to emphasize that one of the things he tries to do as a member of any committee or council he serves on is to become as knowledgeable as he can. Representative Alexander said he reads the information and listens to all the inputs, and he certainly wanted to listen to his colleagues who have been on the Commission and who bring up some very salient points. There is an interesting issue in the gambling area and Representative Alexander could see where certain people have principles that they do not want to see any expansion of gambling. Representative Alexander could appreciate those viewpoints and expected they would vote no on this Compact, just like they would vote no for non-tribal interests. But Representative Alexander does not share that viewpoint and does not share the standpoint that he does not want to see an expansion of gambling. Representative Alexander thought it was an economic development tool for our entire State and he hoped that at some point in time the ex-officio members might have the opportunity to vote on non-tribal economic development issues as well as tribal economic development issues because they both stand the ability to provide jobs and opportunities in our State. Representative Alexander did not agree totally with the Director that this is just a housekeeping amendment because it is not exactly like the other agreements. There are provisions in this agreement that are not in other agreements and there are not provisions in this agreement that are in other agreements. Representative Alexander wanted to see compatibility and consistency and was concerned about leap-frogging situations in our gambling communities, both tribal and non-tribal. Representative Alexander felt that some very important provisions were brought up yesterday by some of his colleagues that if addressed would resolve his issues and he could come back at a future meeting and support this agreement, with the understanding that we are talking apples and apples. But Representative Alexander did not feel that was the case today, adding it was not anything reflecting on the Spokane Tribe because he hoped in the future that we would get there. Representative Alexander said he would be voting no.

Commissioner Parker noted that his term on the Commission was coming to a close at the end of this calendar year. He was really pleased to be able to sit on the Commission today as they vote on this Amendment to the Spokane Compact, because 20 years ago in 1988, Commissioner

Parker had the privilege of serving as the Chief of Staff in the U.S. Senate Committee on Indian Affairs under Chairman Senator Dan Inouye and Vice Chairman Senator Dan Evans. Commissioner Parker knew it was quite an exercise in Congress at that time to address the question of authorizing gambling that the tribes had established in the court system through the U.S. Supreme Court decision in Cabazon the year before. What we see today is a much more mature system and a much more mature relationship between the Tribes and the State. Commissioner Parker was impressed with the wonderful report that the Director of the Washington Indian Gaming Association, Ernie Stebbins, shared with the Commission before the meeting started, titled *Washington Tribal Government Community Investment Report 2008*. Commissioner Parker hoped there were copies available for those of the public who want to look at it. It represents to Commissioner Parker that Washington State in its relationship with the Tribes is in many ways a model for the rest of the country. The system of entering into Compacts through very professional levels of negotiation that balance not only Tribal interests but the State's interests in regulating gambling is a proven system now. There is never going to be 100% agreement on anything, and gambling is a controversial question. Commissioner Parker thought the current system we work with here in Washington State is a proven system that he was pleased to be able to share with the other Commissioners as they consider and act upon this Amendment. The Commission looks forward to good relations down the road and Commissioner Parker wanted to take this opportunity to wish the best of luck to the Spokane Tribe as they move forward. Commissioner Parker was aware that the Tribe has been through a difficult period making the adjustment from the pre-regulatory gambling to a compacted form of gambling under the Compact, and congratulated the Tribe for the success it has achieved through hard work.

Commissioner Rojecki agreed with Commissioner Ellis and Senator Delvin, indicating he would be voting in support of this Amendment.

Vote was taken; the motion passed with five aye votes and two nay votes (Chair Bierbaum and Representative Alexander voted nay).

6. Petition for Rule Change – Monty Harmon – Gambling Promotions

Petitioner's Original Proposal not filed at the April 2008 meeting

- a) Amendatory Section WAC 230-06-030 – Restrictions and conditions for gambling promotions
- b) Amendatory Section WAC 230-15-141 – Additional merchandise or cash prizes for card games

Commission's Alternative filed at the April 2008 meeting

- c) Amendatory Section WAC 230-06-030 – Restrictions and conditions for gambling promotions
- d) Amendatory Section WAC 230-15-141 – Additional merchandise or cash prizes for card games

Petitioner's Alternative A filed at the May 2008 meeting

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

Assistant Director Trujillo reported that Harmon Consulting, Incorporated is seeking to amend two rules related to gambling promotions. The petition was proposed at the April Commission meeting and included the request to increase the monetary amount for promotional items from \$500 to \$5,000 and added language that could combine a promotional contest of chance with a gambling promotion. In April, Mr. Harmon filed an amendment excluding the promotional contest of chance language. Subsequently, because staff was not concerned about increasing or removing the limit, the petitioner filed an alternative at the May Commission meeting removing the limit in its entirety. Included in the packet is the alternative that the Commissioners filed in May for WAC 230-15-141 and the petitioner's alternative filed at the May meeting for WAC 230-06-030. Staff expressed no regulatory concerns associated with removing monetary limits on gambling promotional items and recommends adoption of item 6.d), the Commissioners' Alternative to WAC 230-15-141, and 6.e), the petitioner's Alternative to WAC 230-06-030. The petitioner requests the change be effective 31 days from adoption, but staff recommends an effective date of January 1, 2009.

Chair Bierbaum asked if there were any questions or public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approved proposed amendments to WAC 230-15-141 and WAC 230-06-030 as presented by staff. *Vote taken; the motion passed unanimously.*

Chair Bierbaum asked if Mr. Harmon wanted to comment.

Mr. Monty Harmon appealed on behalf of the licensees for consideration of the effective date for the rule changes. The football season and holidays are coming up, which are opportune times for promotions for promoting businesses. If the effective date is January 1, 2009, the licensees would miss the entire season. Mr. Harmon asked the Commissioners to consider that factor in the effective date.

Chair Bierbaum noted the motion did not include an effective date and asked Mr. Trujillo if he had any feedback to the Commission on Mr. Harmon's request that the rule changes be made effective 31 days from today. **Assistant Director Trujillo** did not believe staff would object to that effective date, but Assistant Director Harris' staff would possibly be impacted by it. **Assistant Director Harris** did not think it would be a large burden on staff. **Chair Bierbaum** confirmed there were no objections.

Commissioner Rojecki made a motion seconded by **Commissioner Parker**, to approve the requested effective date of 31 days from filing. *Vote taken; the motion passed unanimously.*

7. **Petition for Rule Change – Recreational Gaming Association – Wager increase from \$200 to \$500 for house banked card games and remove \$1 limit on bonus wagers for progressive jackpots**

Amendatory Section WAC 230-15-140 – Wagering limits for house-banked card games

Assistant Director Harris reported the Recreational Gaming Association (RGA) is requesting to increase the maximum amount of a single wager or bonus wager on an odd based payout from \$200 to \$500 and for a bonus wager for progressive jackpots from \$1 to \$500, or whatever limits are imposed by the manufacturer's game rules. The RGA states that tribal casinos are authorized to offer \$500 betting limits while house-banked card room licensees have been held to the lower \$200 limit. Tribal casinos offer \$500 maximum wager limits for single and bonus wagers. The progressives are not regulated by Tribal-State Compact but are determined by the manufacturer's game rules and posted in the Tribe's house rules, and is typically \$1. Tribal casinos are also required to have tribal gaming agents onsite at all times the games are operated. Higher wagering limits may make the games more attractive to professional cheaters, but staff does not anticipate all licensees will offer the higher wager limits and most players will not wager at that higher level. The Commission may wish to consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010. The petitioner has requested an effective date of January 1, 2009.

Chair Bierbaum asked if there were any questions or comments from the public.

Dawn Mangano, Casino Caribbean in Yakima, felt it was important to come forward and try to explain in a real way why this change would make a difference for our casino in Yakima. The casino was opened with an extensive menu with seafood and wine, which we were not able to sustain. Ms. Mangano testified that this increase would allow her to go off to a different demographic that has more disposable income, and be able to offer a \$9 martini, Yakima wines from the local wineries, and several steaks instead of one. Raising the limits from \$200 to \$500 would allow her to pursue the orthodontist that put her daughter's braces on or the hog farmers that come in, and they would make more visits and would bring their friends, and Ms. Mangano could go after a different group of customers. Ms. Mangano appreciated that the Commission was considering this change, adding it would make a large impact on the smaller casino in rural areas.

Commissioner Ellis indicated Ms. Mangano's comments were very helpful to the Commission and asked if she had actually done any kind of study or analysis or a discussion on how many customers might be attracted by the higher limit. Commissioner Ellis was curious how many people in the Yakima area might be willing to make a \$500 bet. **Ms. Mangano** replied she had not done any study as far as the numbers, but she has spoken specifically to customers. The orthodontist goes to a different venue where he is accustomed to playing \$500 limits; he has the money to spend and he likes that kind of play, so he does not frequent Ms. Mangano's place. As far as a number of people, it is more a personal contact. Ms. Mangano lives in Selah, which is just outside of Yakima, and it is from personal contact with the customers, asking what can she offer them to come to her

business and not continue down the road, and what is it lacking. This would provide an opportunity to stimulate the food and beverage business. Ms. Mangano said she has a great facility that is tropical themed and the customers like the atmosphere but are looking for that different level of gaming. Ms. Mangano thought she would then be able to offer the rest of it to increase the food and beverage business. It is not numbers; it is specific people. **Commissioner Ellis** said it must be extremely frustrating to know that Ms. Mangano's orthodontist is out there playing with her money, but not in her casino. **Ms. Mangano** replied that was just one example.

Mr. Gary Murrey, Great American Gaming Corporation, talked about the petition on the policy side where it was mentioned; that the Commission has to remain within policy considerations. Specifically, Mr. Murrey stated the \$500 limit has become a socially acceptable level in the State and has been around for quite awhile and he saw no public concern or a large uproar from anybody coming up to comment. E-mails have been provided in support of the limit and there are players interested in the increased limits. From a policy standpoint, Mr. Murrey had looked at any disagreements between it and what has become a socially acceptable level in the State over the years and thought it would be good to raise that level across the State to all the people participating and offering those games of chance.

Chair Bierbaum asked if any of the Commissioners wanted to weigh in on this proposed rule change. **Commissioner Parker** indicated he was in favor of it and supported the increase. **Chair Bierbaum** agreed that she was also in favor of it, adding it would be up for final action next month in Gig Harbor.

8. Petition for Rule Change – Recreational Gaming Association – Allowing Mini-Baccarat and allowing nickels and dimes to be used in all commission games

Original Proposal filed at the May 2008 Commission meeting

a) Amendatory Section WAC 230-15-035 – Requirements for authorized card games

Alternative #1 filed at the June 2008 Commission meeting

b) Amendatory Section WAC 230-15-145 – Making wagers with chips or coins

Alternative #2 Up for Filing at the August 2008 Commission meeting

c) Amendatory Section WAC 230-15-035 – Authorizing new games or changing game rules

d) Amendatory Section WAC 230-15-040 – Requirements for authorized card games

e) Amendatory Section WAC 230-15-045 – Withdrawing approved card games authorization

Assistant Director Harris reported the Recreational Gaming Association is requesting to be allowed to use community cards and card games, which would allow games like baccarat and mini-baccarat to be played in commercial card rooms. Currently players must have their own hand of cards and cannot bet on another player's hand or the house's hand. If approved, players would not be required to have their own individual hands and the change would allow nickels and dimes to be used in card games that charge a commission. These

types of games are allowed under Tribal State Compact. After the May Commission meeting, the RGA clarified that their intent was to authorize only mini-baccarat. Staff drafted an Alternative to the rule, which was filed at the July Commission meeting. At that meeting, Chair Bierbaum raised some additional questions about the Alternative filed. Based on those concerns, staff drafted Alternative Package 2, which is up for possible filing today to address these concerns. This Alternative package has two housekeeping changes and a modified version of Alternative 1 that was proposed to help clarify the intent of the rule change. It changes the order of two of the WAC rules so they flow better in the Rules Manual; the one that lists how games are authorized and the requirements of authorizations. It also changes the word "approved" to "authorized" in the third rule to make all three rules consistent and use the same verbiage and help clarify any confusion. The new change would require that mini-baccarat be played in a manner as described as baccarat in Hoyle, with the exception it would limit the number of players authorized to what is currently listed in our WAC rules. The Commission should consider whether betting on community cards rather than the player's own hand is a social card game as defined in RCW 9.46.0282. Staff would recommend filing Alternative Package #2. Petitioner has requested an effective date of January 1, 2009.

Chair Bierbaum wondered why Alternative #2 was up for filing, not for discussion as listed at the beginning of the package. **Assistant Director Harris** explained the rest of the package, which includes the original and an alternative, have already been filed and are up for discussion, but the proposed Alternative #2 needs to be filed. **Chair Bierbaum** asked who originally proposed Alternative #2. **Assistant Director Harris** replied the RGA had filed Alternative #2. **Chair Bierbaum** asked if the RGA wanted to speak on Alternative 2.

Mr. Murrey, Recreational Gaming Association and Great American Gaming Corporation, explained that Alternative #2 was brought forward after the concerns of the Commission regarding whether authorization comes from the Director after the game was authorized or who authorizes what. Mr. Murrey hoped that after talking with Commission staff that any ambiguity as to what happens first was cleared up. Alternative #2 made it specifically mini-baccarat and goes one step further to clarify who authorizes which games and what games are authorized within the Code. Mr. Murrey testified that the RGA endorses Alternative #2, adding it gets to what was specifically being asked for, and also clears up any ambiguity on the process. Mr. Murrey's second point was that under what defines a social card game under RCW 9.46.0282, the key driving words in that as to what constitutes a social card game is in the middle section where it says there shall be two or more participants in a game who are players or persons licensed. Mr. Murrey thought that was the key driver as to what makes it a social game. It is not what a customer would play against a machine, which becomes an individual game of the player against an odds table. This is a social game between the participant and the licensed person or other participants. Mr. Murrey picked that out as the one defining sentence that makes it social, and since this game falls under that, he thought that was the social aspect of it. Mr. Murrey reminded the Commission that when the pilot program first came out, baccarat was one of the socially acceptable games licensed under this. The Director at that time had a difference of opinion as to what would

constitute social and under the pilot program, it was deemed to no longer fit within his idea of what social was. Mr. Murrey thought that at this point in time and looking at this language, this fits under the definition of a social game.

Mr. Max Faulkner, President of the RGA, asked to speak on mini-baccarat in general. Mr. Faulkner did not know much about the game, but had done some research into it because he was supposed to be a gaming consultant and a card room owner and would like to know something about it. Mr. Faulkner said he had watched Agent Lohse's PowerPoint presentation, watched the game being played at Muckleshoot and in Las Vegas, and saw a lot of friendly interaction. Mr. Faulkner could not find much of a definition of "social" in the WACs or RCWs, so he looked "social" up online and found "seeking or enjoying the companionship of others, friendly, sociable, gregarious." From what Mr. Faulkner has seen, and probably the agents who have watched baccarat being played would probably agree, it is one of the more social card games in house-banking. Regarding the question about the odds of the game, Mr. Faulkner found online that mini-baccarat is probably one of the most player-friendly odds game and actually has lower house odds than even pai gow. Mr. Faulkner congratulated Senator Delvin on winning the charity poker tournament last night, announcing money was donated in Senator Delvin's name to the Mike Utley foundation.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to approve for discussion and possible filing Alternative #2 amending WACs 230-15-035, 230-15-040, and 230-15-045, as presented by staff. *Vote taken; the motion passed unanimously.*

9. Petition for Rule Change – Recreational Gaming Association – Increase the number of players at card tables

Original Proposal filed at the May 2008 meeting

a) Amendatory Section WAC 230-15-055 – Limit on number of players at each table

Alternative #1 Up for filing at the August 2008 meeting

b) Amendatory Section WAC 230-15-055 – Limit on number of players at each table

Ms. Hunter reported this was similar to the last petition in that Alternative #1 is up for discussion and possible filing. At the May meeting, the Commission filed a petition for rule change to increase the number of players at a card table from 7 to 9 at house-banked games, unless they were limited by the manufacturer's rules, and from 10 to 12 at nonhouse-banked games. Alternative #1 is more limited than the original one and would change the number of players at a house-banked game from 7 to 9 and leave the number of players at nonhouse-banked games at 10, which would be consistent with what is currently allowed in the tribal casinos. Since the last meeting, staff has researched what is allowed in other jurisdictions. In Nevada, the manufacturer game rules typically determine the number of spots that are allowed, but the casinos can also limit the numbers further, and the typical number of spots allowed at house-banked games is 7. In New Jersey it is state rules that set the number of players and most games are set at 7, except mini-baccarat and three-card poker that allow 9 players. In Washington tribal casinos, the maximum number is 6 or 7, but for blackjack

many tribal casinos allow 9. Staff would recommend filing Alternative #1 for further discussion.

Chair Bierbaum asked if any Commissioner had a question, or if the RGA representative would like to comment.

Mr. Murrey, Recreational Gaming Association, confirmed that the RGA would endorse the filing of Alternative #1.

Chair Bierbaum called for public comment; there was none.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to approve for discussion and possible filing Alternative #1 amending WAC 230-15-055, as presented by staff. *Vote taken; the motion passed unanimously.*

10. Petition for Rule Change – PokerTek – Electronic Poker Tables

- a) Amendatory Section WAC 230-15-030 – Authorized non-house banked card games
- b) New Section WAC 230-16-157 – Electronic poker tables

Assistant Director Trujillo reported at the March Commission meeting the petitioner provided a demonstration of the poker table, but a petition was not filed at that time. The petitioner is requesting electronic facsimiles of cards and electronic facsimiles of gambling chips be authorized for use in poker. Additionally, the petitioner is requesting that a live dealer be removed; however, a licensed card room employee would still provide oversight. Players would set up an electronic bank account with the card room's cage and receive a player card and a PIN number that would allow the players to access play on the PokerPro table. No money would be placed on the players' cards and poker players would play against one another. If only one person were seated at the table, there would be no play until other players joined in. Instead of using a licensed dealer to deal poker games and collect any fees to play, the PokerPro table deals and collects any associated fees. The PokerPro table electronically collects the fees using the rake method, which can be configured to any of the three fee collection methods authorized in WAC rules: period of time, per hand played, or rake. There are no chip trays or drop boxes attached to the table. The Commission approved the use of electronic facsimile of cards for house banked card games in July of 2001. The DigiDeal table is the only type of table with electronic facsimiles of cards that has been approved for use in Washington State. If this rule change is approved, it would allow an electronic version of poker and our agency would need to establish a regulatory program and develop equipment and software specifications for testing purposes. The benefits of the system to card game licensees include reducing the opportunity for dealers and players to manipulate or introduce new cards or chips, the opportunity to steal chips, reduce dealer labor costs, probably deal more hands more quickly, increase the amount of fees taken in, and reduce costs for cards and gambling chips.

Policy considerations the Commission may wish to consider are whether this table is an electronic gambling device as defined in RCW 9.46.0241, and whether automatically

crediting poker winnings to a player account in the cage is the same as crediting winnings to a cash hand. The Commissioners may also wish to consider whether the ability of the players to access player access cards to access wagering accounts makes the player access card an instrument of value. Another consideration is that the change would remove the live dealers from the poker game, which is a substantial change. Staff received no statements supporting or opposing the change. There are presently about 270 card room licensees that this change could impact; however, because the rules currently require a cashier's cage as well as surveillance requirements, it is very likely only the approximately 83 house-banked card rooms could be impacted. The other seven card room licensees that offer player-supported jackpots would already have this infrastructure in place for the surveillance and cashier's cage. Staff recommends filing the petition for further discussion.

Chair Bierbaum asked if the Commissioners had any questions.

Commissioner Ellis asked how extensively the DigiDeal table game is currently used in the state. **Assistant Director Trujillo** replied that he did not believe it was in use at all; it was at one facility for awhile, but Mr. Trujillo did not believe it was currently being offered at that facility. **Assistant Director Harris** affirmed. **Commissioner Ellis** assumed the PokerPro table was not authorized for use presently in tribal casinos; that under the Tribal Compacts it is essentially prohibited at this time. **Director Day** responded that, from the agency's perspective, it has not been authorized for use at this point and he was not aware that any are in play in tribal venues in the state. **AAG Ackerman** agreed; he did not believe there were any in play or authorized for use in Washington State.

Mr. Frank Miller, Miller Malone and Tellefson in Tacoma on behalf of PokerTek, introduced Mr. James Namchek, the Vice President of Regulatory Compliance, who would be able to answer any technical questions. Mr. Miller hoped this petition would be filed today to provide a chance for discussion over the next few months. Mr. Miller addressed the issue regarding the use of the PokerPro product in tribal arenas, noting that at this time PokerTek is licensed by one tribe in the State, and there have been discussions with other tribes regarding placing the product in their facilities as a Class II game. In Mr. Miller's view, the table is gaming equipment; it is not a game itself but is a gaming table. If the wagering limits and hours are the same as house-banked card rooms in the state, then obviously it is Class II. It has been playing as a Class II piece of equipment for at least the past few years throughout the country. Mr. Miller has worked with PokerTek in getting the table approved as Class II equipment in California. Mr. Miller's clients are talking to their tribes to try to get it introduced in this market. It is not a product that everybody just buys and it replaces all their tables; it is a specialized type of equipment and not for everybody. Mr. Miller understood there are some policy issues and looked forward to having that discussion.

Mr. Miller provided some history about the table. About five years ago at the G2E show in Nevada Mr. Miller and Mr. Dave Malone met with Lou White and James Crawford, who were interested in building some classy poker rooms and thought there would be a great

market in the state of Washington. They were also interested in tying them to the World Series of Poker. Mr. Miller said they studied the market in Washington State and because of the uncertainties and ups and downs and political ramifications, especially in local jurisdictions, decided to pull out of the idea of being an owner of a poker room. Mr. Miller said Mr. White called to say they were all Dell executives, loved poker, and wanted to take their experience and revolutionize the way poker is played. Mr. White did not want to change the game in any way; just take his experience and bring technology to this type of game. It removed the bad elements of poker – the cheating and the collusion – then put record keeping requirements in the game and developed something that no one had seen. The result was the PokerPro game, which took a few years to develop. In 2005 they were placed in the first jurisdiction and since that period of time have been approved in 22 jurisdictions in the country and in numerous tribal jurisdictions in Canada and Europe. The tables first started on cruise ships and are still there. One advantage of being on a cruise ship is it is a regulator's dream, in many respects, because there is no live person dealing the cards. It is all done by the table and it removes the ability of collusion. The accounting functions are all there and the records are intact.

Mr. Miller explained one fascinating feature was the ability to actually go back and review five hands of poker, so if there is any dispute, the card room can actually see how the cards were dealt, where they went, what the wager was – a form of surveillance. So the table has tremendous regulatory capabilities. If someone has a complaint about their second hand, the table can replay the last five hands, step-by-step. The table removed the interaction between a live dealer and players; chips cannot be brought in from outside and played on the table; the cards cannot be marked; a player cannot cap the bet. Another advantage is the customers have to open an account to play and deposit their money. The table shows what the players have in their accounts and wager accordingly. The customers have to prove they are of legal age to play. Given the Gambling Commission's very wise program in that area, this is something that will certainly assist as well, because it would be hard to for the under aged person to play. They have to register, and then put in the PIN number, then go back and cash out – there is no money placed on the cards whatsoever.

When this table was brought to the State about two years ago, Mr. Miller had good discussions with members of the gambling lab and commission staff. One of the problems with this product was how to classify it – was it a gambling device – because it was new and because it was a poker table. Mr. Miller did not believe it is a gambling device, because players cannot play against the device. It is a poker table, but it uses technology. It takes two or more players to play against each other. It is not a video poker game, although video poker is not defined in the statute and as set forth as a policy issue. What is really being talked about is a standalone game where wagers are placed, cards are dealt, cards are discarded, and the outcome. Players are not playing against the house in PokerPro; they are playing against other players, just like in any poker game. There is nothing different in the way the game is played, except there are no paper cards or hard chips. After about a year and a half, PokerTek petitioned the Commission in March with a demonstration of the table. At that point staff had expressed additional concerns, indicating that if the petition goes

forward, rules will need to be adjusted and amended. So the company worked with staff to agree on the rules. All that is left is the policy issue, which the company took care of. PokerTek re-filed their petition with no regulatory concerns set forth by the staff. There are two rules, and what PokerTek is limited to now are the policy issues, some of which were addressed to them. A brief analysis was set forth on what the company thinks its positions are, and look forward to addressing those positions further if need be. PokerTek is asking that this be approved for filing and to have the opportunity for discussion. PokerTek would like to bring the table back when the time is right for the Commission to see it and walk through the process. Step one is opening the account by getting a player card, using a Costco card, it does not matter, it is just an identification card and a PIN number. That way no one can sit down at the table and use someone else's account or funds. It is very secure. PokerTek would like the Commission to look at the table and, hopefully, feel comfortable in bringing it into the state of Washington. In the past two years, the table has been approved in 22 jurisdictions in the country; it is in operation in New Jersey and was approved yesterday in Nevada. The tables are scheduled to be shipped in a few days; they left this morning and are going to an all automated poker room on the strip in a major casino. The tables are being approved throughout the country. Mr. Miller requested the Commissioners file the petition for further discussion.

Chair Bierbaum asked if the Commissioners had any questions for Mr. Miller.

Commissioner Ellis asked how difficult it would be for a dishonest casino owner to rig the game in favor of an employee that was participating in the game.

Mr. Jim Namchek, Vice President of Compliance for PokerTek, replied it was not possible. Once the software has been approved by the jurisdiction, a security mechanism is employed so the software cannot be changed, except by the manufacturer. The central service system for this is sequel server based and employs standard Microsoft authentication and security procedures. **Commissioner Ellis** wondered if that would require a conspiracy between a manufacturer's representative and a casino owner to accomplish. **Mr. Namchek** added as well as the gaming commission because the system is GOI certified and has those evaluations, just like in any other gaming system. **Commissioner Ellis** thought Mr. Namchek must have marketing data on the extent to which poker players, or potential customers so to speak, would be willing to play from that table versus at a table with a live dealer. Commissioner Ellis asked what percentage of poker players were willing to do that. **Mr. Namchek** replied there are about 9,000 poker tables in the world and currently PokerTek has a very small market share of about 3 percent. It is a matter of player adoption, just as with the ticketing systems for the tribal lottery systems when they first went in. Mr. Namchek was a former employee of CR Design Group and helped put that system in the tribal lottery systems. He heard over and over comments from the players that they wanted their change, they wanted to be able to put the money in, and they wanted to hear it clink, and to be able to pull the money out. It was a slow adoption and took about ten years for it to become popular. Now people cannot play anywhere in the country without using ticketing. Automated poker is the same way; the first tables were launched in May of 2005

in the state of Florida. The tables were placed side-by-side with manual tables in a 50-poker table room. The PokerPro tables were continuously full, but at a point it was decided to pull them out for political reasons. PokerTek withdrew the tables, but will go back into that facility in the future. Realistically it is a slow adoption period. PokerTek just installed tables at Horseshoe Hammond in Indiana alongside the manual tables, and at the Four Winds Casino in New Buffalo, Michigan they have an all PokerPro poker room. Players from Chicago go to the Four Winds Casino just to play on the PokerPro. In the month the PokerPro tables have been at the facilities, the numbers are extremely impressive and the tables are always full, plus they are generating more revenue than manual tables. The players who play the PokerPro tables love them and come back and play it over and over again. Many professional players that have played the tables support them and ask how they can buy one. Because they are not a licensee, they cannot buy the PokerPro tables, but the company does have a home version of its Head's Up game, although it is not sold to the private industry.

Commissioner Ellis said it seems terribly inanimate to him but, then again, he has never played with an Xbox or any other computer-operated game. There are probably generations of people now that are potential customers. Commissioner Ellis asked how the speed of play compared to a table with a live dealer. **Mr. Namchek** replied the average was about 24 hands per hour for a manual dealer and the numbers for Indiana are showing about 54 hands per hour – a significant increase. Indiana State likes the tables because they collect revenue off of the hands, the rakes, and are seeing an increase in tax revenue.

Mr. Miller pointed out that he passed around a packet of information on the PokerPro table that included a three minute marketing DVD. Mr. Miller encouraged the Commission to take a look at the DVD to see how it is played. The DVD gives a live demo, plus there is information showing the product. Mr. Miller thanked the Commission, adding he would like the opportunity to have a good debate and discussion and address the policy issues at another meeting.

Chair Bierbaum asked if there was any other public comment; there was none.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to approve for filing and further discussion Amendatory Section WAC 230-15-030 and New Section WAC 230-16-157, as presented by staff. *Vote taken; the motion passed unanimously.*

11. Staff Proposed Housekeeping Rule Changes

- a) New Section WAC 230-06-109 – Sales invoices for merchandise prizes
- b) Repealed Section WAC 230-06-115 – Using checks or credit cards to purchase gambling equipment, products or services
- c) Amendatory Section WAC 230-09-020 – Post house rules
- d) New Section WAC 230-09-022 – Wagering limits for fund raising events

- e) Amendatory Section WAC 230-15-205 – Card tournament licenses
- f) New Section WAC 230-06-083 – Card game licensees reporting changes in licensed employees
- g) Repealed Section WAC 230-03-290 – Card room employees working for additional employer or changing employer
- h) Repealed Section WAC 230-15-175 – Reporting card room employees no longer working

Assistant Director Trujillo thought Item 11 could be taken as a group. **Chair Bierbaum** agreed. **Assistant Director Trujillo** explained that WAC 230-06-109 was previously included in WAC rules. WAC 230-06-115 was repealed in August of 2006, but when the new Rules Manual was published the rule was included. WAC 230-09-020 is a proposed amendment for posting house rules and WAC 230-09-022 is a proposed new rule for wagering limits for fund raising events. Staff is proposing to remove the term “buy in” from WAC 230-15-205 because the term was inadvertently added in the new Rules Manual and the language needs to be returned to what it was prior to the new Rules Manual. Staff is proposing repealing WAC 230-03-290 and WAC 230-15-175. In WAC 230-06-083, the language for card room employees working for additional employers was shifted to the card room employees, but previously it had been to the operators. Staff is requesting that the language be returned to what it was prior to January of 2008 and is recommending filing all changes for further discussion.

Chair Bierbaum asked if there were any questions or public comment; there were none.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to accept for filing and further discussion WACs 230-06-109, 230-06-115, 230-09-020, 230-09-022, 230-15-205, 230-06-083, 230-03-290, and 230-15-175, as presented by staff. *Vote taken; the motion passed unanimously.*

Other Business/General Discussion/Comments from the Public

Chair Bierbaum called for public comment; there was none. With no further business, **Chair Bierbaum** adjourned the meeting at 11:10 a.m., noting the next meeting would be held at the Inn at Gig Harbor on September 11 and 12.

Minutes prepared by:

Gail Grate
Executive Assistant