

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

Chair Niemi called the meeting to order at 1:40 p.m. at the Double Tree Guest Suites located at Southcenter in Tukwila and introduced the members present.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
 COMMISSIONER ALAN PARKER, Olympia
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER KEVEN ROJECKI, Tacoma
 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, Assistant Attorney General
 GAIL GRATE, Executive Assistant

Chair Niemi and Director Day presented Amy Hunter, Administrator of Communications and Legal Division, with a certificate for 15 years of Washington State service. Ms. Hunter is the Agency Legislative Liaison and the Administrator of our Communications and Legal Division.

Partnership Program

Director Day explained the agency's Partnership Program and introduced Special Agents Dawn Mueller and Nam Nyugen who were attending the meeting as part of the Partnership Program.

1. Agenda Review / Director's Report

Director Day welcomed back Commissioners Alan Parker and John Ellis. Director Day then reviewed the agenda for Thursday and Friday, noting there were no staff recommended changes to the agenda.

Chair Niemi explained that she thought the agenda would be finished before the 3:30 time scheduled for the Petition for Review of Porterhouse Restaurant and if all the parties were present, the petition would be presented early.

a) Employee Survey

Director Day explained the summary of the current employee survey that was included in the agenda packet. The agency's first employee survey was done in 2000

and was a larger survey administered by the Department of Personnel. As each survey has been completed, the overall results have been brought before the Commission and a comparison of the surveys provided. Last year, the Governor's office put forward a uniform request of 13 questions to be asked statewide to all participating agencies. Also included in the survey were a few questions that were unique to the Gambling Commission, and will be used to track some areas over the longer term. There was about 96 percent participation by agency staff, which provides a comprehensive point of view. We are in the process of moving to a new system, and as we address the new strategic plan, we will be concentrating on some of those areas as well.

Commissioner Rojecki asked whether staff conduct any surveys of our customers and licensees, and whether data was collected from the industry on areas where the Commission could do better to help the industry. **Director Day** replied that the agency has not done a comprehensive data survey with the industry. However, surveys are requested by our Licensing staff from people they provide services for, and those responses go directly to Assistant Director Trujillo's office. Each time with our strategic plan, staff has attempted to do an active survey at the study sessions and with contact with the licensees. A comprehensive state-wide survey has not been done at this point; although, at Commissioner Parker's suggestion, a public opinion survey was done two years ago.

Commissioner Ellis asked whether the licensing survey covered all licensees. **Assistant Director Trujillo** explained that the survey was in pamphlet form that the licensees or public can pick up at our agency, either at our reception desk or after meeting with staff. Surveys are also periodically mailed with the licenses. We do not have a method for issuing surveys to everyone who visits our agency. **Director Day** noted that as the strategic planning process begins, a review of interested parties will be offered. During the previous strategic planning process, the agency offered specific sessions, but did not get a lot of attendance. Staff is considering doing a more direct contact inquiry instead of an invite-and-attend to see if that works better. If the Commissioners are thinking the agency ought to expand that survey approach, this would be a good time to incorporate it. **Assistant Director Trujillo** added that the agency does have an online survey as well, which asks the same questions as the brochure form. The online survey is returned by people who do not receive a license, as well as those who do receive a license, which gets a broader range of survey respondents. **Commissioner Ellis** asked if Assistant Director Trujillo knew how many survey responses the agency has received during the past year. **Assistant Director Trujillo** responded that approximately 30-35 were received in 2007. There was a point where surveys were sent to each and every applicant that applied for a license, but the response rate was so low, and it was so labor intensive to track the survey, that the agency opted to go with the online survey and the brochure survey.

Commissioner Rojecki felt it would be good for the Commissioners to address it, not necessarily today but in the future, and maybe as a Commission can change things and possibly help get rid of perceptions more than anything. **Director Day** agreed it would work very well because staff has been trying to decide how to go through that in the strategic planning process. If the Commissioners think staff should explore it a bit more, we can bring a proposal back to the Commissioners to see if the agency is going in the appropriate direction. **Commissioner Rojecki** said that was perfect.

b) Net Receipts Comparison

Director Day explained the net receipts comparison pie charts include three years of data. The 2007 figures are just under \$2 billion, which is up from \$1.8 billion in 2006. There is a slight increase for the lottery and horse racing, but most of the growth is in tribal gaming; which now constitutes about 67 percent of the total. There is continued decline in gambling receipts in the major non-tribal gambling areas.

c) Enforcement Options and Administrative Case Flow (PowerPoint Presentation)

Director Day explained that at the Commission meetings people often see the end of the formal enforcement process, but what is not usually seen is the significant activity that takes place in the regulatory and enforcement process on the front end before the cases go to a hearing or before they get to the Commission. Director Day introduced Jeannette Sugai, the agent-in-charge of our Tacoma office, and Melinda Froud, our agency's lead staff attorney who also deals with tribal negotiations.

Agent in Charge Jeannette Sugai provided an overview of the various regulatory enforcement actions taken by special agents in performing their regulatory duties. All of our regulatory activities are conducted with the agency mission in mind: to protect the public by ensuring gambling is legal and honest. Our policy is to seek voluntary compliance with all laws, rules, and regulations governing gambling. A variety of methods are used to achieve compliance: education, training, and enforcement action when necessary. When enforcement action is necessary, there are a number of options available: verbal warning, written warning, NOVAS, administrative charges, and criminal charges. Depending on the circumstances, the severity of the violation, and the history of the licensee, the agent has the option of using any of the enforcement actions in any progression. Commission staff strives to be consistent in the application of its enforcement authority; however, all situations are not the same and may require different actions. A summary suspension is a statement of charges seeking to immediately take the license from the person or organization to prevent them from operating or conducting the gambling activity. Summary suspensions are governed by WAC 230-17-165 and can only be sought when the Director determines a licensee has conducted an act that poses an immediate threat to public health, safety, or welfare, such as cheating, theft, professional gambling, or a crime involving physical harm to individuals. Immediately suspending a license prior to the administrative process is very serious, and case reports are required to be reviewed by the agent's supervisor, their agent in charge, and the assistant director prior to being

forwarded to the Communications and Legal Division for processing. For the period July 1, 2006, to June 30, 2007, 12 percent of the cases resulted in a verbal warning, 26 percent resulted in a written warning (which includes both the notice of infraction and the warning letter), 18 percent resulted in a NOVAS, 4 percent resulted in administrative charges (which includes both standard statement of charges and summary suspensions) and 3 percent resulted in criminal charges. 75 percent of the cases resulted in a written warning or lower and 25 percent resulted in a NOVAS or higher.

Senator Delvin asked whether there was any give and take when it comes to the NOVAS and higher. The agency's goal is for voluntary compliance by using education and training. Is the goal to reach a reasonable solution with the licensees? With the NOVAS and higher, how much of that goes on -- are staff truly trying to help the business and not strictly imposing the fine and telling licensees they are going to pay the fine or close? **Agent in Charge Sugai** responded that staff continually tries to work with the licensees to get voluntary compliance or to bring them into compliance. The NOVAS is settled with a fine that the licensee agrees to pay in lieu of a statement of charges. Once it gets to the point of a statement of charges, our Legal Department attempts to work with the licensees.

Commissioner Ellis asked for a brief explanation of what the information only category is for the disposition relating to a case report. **Agent in Charge Sugai** explained that as long as a complaint was not received and no violations were found by the agent during an inspection or investigation conducted, the disposition would be information only. If staff received a complaint and it was investigated and no violations were noted, the disposition would be concluded with unfounded. If a report was written, an investigation conducted, and no violations were noted, the disposition would be information only, just to get that information into the case system.

Lead Staff Attorney Melinda Froud provided an overview of the administrative case process. Cases are forwarded to the Legal Division by our agents. Once a case is received, staff reviews it to ensure there is sufficient evidence to warrant taking administrative action against a licensee or an applicant. From December 2006 through November 2007, there were 121 administrative charges issued; 24 of those cases went to hearing; 74 cases settled; and 22 cases resulted in default orders. The most common charges issued were for violations relating to late activity reports, criminal history, or theft. Staff's goal is to issue the charges within 30 days from the date the case report is received. Once the charges are mailed, the licensee has 23 days to request a hearing or the case goes into default. Once a hearing request is received, a settlement offer is usually made within 45 days. Many factors are looked at before a settlement offer is made. The typical settlement for a first set of charges for late reporting would be a 15-day suspension with 3 days deferred and 12 days vacated by a fine of \$1,000 and \$300 in costs. Summary suspensions are issued for the most

serious cases such as theft or book making. When served with a summary suspension, a licensee has 15 days to request a stay hearing for immediate relief. The licensee also has 20 days to request an administrative hearing for the revocation charges that are included as part of that order of summary suspension. Hearings are held before an administrative law judge and either party has 23 days to appeal an initial order. If a case is appealed, it will not reach final resolution for several months. In addition to a petition for review, licensees have ten days to petition for a reconsideration of a final order. Licensees have 30 days to appeal either an order on a petition for review or on a petition for reconsideration to the Superior Court.

Chair Niemi asked whether staff take into account all the factors for settlement in the settlement process. **Lead Staff Attorney Froud** affirmed.

Chair Niemi noted that ex-officio member, Senator Margarita Prentice, had just arrived.

d) Internet Gambling Public Service Information

Director Day briefly explained the public media program the Commission started on December 11, 2007, with a consumer protection message. The primary message related to internet gambling in a consumer protection approach and is included in the agenda packet. After much debate, the agency hired an advertising firm to help design and implement the plan, which has been very successful. Five newspapers have followed up with an interview after the message was released and 13 different radio stations have been involved. Susan Arland, our public information officer, has been conducting all of those interviews and has done an excellent job. Director Day played two sound bites of the message, noting that when it appears on TV, there is a rolling scene behind it. Our agency goal is to increase the public's knowledge of what information is available on Internet gambling, along with clarifying the law and enforcement approach.

e) Legislation

Director Day explained that in support of the 2007-2009 budget, the Commission approved a plan to move forward with a series of revenue and regulatory enhancements consisting of some new licenses and new or increased fees. Staff was moving forward with this process, beginning with the approval of the budget and the appropriate rule making process, to increase fees along the lines of the fiscal growth factor. At the November meeting, the Commissioners passed the fiscal 2008 increase, and then I-960 was passed requiring legislative approval of government fee increases. I-960 provided a disruption or redirection of the process. Staff had to look at how the agency could move forward with its planned fee increases in a manner that accommodated the voter approval of I-960. At the last meeting, a concept was discussed on how the agency could move forward for legislative approval a series of contemplated fee increases or new fees. The Commissioners gave staff a wide degree of flexibility because it was not known how this may occur or to what extent there

needs to be legislative approval. Staff has been attempting to find different information sources to help get these new fees or increases to the required legislative approval. Director Day hoped the Commission would authorize staff to continue to seek legislative approval, as the process to obtain approval becomes clearer. Director Day was fairly certain that fee increases require a legislative approval, but the question is what the Legislature will consider to be approval. These are basically the same fee increases that have been moving forward, with two fairly significant changes that are being brought forward based on input from various interested parties and a legal review as to how our revenue needs can be accommodated through these increases.

Director Day summarized the changes in Section 1. Subsection (a) addresses the fees where our processing costs exceed the current fee. The first items are those areas where the costs to the agency were actually more than what has been recouped through the present fees and would be more than the growth factor allowed under Initiative 601. Subsections (a) and (b) involve about \$200,000 in revenue in the biennium. Subsection (b) involves the stamps that are issued but because of rounding limitations combined with I-601, fees have not been increased. Subsection (c) would authorize replacing the current manufacturer license system. Instead of the previous proposal to start issuing and requiring manufacturers to affix an electronic equipment identification stamp, staff is requesting Commission approval of using 3 percent as the license fee to be a manufacturer in the state of Washington. Subsection (d) establishes a fee for publicly traded licenses. The agency incurs costs that are not recouped to review the reports submitted by publicly traded licensees. During discussions at study sessions, there was the concept that this fee could be assessed multiple times, but the agency's idea was not to assess one corporation multiple add-on fees. Subsection (e) establishes a new individual license for corporate officers who, in most cases, have no ownership interest. This would provide staff the ability to take action against the license of a corporate officer who committed a violation or had a criminal record to remove that person from the corporation, rather than take action against the entire business. The change would promote our process but not be overly aggressive to the licensee and the owner. Subsection (f) obtains legislative approval over the fiscal growth factor increase and to allow a similar increase based on the estimated fiscal growth factor for fiscal year 2009. That does not mean the Commission would have to enact that fee increase for 2009, but would provide legislative approval for that amount of fee increase if needed.

Director Day noted that the proposal to change the house-banked card rooms to a fee structure based on gross receipts was removed, partly because it was not an immediate revenue gain for the agency. It was basically designed to establish a class structure that would add to the revenue and provide a little more equity with higher class levels for growth in the industry. If needed, staff can proceed with this change through the rule-making process after I-960 clarifies itself, or the courts clarify it. Each of these proposals, if they receive legislative approval, would have to come

back to the Commission for rule making implementation. Staff's hope is that the Commission will authorize moving forward and continuing to seek the appropriate venue, whether through the budget process or as a bill itself. The agency is not in a position to sit back and not get these revenue enhancements in place. Our working capital balance is not at the point where the agency can absorb a continued downturn in revenue. Staff recommends the Commission approve this proposal for submission to gain legislative approval of the planned fee increases and new fees with the understanding that this format is likely to change as we move forward depending on the Legislative Office of Financial Management and the legal direction input.

Chair Niemi asked if the agency would lose quite a few FTEs if the Commission is not able to pass this, or if the Legislature does not pass it. **Director Day** affirmed that the agency would not be able to sustain the staffing level and could possibly lose at least 30 positions. The number would depend on the level of revenue the agency is able to recoup through this process, which is why the agency needs to at least try to find a venue to move these proposals forward. **Chair Niemi** commented that in subsection (c), the manufacturer license fees is written as "... fees to 3% of annual gross gambling receipts" but she would like the language to be "... fees of 3% of annual gross gambling receipts." Chair Niemi realized that a lot of people are not happy with that language, but felt that with the number of new machines involved, if the language just says "to 3%" staff is going to get arguments constantly about how high that is. Everybody is going to have to settle these arguments, especially those people who have a lot of machines and do not want to pay that much. **Director Day** replied that he had the word "up" removed from the original language where it said "up to 3%" but did not remove the word "to." If it is acceptable to the Commission, staff will change the language to read "... fees at 3% of annual gross receipts."

Senator Prentice said she was concerned that this is still being discussed, especially with the obvious urgency of this proposal, and warned that the agency is going to have to stand in line because a lot of bills have been pre-filed and already dropped. Senator Prentice thought this proposal would come directly to her committee, but urged the Commission to hurry it up because 60 days goes awfully fast and the intensity is already starting. Senator Prentice asked the Commission to please get it before her committee soon so it can be scheduled for a hearing. **Chair Niemi** thought the Commission intended to vote on the proposal today. **Director Day** explained that staff had been waiting for the Office of Financial Management to review the process. One reason the proposal is not already at the Legislature is because there has been consultations with the Attorney General's office to come up with the best way to do this. Generally, staff reached the same conclusion that the agency has run out of time, so the agency is trying to move this forward with the best information staff has and let the picture become clear later.

Commissioner Parker asked whether the Director anticipated any legal challenges to these items, in particularly subsection (c). **Director Day** replied that the agency

received letters, like the one in the agenda packet from the Washington Indian Gaming Association, concerning the electronic equipment stamp. Director Day felt that the original proposal was sound on its basis, but believed the new language was more solid and clearer because it sets a license fee for a manufacturer that recovers the costs of the licensing and regulation system in the state of Washington. Director Day noted he had received positive responses from our Attorney General. One reason staff switched to this proposal was to recognize the criticisms, whether on the tribal side or the house-banked side, and make sure we have the strongest proposal possible.

Commissioner Ellis asked in what sense a manufacturer has gambling receipts – or if it was meant to be receipts for gambling equipment. **Director Day** agreed the use of the term “gambling” was not the best word to use in this instance, adding that question had also been asked during the study session. The information will probably come from the manufacturers’ quarterly reports and their sales receipts.

Chair Niemi asked if Director Day wanted her to ask the audience for comments, wait until both Senator Prentice and Representative Alexander are present, or vote on this proposal now. **Director Day** suggested it was appropriate to receive comments from the public before voting.

Chair Niemi called for public comment.

Mr. Gary Murrey, Great American Gaming Corporation, testified that today was the first time he had seen this in actual draft form. Mr. Murrey said there were two areas where he asked the Commission to possibly make some adjustments before the bill gets to the Legislature and back to the Commission for rule making. Mr. Murrey understood that once the bill made it through the Legislature, the industry has time to negotiate during the rule making process; however, he did not like to look at something in legislation that says what the agency is going to do, although it is not the agency’s intent. Mr. Murrey would like to see the language cleaned up as best as possible ahead of time. Subsection (d) lists a license fee of \$6,500 annually, which is for the smaller lower-level companies that have a parent company. Mr. Murrey explained that in his company, there are five lower-level companies and one parent, so his company could be up for \$37,000 in fees. Mr. Murrey said he would rather the fee addressed the parent company and not the licensees that do business under that parent company. In the case of those with ten underlying companies or more, it would be \$65,000 to \$70,000 for the work of investigating once.

Chair Niemi asked if Mr. Murrey had brought that concern up in the study session also. **Mr. Murrey** affirmed he had. Mr. Murrey explained the other section he would like the Commission to look at is subsection (e), which has a fee of \$1,100 to investigate an individual. Currently, the fee is somewhere around \$280 to investigate an individual. Mr. Murrey asked why the proposed fee was \$1,100 for the same investigation that is currently charged \$278 – it seems disproportional. Just because

there is an opportunity to add a new fee, it should still be in the same realm as other investigative fees for any other individual currently licensed by the Commission.

Commissioner Ellis noted that, focusing on subsection (d) for example, there may be publicly-traded companies who are licensees where a \$6,500 fee would be appropriate. And backing up one step, it needs to be recognized and emphasized that the authorization here is for a fee not to exceed \$6,500, as Director Day explained. Commissioner Ellis assumed that would leave open during the rule making process the opportunity to examine situations like the one Mr. Murrey described and make sure the fees make sense in the context of particular licensees. **Mr. Murrey** did not disagree that the \$6,500 may be appropriate to investigate the parent company, but the way the rule is written now, the \$6,500 would also be paid by the underlying company. The fee could be charged to every underlying company of that parent company, which could be multiplied by 10 or 11 times. So it is an open ended fee, necessarily by how many subsidiaries that company has, regardless of how long it took to investigate the financial statements of the parent company. Mr. Murrey suggested the language state that the license fee is for the publicly-traded company and not the ones that have a parent publicly-traded company. It is the publicly-traded company that pays the fee for the services rendered by the Commission. **Commissioner Ellis** felt that the more complex issues in looking at the cost of the investigation may be better addressed in the context of the rule making process rather than a general overall authorization for a fee up to \$6,500.

Chair Niemi announced that Representative Gary Alexander had just arrived. Representative Alexander is the Commission's new ex-officio member, who among many other things is the ranking minority member of the House Appropriations Committee. Chair Niemi explained that the discussion was almost finished, but noted it involved Representative Alexander's legislative committee. The draft being discussed relates to a new fee for gambling activities and the Commission is hearing a few objections from the public. If a motion is made after the discussion, the Commission is going to vote on the proposal. Chair Niemi asked if Mr. Murrey had anything else he wanted to say.

Mr. Murrey wondered if there were any questions or comments about the inequity between the \$1,100 fee for the individual we are talking about versus a \$278 current fee for individuals. Mr. Murrey felt that if the fee was allowed to be \$1,100, eventually it would be \$1,100 where everybody else would be at \$278. That is going to leave some people paying extraordinary fees compared to their compatriots. **Chair Niemi** asked whether Mr. Murrey had asked that question in the study session also. **Mr. Murrey** affirmed he had. **Chair Niemi** asked if he had received an answer. **Mr. Murrey** replied the answer was that it would be discussed. But if the Commission is going to make a motion, now is the appropriate time to address the question and discuss it because it is uneven as we go forward. If the Commission, as the deciding body, allows it to go through the process then it is going to go through that process

with that number. Mr. Murrey would just like to see it at the same level as every other individual license. **Chair Niemi** asked that the person who answered Mr. Murrey at the study session explain the intent of the amount, so at least the intent is on the record, even if that does not solve the problem. **Assistant Director Trujillo** explained that the intent of the rule is to capture a decision or policy maker that is not currently an owner or licensee so that the agency can hold that person accountable for their actions and choices that impact the licensee. Assistant Director Trujillo felt we were on common ground with the intent, that where Mr. Murrey has expressed disagreement is with the amount. Mr. Murrey is correct that the amount for individual license holders is less than \$1,100. That amount is grounded in years of what the license fee has been for individual license holders, and increases have been limited by I-601. This is a new fee, and staff is attempting to recover agency costs. Mr. Westhoff, our agency budget manager, was more involved in determining the amount.

Chair Niemi asked if that was more than about \$200. **Assistant Director Trujillo** affirmed it was, although he did not know the exact amount. **Director Day** pointed out that he had provided at least part of the answer to Mr. Murrey's question at the study session. Director Day agreed with Mr. Murrey, for the most part, on both issues, but needed to go over the figures with Mr. Westhoff to determine if the \$1,100 amount should be adjusted. Director Day noted that if the Commission authorizes staff to move forward, we will take another look at that figure and attempt to bring it closer to the amount for other individual licenses. Director Day hesitated to throw a number out there until he had a chance to review the numbers with Mr. Westhoff to determine exactly how the \$1,100 amount was arrived at. Director Day agreed with Commissioner Ellis on the subject about reviewing the corporate statements. It is a complex subject and difficult to put into a couple sentences. Possibly staff can restructure that sentence to get it closer to providing assurance that the agency is not trying to assess this fee on every licensee held by a corporate entity. **Mr. Murrey** said he appreciate the Commission's response and Director Day's willingness to work through this. Mr. Murrey understood the tight deadline, which was why he wanted to address the Commission directly instead of just working through staff.

Mr. Chris Kealy, Iron Horse Casino in Auburn and Everett, testified that the obvious point on this whole process was the panic mode to plug a gap in a budget to save FTEs that may or may not have an adequate mission any more. Mr. Kealy felt that question needed to be asked in a public setting. The shift in market trends demonstrated by the three pie graphs clearly shows that the revenues are ending up in the tribal venues, which are self-governing, self-policing bodies that may be making claims they are adequately policing themselves as their own independent governments. Mr. Kealy suspected that subsection (c) was going to get attacked by at least one tribal entity, if not more than one or collectively. That will leave the rest of the burden on the people who have the shrinking market. It is easy to see that we are down about 20 percent across the board. The reality is that the 30 FTEs may have to go – they may not have a

mission because the industry is shrinking. Mr. Kealy pointed out that the agency started in 1973 and this Commission has evolved to the place it is today. In 1972, most gaming was illegal. In the year 2008, there is two billion dollars worth of authorized gambling in the state of Washington. There is not a lot of nefarious gambling going on, partly because most gambling is legal and there is no need to go to a back-room card room when card rooms are legal. Some of what has been needed to be watched over the decades has diminished by public policy that now allows the activity. The supply has basically caught up with the demand, for the most part, which belies some of the activities that the Gambling Commission used to prevent. Now the agency just supervises because it has been public policy that gambling is legal and taxed. Mr. Murrey noted that the agency is panicking to make sure enough money is in the coffers to keep agents in the field, a field that is really not as “dangerous” as it might once have been.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to authorize staff to submit the legislation as presented in the form of the draft, with the understanding that staff is authorized to reduce, below any maximum stated in this draft, the amount of any fee. *Vote taken; the motion passed unanimously.*

- Agency Request Legislation

Ms. Hunter reported that the legislative session begins on Monday and is a 60-day session. Ms. Hunter briefly recapped our agency request legislation. One proposal deals with retaining interest on the gambling revolving account. Ms. Hunter was pleased to be able to tell the Commission that the Governor’s office has approved this request and it is reflected in the Governor’s budget. The amount expected to be generated by keeping the interest in the Gambling Account rather than in the General Fund is \$93,000. Staff has been working with legislators to get the bill sponsored in the House and expect to have it filed next week on the first or second day of session. Ms. Hunter thanked our ex-officio members for their support: Senator Margarita Prentice has signed on sponsoring the Senate version of the bill, Senator Delvin will be happy to give his signature on the bill, Representative Alexander has signed on to the House version, and Representative Simpson plans to sign on. Through the work of Mr. Westhoff, our Business Office Administrator, Representative Sommers, Chair of the Appropriations Committee, has also signed on to the bill.

Chair Niemi asked if the Commission needed to vote on this legislation. **Ms. Hunter** replied there was no need to vote because the Commission previously voted authorizing staff to submit it as agency request legislation.

- 2008 Session – Bills Pre-filed

Ms. Hunter pointed the Commissioners to the bill on green paper dealing with the ticket prices for raffles. Only charitable or nonprofit organizations are allowed to hold raffles. This bill would increase the price of a raffle ticket from \$25 to \$100, or

a greater amount as determined by the Commission by rule. This bill was introduced by Representative Moeller, who is on the Commerce and Labor Committee. Ms. Hunter did not know the back story behind this bill, so staff recommends a neutral position on the bill at this point. Ms. Hunter explained that usually if the Commissioners decide to take a neutral position, staff would explain at the hearing what may be the pros and the cons of the bill. One pro is that it could help increase the revenue for charitable/nonprofit organizations. One possible con with the bill is that with a greater price limit it could expose operators and consumers to higher risks. There are about 620 raffle licensees, and about 35 of those fall into the larger category that brings in over \$75,000 in gross receipts a year. Staff felt that some of those licensees would take advantage of having an amount more than \$25. There are currently some organizations that auction off a car every year, but even those organizations are not necessarily using the \$25 limits. What the Commission did last year when deciding to remain neutral on a bill was to not take a vote, so if Ms. Hunter did not hear a motion she would assume that meant the Commission wished to remain neutral on the bill.

Chair Niemi asked if there were any questions or if one of the Commissioners wanted to make a motion. There were none.

Ms. Hunter reported the second bill has not been filed, although she has pretty good information there would be a bill introduced to increase the age to gamble from 18 to 21. Ms. Hunter did not know if that would be across the board for all activities, meaning Lottery, Horse Racing, and Gambling Commission. There was a bill a couple of years ago to increase the age to gamble in house-banked card rooms, which the Commission had a 2-2 split vote at that time on whether to support that bill. Commissioners Niemi and Ellis voted for increasing the gambling age and Commissioners Bierbaum and Ludwig were against it. Ms. Hunter was fairly sure Commissioner Parker was not there for that vote.

Ms. Hunter briefly reported on bills that have been carried over from the 2007 session; two were agency request bills: Senate Bills 5375 and 5374. The Senate version of Senate Bill 5375 is in the agenda packet and deals with penalties for underage gamblers. The bill clearly states the age to gamble, which is usually 18. It also allows agents to issue a civil infraction to underage gamblers, which there currently is no penalty for. The fine would be \$125, which equates to \$257 when the statutory assessments are added. The House version of this bill passed last year by a vote of 94 to 1. The Senate Committee added an amendment to attach the infraction to the driver's license. The Senate version died in Rules. The Senator who sponsored that amendment is no longer in the Senate. During the interim staff have been working with legislators on the bill and there appears to be good support for the bill without that amendment. Staff is hopeful that both versions will move forward. Senate Bill 5374 is the companion to House Bill 1346 and would allow the Commission to create a barring list and to put what has been called "the bad of the

bad” on the list. Staff estimates there might be between 5 and 25 people put on the list a year. These are career or professional offenders or people who have had serious gambling convictions. Both versions of the bill passed out of their respective committees last year with do pass recommendations and both died in Rules. Again, staff has been spending time over the interim talking with legislators and has good commitments. There are a lot of bills to get out of Rules, and the legislators on those committees have a lot of bills that people want to see moved.

Ms. Hunter touched briefly on a couple bills that are being carried over because it is the second year of the two-year legislative cycle. The first three bills dealt with internet gambling, and were basically defenses for the individual player involved in internet gambling, not the people who are putting it all together and offering it. House Bill 1243 did not have a hearing and died in committee. The Commission voted at the February 2007 meeting to take a position against that bill. House Bill 2127 made it a misdemeanor for the player who was involved in the gambling. There was a hearing on the bill, but it died in committee. House Bill 2320 made it a gross misdemeanor for the player. Three years ago when the internet gambling bill was first introduced, the agency proposed a tiered structure where it would have been a gross misdemeanor for the player who was involved. Then, just as the bill went through the process, it was changed to a felony. Last year, the Commission took a neutral position on the idea of it being a gross misdemeanor, and staff would recommend that if the bill begins to move again, the Commission stay with that neutral position. House Bill 1257 would have required legislative approval of Compacts, and the Commission decided at the February meeting to be neutral. There was no hearing on this bill last year and it died in committee. The last bill is the zoning bill (Substitute House Bill 1477 and Senate Bill 5558). There has not been a new bill pre-filed but one is expect to be introduced that may deal with allowing the cities or counties to zone specifically for gambling, but not have the cap provision.

Chair Niemi asked if there were any questions. **Director Day** drew attention to the yellow sheet, which is a page out of the Governor’s budget proposal showing the agency request legislation on the gambling revolving fund interest bill listed there. Director Day pointed out he would not want there to be an impression that the Commission has not reduced FTEs in response to long-term planning. In the 2003-2005 biennium, the Commission voluntarily reduced the Commission’s authorized FTEs by over 20 FTEs. Also during this year, fiscal year 2008, the Commission is operating under its authorized FTE level in order to ensure that we are able to continue overall operations and not go into the red. Director Day wanted to make sure that fiscal responsibility was also on the record. In addition, it is important to make sure no one is under the perception that illegal gambling is extinct in the state of Washington. In fact, the agency continues its undercover efforts and has significant bookmaking and sports bidding operations being investigated, as well as other illegal gambling areas related to unlicensed card rooms, loan sharking, and animal fighting. It is important to keep in mind that illegal gambling does still persist, although

Director Day was confident the agency's presence was helping to keep it under control and maintained to the best of its ability.

f) Correspondence

Director Day briefly discussed the correspondence included in the agenda packet. On behalf of the staff, Director Day welcomed Representative Alexander to the Commission, thanking him for his interest in joining the Commission.

g) Monthly Update Reports

Director Day noted there was nothing new to report on the monthly update reports.

h) News Articles

Director Day pointed out the news article entitled "Miracles Happen" about Commissioner Alan Parker and his amazing career and also his journey back to us - welcome back.

Chair Niemi called for public comment.

Gary Murrey, Great American Gaming Corporation, addressed the presentation given earlier about the fines and the process that is involved and put into light some of the numbers. When looking at the statement of charges, the 121 number would represent, at 4 percent, somewhere around 3,000 investigations. When looking at the industry in the card room sector alone, there are nearly 10,000 employees and about half of those are licensed employees and many pull-tab vendors that are not licensed. Those employees must be aware of or know over 600 WAC rules, the internal controls involved in all of the card room activities. Gaming agents are in our facilities about twice a week, about 100 visits a year, or several hundred hours investigating, constantly looking at everything that is done within those rules; unlike other law enforcement agencies that monitor but do not have an active investigation going constantly. The number of investigations seems fairly small compared to the number of rules that licensees have to abide by, the amount of money that goes through their facilities, and the number of people involved. Of those thousands of people involved and how well we try to train them, what concerns us on the industry side is some of them just do not get it; some of them just make a mistake. Once we get to the NOVAS, there is very little we can do as operators to negotiate or to fix anything after the fact to mitigate that event. So the NOVAS is almost a no-brainer to sign because it is a \$300 fine. If the operator does not sign it, they are facing a 15-day or 30-day closure. There is no rationale not to sign a NOVAS regardless of whether the operators think they are guilty or not. It is not like getting a traffic ticket where the person can either pay the fine or mitigate or challenge that fine. The sentence for not signing the NOVAS of \$300 is a possible 30-day closure for the business. It is unreasonable to believe that the reason most people sign the NOVAS

is because they feel they are guilty –it is an unreasonable assumption at that point. Every layer we go up, and there is negotiation upon that, the penalty for not accepting the negotiation is far worse in the long run than taking the deal that is before you. If the licensee does not take the deal, the punishment is so severe and there is so little way to negotiate that down, so even if the person feels they have done something in error, but not that egregious, there is no way for the licensee to feel comfortable that going further in the process is going to harm their business. So it becomes a dollars versus cents issue. The licensee has to sign the NOVAS because that is the least egregious way to go about it, even though they do not believe it is right, or correct, and they have no venue to go through and deal with that.

Chair Niemi asked if Mr. Murrey had thought of asking for an amendment to that WAC. **Mr. Murrey** replied yes, he believed the industry was working on a package of rules to help it have venues. **Chair Niemi** thought that was reasonable, noting the Commission obviously could not help Mr. Murrey now but if he requested an amendment to the WAC it could be discussed in that respect. **Mr. Murrey** thanked Chair Niemi.

Mr. Jay Gerow, ZDI Gaming, asked if the Commission had received the letter he had sent in November regarding possible discussion between staff and stakeholders. **Chair Niemi** affirmed they had not only received the letter but had discussed it with staff. **Mr. Gerow** noted he had not gotten a response. **Chair Niemi** apologized. **Mr. Gerow** said thank you.

Chair Niemi called for a recess at 3:20 p.m. and reconvened at 3:45 p.m.

2. **New Licenses and Class III Certifications**

Assistant Director Trujillo noted there are 32 pages in the list, two house-banked card room pre-licensing reports, and one pre-licensing report for a small manufacturer. **Commissioner Ellis** asked if any of these applications would raise any significant issues that the Commission should address. **Assistant Director Trujillo** replied there were no significant issues that needed to be addressed. One interesting item of note is that the house-banked card room, Tuscan Sands, is located in Zillah, Washington, which is probably the first house-banked card room in Zillah.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-32 as presented by staff. *Vote taken; the motion passed unanimously.*

3. **Administrative Actions**

a) **Defaults**

Debbie Cole, Card Room Employee, Revocation

Ms. Froud reported that Debbie Cole did not report to Commission staff Class C Felony convictions for forgery and Violation of the Uniform Controlled Substances

Act (VUCSA). Ms. Cole did not report to Commission staff two of five convictions for Driving While License Suspended (DWLS) in the Third Degree. Ms. Cole also failed to appear for ten various hearings between 2005 and 2007 related to her different court actions. On October 15, 2007, the Director issued administrative charges to the Licensee. On November 2, 2007, our legal secretary made a courtesy call to the licensee but the number was disconnected. The licensee did not respond to the charges, and by failing to respond to the charges, the licensee waived her right to a hearing and the Commission may enter a default order pursuant to RCW 34.05.440. Staff recommends that the Commission revoke Debbie Cole's license.

Chair Niemi asked if Debbie Cole or anyone representing her was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to adopt an order substantially in the form presented by staff revoking Debbie Cole's license to conduct gambling activities. *Vote taken the motion passed unanimously.*

Nhat Hoang, Card Room Employee, Revocation

Ms. Froud reported that Nhat Hoang failed to disclose that he was convicted of a felony Possession of a Controlled Substance and that he is currently serving probation for that crime through August of 2008. The Director issued administrative charges to the licensee on October 25, 2007. On November 13 our legal secretary made a courtesy call to the licensee and left a message on his answering machine reminding him of the deadline to request a hearing. Because the licensee did not respond to the charges, the Commission may enter a default order in this matter. Staff recommends the Commission revoke Nhat Hoang's license.

Chair Niemi asked if Nhat Hoang or a representative was present. No one stepped forward.

Commissioner Parker made a motion seconded by **Commissioner Ellis** to revoke Nhat Hoang's license to conduct gambling activities, as presented by staff. *Vote taken the motion passed unanimously.*

Daniel J. Tebow, Card Room Employee, Revocation

Ms. Froud explained this case was actually a summary suspension. Daniel Tebow was a poker floor supervisor who admitted to taking \$1,800 in chips and cash over a two-week period from the poker podium at the Silver Dollar Casino in Renton. The Director issued an order of suspension to the licensee on November 8, 2007, which was personally served on Mr. Tebow on November 16, 2007. On December 4, 2007, our legal secretary made a courtesy call to the licensee who said he understood the deadline to respond. However, there was no response to these charges and the licensee waived his right to a hearing and the Commission may enter a final order in

default against the licensee. Staff is recommending that the Commission revoke Mr. Tebow's license to conduct card room employee activities.

Chair Niemi asked if Daniel Tebow or a representative was present. No one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Ellis** to revoke Daniel Tebow's license to conduct card room employee activities. *Vote taken the motion passed unanimously.*

Grant D. Undt, Card Room Employee, Revocation

Ms. Froud reported that Grant Undt accepted and failed to timely deposit personal checks from patrons in the poker room where he worked. The licensee accepted and signed checks belonging to his girlfriend, another card room employee, who wrote new dates and/or different amounts on other patron's checks to keep the checks current. On November 15, 2007, the Director issued administrative charges to the licensee. On November 30, 2007, our legal secretary made a courtesy call to the licensee and the individual answering the phone said the licensee was not at that number. The licensee did not respond to the charges, and by failing to respond, he waived his right to a hearing. Staff recommends that the Commission revoke Mr. Undt's license.

Chair Niemi asked if Grant Undt or anyone representing him was present. No one stepped forward.

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

b) Petition for Review – Porterhouse Restaurant, Suspension

Assistant Attorney General Bruce Marvin was present for the State, as well as **Attorney Joan Mell**, representing Cardroom Inc., and **Owners Steve Crothers and Brian Rosborough**. Ms. Mell and Mr. Marvin provided their testimony in the matter for review. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony (4:45 p.m.), **Chair Niemi** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 5:15 p.m.

Commissioner Ellis made a motion seconded by **Commissioner Parker** that the Commission deny the Petition for Review submitted by the Porterhouse Restaurant and adopt the initial order of the ALJ with the addition of the three supplemental findings of fact submitted by Commission staff and also, consistent with the

disposition of the proceeding, deny the petition for the stay or continuance. **Vote taken; the motion passed unanimously.**

Mr. Ackerman stated that, as per the normal practice, he would draft an order memorializing the decision of the Commission, which will not be final until signed by the Commissioners. The license will not be taken away or suspended prior to the signature of the order. Once the order is signed, the licensee has 30 days to petition for judicial review, and/or to seek a stay if the Commission does not elect to act on it today, and/or to seek a stay from the Superior Court.

Ms. Mell requested a stay at this time. **Chair Niemi** denied the stay at this time because the order has not yet been signed.

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

Chair Niemi asked if there were any other comments. There were none. Chair Niemi noted that the first item on Friday's agenda would be Item 8, the Electronic Pull-Tab Dispenser rule. At 5:20 p.m. **Chair Niemi** called for an Executive Session to address pending investigations, tribal negotiations, and litigations. At 5:45 p.m. Chair Niemi called the meeting back to order and immediately adjourned.

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

Chair Niemi called the meeting to order at 9:40 a.m. at the Double Tree Guest Suites located at Southcenter in Tukwila and introduced the members present, noting that Commissioner Parker was not able to attend today's meeting.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
COMMISSIONER JOHN ELLIS, Seattle
COMMISSIONER KEVEN ROJECKI, Tacoma
SENATOR MARGARITA PRENTICE, Seattle
SENATOR JEROME DELVIN, Richland
REPRESENTATIVE GEOFF SIMPSON, Covington
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, Assistant Attorney General
GAIL GRATE, Executive Assistant

5. Approval of Minutes – Regular Meeting, November 15-16, 2007

Chair Niemi noted there were not enough members present who were at the November meeting to approve the minutes. **Mr. Ackerman** clarified that there is a quorum and two of the Commissioners were at the November meeting, noting that while there is a quorum, Commissioner Ellis would probably recuse himself from the vote. That puts Chair Niemi in the position of having to do the second and both Commissioners who were at the November meeting would need to be unanimous in order to approve the minutes.

Commissioner Rojecki made a motion seconded by **Chair Niemi** to approve the minutes of the regular meeting of November 15-16, 2007 as presented. *Vote taken; the motion passed with two aye votes – Commissioner Ellis abstained because he did not attend the November meeting, although he did read the minutes.*

ITEM 8 TAKEN OUT OF ORDER –PRESENTED BEFORE ITEM 6

8. Electronic Video Pull-Tab Dispensers

Original Proposal Repealing Electronic Video Pull-Tab Dispensers

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

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

Alternative #1 – Staff and Industry Proposal

- c) **New Section WAC 230-14-047** – Additional requirements for authorized electronic video pull-tab dispensers.
d) **New Section WAC 230-06-002** – Defining “cash”.

Alternative #2 – Industry Proposal

- e) **New Section WAC 230-14-047** – Additional requirements for authorized electronic video pull-tab dispensers.

Assistant Director Trujillo explained that Items 8 a) and b) are the original amendments that disallow electronic video pull-tab dispensers by adding or deleting language to existing rules, which were discussed at the September Commission meeting and held over to October where they were filed for further discussion. The Commission asked staff to work with the industry to come up with an alternative. Alternative #1 to the original proposal is under Items 8 c) and d) and was prepared after receiving input from industry representatives. Alternative #1 incorporates two of three changes requested by the industry and discussed at the November Commission meeting and filed for further discussion. Alternative #1 establishes minimum standards that allow electronic video pull-tab dispensers. Those standards are important because staff and equipment providers have been operating without clear guidance since the dispensers were first authorized in 1997. Alternative #1 also incorporates the Commission’s decision to allow gift cards and gift certificates to be used to purchase pull-tabs and creates a definition for cash. Item 8 e) is Alternative #2 and was introduced by industry representatives at the November Commission meeting and was also filed for further discussion. Alternative #2 adds subsection 3 (d) allowing prize winning credits to be placed back onto the gift card and removes the definition of cash. This is significant because the Commission has not authorized this function and it is the subject of current litigation. Staff recommends adoption of Alternative #1 with an effective date to be determined by the Commission.

Chair Niemi called for public comment.

Mr. Max Faulkner, President of the Recreational Gaming Association (RGA), thanked the Commission for not banning the machines and for working with staff to come up with these two alternatives. Mr. Faulkner testified the RGA’s position and the position of some of the smaller clubs supported the second proposal with the cash card. The reasoning was that it was still a pull-tab machine and was on the low rung of the gaming hierarchy and more of a concern for the small clubs. Mr. Faulkner noted that anything that can help some of the smaller mom and pop businesses is justified.

Mr. Ric Newgard, Washington Charitable and Civic Gaming Association, supports Alternative #2. A number of its members use the machines currently and would like to continue using them and maybe even be able to use a cash card at the same time.

Mr. Gary Murrey, Great American Gaming Corporation, testified his interest in Alternative #2 was simply for manpower and accounting purposes. The more often a player has to go to the person manning the bar to exchange dollar tickets back and forth, the more problems there are and the more opportunity there is for accounting errors. Electronic accounting allows the machine where the dollar tickets are put on and off the card to do it. More electronic accounting is a safer accounting system; less cash transactions between humans is less chance for theft and missed accounting functions. Alternative #2 would help by having more accurate accounting and fewer transactions of cash.

Mr. Chris Kealy, Iron Horse Casino in Auburn and Everett, testified that when looking at the machines that have been put out in the marketplace for the past ten years, the electronic video pull-tab dispensing devices have a real limited scope. But as Mr. Faulkner alluded to, in the outlying areas, in the smaller facilities, and in the small single purpose taverns, the devices have a potential niche. Currently, there is a very antiquated machine, similar to the cigarette dispensing machines where a person puts in coins and pulls a lever and the machine pulls and pushes and drops out a pack of cigarettes. It is a vending machine that dispenses pull-tabs and there are about 4,000 of them in the state – they are ugly and just do not attract any interest. Mr. Kealy thought that was the group where the niche the machines being discussed fills, and it probably takes out about 4,000 of that type of machine. A person would probably see something in the neighborhood of 3 to 600 of these video pull-tab dispensing machines with the cash card technology out there. That is the scope of the decision, and it is purely a policy call from what Mr. Kealy can see. Mr. Kealy was hopeful the Commission recognized the shrinking revenues in the pull-tab industry. This might help some of the local jurisdictions keep some of the tax dollars that are providing police and fire services in those small local jurisdictions because that has been a very shrinking economic component. As has been seen again with the Gambling Commission losing fees and going backwards in its books, so are the local cities on their lack of tax revenue from the lack of gaming activity that no longer exists. It is really a product problem that Mr. Kealy hoped could be advanced. Mr. Kealy pointed out that he was aware that Alternative #2 would effectively end the litigation between ZDI and the Gambling Commission. Mr. Kealy asked if Mr. Ackerman disagreed with that statement. **Mr. Ackerman** responded that, in and of itself, it would not. **Mr. Kealy** asked if Mr. Ackerman would say that the policy decision with adopting Alternative #2 would impact his understanding of that case. **Mr. Ackerman** replied it would change some of the basic facts, but it would not necessarily end the litigation. There are problems with the litigation beyond that. **Mr. Kealy** said he did not mean to put Mr. Ackerman on the spot on this particular case inappropriately. **Mr. Ackerman** said Mr. Kealy was not. There are two parties

to all litigation. The Commission is the defendant, not the plaintiff; somebody sued the Commission, so Mr. Ackerman cannot say that it would end the litigation. **Mr. Kealy** pointed out that the lawsuit actually came out of them trying to come forward with a machine two years ago and this Commission saying it would rather see this in an Adjudicative Law Judge format rather than come back, noting that was the birth of the whole thing. **Mr. Ackerman** agreed that was one of the factors, but we are many steps up the ladder now, and every time you get a decision in litigation, it seems to create additional issues that then have to be resolved. We are at a point now where there are additional issues. **Mr. Kealy** said he certainly had an understanding of that. As an observer watching the process over the past three years, Mr. Kealy has seen anywhere from \$10,000 to \$20,000 a month being expended to fight products that regulatory-wise are ultimately safer to operate. That confused Mr. Kealy, who said he would like to see it stop because money is being spent on making sure they do not have the products that would help the industry.

Commissioner Ellis noted, getting back to Mr. Kealy's initial point on the machine where a person puts the money in, pulls the knob, and the pull-tab pops out, that both of the machines would be allowable under Alternative #1 or Alternative #2 and would significantly improve that technology. **Mr. Kealy** agreed, adding that Alternative #1 is actually just a codification of something that has been in existence for ten years. **Commissioner Ellis** said that was his understanding also. **Mr. Kealy** said that Alternative #2 actually changed the product enough to make it interesting to the outlying areas. In Auburn specifically, Mr. Kealy's facility is two miles from the Muckleshoot Casino and he would not put those machines in that facility, because the Alternative #2 machine would not be competitive or interesting enough in the marketplace that competes against the VLT. It would only be interesting in Moses Lake or some very out of the way place where a licensee could put six of them in a tavern, because when dealing with pull-tabs, we deal with thousands of licensees in very small out of the way places. That is where that machine actually has a niche. Mr. Kealy was interested in seeing it approved. Mr. Kealy said he would actually be very interested to show the Commission that two years from now it does not do anything. Mathematically, pull-tabs will go from \$95 million in 2007 to \$88 million, even with this machine, then to \$72 million; it is on its way to zero because it is a product that is dying, the same as bingo, basically because there are other more compelling products that the public is more interested in.

Assistant Director Trujillo wanted to make sure he had not been misleading when he said this allows prize winning credits to be placed back onto the gift card. He clarified there is a restriction that only prize winnings of up to \$20 be placed back onto a gift card.

Ms. Dawn Manango, Casino Caribbean and Macau Casino, testified that as she has looked at these machines to see what they were like and whether it would be interesting for her customers and whether she should put them in, the drawback that

she saw in Alternative #1, or what is out there now, is the convenience for the customers. When players win \$1, they have to go up, wait for the bartender, get paid, and then go on and play. Ms. Manango supported Alternative #2, because the win can go back on the cards and it is more convenient for the players.

Mr. Monty Harmon, Harmon Consulting, testified that as a CPA he has talked about the cash card concept before. The one item that has not been mentioned for the Commission to consider between the two options is when operating pull-tabs in an environment where there are multiple games, the more winners there are – the dollar winner, the \$5 winner – people turn those in and they want to play on a different game. There can be confusion between the series, which reduces accountability. If the machine is able to put that prize back on to a card, the accountability stays with that series and with that game, as opposed to taking the winner and having some potential for confusion when players turn in a dollar ticket and have a sale on a different pull-tab series. Typically an employee might place that winner in one bin for the series it was won on and take the money out of another series; thereby confusing the accountability. Allowing for the lower-tiered winners to be accounted for by series reduces the number of opportunities for those kinds of errors.

Ms. Delores Chiechi, Recreational Gaming Association, testified that one thing she personally finds interesting is when a customer goes to a bar and buys a pull-tab and wins \$20 on a pull-tab, not often does the bartender give the customer \$20 and then the customer gives that bartender back the \$20 and asks for \$20 worth of the pull-tabs out of bowl number five. Usually when players win \$20, they ask for the winnings to be paid in pull-tabs not cash. With Alternative #2, with regard to putting cash back into play, we are discussing the option of being able to do that electronically with the new technology that is available – essentially the principal of what is happening is already happening.

Commissioner Ellis moved that the Commission adopt Alternative #1 as presented by staff and the industry and that the Commission deny the petition for Alternative #2. It is a very close call and from Commissioner Ellis' point-of-view, he did not disagree with anything that the proponents of Alternative #2 have offered. Commissioner Ellis was concerned with the technical legal concern of what is the Commission's authority in a matter like this, adding the Commission was dealing with a statute that has become archaic. The statute says that the Commission has to look at pull-tabs as they were customarily understood in 1973 when gambling was first made legal in most areas in this state. The Legislature took a very cautious and narrow approach in all areas, including in the Commission's authority to expand gambling or to authorize new games. Commissioner Ellis thought that was reflected in the same statute that authorizes and defines pull-tabs. The Legislature, of course, passed the buck in the definition and just said pull-tabs are what everybody thinks pull-tabs are in 1973. But the Legislature did allow the Commission to define them in a more definitive manner if the Commission chose, and the Commission did that. But in Commissioner Ellis' view,

the Legislature did not have in mind that the Commission would do anything more than define pull-tabs in real terms as they existed in 1973, which was reinforced by the fact that the Legislature in 1994 added video pull-tabs to the list of prohibited gambling devices. So while Commissioner Ellis was sympathetic with the industry and with all of the arguments that have been made in favor of Alternative #2, he felt the addition of having the machine credit wins under \$20 to the gift card is a step that the Commission is not authorized to take and that has been recognized over the years. Commissioner Ellis looked over the segments of minutes relating to this topic over the years, starting in 1977, and numerous speakers defended the proposals for the original Gold Crown machine and then for the machine that ZDI currently has in many casinos in this state. Virtually every speaker, at some point, made a strong point that the machine would not credit wins, which was clearly understood to be a very significant step, so this is an issue that has been on the table. Commissioner Ellis did not think the Commission has the authority to take that step. The Attorney General's office in their 1999 Opinion laid out the legal and practical analysis correctly when, among other things, they pointed out that video pull-tabs raise some issues concerning speed of play and social impacts. Many of the features of video pull-tabs are not before the Commission with this issue, but the issues concerning speed of play and the social impacts are included. It is unfortunate that our record does not have any significant information, that Commissioner Ellis could see (and he read the minutes of the meetings that he missed as well as remembering the meetings he attended), as to what these machines would do in terms of the speed of play by crediting winnings of under \$20. Also Commissioner Ellis did not see any information in the record as to how many winnings would be under \$20, but assumed it would be the vast majority, that it would be fairly rare for a ticket to be a \$20 or greater winner. For those reasons, Commissioner Ellis favored Alternative #1 and disfavored Alternative #2. Commissioner Ellis added that an argument could be made that video pull-tab dispensers should not be allowed at all, which was the original approach that was considered, but felt that would be unfair to the businesses that have already purchased the machines.

Commissioner Rojecki seconded the motion, noting his concern revolves around the legal process. Commissioner Rojecki has explained to others within the industry that our Attorney General has advised the Commission on specific aspects that Alternative #2 addresses, not necessarily specifically but there are similar provisions. This Commission has made a decision to appeal some legal proceedings that have happened in lower courts, so for the Commission to defy the orders of our Attorney General would not be in the best interest as a Commission.

Chair Niemi said she was going to vote against the motion, and even though she would not prevail, Chair Niemi wanted everyone to understand why she was voting this way. Chair Niemi went beyond this particular issue and, referring to the pie charts staff sends around every year, reminded that the industry came close on June 30, 2007, to hitting \$2 billion in gambling receipts, which included the lottery and horse racing, and the tribes had \$1.338 billion as of that time. Gambling receipts

have gone up very rapidly in the six years Chair Niemi has been on the Commission and things have changed dramatically. The tribes without these new compacts have 18,034 machines and with the new compacts that were negotiated by the Governor -- the Commission was not involved, although the Director was in these negotiations -- they went from 900 machines to 975 machines. If the tribes used all these machines, they would have 27,225 machines. The tribes do a lot of very good things with the money they have and they also pay fees, like impact fees. The tribes that have a casino pay the communities for fire, police, roads, and utilities, so they do not take away from any community. The tribes are involved in anti-smoking and contribute a great deal to their local communities, they have health clinics and daycare facilities, and they provide jobs outside of the casinos for their members. Some tribes even give to the arts. Lately the tribes have also been taking care of problem gambling, which is included in their new compacts. Chair Niemi has said it before and would say it again that Washington is the only state in this country that does not have revenue sharing with tribal gambling. One thing that really impressed Chair Niemi, and possibly pushed her to change her mind, was when about three or four months ago at a Commission meeting in Yakima a member of the Yakima City Council, who also works for a non-tribal casino, mentioned that Yakima gets \$800,000 from the non-tribal casinos and that the city is dependent on that money. Chair Niemi recalled that was one of the arguments for being able to keep these machines. Communities that have gambling may tax that non-tribal gambling. Local communities got \$39 million dollars throughout the state this past year, which was down \$3 million from the year before. Looking at these pie charts, it shows that bingo is practically gone and that local gaming casinos are also down a bit; everybody is down a little bit. Chair Niemi thought this was not what people considered in 1973 when gambling was allowed -- they thought it would be enjoyable and they thought it would provide some revenue. Well that revenue is going away and it seemed to Chair Niemi that if there was anything the Commission could do to help the local communities to gain somewhat, it should do what it could. As to the legal argument, Chair Niemi thought that all over the country there have been disputes about whether this type of machine is a Class II or a Class III machine -- in effect a slot machine -- and no judge has come out with the same opinion. No one really knows what it is. Chair Niemi respected the fact that it is not a slot machine, but frankly did not expect any definitive ruling to come out of the courts that would be useful either. So for that reason Chair Niemi was going to vote against this motion.

Mr. Ackerman pointed out that the effective date was left open at this point, and the Commission should consider setting an effective date by motion. **Commissioner Ellis** moved that the effective date be 31 days after filing and Commissioner Rojecki agreed.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to adopt Alternative #1 to WAC 230-14-047 and WAC 230-06-002 as presented by staff, and the industry and that the Commission deny the petition for Alternative #2, with an

effective date of 31 days from filing. Vote taken; the motion passed with two aye votes; Chair Niemi voted nay.

6. Petition for Rule Change – Packaging Pull-Tabs

- a) **Amendatory Section WAC 230-16-060** – Assembly and packaging of pull-tab series.
- b) **Amendatory Section WAC 230-14-260** – Inventory control.

Assistant Director Harris reported this petition was from the Washington Charitable and Civic Gaming Association and requests manufacturers be allowed to package pull-tab series containing more than 10,000 tickets in multiple containers. Because of the increased size and weight of the new authorized ticket count games, operators would have difficulty handling and storing such games. The rule would also add additional security requirements to such packaging. In July 2007, the Commission adopted a petition to increase the number of tickets in a pull-tab series to 25,000, but the current rule requires a series to be packaged in one container with the exception of the progressive pull-tab game. The multiple packaging containers may increase the complexity of packaging and shipping the product. Both manufacturers and distributors could have control problems leading to misplaced boxes or containers that may fail to be shipped. Operators may miss a package and fail to load or sell the entire series. There may also be quality control issues due to potential errors and problems with multiple packaging, but staff believes the impact would be small. This change could lead to additional staff time for investigations, follow-up on compliance modules, or quality control issues if there is a large growth in that area. Because the larger size games are now authorized, staff would recommend that the proposed rule change become effective 31 days after adoption.

Chair Niemi asked if there were any questions from the Commission – there were none. She called for public comment.

Mr. Ric Newgard, Washington Charitable and Civic Gaming Association, admitted to being the petitioner and apologized because this change should have been included in his petition last July that the Commission passed. Organizations currently have the potential of using those large pull-tab games but cannot get them shipped. Mr. Newgard would greatly appreciate support from the Commission on this issue. Mr. Newgard thanked staff for requesting an effective date of 31 days from approval so the organizations do not have to wait until July.

Commissioner Rojecki made a motion seconded by **Commissioner Ellis** to approved proposed amendments to WAC 230-16-060 and WAC 230-14-260 as presented by staff, with an effective date of 31 days from adoption. Vote taken; the motion passed unanimously.

7. Rules Simplification Project – Clean-up Package #2

- a) **Amendment WAC 230-07-140** – Minimum accounting records for Class D and above bingo.

- b) **New Rule WAC 230-15-553** – Cash equivalent defined.
- c) **Amendment WAC 230-06-125** – Renew your license in a timely manner.
- d) **Amendment WAC 230-14-080** – Prize limits and percentage of winners required.
- e) **New Rule WAC 230-06-007** – Canceling, changing time, date, or location of fund-raising events.
- f) **Amendment WAC 230-14-120** – Permanently ~~removing~~ reserving punchboards or pull-tab series.
- g) **Amendment WAC 230-16-015** – Punchboard and pull-tab sales restrictions.
- h) **New Rule WAC 230-06-106** – Limited transfers of ownership allowed.
- i) **New Rule WAC 230-06-107** – Ownership changes – allowed
- j) **New Rule WAC 230-06-108** – Ownership changes – prohibited.
- k) **Amendment WAC 230-10-350** – Recording bingo winners.
- l) **New Rule WAC 230-06-007**- Licensed employees must wear nametags.
- m) **New Rule WAC 230-03-018** – One annual change of bingo premises allowed.
- n) **New Rule WAC 230-10-446** – Defining “linked bingo prize”.
- o) **New Rule WAC 230-14-226** – Location of unplayed punchboards and pull-tab series.
- p) **New Rule WAC 230-16-052** – Standards for flares.
- q) **New Rule WAC 230-17-151** – Accumulating excessive reserves.

Ms. Hunter noted that no new comments have been received on these rules since the November meeting or at the study session. **Ms. Hunter** briefly explained that each change was covered at the November meeting and unless asked she would not repeat them. Three micro-changes made to the rules since the November meeting included changing one title of a rule, adding “or” instead of a slash, and spelling out 300. Staff would recommend final action effective 31 days after filing.

Chair Niemi asked if staff was requesting final action on all the rules a) through q). **Ms. Hunter** affirmed, unless there was any particular rule the Commissioners wanted to pull out to discuss separately. **Chair Niemi** asked if any Commissioner wanted to pull out any of the rules listed. No one did.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to approve the amendments (a) through (q) in the Rules Simplification Project, as presented by staff, with an effective date 31 days from filing. *Vote taken; the motion passed unanimously.*

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

Chair Niemi called for public comment.

Ms. Dolores Chiechi, Recreational Gaming Association, welcomed Representative Gary Alexander to the Commission, noting the RGA was excited to be working with him. **Ms. Chiechi** also welcomed back Commissioner Ellis.

Mr. Bill Taylor, President and CEO of the Renton Chamber of Commerce, testified about a couple card rooms in his community, and about where this industry is within Renton and perhaps in the state. Mr. Taylor said Renton was fortunate to have Freddie's Club and Diamond Lil's, who are very involved in the community to an extent that probably does not pay them back in terms of activity that goes on. The clubs are there all the time and the city needs them. Diamond Lil's and Freddie's employ about 300 people and pay over a million dollars in taxes to the City of Renton. Washington State typically leads all other states in new business start-ups, but is dead last in terms of sustainability and has the highest business failure rate of any state in the union at about 22 percent. Mr. Taylor just saw a casino in Renton fail after less than a year because of a combination of factors that the gaming industry faces making it difficult for businesses like that to stay open. One of the biggest competitors of our casinos happens to be the regulator – the State, with its lottery and all of the gaming that it supports. The card rooms also have to compete with the Native American gaming industry, so they are playing on a field that is not at all level. It has a lot of bumps in it and it is very difficult for them to survive and exist. Mr. Taylor did not know what action the Commission could take to level that playing field, but urged the Commission to do what it could to help these businesses survive. Mr. Taylor understood that regulations have to be in place, but with the rate of business failure in Washington State, any help would be appreciated. Mr. Taylor did not understand why people like Freddie's and Diamond Lil's even attempted to stay in business because it is very, very difficult, but they are good corporate citizens and the City of Renton values their business. They participate as much or more than most of the other businesses that are in Renton.

With no further business, **Chair Niemi** adjourned the meeting at 10:20 a.m., noting the next meeting would be held on February 14 and 15 at the Best Western-Tacoma Dome Hotel.

Minutes prepared by:

Gail Grate
Executive Assistant