

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, AUGUST 13, 2009
APPROVED MINUTES**

Chair Keven Rojecki called the meeting to order at 1:40 p.m. at the Inn at Gig Harbor and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki**, Tacoma
 Commissioner John Ellis, Seattle
 Commissioner Mike Amos, Selah
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland
 Representative Gary Alexander, Olympia

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

1. Underage Gambling Compliance Recognition

Director Day explained a survey conducted a few years ago showed concerns from the public as to whether there was underage gambling occurring in the state of Washington. As a result, the agency began a fairly aggressive inspection process and enforcement program utilizing an underage person and directed at the house-banked card rooms. Over a period of five years, 381 underage gambling inspections were conducted at 96 different card rooms across the state of Washington. Assistant Director Mark Harris headed the inspection program. Director Day recognized those card rooms that passed every inspection during that five-year period. Chair Rojecki, Director Day, and Assistant Director Harris presented certificates to the following establishments:

- ✓ Casino Caribbean, Kirkland; Dawn Mangano and Michael Marquess
- ✓ Golden Nugget Casino, Tukwila
- ✓ Golden Nugget Casino, Shoreline
- ✓ Iron Horse Casino, Everett; Chris Kealy
- ✓ Magic Lanes Casino, Seattle; Max Faulkner
- ✓ Riverside Casino, Tukwila
- ✓ Silver Dollar Casino, Tukwila; Christy Walker.

Senator Prentice commented that was three in her district.

- ✓ Chips Casino, LaCenter; Bruce Meyer

- ✓ Palace Casino, Lakewood; Bruce Meyer
- ✓ Palace Casino in LaCenter; Bruce Meyer
- ✓ Hawks Prairie Casino, Lacey
- ✓ Silver Dollar Casino, SeaTac

Director Day announced there would be another presentation at the September Commission meeting in Spokane for three establishments on the east side of the state.

2. **Agenda Review/Director's Report:**

Director Day reviewed Thursday and Friday agendas, noting there were no staff requested changes.

a) Budget Adjustments (PowerPoint Presentation)

Terry Westhoff, Business Operations Administrator, explained the purpose of the presentation is to get the Commission's approval on adjustments to the 2009-2011 biennium budget that was approved last August. Mr. Westhoff recognized his outstanding budget staff, Judy Pittelkau and Cam Dightman, and thanked them for doing a great job of developing the budget and getting it to all the parties on time, plus monitoring the budget to make sure everything is on track. Mr. Westhoff reviewed the items covered in the PowerPoint presentation, noting that at the end of the presentation, the Commission would be asked to take action on the revised biennium budget. Staff recommends approval of a revised budget for the 2009-2011 biennium budget of \$33,630,000 and 165.4 FTEs.

Chair Rojecki asked if there were any questions and called for public comment; there were none.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission approve the staff recommendation for an adjusted 2009-2011 biennium budget in the amount of \$33,630,000 and 165.4 FTEs. *Vote taken; the motion passed unanimously.*

Director Day thanked the Commissioners for approving the recommended budget and allowing staff to utilize those forfeiture funds in areas that produced the funds in the first place.

b) Correspondence

Director Day explained staff produced the fact sheet as a brief overview of the Commission, touching on the history and on law enforcement. The map identifies the regulating agency for gambling in other states and shows that 26 of the states have law enforcement authority. It also identifies others that are similar or dissimilar in structure, adding that in some cases, states will have four different agencies that do the same job

that the Commission does. A table comparing different agencies is also included. Director Day recognized Ms. Hunter's staff for their work in gathering the information.

Senator Prentice asked who prepared the fact sheet. **Director Day** replied that our Public Information Officer, Susan Arland, was the primary person. **Senator Prentice** liked how the safeguards were labeled and how the history and background were captured. She noted that some of us remember that history. Senator Prentice said she had great admiration for the work done, pointing out it is hard to capture all that information and do it that well. **Director Day** thanked Senator Prentice and said he would definitely convey her comment to Ms. Arland. Director Day said Ms. Arland does an excellent job, and agreed it was hard to convey that information accurately without being too detailed.

Director Day explained that Representative Alexander had asked to see some statistics comparing new licenses as opposed to licensees that are no longer licensed. Staff put together a graph for the period of time that Representative Alexander had suggested which was 2004-2008. Staff does not have the ability to clearly identify for the Commission what the reasons were for the licensees no longer being licensed.

Director Day pointed out the house-banked public card room report, which lists the 78 house-banked card rooms that are currently operating, and two that are licensed but not operating. In 2005, there were about 100 house-banked card rooms – in anticipation of a potential freeze bill. The number has been consistently in the high 70s or low 80s for quite some time.

Commissioner Ellis asked if, in addition to the house-banked card rooms, there are a small number of poker room licensees that do not offer house-banked games. **Director Day** affirmed. **Deputy Director Trujillo** confirmed there are approximately 18 Class E card rooms and approximately 8 Class F card rooms.

Director Day explained the Lucky Ladies and Emperor's Challenge Odds Tables were prepared in response to questions about payout odds for some of the games that were discussed last month. A table showing the breakdown of types of games at house-banked card rooms around the state was also included. The most popular table game is poker (201 tables) and the next popular is Spanish 21 (166 tables). Also interesting is that mini-baccarat is not currently played on the east side of the state, and is much more popular in the northwest region rather than the southwest. On the east side of the state the average is just under 12 tables per card room, and the average on the west side of the state is about 13 tables per card room.

d) Monthly Update Reports

Director Day noted there was nothing unique in the monthly update reports or news articles. There was no new gambling legislation, but the federal summary indicates

legislation has been introduced relative to the trust land acquisition for the Samish Nation and recognition for the Duwamish. Also Senate Bill 1597, an internet gambling bill similar to Representative Barney Frank's bill, was introduced by Senator Robert Menendez from New Jersey. Both of those bills are still in committee.

Comments from the Public Regarding the Director's Report:

Chair Rojecki called for public comment on the Director's Report; there was none.

3. Approval of Minutes – July 9-10, 2009 – Regular Meeting

Commissioner Amos made a motion seconded by **Commissioners Ellis** to approve the minutes from the July 9-10, 2009, regular Commission meeting. *Vote taken; the motion passed unanimously.*

4. Petitions for Review

a) North Shore Pub, Kenmore, Revocation

Assistant Attorney General H. Bruce Marvin reported that, with regard to the North Shore Pub, two days ago staff received a notice of withdrawal from Mr. Yahng who was representing North Shore Pub in this matter. AAG Marvin's understanding was that the North Shore Pub has allowed its pull-tab license to lapse and that a new corporation has submitted an application for licensing at that location. It would appear the North Shore Pub, at least the entity that is the subject of this proceeding, may be out of business. AAG Marvin thought it would be appropriate to address the motion and petition for review that is before the Commission to resolve this and have a final record in this matter. **Chair Rojecki** agreed.

Commissioner Amos asked for clarification on whether Mee Chong Collins and Mee Chong Lee was one and the same person. **AAG Marvin** believed they are the same person.

AAG Marvin presented an abbreviated portion of the facts since he imagined nobody from North Shore Pub was going to be appearing, now that their counsel had withdrawn. He explained the Commission could seek a default, but felt they should go ahead on the merits and make its final decision on them. AAG Marvin provided testimony in the matter for review and asked that the Commission enter a final order affirming the Adjudicative Law Judge's initial order in its entirety. A recording and transcript of the hearing is available upon request.

Chair Rojecki asked if Mr. Terry Suzuki, Mr. Michael Yahng, Mee Chong Collins, or Chong Mee Collins, or anybody representing them or the North Shore Pub located in Kenmore, Washington was present. No one stepped forward.

At 2:50 p.m., **Chair Rojecki** asked if there were any questions and called for an executive session to discuss the North Shore Pub petition for review; he recalled the public meeting at 3:00 p.m.

Commissioner Amos made a motion seconded by **Commissioner Ellis** that the Commission uphold the ALJ's initial order revoking the license of the North Shore Pub. *Vote taken; the motion passed unanimously.*

b) **Sage I. Lee, Card Room Employee, Revocation**

Chair Rojecki asked if Sage I. Lee or a representative were present; no one stepped forward.

AAG Marvin provided testimony in the matter for review and requested that the Commission enter a final order affirming the ALJ's initial order in its entirety revoking Mr. Lee's license. A recording and transcript of the hearing is available upon request.

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

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission enter an order affirming in its entirety the corrected initial order of the ALJ revoking the license of Sage I. Lee. *Vote taken; the motion passed unanimously.*

5. Qualification/Program Review: AMVETS 00001, Tacoma

Special Agent Kevin Maxwell from the Southwest Region reported on the Qualification/Program Review of the American Veterans (AMVETS) Post #1, which was started on July 1, 2009. SA Maxwell explained the purpose of the Qualification/Program Review was to ensure charitable/nonprofit organizations have made significant progress toward their stated purposes and to verify the organization qualifies to operate as a bona fide charitable or nonprofit organization as defined by RCW 9.46.0209. Staff is required to prepare a summary of the organization's qualifications for the Commission's review at a public meeting every three years. SA Maxwell reviewed AMVETS qualifications and stated purpose, noting the licensee has programs that support their stated purposes and that they have complied with the requirements of their Bylaws and Articles of Incorporation. SA Maxwell indicated that Ray Edie and Carla Johnson from the AMVETS Post #1 were present to answer any questions.

Special Agent Donna Khanhasa from the Financial Investigations Unit reported that in accordance with WAC 230-07-145, a charitable or nonprofit organization must report their progress toward their stated purpose on an annual basis. The financial statements must be prepared by an independent CPA and be in accordance with generally accepted accounting principles (GAAP). Because AMVETS is a Group IV licensee, they have to spend at least 60 percent of their net gambling income on functional expenses, which include both program services and supporting services. Based on her calculations, SA Khanhasa

determined that AMVETS was in compliance with the significant progress requirement. Staff recommends that AMVETS Post #1 continue to be certified to conduct gambling activities in the state of Washington as a nonprofit organization.

Chair Rojecki asked if there were any questions.

Commissioner Ellis stated the investigation and the results were very impressive. One aspect of the report that was particularly impressive to him was the fact that AMVETS Post #1 donated space and funds to the Veteran's Service Office that helped file 746 claims resulting in awards in the amount of more than \$10.5 million for veterans' benefits. Commissioner Ellis asked if it was correct that the organization assisted veterans to obtain awards exceeding \$10.5 million in just one year, during 2008. **SA Maxwell** affirmed that was correct. **Commissioner Ellis** said that was amazing.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that AMVETS Post #1 continue to be certified to conduct gambling activities. *Vote taken; the motion passed unanimously.*

6. New Licenses and Class III Certifications

Commissioner Amos made a motion seconded by **Commissioners Ellis** to approve the list of New Licenses and Class III Certifications listed on pages 1-11. *Vote taken; the motion passed unanimously.*

7. House-Banked Card Room Review and Report on Definition of Establishment: Caribbean Cardroom, Kirkland

Deputy Director Trujillo reported that last month Caribbean Cardroom was held over at staff's request and with the applicant's concurrence. Mr. Herbert Lampert owns 90 percent of the Caribbean Cardroom and Mr. Michael Marquess owns 10 percent of the business. Late in the application process, staff raised questions about the applicant card room sharing facilities with the adjacent card room, and staff requested additional time to evaluate the relationship. The Caribbean Cardroom is seeking to be licensed to operate house-banked card games in an unincorporated area of King County in space formerly occupied by Sno-King Bingo, who shared the building with Casino Caribbean. When Sno-King ceased operating earlier this year their premises remained vacant until occupied by Caribbean Cardroom. Caribbean Cardroom shares a common wall and restroom facilities with Casino Caribbean and the ownership structure of each business is common. Staff wanted to ensure that each house-banked card room was a separate and distinct business entity. Staff has determined that each business: offers the sale of food or drink for consumption on the business premises; has an infrastructure that meets house-banked card game operating and reporting requirements; operates independently of the other; and one can be sold without impact to the other. DD Trujillo reviewed the layout of the shared area. DD Trujillo pointed out a communication from Toby Nixon who in November 2005 as State Representative was one of many who objected to the opening of Casino Caribbean in the

Kingsgate area. According to Mr. Nixon's e-mail to the Kirkland City Council, his opposition was based on negative impacts that have not occurred. In his letter, Mr. Marquess outlines the events leading up to the opening of Caribbean Cardroom and explains in detail why the facility shares a common area and restrooms. Mr. Marquess and Dawn Mangano are present to answer any questions.

Mr. Michael Marquess, Caribbean Cardroom: I want to thank you for allowing me to speak today. And I want to thank the staff for working with us on this application. Just a brief history on the unique circumstances that brought this to where we're at. Sno-King Bingo had declining revenues for some time and their slow decline had prompted them to start looking into other avenues. With the compliance issues with bingo, they were looking at forcing to close their operation, so they approached us and said we're going to have to go out of business and we need to do something with that space. We negotiated a lease that was very good for them. It gives them about \$240,000 a year in income that they weren't going to get previously. Their bingo operation was basically breaking even, so this actually puts about a quarter of a million dollars a year into their coffers. That solved their problem, but our circumstance was that we weren't really ready to go forward with something that ambitious. They wanted the lease money; they wanted a strong lease. We understood their circumstances, so we went forward with it. Last year Kirkland was pursuing annexation, but they dropped it. And we didn't have any idea that they were going to pursue it anytime soon. They showed renewed interest in it and a bill was introduced, Senate Bill 5321, which would allow them to keep us if they annexed us. Our ambitions were to just do a Class F card room in that location because the revenues would not support a full blown 15-table card room, and we don't predict that to happen for many, many years. We're going to be making a lot less profit with this. This isn't some kind of a scheme to get more money. We had to help our partners in Sno-King with their situation, and then Senate Bill 5321 put an urgency on the whole thing. So that's sort of how we came to where we're at.

Ms. Dawn Mangano, CFO of Casino Caribbean, Macau Casino, and Caribbean Cardroom: My part was more administrative as we moved forward in pursuing opening the card room, setting things up so it is a separate business so it would comply, tax ID, formation paperwork, separate leases, all those things that separate you out legally; separate books and all that kind of thing. As we moved along with the construction phase we were sensitive to perception. And with the shared bathrooms that we've had before, first we built a common area because it used to just be one set of doors. So then there were two sets of doors. And after that we moved forward additionally and built walls. So when you look through one set of doors from one property, it just looks on to a blank wall that's dark, and same on the other side. So you do not have a view into the other property. Those bathrooms are at the back of the property, away from the main gaming business. It's not a highlighted area, it's a hallway to a bathroom, and so that's something we were sensitive to. I'm not sure if there were any other things, but that was basically the main thing we tried to be sensitive to that. So I guess today we're just asking for final approval on our license, and be available for any questions you might have.

Chair Rojecki asked if there were any questions.

Commissioner Ellis asked for clarification on the relationship between the request that the Commission take action concerning the license versus the draft of a new section defining requirements for licensed premises of card rooms. **Deputy Director Trujillo** explained there are two separate sections: one is the recommendation for the house-banked card room, and the other is recognizing the issue that was brought to light with the Casino Caribbean application. Staff can either make the recommendation now for the house-banked card room or after the next section, which may answer some of questions about the shared areas for the restrooms. **Commissioner Ellis** wondered about the draft of the additional requirements because it states quite clearly that in order to maintain separation between adjacent facilities, each has to provide its own restroom facilities. **DD Trujillo** affirmed. **Commissioner Ellis** thought that provision would have been essentially fatal to the business plan that has been developed for the casino. **DD Trujillo** affirmed and explained that is only draft language for dialogue discussion today and was not sure how it would impact retroactive or future businesses. **DD Trujillo** asked if the Commissioners wanted to move into the next section now.

Chair Rojecki suggested taking care of the current section first. **Commissioner Ellis** agreed. If it is not vital to the Caribbean Cardroom that they get an answer to that question before the Commission moves on their license application, then go ahead.

Commissioner Ellis made a motion seconded by **Commissioners Amos** that, pursuant to the staff's licensing investigation and the P.O.R.E., the Commission license Caribbean Cardroom as a house-banked card game licensee to operate up to seven tables in accordance with the wagering limits of WAC 230-15-140. Vote taken; the motion passed unanimously.

Deputy Director Trujillo reported that staff is working on the specific issue of Definition of Establishment, which the application by Caribbean Cardroom brought to light. Specifically, the question is at what point do adjacent house-banked card game licensees exceed what was envisioned by the Legislature in 1997. RCW 9.46.0282 is the definition of social card game, and the last sentence says the number of tables authorized shall be set by the Commission but shall not exceed a total of 15 separate tables per establishment. To this date, "establishment" remains undefined. Most house-banked card rooms are located far apart for business and competitive reasons; however some have gradually located closer to one another. **DD Trujillo** reviewed diagrams and pictures of Chips Casino and Palace Casino in LaCenter that are located near one another, but do not really connect, and Chips Casino and Palace Casino in Lakewood that share a common wall. Caribbean Cardroom and Casino Caribbean share a common wall and a common area. While staff is confident the businesses represented are separate and distinct, staff can foresee a time when an applicant brings plans for locating multiple house-banked card game licensees in a location where each establishment shares a common wall and other common facilities. With the

common access area, if customers enter one licensed location, they may have unrestricted access to all locations. For example, a strip mall with five suites could become a facility with 75 tables. Staff is certain that was not the intent of the Legislature in 1997, and is asking for approval to move forward with the rule-making process to define “establishment” to prevent that from happening because current rules do not prevent it.

Chair Rojecki asked how many businesses staff perceives this to impact, based on the draft rule as written. **Deputy Director Trujillo** responded that, as it is worded and if it were to be made retroactive, it would just impact the Caribbean Cardroom. If it were to be from a certain point forward, it would not impact Caribbean Cardroom.

Senator Prentice recalled that as the card rooms in LaCenter and Lakewood developed, the ones in Palace and Chips in LaCenter were very different identities. The property had been purchased, and Senator Prentice thought the reason the Commission was not overrun with them was because it would not be profitable to be competing against themselves to any great extent, so they have sort of peacefully co-existed. Senator Prentice did not want anybody to misread SB 5321, the bill that had to do with annexation of unincorporated areas. The Legislators had to deal with a problem; they could have forgotten about them and said “Okay, Roxbury Lanes, we don’t care if you disappear; tough luck.” But the legislators did not want to do that, so they wanted to put in very limiting language, to grandfather them in. The legislators did not want to erase them from everybody, but if they were going to be annexed by a city like Seattle that pretends it does not have gambling and then has to absorb a card room, then the legislators did not want those folks to go out of business because they have never had any problems. Senator Prentice did not want to do that. That was the intent of the language; not to allow opportunities for expansion based on what had happened when it was not an issue. Senator Prentice was really uncomfortable with it. Although she has not thought it all the way through, she knew what was intended. It was Senator Prentice’s bill, and the whole deal had to do with annexation of unincorporated areas. The legislators were trying to be fair and Senator Prentice said she would sure rebel at having that be misused at this time.

Representative Gary Alexander said that 1997 was his first year, and he did not recall. He asked if the development of the definition of “social card game” that is in law originated by the Gambling Commission; was it a bill proposed by the Gambling Commission? It was not. Representative Alexander said he needed to go back and take a look at the people that were involved with the sponsorship, but it seemed to him that the limits on the number of tables probably dealt more with ownership than it did with proximity. But he did not know. A lot of businesses share common areas, and he did not think that should be a deterrent to deciding questions. But Representative Alexander thought there should be some reservations around ownership questions. He was going to go back and see if he could find out who sponsored the original legislation and what their intent was when they established the limits on the number of tables. **Senator Prentice** thought Ray Schow was the chair of the committee at that time, but she did not know where he was now.

Deputy Director Trujillo asked if Representative Alexander and Senator Prentice agreed this was a good idea to make sure that house-banked card rooms do not get any closer. **Representative Alexander** replied that, from his perspective, if proximity was going to be a factor or aggregation he certainly would not go retroactive; would certainly not go back and penalize anyone that has been granted permission to date. **Senator Prentice** recalled the hue and cry when the 15 table card rooms with house-banked were allowed and the proliferation suddenly. Senator Prentice was on the Commission then and certainly got a lot of criticism from folks who were very unhappy that suddenly they saw this big increase in gambling that they had not known anything about. It had just turned out that way, and she would not care to go through something like that again. She would not want to invite this negative attitude toward what is currently allowed. It would have been okay, as long as it was not in their face. **Chair Rojecki** echoed Representative Alexander's comments. He did not think retroactivity was necessarily the case. Chair Rojecki did not think it was right to approve something and then come back and penalize them later because of the failure to define proximity, whether that be Commission staff or the Legislature. Chair Rojecki asked if staff were asking for a motion from the Commission to set this in the rule-making process. **Deputy Director Trujillo** was not sure there needed to be anything formal; probably just a verbal answer that staff should proceed.

Director Day clarified that staff thought this could have the potential of being a problem. There was not much rule guidance about what an establishment was and how strict staff should be about ensuring they comply with the 15 table limit. Before staff went down the road with developing a rule, staff wanted to check in to see if the Commissioners thought this was a potential policy problem that merits moving forward with the rule-making process. If that was the case, staff would move forward with the rule-making process, but did not want to start down that road if the Commissioners did not see the same potential. Director Day did not think a motion was needed, just a nod of the head. **AAG Jerry Ackerman** agreed a motion was not needed. What he heard was that staff was not trying to unwind the existing situation at any particular location. The concern was that obviously the Legislature has historically recognized the fact that, originally, house-banked card rooms were supposed to be commercial stimulants for the sale of food and drink. They started out with five tables originally, then later it was decided it was appropriate to increase that number to 15 tables. The Legislature has consistently set a cap on the number of tables, so AAG Ackerman thought staff was struggling with trying to make sure the Commission does not get in a situation where there is a building that looks a lot like a strip mall and that basically has one owner that sets up five corporations side-by-side with connecting doors. The reality would be one very large building with 75 tables in it, which did not appear to staff to be the intent of the Legislature that has been reflected in RCW 9.46.0282. AAG Ackerman thought staff was not trying to unwind anything that currently exists, but to make sure the Commission does not get into a situation where, through circumstances similar to what was just addressed with the Casino Caribbean, the Commission ends up with one facility that appears to exceed the 15 table limit. AAG Ackerman understood that staff was

not saying that was what has happened here, but think staff was trying to be proactive and look forward to make sure that the Commission does not get into that kind of situation. There does not need to be a motion; any one of the Commissioners could direct staff to work on the rule and bring something before the Commission for review. Probably just a nod would be adequate for staff's purposes.

Chair Rojecki and Commissioners Ellis and Amos approved staff to move forward with the rule-making process.

Other Business/General Discussion/Comments From the Public

Chair Rojecki called for public comment; there was none.

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

Chair Rojecki called for an Executive Session at 3:50 p.m. to address pending investigations, tribal negotiations, and litigations. **Chair Rojecki** called the meeting back to order at 4:35 p.m. and immediately adjourned.

(all 3 Commissioners & 3 Ex-Officio Members were present during Executive Session)

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, AUGUST 13, 2009
DRAFT MINUTES**

Chair Keven Rojecki called the meeting to order at 9:10 a.m. at the Inn at Gig Harbor and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki**, Tacoma
 Commissioner John Ellis, Seattle
 Commissioner Mike Amos, Selah
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland
 Representative Gary Alexander, Olympia

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

RULES UP FOR FINAL ACTION

8. Staff Proposed Rule Change – Housekeeping – Administrative Hearings

Amended Version Up for Final Action

- a) **Amendatory Section WAC 230-17-137** – Guidelines for imposing penalties in disciplinary actions

Ms. Hunter reported that while working on implementing the rule, staff realized there was a small drafting error that needed to be changed from “commissioners” to “presiding officer” as the person that may consider the factors listed in the rule. Staff recommends adoption, with an effective date of 31 days after filing. Ms. Hunter noted that the agenda states it is an amended version up for final action, which it is not. The version that is in the agenda packet is correct and is the version that was filed at the May meeting.

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

Commissioner Ellis made a motion seconded by Commissioner Amos to approve the proposed amendment to WAC 230-17-137, to be effective 31 days from filing. *Vote taken; the motion passed unanimously.*

9. Petition for Rule Change – Clyde Bock, Bingo Manager: Bingo Adjusted Cash Flow

a) Amendatory Section WAC 230-10-380 – Relief reduction for minimum annual adjusted cash flow

Ms. Hunter reported the amended version is up for final action today. The petitioner, Clyde Bock, is a licensed bingo manager with the Ruth Dykeman Children’s Center and is requesting that bingo licensees have the ability to apply up to 49 percent of the taxes they pay to local governments as a credit when computing their expenses for cash flow requirements. There are only about 14 large bingo organizations left in the state; at one time there were over 60. This rule change would deal mainly with those 14 organizations. Some jurisdictions do not charge a gambling tax and others do. Mr. Bock’s position is that the rule change would allow his organization to receive some recognition for taxes that have been paid and bring his cash flow more in line with bingo licensees that do not pay gambling taxes. Two significant changes made in the amended version include language in subsection (3) to make it clear that the tax credit can be given annually while the 25 percent reduction is limited to once every five years, and language in subsection (2) to make it clear that the 25 percent reduction cannot be combined with the tax credit. The petitioner is fine with the changes. Letters were sent to the other 13 bingo licensees letting them know about the proposed change. Staff has not heard back from any of them. Ms. Hunter reviewed some excerpts from the charitable and nonprofit gambling report that was done in 2004 by Sally Perkins. In her report, Ms. Perkins observed that the Commission had made nine rule changes in this area since 1983 and “the Commission has bent over backwards to assist licensees, especially the largest licensees to be profitable and comply with the income/cash rules.” She also noted the changes reduced the required cash flow for the largest licensees by 58 percent. Ms. Perkins recommended the Commission consider increasing the amount of the requirement. Staff recommends final action on the amended version. Mr. Bock requested an effective date of 31 days from filing.

Chair Rojecki asked if there were any questions and invited Mr. Bock to come forward.

Mr. Clyde Bock, Bingo Manager for the Ruth Dykeman Children’s Center located in Burien: The bingo game is Imperial’s Bingo Connection located in Renton. I’ve been in the bingo industry for 35 years in the State, so I’ve been through the very beginning up to date and I’ve been a bingo manager since 1982, so I’ve been through all of the transitions. The only thing I would like to point out is in this particular rule, we’re not talking huge amounts of dollars. In my case, it is \$36,000 is what we would be able to consider toward our compliance. The scenario of the taxing between districts is a valid concern of mine in that if my competitors have \$76,000 less in taxes a year than I do,

that's a direct impact on me. But primarily, the report that was referred to was done in 2004. Since then, several impacts have hit the bingo industry which I would consider beyond my control. Top on the list is the smoking ban that occurred in December of 2006. That was a major contributing factor why we went from over 25 large bingo games down to where we are now. So that was a significant impact. Also let's not lose track of the fact that I don't think very many businesses in 2009 are as successful as they were in 2004. My pull-tab operation, which is a considerable portion of what we do, since November, where I was doing \$40,000 to \$50,000 in gross net, meaning after prizes, I'm now down to \$25,000 to \$30,000. So I'm off about \$20,000 a month, and that's hard to make up because that's direct to where I pay my expenses out of. So that particular revenue stream has not recovered since November. And it's just like you could take a knife. And it is expected; pull-tabs is where more discretionary income is going to be applied versus bingo. So it's a combination of things. If we wanted to look at what have other states done to help their bingo games, because we're all in the same boat – Oregon I believe basically allowed their operations five video poker machines. California just recently allowed Class II gaming machines into their bingo halls, I think up to 15. Now we're not asking for that. But here's the scenario what I'm leading to; we can have a bingo game generating \$120,000 a year. But because it should be \$140,000, then they are at risk of losing their license. The 25% rule is fair. I worked with it, we've all negotiated with it. It is only once every five years. There's two games in the State out of the 14 – there may only be 13 left – that are on the bubble; that have utilized that 25 percent. The Bingo Connection, the game I manage, is one of them. The other one is a game in Spokane. So I'm asking that we have this as a back-up plan. So in summary, we're not talking large sums of money. And I believe that all of these games have boards behind them, they're all worthy causes in the non-profit side, we've all experienced the same expansion of tribal gaming, and the same enhancements of the card rooms over a period of years, the lottery going into many different new style games. All of these have taken a slice of the pie. So all I'm asking for here is that we do be able to consider the taxes. My last comment deals with this 58 percent figure. Here's the reality. At that time, what that 58 percent figure refers to is the time when taxes were included in my net return. So if my organization returned \$200,000 and we paid \$100,000 in taxes, my net return requirement at that time is \$300,000. Suddenly they say okay, we're going to make your net return only \$200,000. But we're not going to count the taxes anymore. Now you could make the case that that's a 33% reduction. But no, my scenario is still the \$200,000. So that 58% included that figure. There was a reduction, I'm not discounting that. Because at one time that figure of the net return was 16% of your gross net, then it went to 14, and then it was revised. But this 58%, a large portion of that was a paper adjustment. So that's the only clarification factor that I'm suggesting that exists in that. Not that we haven't been seeing the reductions. But let's not lose sight of the fact there is only 13 of us left, or 14. And all of us are struggling. And we're doing the very best we can to make as much money for our organizations as we can because without this bingo revenue, a lot of these organizations would not exist, or at least exist at the level that they do. And

I'm here to answer any questions or thoughts. Okay. I certainly appreciate your consideration of this matter. And Senator, we've been through this a lot. There are very few people in the State that have been in the business longer than I have. So I've been through every single portion of this and I sincerely appreciate your thoughts.

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

Commissioner Ellis said he has been on the Commission a few years and has seen nothing that suggested the bingo operations in this state are not doing everything they possibly can in order to get funds to pay to their stated purposes of their organizations. He thought a very good example of that was presented on Thursday in the P.O.R.E. for the AMVET organization and the remarkable accomplishments the organization has been able to achieve within the limitations of their revenue.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission adopt the amendatory section to WAC 230-10-380, which would largely level the playing field for these organizations, with an effective date 31 days from adoption.

10. Petition for Rule Change – Galaxy Gaming: Card Games

- a) **Amendatory Section WAC 230-15-040** – Authorizing new games or changing game rules

Deputy Director Trujillo reported that the petitioner, Galaxy Gaming, is proposing to amend WAC 230-15-040, which was originally presented in May. The petitioner is requesting the maximum number of games allowed within a single hand of cards to be increased from three to six. Petitioner's Amendment #1 amends the language in the petitioner's original submission to limit the wager for the additional three games to \$5 or less in an attempt to mitigate concerns about doubling current wagering limits. Deputy Director Trujillo reviewed the Rule Summary. Staff received letters of support from David Pardey of Skyway Park Bowl and Casino; Jim Bakunowicz of the Cadillac Island Casino, Cleo's Island Casino, and Classic Island Casino; Shannon McClure, general manager of Great American Casino in Kent; and Vern Westerdahl of Magic Lanes Casino and Roxy's Casino. Three of the supporters cited confusion in an existing game and two specifically referred to Emperor's Challenge. DD Trujillo said the petitioner, Rob Saucier, was present and would like to comment.

Chair Rojecki noted that under Resource Impacts, it says additional staff time is needed to review games that are submitted and asked how long that takes. **Deputy Director Trujillo** responded that a field agent reviews those games and the approval runs through the Licensing Division, so it would take approximately a few days for the process. **Chair Rojecki** thought it would require quite a bit of staff time as far as hours and investigation to figure out how the game is played. **Deputy Director Trujillo**

affirmed, explaining the agent actually sits down with the rules and plays the game to make sure that he understands the game and that it comports with the rules and regulations.

Mr. Rob Saucier, representing Galaxy Gaming, Inc.: First of all I'd just like to make a couple of clarifications on a few things. Number one, we are not seeking this rule change to be able to offer a new game into Washington State. The game that has been discussed and was demonstrated is a game that is referred to as Emperor's Challenge/Pai Gow poker. Emperor's Challenge/Pai Gow poker has been approved in the State of Washington for some time and is actually the second largest proprietary game in the State of Washington currently. There is currently 80 installations in non-tribal. There's also a number of installations in the tribal casinos as well. Emperor's Challenge is the same game in Washington, whether or not it is in tribal or non-tribal. The difference is that with the current restriction on the rule, the tribal casinos can allow their players to wager on all four betting positions that exist on the layout. The non-tribal players may only select three out of the four. So the change that we request will allow players in non-tribal casinos to wager on all four of the four wagering positions. I just want to make that clarification. There is some confusion from the players and the number one complaint that we hear from our clients is that there's a lot of problems because players like to wager all four wagers. They get into arguments with the dealers because the dealers say no, you can't do that. You can only wager on three. Then the players say well wait a minute, we can do it at the tribes and the dealers say well this is not the tribes, we can only do it three. And so there's been a lot of confusion. There's been times maybe where a dealer may miss that somebody actually had four wagers and technically they're violating the rule. So that's why we're seeking this. I see that staff had made a recommendation, and we just learned of this yesterday, to change the number of games from the six that was requested by us to four. And I would let you know that from the petitioner that that satisfies the problem. That satisfies the issue that we have before us now. And so we would accept that, if that is the pleasure of the Commission. I would give you a little history however in terms of what the intent was initially. And that was that originally when we submitted the petition, we submitted it for no restriction on the number of games that a player may play within the wager limitations. And the reason for that is because to our knowledge, and to the staff's as well, we're not aware of any jurisdiction anywhere in the world that has such a limitation. And again, with the tribes within the State, there is no such limitation. It appears that there's an evolution of table games that occurs. And the evolution is that when table games started out, generally wagers were limited to a single wager. Blackjack was a single wager. Later insurance came along and that caused a second wager. Then side bets came along and that was a third wager. And as games have been evolving, as the gaming industry has been evolving, the number of wagers increased. So the initial draft of the rule submitted to staff was to not have any limitation. Staff recommendation was that we put a number on it because they felt that that was more appropriate. So we put the number of wagers as six, not because we had anything in

mind for either five or six, but merely so that maybe the Commission would not have to deal with this issue six months from now, or a year from now, if somebody came forward with a game that required something more than four. But again, for the need that we have today, if it is the pleasure of the Commission, we would amend our petition to accept the four wagers. And then finally, just one other thing that I would like to add. We requested that the rule become effective in 31 days if the Commission chooses to adopt the rule change. The reason for the 31 days is because there is a lot of confusion in the field right now. We've confirmed with staff that there are no regulatory concerns. And in fact it actually may help the regulatory market as far as the agents in the field because there will be less confusion if this rule is allowed to pass. Thank you.

Commissioner Ellis noted that Mr. Saucier had indicated there were no regulatory concerns that staff seemed to have. Commissioner Ellis pointed out that staff indicates that if licensees offer games with more than three wagers within a single hand, there could be an increase in dealer procedural errors and in cheating. It would be more difficult for dealers to keep track of the games and make sure that players are not bidding inappropriately, adding chips to their bets, and that kind of thing, which being a novice in actually playing a game like this, would certainly seem to be the case to him. If there are seven or nine players playing a game that has all of these different betting possibilities, it would seem to be rather difficult for a dealer to keep track of exactly what's going on. Commissioner Ellis asked what Mr. Saucier's reaction was to that.

Mr. Saucier replied: Well first of all, and again this is unique in Washington. But there's a difference between the number of games, which is what we're defining this as, and the number of wagers. In both the presentation that I gave and the staff member gave last month, we had indicated essentially that there is no limit on the number of wagers, provided it's within the same game. So even today a new proprietary table game could be submitted that technically would have three games, or could have 12 wagers, 20 wagers, as long as they are within the game. An example of that is one of the PowerPoint slides in there, Texas Hold'em Bonus. And there was actually five wagers on there. And I indicated on the slide that it was actually counted as three. In reality, I was wrong, it was counted as two. So there's an example of a game that is currently being played today that has five wagers, counted as two. And that hasn't been an issue. So in our game we have four wagering positions now. But because of the definition, players may only wager on any three. I think that there's going to be less confusion, less regulatory concern, because people could say look, I wanted to play all four but they said you can only have three. Which three did you want? There's a lot of confusion.

Chair Rojecki noted that Mr. Saucier said they were not seeking a new game, but it seems that every time the Commission has increased this specific section of the WAC, it has been for a specific game. Chair Rojecki asked if the intended purpose, as Mr.

Saucier saw it, was more for coordination or less confusion in the field. **Mr. Saucier** replied that was his intent with this petition. He will testify Galaxy Gaming has no other game right now that would require this rule that they would present. That's not to say that three months from now, or six months from now, Galaxy Gaming may not have a game they would like to present to the Commission. Or that is not to say there are other game manufacturers out there that may be waiting in the wings for a rule change like this to occur.

Chair Rojecki asked if there were any other questions or public comment.

Mr. Max Faulkner, Vice President of the Recreational Gaming Association: On this game I did go out and look at it, and from a dealer/supervisor position where there's four bets out there and somebody might make the fourth bet. And the dealer says oh, you can't make that bet. Well that player did. Well they've only got three bets out there. So just for a regulatory issue, it seems to me that it would be good to approve the rule and waive the January 1st and implement it in 31 days. Just control of the game.

Commissioner Ellis asked if there was a point at which Mr. Faulkner, as a very experienced card room operator and consultant, would think the number of bets within a single hand could become difficult for a dealer to administer. **Mr. Faulkner**: I'm not too familiar with craps games. But I know those dealers handle a number of bets. And they have to be trained more extensively than a blackjack dealer. I don't know of any table games that have five or six individual bets on outcomes in the market place. You know, I haven't been to the trade show last year, but I kind of keep up on them. So I guess it would depend on the complexity. And in general when the game gets too complex, the people don't want to play it. Not really a direct answer, but that's how I see the market.

Deputy Director Trujillo reported that because the petitioner has described a game that uses four games within a hand, but has requested an amendment to six games without describing the types of games that may result, staff recommends not adopting the proposed change; petitioner's Amendment #1. However if the Commissioners choose to increase the number of games played in a hand in order to allow the game described by the petitioner, staff would recommend changing the petitioner's amendment from six to four. Petitioner has requested an effective date 31 days from adoption and he has come forward to describe the reasons for that 31 days.

Commissioner Amos asked if the only game being discussed was what Mr. Saucier said was Emperor's Challenge for the fourth bet in that Pai Gow card game. **Deputy Director Trujillo** affirmed that was the only one.

Commissioner Ellis asked what staff's concerns were about the difference between the rule if adopted to it being effective 31 days from adoption versus January 1, 2010.

Deputy Director Trujillo replied staff would not have concerns if the Commission chose to adopt it within 31 days versus the January 1, 2010, deadline, adding it would probably reduce the confusion that is out there.

Chair Rojecki called for public comment; there was none.

Commissioner Ellis stated there was a record established that there is potential and actual confusion from the current table for Emperor's Challenge/Pai Gow. It does not sound like there is a significant risk of the downsides occurring: dealer's having difficulty administering the game, increased cheating, or mistakes by the dealers. The victims, should that occur, would be the card room operators who can simply not offer the game if they are concerned.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission adopt the amendatory section to WAC 230-15-040 revising, or amending, section (1)(b) to read that the offer can be no more than four separate games within a single hand, and continuing with the additional amendatory language in the second section of that subsection, to be effective 31 days from filing. *Vote taken; the motion passed unanimously.*

11. Petition for Rule Change – Bonanza Press: Cumulative Prize Pool Pull-Tab Series

Amendatory Section WAC 230-05-030 – Fees for other businesses

Amendatory Section WAC 230-14-065 – One flare per punchboard or pull-tab series

Amendatory Section WAC 230-14-080 – Prize limits and percentage of winners required

Amendatory Section WAC 230-14-265 – Retention requirements for punch boards and pull-tab series

New Section WAC 230-14-320 – Defining a cumulative prize pool pull-tab game

New Section WAC 230-14-325 – Defining a cumulative prize pool pull-tab board

New Section WAC 230-14-330 – Defining a cumulative prize pool pull-tab series

Amended Version of WAC 230-14-335 Up For Final Action

New Section WAC 230-14-335 – Operating requirements for cumulative prize pool pull-tab series

Amendatory Section WAC 230-16-052 – Standards for flares

New Section WAC 230-16-102 – Cumulative prize pool pull-tab games

New Section WAC 230-16-104 – Cumulative prize pool pull-tab series flare

Assistant Director Harris reported the petitioner is requesting the Commission authorize a new type of pull-tab game called a cumulative prize pool pull-tab game, which is two or more separately packaged games together, each with a unique series number. Each separate game awards a chance to open a seal on a cumulative prize pool board or an additional flare. The petitioner has been working with staff since August 2008 to develop rules that would meet their intent and be worded so the rules are

consistent with other WAC rules. The new rules basically add some definitions, some operating requirements, and manufacturing standards and requirements. Two major differences from what is currently authorized for pull-tab games would be to allow the secondary flare or secondary game board for the cumulative prize pool awards, and to allow the manufacturers to calculate 60 percent payout based on the total of all the games in the series and the cumulative prize pool flare. Currently these types of games are played in Minnesota, Kentucky, Virginia, and Texas. Staff has received six letters supporting the petition and one letter opposing the petition.

Commissioner Ellis noted the description of the impact of the change to the 60 percent payout requirement in the Rule Summary and how that would apply in the context of the cumulative game was helpful. Commissioner Ellis asked if staff had any regulatory concerns about the complexity of that calculation or whether there is any potential for abuse inherent in the different way of calculating and meeting the 60 percent requirement. **Assistant Director Harris** replied that, from staff's standpoint, it would be a little bit more complicated to calculate the percentage. It would basically be just grouping a larger pool of games together to meet that calculation, but the formula and everything else would be the same for 60 percent payout.

Chair Rojecki asked if there were any other questions and invited Mr. Norris to step forward.

Mr. Richard Norris, Bonanza Press: Thank you to the board and Mr. Harris for everything. I do have samples of the product, and I believe everybody got a chance to see what we were proposing at the previous meeting. One of the things that is a concern is the 60 percent Rule, and as we develop new games, we're required to send in a flyer to show what the new products are like. There's no formal approval process here in Washington as in other states, but we do put the payout percentage on there as it's grouped so it's easy for staff to confirm how we come up with the 60 percent and that they meet that rule. So just to address that one issue; and I think Mr. Harris did a great job of describing the game. So if there's any other questions, it's just easier to move on from that point.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission approve the proposed rule changes for the cumulative prize pool pull-tab games, including Amendatory Sections WAC 230-05-030, WAC 230-14-065, WAC 230-14-080, WAC 230-14-265, New Sections WAC 230-14-320, WAC 230-14-325, WAC 230-14-330, an amended version of New Section WAC 230-14-335, Amendatory Section WAC 230-16-052, and New Sections WAC 230-16-102 and WAC 230-16-104, with an effective date of January 1, 2010. *Vote taken; the motion passes unanimously.*

Chair Rojecki called for a break at 9:55am & reconvened at 10:10 a.m.

Senator Prentice left during the break

12. Petition for Rule Change – ZDI Gaming, Inc.: Electronic Video Pull-tab Dispensers

- a) **Amendatory Section WAC 230-14-047** – Standards for electronic video pull-tab dispensers

Deputy Director Trujillo reported the petitioner, ZDI Gaming, is requesting that electronic video pull-tab dispensers be allowed to dispense pull-tabs only after all plays have been displayed on the video terminal. The petition, as requested, would require players to use the dispenser to play the pull-tabs; players could not open the pull-tab until the outcome is displayed on the video terminal. After the outcome of the bundled pull-tab has been displayed, the pull-tab would be dispensed. As a result, the paper pull-tab would not be a fundamental part of play and would only be needed to claim a prize. AD Trujillo reviewed the Rule Summary, noting he would make staff's recommendation after the petitioner has commented.

Chair Rojecki asked if there were any questions and invited Jay Gerow to come forward and present his PowerPoint.

Mr. Jay Gerow, ZDI Gaming: Mr. Trujillo didn't make his recommendation; however, I do see it here on the agenda, as does everybody else. I guess I wanted to start off with the history and my concern that I hope that staff's recommendation isn't retaliatory in anyway with the ongoing litigation that ZDI has with the agency. As you can see in the PowerPoint here, this process started over 15 months ago where we had made a submission, along with some other changes, to be able to do this delay feature. We were told by staff that they didn't like the feature, and they didn't feel it complied with the WAC. However from everything that we saw, it did comply with the WAC. So staff agreed to give us the option of either coming forward with a proposed rule change so they'd feel more comfortable bringing it in front of the Commissioners, or we could go to an ALJ once again for more litigation. So we went forward with the rule change, hoping that would solve the problem, and we wouldn't incur any more litigation cost, nor would the agency. So that's where we are today basically. In the meantime, I've spent a lot of money going back and forth, having to submit every time we make a change. I had to resubmit the equipment to the lab after I was told no, we could not use it because there were other features, as I said before, that we wanted to use on it. So I had to pay for that again; made other modifications, and then what was very disheartening was – oh, we also actually put forward the proposed rule change, staff said they didn't like the wording on it and they asked if I'd come down to one of the sessions, go through it with them, change the wording so everybody was comfortable. And I did that, left the meeting feeling good; everybody on staff was fine with the new wording; I was fine with it. Never once was it suggested staff would be opposed to this whatsoever. We get it filed, only to find out last week when I received the agenda that staff is opposed to this change. So it's a little disheartening that I would spend 15 months, thousands of my own dollars, staff is spending resources, time, licensees

money, only to tell us at the last minute that they're opposed to this change. It's a little disheartening for myself and for the other licensee, I believe. So if you're going to be opposed to it, be up front about that and tell me that 15 months ago; that it's not going to go anywhere. Then we get into the impact of the proposed change. And I'll go down what we have here, the breakdown of it. The very first thing there is the petitioner's request would require players to use the dispenser to play pull-tabs. Well (a), no one's forcing anyone to play pull-tabs. A player chooses to play pull-tabs because they want to play pull-tabs. Dispensers have been being used for over 36 years in this State to dispense pull-tabs. Granted they've come a ways from where they first started. As you can see, I brought some examples. We've got a couple of the old mechanical machines, and then obviously the newer machines. And as you can see, the newer machines are probably more enticing, as they should be, since the other machines were built back in the '70's and these are the newer machines that were approved in '97. So I'm not sure why this question is even on there, quite honestly. Because if you're going to play pull-tabs out of a machine, it doesn't matter whether it's this machine or that machine, you're choosing to play pull-tabs out of a machine. No one's requiring you to do it. You can go buy them out of a bowl if you don't want to play the machines. Players cannot open the pull-tab until the outcome is displayed on the video display. Obviously this is false. It was back in '97 with Director Miller and part of this staff that's still here today, had approved, as you can see there. The player is the one that opens the pull-tab the minute they push the button on the machine. That's the action that opens the pull-tab. So the fact is that they're the one initiating it. The fact is the VIP works that way, as well does the Gold Crown that's currently approved. After the outcome of the entire bundled pull-tab has been displayed, the pull-tab is dispensed. False again. The dispensing process started from the moment the player chose to play the machine, inserted the money and pressed the button. At that moment the ticket is dispensed out of the stack and actually opened inside of the machine. And then the play process starts.

Commissioner Ellis asked if Mr. Gerow was basically talking about what happens internally in the machine. As Commissioner Ellis looked at the proposed amendment, the critical change, from some points of view at least, seems to be that the players actually get the paper in their hands once all of the play is completed and they have seen the results. Is that correct? **Mr. Gerow** replied it was the same results. The players end up with the tickets in their hand, regardless. They are not doing away with the ticket; the player gets the ticket regardless. **Commissioner Ellis** asked if that was after play is completed, or as the proposed rule specifically says: a bundled pull-tab may be dispensed after all plays have been completed. So the player does not actually receive the piece of paper, or the group of pieces of paper, until after the plays have been displayed on the video screen and completed. **Mr. Gerow** affirmed that would be correct with what staff asked him to bring forward. That does not affect the existing rule; that would be the new proposed rule. **Commissioner Ellis** asked if Mr. Gerow would have proposed a different rule.

Mr. Gerow replied: Actually had everything gone like we felt it should, there shouldn't be any proposed rule. It should be sufficient with the rule that's there; that it's for entertainment purposes. So their last statement here: as a result the paper pull-tab is not a fundamental part of play and is only needed to claim a prize. The paper pull-tab is the whole part of the play. If we didn't have a paper pull-tab, we'd have a TLS machine here. The whole principle on how this machine works is you have to have a paper pull-tab. A paper pull-tab is what initiates the play on there, once the player chooses to play the machine. And that's what you receive at the end. And that hasn't changed, and we don't have any plans on changing it. That has nothing to do with this. So I'm not real sure why that statement is even in there, quite honestly. Without it you would have a TLS machine. Regulatory concerns, there seems to be none. There's no resource impact. So obviously it's not a burden on the agency. So then it gets down to policy, and I guess what policy, and whose policy; something that we'd like an answer to. Then we'll go through the policy consideration the staff has put in here. Should players be required to play the game through a video pull-tab dispenser. Players are already required to play pull-tabs through dispensers if they choose to play pull-tabs through dispensers. If you choose to play pull-tabs through any of those machines up there, you're playing it through the machine. They also bring up the AGO's opinion back in '99. And what it states in there is that pull-tabs to be pull-tabs must have a paper ticket or an element. Without them they would be video pull-tabs or TLS machines. As you can read through there, you'll see that it's listed, it describes what's there. We've had a pull-tab that meets the requirements since 2000. It's never been an issue, never come up as an issue. So I'm not sure – there seems to be this obsession that you have to handle this ticket to qualify it as a pull-tab. There's no WACs, there's no RCWs, there's nothing that says a person has to physically open it themselves. It's already been opened by the machine, which has been in use since '97 from the Gold Crown form. It opens it. Once that ticket is opened, the security of that ticket is gone. So it really makes no difference whether you get the ticket immediately once it's opened, or you get it at the end of your entertainment value. Another point is it seems that staff is taking a subjective view now on the fact that in the minutes – and only pointing out part of what is happening there with the facts and the statements there. And the incredible part is a few of the staff members were on the staff back then and they themselves were ones that said this is what activates it, pushing the button activates the initial part of it. And this one here is one that I found very incredible by the fact that it mentions in here, Ms. Sonja Dolson, staff member, some operational issues were addressed and dealt with the manufacturer. And they will continue to work with the manufacturer to enhance the product in the future. The staff recommends approval of the dispensing device. Well I guess what's disheartening is the part there about continuing to work with the manufacturer to enhance the product in the future is nowhere to be found anymore in the staff's services these days. I can only go through everything that staff has in there as far as what they've highlighted. I've continued in the red part, and you'll see that basically the bottom line is you still get a ticket at the end of what we're trying to do.

And the ticket is what makes the game valid. It's what makes it a pull-tab game. This is probably the most important thing right here, what was said back in '97 by Director Miller and staff. It says the WSGC staff interprets that to be that if it has been dispensed and has been opened by the player pushing the button, then that is sufficient. The player initiates the opening by pushing the button, and that is how they believe that it complies with the rule, and that is how they interpret it. And then the last thing is that it took a unanimous five votes to carry it, and that's where we are today. And if you'd like, I can give you a demonstration of what the difference is between the two machines. Do you have any questions?

Chair Rojecki asked if the Commissioners wanted a demonstration.

Commissioner Ellis replied he did not think so; he thought he understood how it works.

Commissioner Amos asked if, when the ticket comes out, like machine # 2 over there has five of them straight across, that is somehow a winner. After the machine spits out the ticket, does the player still have to take it to somebody to get paid, and then the flare is marked off at the time the prize has been won? **Mr. Gerow** affirmed that was correct. None of that has changed; in fact there is very little change. There is a delay function on the machine now, with the very first play anyway. The player does not have a ticket instantaneously; and the first play has already started. **Commissioner Amos** asked if the player would then, if it is 20 plays for \$5, do his 20 plays, and if the player had winners, would have to go to the cage to get the money and then come back to play it again. **Mr. Gerow** affirmed.

Chair Rojecki called for public comment; there was none.

Deputy Director Trujillo reported that staff recommends not adopting the proposed rule change based on the policy considerations noted in the Rule Summary.

Commissioner Amos made a motion that the Commission accepts the proposed amendment to WAC 230-14-047.

Commissioner Ellis did not second the motion. He understood Mr. Gerow's analysis, but basically came to the same place he had with regard to the previous machine proposed by ZDI. Commissioner Ellis emphasized back when the Commission was making that decision that he felt the Commission was bound by the Legislature's adoption of a definition of pull-tab, which as it existed when the Gambling Act was originally passed in 1973 and as interpreted by the Attorney General in 1999, and admittedly it is an inflexible definition and one that the Attorney General emphasized because of its criminal context of the Gambling Act required in their own interpretation. As the Attorney General's Opinion emphasized, when looking at video pull-tabs, the

replacement of a paper or cardboard tab with an image on a screen changes a significant element of the game, and for that reason concluded that video pull-tabs could not be approved by the Commission. Commissioner Ellis thought the Commission was in the same boat with this machine from the standpoint that the game is on the screen, and at the very end of the game, after the players know what the results are, they get pieces of paper. The game has essentially been conducted on the screen and the paper becomes a confirmatory element. Commissioner Ellis said he was not going to second the motion.

Chair Rojecki agreed with Vice Chair Ellis' comments, and said he could not second it from the Chair, so the motion failed.

Senator Jerome Delvin commented that he read the Attorney General's opinion and I understood the argument, but thought that as a state that is supposed to be big on innovation and technology, the Gambling Commission does not appear to support that notion in the sense that it does not allow technology to alter these games; in a sense that they are using technology, they are using innovation. One thing in the Attorney General report that stuck out to Senator Delvin was in the last paragraph it says "since gambling in general is still criminal activity in Washington State"; then there are a bunch of criminals here. That kind of stuck with Senator Delvin that they still think that gambling is a criminal activity in our state in the Attorney General's office. That rings kind of funny in the sense that the Commission is allowing criminal activity in this state on tribal and non-tribal land if that is the way the Attorney General reads the Statute.

Representative Alexander shared that this was interesting to him as he also read it. Right now the Attorney General is very seriously looking at accepting electronic signatures as a way of validation on computers. The question is whether reading a paper punch card electronically or reading a signature electronically, are there some similarities in that approval or review process. That is just something to keep in mind.

Commissioner Amos asked if the Gold Crown device mentioned on page 4 of the excerpts from the July 1997 Commission meeting minutes was similar to this machine. Director Miller makes a comment in those minutes that the Gold Crown device does dispense a completed product. **Deputy Director Trujillo** affirmed it does dispense a paper pull-tab. **Commissioner Amos** asked if it had a video screen like this machine. **Deputy Director Trujillo** affirmed, explaining the paper pull-tab is a little different, but essentially it does dispense a paper pull-tab. DD Trujillo had no idea what was meant by "completed" and deferred to AAG Ackerman, since he was not at the Commission meeting in 1997.

AAG Ackerman replied he was also not at the Commission meeting in 1997, but certainly the Commission has seen the metamorphosis over time from simple dispensing machines, similar to what dispensed stamps, to today's electronic device. Clearly the Commission has to keep in context that these statements were made over a

decade ago looking at a device that was different from what is being proposed today. But AAG Ackerman was not at the 1997 meeting and did not know what Director Miller was thinking when he made those comments and would not purport to interpret it for him.

Chair Rojecki asked if there was anything the Commission needed to do or have failed to do; if the motion dies because there is no second. **AAG Ackerman** affirmed the motion fails for lack of a second.

Mr. Gerow, ZDI Gaming, said the Opinion plainly states that a paper pull-tab is a product that has to be used to be compliant. There is a court case documented in there, and Mr. Gerow wanted to get on the record that ZDI Gaming is using a paper pull-tab. This whole system has been used since 1997, so why all of a sudden is this now an issue? That was Mr. Gerow's question back to the Commission. It plainly states that a paper pull-tab has to be used to make it compliant; which it does, and is used.

Commissioner Ellis responded that the rule change that the Commission is looking at is a change to a rule defining pull-tab dispensers. Commissioner Ellis' concern, as said before, is that, essentially, the dispenser and the screen on the dispenser have supplanted the significance of the paper pull-tab. The player only sees the representation of the pull-tab or the results of the game on the screen, and that paper becomes a secondary after-thought as far as the player is concerned. So that is how Commissioner Ellis interpreted the legal requirement the Commission is operating under and the reason for his attitude with regard to the rule change. **Mr. Gerow** asked if Commissioner Ellis was saying that it was okay to have the pull-tab on the other one like it is, but if it is delayed but still gets the same result, it is not basically the same. Because it is doing the exact same thing, other than delaying it for a few seconds; the player still gets a paper pull-tab; the player still takes the paper pull-tab up to a cashier to get paid on it.

Commissioner Ellis pointed out that was after the player had already seen the results of the game. The game was essentially over and all the player was doing was taking the paper pull-tab over to collect any winnings.

RULE UP FOR DISCUSSION

13. Staff Proposed Rule Change – Repeal of All-in Wager of \$500 for Texas Hold'em Games

a) Amendatory Section WAC 230-15-135 – Wager limits for nonhouse-banked card games

Assistant Director Harris reported this is a staff proposal to remove the language from the recent rule change that became effective July 1, 2009, allowing all-in wagers of \$500 in Texas Hold'em poker games. By removing the all-in reference, the rule would revert back to the \$40 limit on all nonhouse-banked card game wagers. After the rule was passed, staff identified a problem it created in the wagering structure where the change allowed for an all-in wager only to exceed \$40 but did not allow players to make a call or a matching wager. The rule also appears to be ambiguous on who is eligible to

make an all-in wager. Does a player have to have \$500 or less to place an all-in wager? Or if a player has over \$500, would the player just be limited to a \$500 wager? Or would the player be ineligible to place a wager at all? The proposed change will prevent having an unworkable rule.

Chair Rojecki asked if there were any questions or public comments.

Mr. Chris Kealy, President of the Recreational Gaming Association: I would like to talk about 13. Do you want to have the discussion on 13 and 14 together? No? Okay. I'm asking the Chair and whoever. On 13, last month we talked about this proposed repeal. And we've heard it presented that it's an unworkable rule. We as an industry do not agree that it's an unworkable rule. The rule was brought about and it allows for a game – and I can describe the game that you could play right now, and is legal to play – or would be legal to go to the Commission and have approval of the rules to play it. It would be a spread limit. I could play 1 to 100 game, put on my wall the rules that would state you can only have a maximum of \$500 on the table at any given time. So if you want a pot that exceeded \$500, you would have to pull the additional funds off the table. And if I put those rules on my wall, and ran a 1 to 100 game, it would allow players to play ante \$1 and \$2 in the blind (small and big blind). And the subsequent betting could be \$2, \$4, \$10 or \$100. And we could run that game through the mechanics of playing Texas Hold'em and we could definitely comply with the rule that is now on the books. So the repeated version that it's an unworkable rule, I dispute. I think the rule has been brought about and we got it voted for. Albeit it was a "skinny" Commission at the time; there was three people that were involved in the process. Mr. Amos is going: I was called skinny. And two of the three people that were involved with that are here today. But several of the other Commissioners that were involved are not. So we're still looking for a vote on this rule, hopefully with four or five Commissioners here, so we can see a full representation of where it came from and whether it should go away. That's my comments on this rule.

Commissioner Amos asked if Mr. Kealy would like to see Items 13 and 14 postponed until the Spokane meeting. **Mr. Kealy** affirmed that would be great. **AAG Ackerman** pointed out that Item 13 is just up for discussion.

Chair Rojecki stated this would be up for final action in September.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

14. Petition for Rule Change – Recreational Gaming Association: Texas Hold'em Wagering Limit of \$250

- a) **Amendatory Section WAC 230-15-135** – Wagering limits for nonhouse-banked card games

Assistant Director Harris reported the petitioner is requesting an increase to the maximum wager of a single wager in Texas Hold'em from \$40 to \$250 when operated at a house-banked licensee. Class E and Class F nonhouse-banked card game licensees would still be limited to \$40. Tribal-State Compacts limit the Class II wagers to \$40 and Class III wagers to \$500. Tribal casinos are required to have a tribal gaming agent on site when all the games are being operated. If the wagering limit for the non-tribal card room is increased to \$250, the Class II threshold would also be raised to \$250. The state does not regulate Class II gaming, so basically it would reduce our jurisdiction in that area. AD Harris reviewed the Rule Summary. Staff recommends denying the petition based on the policy considerations.

Chair Rojecki asked if there were any questions and invited Mr. Kealy to step forward.

Mr. Chris Kealy, Recreational Gaming Association President: On this petition rule, I want to first of all apologize. I would say it's my fault that it even got submitted at \$250. I think a number has become an object that – we knew it shouldn't be \$500. And when I was at the podium last month and said we'll bring something back and split the baby in half, I felt like okay, half of \$500 is \$250, so that's the way we submitted it. And I want to apologize first and foremost. I didn't want the number to dominate the discussion. I just wanted to get a petition in play that could parallel 13 and we could resolve the issue of poker betting limits for a lengthy period of time. And per Chair Bierbaum's statement that this will be it for awhile, we're paying attention to the fact that this will be it for awhile. And so when we go through the history lesson of how often the poker betting limit has been bouncing around in front of the Commission, we're utilizing a lot of communication that told us let's take an incremental approach to betting increases. And we've been trying to do that, so we're seeing a lot of repetitiveness to this process because we are taking an incremental approach, or we have been, or sort of, because we put petitions out and then fail. And we put petitions out and almost get there, and then fail. Or get some bifurcation of it as now on 13, and then get it repealed. So we would like to just settle it. And we're looking forward to working with staff. It's been a long hot summer and everybody's got vacations and stuff. So it's probably my fault as much as anybody that we didn't get with staff and find out what was the middle ground. And so I'd just like an opportunity to see this petition either get filed or get held over to possibly get filed next month in Spokane. Jerry – pardon me for borrowing legal services here. But is that available to us; to just simply hold this over?

Chair Rojecki replied the Commission has 60 days to file this. **AAG Ackerman** agreed. **Chair Rojecki** said he was trying to help Mr. Kealy by pushing this to the next meeting, if that would be something Mr. Kealy would want. **Mr. Kealy** asked if that meant the Commission could take no action on this; just simply say no action and deal with it later. He wanted to make sure he understood and agreed he would love the opportunity to live another day on this subject and see if there is a modest middle

ground so we can be done with this for six years or something, if that is even legal. Mr. Kealy was trying to find a way to be done with the poker betting limit for the rest of everybody's tenure on this Commission. The industry is asking for and offering that very subject. **AAG Ackerman** thought he has heard Mr. Kealy say, both in the hall and here in the meeting, that he has some interest in having this petition set over to the next meeting for consideration at that time. By that, AAG Ackerman meant consideration as to whether or not to file this for further discussion. Looking at the time limits for consideration of this, under the APA it appears the Commission does have the option to set this over to the next meeting if they wish to do so. **Chair Rojecki** noted the Petition for Rule Change letter to the Commission was dated July 22, 2009. **AAG Ackerman** replied the Commission could set this over to September if they chose to do so.

Mr. Kealy asked AAG Ackerman if, with it being held over, it could be amended; or can it be filed next month at \$100? Is that possible or does it have to be filed at \$250 and then amended afterwards? **AAG Ackerman** replied that under the APA, if it is set over to the September meeting, it would show in its current form. In other words, notice has been given to the public that the Commission is considering this petition. If Mr. Kealy got together with staff in the interim and developed an alternative and asked the Commission to file the alternative instead of the initial petition, that would be permissible depending on how much the existing petition is altered. If things are changed, other than the amount in a relatively insignificant way, then that could create other issues. But by simply changing the amount, and that change is not substantive, then that would perhaps be permissible. AAG Ackerman could not answer better than that without seeing what Mr. Kealy came up with. **Mr. Kealy** asked if the petition was filed, could it then be set over on an agreeable format until they could get together with stakeholders, or other people, to make sure everybody was included in the process. Mr. Kealy asked what the length of time was once the petition was filed and if it would be possible to not have a vote until January or sometime. **AAG Ackerman** replied that normally it is 60 days, which is why the **Mr. Kealy** interrupted to clarify he meant after the petition was filed for discussion. There is a discussion and then a non-December meeting, so if the schedule is followed, the Commission could look at a vote say in January or February, or somewhere out there. **Chair Rojecki** replied six months. **AAG Ackerman** agreed that once the petition has been filed there would normally be a six month period; there is an option for continuances and things. **Mr. Kealy** said he was just trying to follow the timelines and make that part of the public record in the RGA's general intent. The RGA wants this to be a thoughtful and thorough examination of something they want to put to bed for a lengthy period of time. **Chair Rojecki** said he and Mr. Kealy have had these same conversations, and Chair Rojecki would like to get everybody together, or at least get the interest groups together, including cities, and discuss this issue. He would like to look at tangibles, so everyone is speaking from the same perspective as far as where the card room industry is today versus where it possibly will be in the future, and look at a whole host of things. Chair Rojecki noted he has been supportive of that. **Chair Rojecki** asked if the Chair could

just push this to next month. **AAG Ackerman** replied the Chair does have that power, subject to one of the Commissioners making a motion to override the Chair's power.

Chair Rojecki moved the petition to next month.

15. Petition for Rule Change – Gemaco, Inc., Licensed Manufacturer: - Restoring manufacturer representatives' ability to represent more than one manufacturer and allowing distributor representatives to represent more than one distributor

Petitioner's Proposed Amendment

- a) **Amendatory Section WAC 230-03-330** – Representing only one employer at a time

Staff's Proposed Amendment

- b) **Amendatory Section WAC 230-03-300** – Applying for a manufacturer's representative license
c) **Amendatory Section WAC 230-03-330** – Representing only one employer at a time
d) **Amendatory Section WAC 230-16-001** – Manufacturers, distributors and gambling service suppliers must comply with all requirements

Ms. Hunter reported the petitioner had withdrawn its original petition based on staff bringing forward this alternative, plus assurance that staff would pursue getting these rules before the Commission. These rules would allow a manufacturer representative to represent more than one manufacturer, which was accidentally changed during the rule simplification process. These would restore the rules back to the way they were. Ms. Hunter reviewed the Rule Summary. The petitioner asked about removing the restriction that distributor representatives can only represent one distributor, which staff are looking into. It has been a long-standing policy that a distributor representative could only represent one distributor. Staff has confirmed the existence of rules dating back to at least 1978 with that requirement, but will look at it to make sure there are regulatory reasons to continue to have that requirement. Staff would like to keep this rule on a separate track to restore the rule to what it was before the rule simplification project. Staff recommends filing Staff's Alternative for further discussion.

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

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission approve for filing for further discussion Staff's Alternative #1. *Vote taken; the motion passed unanimously.*

Other Business/General Discussion/Comments From the Public/Adjournment

Chair Rojecki opened the meeting for public comment.

Mr. Lucus Gerow, Jay Gerow's son: I would like to comment about WAC 230-14-047. I'd just like to say that I don't really get how these changed that much. All it does is change how the tickets dispense in time. I read the rules. and (2)(a) says that use of video monitor for entertainment purposes only. All this does is make it more entertaining for whoever is playing it. And it says dispense the pull-tab to the player and not retain any portion of the pull-tab. That happens. It just happens, it just is delayed. And it doesn't change much, it just comes out a little bit later, which makes it a lot more entertaining for the person who's playing because they do not know what they're going to get. They find out after they play the game. So it makes it a lot more entertaining for the person who is playing. And down at (d), there's an amendment or something that says that however, a bundled pull-tab may be dispensed after all plays have been completed. That does not change anything because it still comes out after every 20 plays, every \$5, one pull-tab comes out, one sheet comes out every single time, every time you finish the 20 plays. And that also happens with the other ones. So all it does is delay it and make it more exciting for the person who's playing.

Chair Rojecki thanked Mr. Lucas for his comments. With no further business, **Chair Rojecki** adjourned the meeting at 11:10 a.m. The next meeting will be held in September at the Mirabeau Park Hotel in Spokane.

Minutes prepared by:

Gail Grate
Executive Assistant