

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, AUGUST 12, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 1:30 p.m. at the Heathman Lodge in Vancouver and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commission Vice-Chair Keven Rojecki, Tacoma
 Commissioner Michael Reichert, Maple Valley
 Commissioner Rebecca Roe, Seattle
 Representative Geoff Simpson, Covington
 Representative Gary Alexander, Olympia
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland

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

1. Evergreen Council on Problem Gambling

Ms. Lee Lee: Evergreen Council on Problem Gambling, reported she has been with the Council since the end of January; retired from a 27 year career in state service. Maureen Greeley, Executive Director, previously presented the Commission with the Gold MarCom Award, which signifies attention to detail and creative achievement, and recognizes collaboration on outstanding marketing and communications projects such as the NotAZander campaign.

Chair Ellis thanked Ms. Lee, adding that when we were presented with the original award, the Commission had commented they greatly enjoyed the working relationship with the Council.

Ms. Lee presented the Platinum Hermes Award to the Commission. Because this campaign just keeps on going, there is also the Platinum Hermes Award, which is judged by the Association of Marketing and Communications Professionals. The Hermes Award

represents international competition in marketing and communications for concept, writing, and design of traditional materials and programs, as well as emerging technologies.

Chair Ellis thanked Ms. Lee, noting it is an impressive trophy.

Ms. Lee said the Communicator's Award for Distinction for Integrated Campaigns from the International Academy of Visual Arts is on the way. Additionally, the NotAZander campaign was one of the top nominees for Community Awareness Award at the National Council on Problem Gambling and was recognized at the National Conference in Portland this last June. So the NotAZander campaign just keeps going. Those at the Evergreen Council appreciate the partnership they have with the Gambling Commission, and definitely enjoy working with the staff.

Director Rick Day thanked Ms. Lee and the Evergreen Council on Problem Gambling, noting staff has definitely enjoyed the relationship with the Council.

2. Agenda Review / Director's Report

Director Day briefly reviewed the agenda and the last minute documents that were provided to the Commissioners. Staff has no changes on either day's agenda. Director Day note that in front of the Commissioner's was a keychain that says "Don't Bet on Sports" that is a product of a separate public information campaign the Commission launched relative to sports betting and its gambling crimes awareness program. Director Day directed attention to the report from the Washington State Auditor's office, which states "we have reported no findings in the past nine years," this being the ninth year. That is a tremendous compliment to Mr. Terry Westhoff as the Administrator of the business operations staff, his staff, and other staff that are involved, and of the effectiveness of their financial controls and their financial program. Director Day extended his thanks for their excellent work.

Chair Ellis added the thanks of the Commissioners and ex-officios as well. He thought they all appreciated the fact that the business office and the other staff of the Commission manage to keep them out of hot water and allow them to deal with issues concerning the industry and not issues concerning internal procedures.

Director Day thanked Chair Ellis, adding the only trouble with nine years with no findings is that each year after that comes harder.

2011-2015 Strategic Plan

Director Day hoped the Commissioners would consider and give their approval to the 2011-2015 Strategic Plan. The development of this plan was led by an employee team; it is not something that management drives. A team of staff is responsible for charting the agency's course, and of course it is critical to the Commission in this process. This strategic plan is not required in the budget documents, but Director Day felt it was important to unify the Commission's direction. Staff plans to continue development and proposal of the strategic

plan in the future. Shanna Lingel, who will present the plan for consideration to the Commission, has led this team through the last two strategic plans.

Special Agent Shanna Lingel, Tribal and Technical Gambling Division (TTGD), reported she has been Chair of the Strategic Planning Team for the last four years. The team has just finished preparing the plan for 2011-2015, which we're presenting to the Commission for approval. By law, agencies are still required to maintain a strategic plan. The other strategic planning team members are Tom Means of the Information Technology Division, Judy Pittelkau of the Business Operations Division, Rick Herrington of the Criminal Investigations Unit, and Melanie Bowdish of the Licensing Operations Division.

Chair Ellis announced the arrival of Representative Gary Alexander from Olympia and Senator Jerome Devlin from Richland.

Special Agent Lingel reviewed our mission, vision, values, and goals. She explained there are now 21 projects included under the goals in this plan:

- Goal #1 "To detect and remove the criminal element from gambling", we added three new projects: Project 1.2, to enhance computer forensics; project 1.3, for gambling crimes, education and awareness program; and project 1.4, to enhance criminal investigations and intelligence gathering.
- Goal #2 "To maintain a regulatory environment that promotes compliance," no changes.
- Goal #3 "To develop, retain, and value our employees," we have three new projects: Project 3.2, online agency training; project 3.3, internship program; and project 3.5, internal communication plan.
- Goal #4 "To provide accurate and timely information to the legislature, public, and other stakeholders", we added three new projects: Project 4.1 is a public opinion survey; project 4.2 is online activity reporting; and project 4.3 is e-mail retention, management, and disclosure.
- Goal #5 "To pursue improvements and innovations in agency programs and processes", project 5.6, the scanning assessment, is the only new one for that section.

The Strategic Planning Team asks the Commission for approval of the 2011-2015 Strategic Plan.

Chair Ellis thanked Special Agent Lingel and asked if there were any questions.

Commissioner Rebecca Roe asked what Section 4.2, online activity reporting, meant.

Special Agent Lingel replied since more and more of our licensees are becoming computerized, staff hopes they will file it online instead of filling out the required activity report and mailing it.

Commissioner Michael Reichert asked what the 4.3, e-mail retention management policy, applied to. **Special Agent Lingel** explained the primary objective is to obtain a program that will properly retain e-mails that are public records.

Chair Ellis stated, as the statement of the goal reflects, that can be a very tricky matter. It used to be a fairly difficult issue in some circumstances to determine whether an e-mail constituted a public record that was subject to the public record retention requirements or not. And if the answer was that it was a public record, it could potentially result in a huge volume of materials, as the goal reflects. And he asked if AAG Jerry Ackerman and Ms. Amy Hunter have been involved in working with the team on this particular goal, or have any thoughts.

Assistant Attorney General Jerry Ackerman agreed with Chair Ellis. He had not been working with the team on this and does not know if Ms. Hunter has been involved or not, but certainly that is something that will need to be considered before these results in a final product.

Chair Ellis stated, in looking at the sequence of the strategic plans that have been in place, there was a plan for 2003–2008, there was the immediately preceding plan for 2009–2013, and now midway through that timeframe we have a proposed plan for 2011–2015. He asked if there was a particular reason why the team, or the agency, chose at this point to develop a new plan, even though the time period for the previous plan had not expired. **Special Agent Lingel** explained the team does them every two years, which she assumed was an OFM requirement. **Director Day** affirmed that OFM requires a strategic plan be submitted prior to submittal of the budget. The team adjusted the times to comply with that requirement. Staff actually renews the plan; it is not redone from the ground up every year.

Chair Ellis *announced the arrival of Representative Geoff Simpson from Covington.*

Director Day explained 5.2 automated tribal review program was designed to help the Commission automate its work with the tribes. This project is expected to be finished in December 2011. As time wears on, this automation is going to prove more complex because we are working with each tribe on an approach that is much more partnership directed. We are meeting with the regulatory Tribal Gaming Agencies (TGA) and the regulatory entities of the tribes and looking at what they are doing, what they feel is most important, and discussing the regulatory plan for the next year. As we move forward, the process may very well change how easy this is going to be to automate. It is fairly simple when there is a standard program, but as we develop a more individualistic approach with each of the tribes, it will be a little bit more complex. Director Day was confident it would be more effective.

Chair Ellis agreed that sounded good. One of the projects that interested him was reflected in the 2009–2013 plan about relationships with the tribes in the criminal area. He was concerned that with criminal enforcement, billing issues with some of the tribes seemed to

be impairing the working relationship and preventing the tribes from getting the Commission involved in criminal investigations that the Commission felt it should be. He did not see anything in the materials for this strategic plan that indicated that the issue was resolved satisfactorily. He wondered if Ms. Lingel knew what the status of that concern was. **Special Agent Lingel** explained that Terry Westhoff and Julie Lies, the Assistant Director of TTGD, have been meeting with the tribes and are trying to come to an agreement on a flat billing rate. If a flat billing rate could be developed where the tribes know what their budget is going to be every year, then for them to call staff in would not be a problem. It would not exceed their budget if it was a case that took a great deal of staff time and assistance. **Chair Ellis** replied he knew they were doing that work and that there has been a lot of work done with tribes to deal with some of those issues. His concern at this point was really a specific one as to whether the team feels that the Commission has gotten past the point where tribes are actually reluctant to get involved in investigations or bring the Commission in to investigations because of lingering concerns about billing. **Special Agent Lingel** affirmed.

Chair Ellis thought the format for the strategic plan had obviously developed since the first one that he looked at for the 2003–2008 version. Given the structure of most of the plan, broken down by goal, listing the projects for a goal, and very importantly among other things, identifying how it would be determined whether or not a goal has been achieved, or the extent to which it has been achieved as to a specific project, had staff considered taking the accomplishments section of the plan and organizing that by goal and project. Many of the accomplishments seem to be pretty closely within one of the projects and the anticipated method of determining success of the project, but the accomplishments are not really organized by goal or project. **Special Agent Lingel** replied staff had not thought about doing it that way. **Chair Ellis** thought it might be helpful both internally as well as for the Commission. **Special Agent Lingel** agreed. **Chair Ellis** commented it would be helpful to be able to look up a goal on a project basis to see exactly what was done during the year, because it certainly is an impressive list of accomplishments.

Director Day thanked Chair Ellis for the suggestion. The whole issue over tribal billings is still part of this plan; it is 5.5, and is a little more generalized and has a broader implication. In the middle of the second paragraph on page 57 it says, “In addition, a structure can actually deter tribes from asking for appropriate assistance from the state due to concerns over billing hours. This could have a negative impact on the tribal/state relationships and negatively affect the effective regulation of gambling in the State of Washington.” **Director Day** stated the efforts to try to find an alternative billing system that is perceived and practiced, which is fair for both sides, is something staff is working very hard on.

Chair Ellis asked if there were any other questions or comments. There were none.

Commissioner Rojecki: made a motion seconded by **Commissioner Roe** that the Commission approve the 2011–2015 Strategic Plan. *Vote taken; the motion passed with four aye votes.*

Director Day thanked Special Agent Lingel for her work on the team, noting she is rotating off the team this year, so this is the last year she will appear before the Commission relative to the strategic planning team. **Chair Ellis** also thanked SA Lingel.

2011–2013 Biennium Budget/Forfeiture Fund Approval (PowerPoint)

Director Day explained the next presentation was the final proposal for the next biennium budget, 2011-2013, which was briefed to the Commission at the July session. Every two years staff brings a proposed biennium budget to the Commission for consideration, and then staff submits it to the Office of Financial Management (OFM). This proposal contains a section specifically describing planned forfeiture fund expenditures.

Administrator Terry Westhoff, Business Operations Administrator, explained he would present the proposed 2011-2013 biennium budget for Commission approval. The budget period begins July 1, 2011, and ends June 30, 2013. Staff were only able to provide 11 months of information last month. The fiscal year has closed, so a full fiscal year's information is now available.

The chart compares the revenue with the expenditures. The top blue line shows total expenditures, those paid for by the gambling revolving fund and seizure funds, and the red line shows only the expenditures from the gambling revolving fund. This chart shows one of the primary reasons the Commission needs an adequate working capital balance. There are consistently two months of expenditures exceeding revenue, followed by a spike in revenue. In those eight months of lower revenues during the year, it is important to have the working capital balance to help ensure we are able to cover our obligations. This is especially true in October and November, and April and May, as they follow months with lower revenue spikes. Our major revenue comes in December, followed by June. The Commission is allotted 166.4 full-time equivalent positions, or FTEs, in FY 2010, but the actual fill level at the end of June was about 158 FTE, which includes 152 FTEs in the gambling revolving fund and 6 FTEs in the federal seizure account. In fiscal year 2010, punchboard and pull-tab license fees were still the agency's largest single source of revenue with tribal regulation being the second largest, and house-banked card rooms the third largest source. Combined salaries and benefits are our largest expenditure at 72 percent in fiscal year 2010. Our agency has historically been around 70 to 75 percent. Salaries and goods and services is next at 18 percent. Furniture/equipment is at 8 percent, which includes vehicles, computers, and other assets expected to have a useful life of more than one year. Travel and personal service contracts are very small pieces of our budget. At the end of FY 2010, our working capital balance, which is the blue line, was about \$600,000 higher than our estimate. The primary reason for this is that we had some position vacancies early in the fiscal year that took several months to fill, which is not unusual, especially with Special Agent positions. We also

manage our expenditure levels in-house and had some restrictions on expenditures related to the statewide freezes. Expenditures for FY 2004 are compared to FY 2010, because two years ago at the beginning of that biennium, we compared FY 2008 and FY 2004. This will show where we are two years later. Despite a decrease in FTEs of 16 percent, salaries have increased and benefits have increased sharply due primarily to statewide general salary increases during this time, pension and health rate increases, and the introduction of the Public Safety Employee Retirement System (PSERS) during this period. This had an impact on pensions, which went up 338 percent. Rentals and leases have decreased due to closing most of our satellite offices over the past few years. The increase in furniture and equipment is due primarily to the purchase of vehicles. In FY 2010, we used seizure funds to catch up on our vehicle purchases, since fewer vehicles than normal were purchased over the previous few years. It was half what it was in FY 2004, even with the increase in vehicle prices. AG costs and travel and vehicle maintenance increased modestly over the six-year period, especially when considering inflationary and market increases. Fuel usage was reduced by over 40 percent during this time, but fuel prices increased 45 percent in that same period of time.

Chair Ellis thought that answered a question he had and assumed the FY 2010 figures reflect the effect of inflation and are not constant dollars. **Administrator Westhoff** affirmed.

Commissioner Reichert asked about the pension distribution. There is this huge increase, looking at 5 percent across the board versus salaries. He asked how the Commission calculated to get to \$504,000 off of \$8.5 million on the pension allocation. **Administrator Westhoff** asked if Commissioner Reichert meant as far as the \$115,000 to \$504,000.

Commissioner Reichert affirmed, and asked if it was a percentage of gross. **Administrator Westhoff** responded the PERS employer contribution rate in FY 2004 was 1.4 percent and in FY 2010 it was 5.31 percent. The new retirement system (PSERS) rate for FY 2007, which was the first year, was introduced at about 7 percent and now is at 7.85 percent. Even though the agency has fewer employees, that was the total amount being paid into those pension rates.

Commissioner Reichert asked if this was the employer share; if there was an employee share portion of that in any part of the calculation. **Administrator Westhoff** responded, no, that was only the agency's cost, not the employees' costs.

Administrator Westhoff pointed out the slide showing gambling revolving fund, FTEs compared to net gambling receipts in the state, has been shown to Commissioners and other stakeholders several times over the past couple years, but is important to go over again. It shows the money that is made by the tribes and both non-profit and commercial licensees in gambling activities. Although over the past year and into the next couple years the agency will have seizure fund positions, this is only one-time money that is expected to be exhausted after 2013. Therefore, as a comparison of apples and apples, this looks at

gambling revolving fund FTEs. The revolving fund positions reflect what ongoing revenue from the agency can afford. As we get into 2013, we will have the same level of FTE that we had in 1994 when we were in the infancy of Class III tribal gaming in the state and only had about \$30 million in net tribal receipts. There were no house-banked card rooms at that time. When taken into consideration, the regulatory licensing certification lab and support FTEs that have been put in place in response to the tribal gaming related growth since 1994, the reductions on the non-tribal side are even more significant. From 1999 to 2009, the decline in field operations regulatory enforcement staff has exceeded the license organization reductions. The field operations' regulatory enforcement FTEs have dropped 33 percent while organizational licenses dropped 24 percent. The gambling landscape has changed since then as well. There are more house-banked card rooms with many more card room employees. Undercover agents who deal primarily in undercover criminal work have seen reductions of more than 50 percent over the same period. When looking at workload indicators in comparison to agency-wide staffing, despite about a 14 percent drop in organizational licensees between 2004 and 2009, staff has seen a 16 percent growth in individual licenses and certifications. There was a 17 percent growth in tribal casinos, which does not take into consideration any expansions within existing casinos. The growth in individual licenses has its largest impact in our Licensing Division, but does have some impact in the regulatory and enforcement areas as well. Even though there has been growth in these areas, authorized agency wide FTEs were reduced close to the organizational license drop. When looking at actual FTE numbers through 2009, the reduction is higher than the decline in organizations. One reason for the level of agency reduction is we have not kept up with inflation. The Commission is a fee-based agency and its fees are at a fixed dollar amount. Unlike most taxes that are based on a percentage of an item's value, the Commission's buying power does not increase over time. A 2 percent tax on something like property values, wages, or sales will automatically go up as the value or cost of those items increases over time, but a fee of \$100 is going to go down in value each year if inflation rises. Since 2004, we have had two fee increases at about an 8.9 percent. The national average inflation has gone up 13 percent during this time, while the Seattle Consumer Price Index has gone up 16 percent. Keeping in mind there are no fee increases planned through at least June 2013, at the average annual CPI rate, our fee increases would cover less than a third of the inflationary increases. Organizational restructures and process improvements in technology have helped us reduce cost. Staff has also taken into consideration the continued downturn in commercial and nonprofit gambling overall and the downturn in the economy when choosing not to recommend fee increases. Seizure funds also play a major reason why fee increases have not been requested. Staff does not anticipate requesting any fee increases in the next few years. The agency, as a matter of practice, increased fees more than once per biennium on average through the mid 1990s and all the way into 2003 as a way to adjust fees for inflation. As we move into the near future, the Commission will get to a point that further reductions in FTEs will not allow it to effectively accomplish its mission. At that point, staff will need to address the widening gap between inflation and revenues through requesting fee increases.

Commissioner Reichert asked if, as long as the working capital balance stays above the line, the Commission was going to be okay. **Administrator Westhoff** replied that was one major reason, but if staff continues to see that gap widen then the agency will have to dip into working capital balance. **Commissioner Reichert** responded that was an indicator for Commissioners to know the float level in a sense inside the operation. **Administrator Westhoff** agreed, clarifying that was through 2013. The working capital balance looks fine and staff do not anticipate asking for any fee increases at this point.

Representative Gary Alexander asked about the chart that shows the fee increases versus U.S. inflation versus Seattle Consumer Price Index (CPI), assuming the U.S. inflation and Seattle CPI are cumulative numbers from 2004 to 2009. **Administrator Westhoff** affirmed. **Representative Alexander** asked if Administrator Westhoff said there were two fee increases of 8 percent. **Administrator Westhoff** replied, no, that was the combined total of the fee increases. There was one about 3 percent and one about 5 percent, which when combined went up a little bit because they compounded.

Administrator Westhoff reported the FY 2011 budget, is the budget the Commission approved last month for \$16.7 million and 165.2 FTE, which is a slight reduction from the previously approved budget. Those reductions mostly reflect timing and filling seizure fund positions.

Commissioner Reichert asked, in terms of the share of tribal versus non-tribal, if that was a growing trend in terms of seeing an increase of tribal activity vis-à-vis total activity, or if that was holding fairly steady. **Administrator Westhoff** replied the trends are fairly steady. Staff has been seeing over the last few years that the growth in tribal gaming has been steady. It was a lot slower between 2008 and 2009, but since 2005 slight reductions have been seen in the level of the commercial and nonprofit. The blue line shows all levels and the purple line shows tribal gaming. **Commissioner Reichert** asked if staff saw that leveling off or staying pretty much steady into the future and asked what the projection was. **Administrator Westhoff** responded staff is anticipating that maybe in 2010 they may be seeing a leveling off because of the economy. As we move forward, the trends are expected to continue as they have been in the past in both areas. **Commissioner Reichert** asked if there would be a short plateau. **Administrator Westhoff** affirmed.

Administrator Westhoff referred to the chart showing Revenue Estimates. The Business Operations division and key agency personnel meet every year in February to review historical and future trend information to determine any changes that need to be made to estimates in license levels and other revenue items. Information is gathered from licensees, as well, when looking at our revenue estimates. Our cost allocation model is designed to recover costs for those areas that we bill. There were no new fees or fee increases included in our revenue estimates, and there is no reliable way to know when or how much might be received in seizure funds in the future. Federal guidelines do not allow us to anticipate receipt of this money, so no new additional seizure funds are included in this budget. The

estimated gambling revolving fund revenue for the 2011-2013 biennium is \$26.4 million, which is about 6 percent lower than estimated for the current biennium. In the 2011-2013 biennium, the first four items on the chart show the ongoing operational costs being paid with seizure funds. The law enforcement FTEs shown are existing positions that are currently funded out of the gambling revolving fund. However without seizure funds, we could not continue to afford these positions. Seizure funds are also being spent for vehicles and items such as computers, facilities, and communications. The three projects shown were started during the current biennium and will be completed at the beginning of FY 2012 due to their getting started a few months later than anticipated. There is also a decision package for a public opinion survey, which was last done in 2005. Staff anticipated doing one every five years, so it has been delayed slightly. The 2005 survey provided valuable information to the Commission and the Legislature, such as feedback on the public's concern with underage gambling. This information was the catalyst for the underage gambling patrols agents have successfully been doing over the past several years and other efforts to curb underage gambling as was seen in the presentation by the Evergreen Council. The proposed spending plan for seizure funds during the 2011-2013 biennium is \$5.9 million and includes 18.4 FTEs.

Commissioner Reichert asked if the distribution of the benefit of the seizure fund was pretty well distributed across the licensees. **Administrator Westhoff** replied absolutely. **Commissioner Reichert** thought that was an important matter to be able to see because the seizure funds are unpredictable but they reduce the use of fee income for day-to-day operations. The benefit of those seems to be very important, so our philosophy of that is distribution across the licensees. **Administrator Westhoff** responded that shows across our cost centers, our enforcement and regulatory staff. Commissioners can see that it should reflect the levels of our staffing and that way it is distributed evenly amongst the licensees and the benefits to the tribes as well.

Director Day commented the chart describes how that impacts billing rates. The tribes actually see the benefit of the seizure rates and it is driving the fixed cost down through the reduction – or the rates stay lower than they would normally go up according to a natural increase. With licensees, the actual expenses – for instance all 17 of these enforcement positions would actually be in the non-tribal enforcement program – so they are being picked up under state seizure spending, which is not an expense that is passed on through license fees.

Commissioner Reichert thought the practical implications of the distribution of the benefit is just one aspect; it is the philosophy that you are using to allocate. His concern is that it be as equally beneficial as we can achieve and not favor the tribes or anybody else over someone else in terms of the nature of the seizure. That is the purpose of it. **Director Day** thought the rates are very good. **Commissioner Reichert** asked what the indicator was. **Director Day** responded that most of the expenses are fixed expenses that are allowable.

The design of the budget allows for us to take things out like rent and expenditures that actually drive down those rates that are charged across the board for everybody.

Representative Alexander commented it has always concerned him when he sees budgets that use one time funding for ongoing obligations. He was hopeful the seizure dollars could be used for working capital, or used for equipment, or used for one time purchases that do not have ongoing commitments. But when we use non-predictable resources, revenues, for ongoing staffing or other expenses, we run a significant risk that that potential source of revenue will not continue. And all of a sudden you come to a point where you have to drop off the end of a cliff to stop something. So that's just my concern when I start to see one time funding used for ongoing obligations.

Administrator Westhoff replied he appreciated that comment, Representative Alexander. We have had those same discussions with regard to the staff and the leadership. We are aware that we have to plan as far as we go through the 2011-2013 biennium. As we saw in that one slide before, we know how many FTE that the gambling revolving fund can afford going forward. So as we go through this fiscal year, and then go through the 2011-2013 biennium, we are going to be planning accordingly to where we are with our working capital balance, where we are at our budget as far as drawing down our FTE levels at a level where our ongoing revenues can support our operations. We have to at that point look at fee increases and things like that as well to make sure that we are able to sustain our operations at a level that we can continue to do our mission. The benefits to the tribes and licensees from seizure spending, because the Commission is able to use the funds on vehicles and other items, we are able to go through 2011-2013 without any fee increases anticipated. We're able to also use the money to keep reimbursement rates lower. For instance the tribal regulation rate would have been over \$133 without the seizure funds in Fiscal Year 2011. However they are at \$118.15 since costs are moved out of the revolving fund. The money will continue to offset fees not only in the 2011-2013 biennium, but also in the following biennium. For instance, the ability to purchase more cars with seizure funds would allow us to buy fewer of them after the seizure funds are exhausted. The same could be said about computers and other equipment as well. The proposed expenditure plan for the 2011-2013 biennium begins with the carry forward level of \$29.5 million and 159.4 FTE. There are adjustments to the expenditure amounts with seizure funds and a reduction of staffing in line with anticipated revenues. The total proposed budget for the 2011-2013 biennium is \$32.4 million and 155.5 FTEs. When comparing that to the current biennium, which is the 2009-2011 biennium, you can see that this proposed budget is \$1.2 million and 10 FTE less than the current biennium. So again, it shows that continued draw down to make sure we continue to be able to be in line with our revenues as far as our expenditures.

The graph on working capital balance shows three years; the current fiscal year, 2012, and 2013. As a result of this budget plan, we are able to maintain our working capital balance at close to the OFM recommended balance, which is also the minimum staff recommends to be maintained to respond to most risks to our working capital balance. Although we have

reduced our budget in the next biennium, without the seizure funds, we would have to make significant reductions in staffing and seek further fee increases. The seizure funds will allow us to continue to draw down our staffing levels in line with revenues and provide benefits to licensees and tribes. This graph depicts our revenues, expenditures, and working capital balance since 1998 and into the 2011-2013 biennium. The chart shows our proposed budget for the 2011-2013 biennium is expected to bring revenues and expenditures into line and brings us near the minimum working capital balance needed. There are items that regularly affect working capital balance for this agency. If we have solid information at the time, we can build some of these items into the budget. However, many items are difficult, if not impossible, to predict one year out let alone three years out. Revenues are cyclical, while expenditures are relatively flat, so it is important to maintain sufficient working capital balance to cover periods of lower cash flow. As a non-appropriated agency, license fees are a major source of revenue. Although we have done a decent job of predicting revenue trends, there are sometimes greater than expected dips in revenue that may be temporary in nature. The current economy is an example. The working capital balance gives us an opportunity to ride these temporary changes out until things get back to their normal patterns. The state increased employer and employee contribution rates significantly in FY 2011 to cover health care costs. Employer pension and health care rate and salary changes have been significant over the past several years and will likely continue to impact us in the future. State service agencies such as General Administration, Printer's office, DIS, and the AG will pass their costs on to our agency for the services they provide. Legislative mandates also can have an impact. For instance the fuel efficiency mandates for state agencies require us to purchase more hybrid vehicles. Although there are social and ecological benefits, these cars are more expensive. Using recycled paper products is another example. All fee increases now have to be approved by the Legislature. This could cause future fee increases to be delayed or denied, resulting in revenues being lower than necessary to maintain an adequate working capital balance. Staff recommends approval of the 2011-2013 biennium budget of \$32,420,000 and 155 FTEs.

Chair Ellis asked if there were any questions; there were none. **Chair Ellis** called for public comment.

Mr. Chris Kealy, President of the RGA, said he had a few questions and observations while we were running through this scenario. His first question is the agency fee increase compared to inflation change 2004-2009. The fee increase demonstrates about a 9 percent increase as compared to two other provided for bars here. Reference is made to a Seattle CPI. Does anybody know what the Washington State CPI was in that period? Was that ever considered? Because it is a state agency, RGA is curious what the state CPI index change was in that period. Nobody knows what that is?

Chair Ellis asked if Administrator Westhoff knew how close the Washington State inflation rate was compared to the U.S. inflation rate. **Administrator Westhoff** responded, no, he

was not aware, but could look into that and get back to Chair Ellis. He thought the Seattle CPI and Washington CPI are going to be around that range, but was not sure.

Mr. Kealy said his question started there, because then it rolls into the period that is being demonstrated, which he thought was a great amount of information; he has seen two legislative withdrawals of funds from the revolving fund. One was \$5 million and the other was \$2 million. Mr. Kealy's base premise to start with was when the pilot programs and all these things started to change over the last decade; there were a lot of assumptions made on fees to adequately have staff funded to perform the duties. Ultimately, when you stand back and look at it, you have \$7 million worth of withdrawals from the revolving fund that really were license fees intended for gambling administrative services. The Commission really has an inflated, or an overpriced model that you start with because you do not increase the rates at the rate of the CPI when you started \$7 million to the good. The fact that you finish here or in this range, indicates you start on the wrong end. By utilizing that thought process, Mr. Kealy said he was trying to assess whether or not that was appropriate. The second point is that we see this reduction in field rates. In response to Commissioner Reichert's question, he understood there might be a different charge for field rates, but did not see any different charge for licenses. He pays for a license, or an individual pays for a license, on an annual basis, but there is no change in that fee. So to the extent tribal entities or other sources are on a pay-as-you-go relationship and for services rendered they get a reduction, they will see a reduction in their expense, but we will not. We will only see the consistent rate charges that we have. Mr. Kealy's understanding of the way the Gambling Commission situation has developed is the renewal of licenses is the same price as a new license, or within a few dollars. He thought they were actually the same price, and yet a renewal is an ongoing relationship; if there are no reported changes, then it is simply a renewal. So a new license, by all accounts, would be more expensive on an individual card room; on an individual licensee, maybe, maybe not. Mr. Kealy thought renewals should take a lot less staff time because the onus becomes on the person that is purchasing the license. If you have not reported a change in your circumstances, then you are obligated to not have had changes in your circumstances. And in fact if a spot investigation or some other information comes to light, you are going to lose. Mr. Kealy is very much worried about the same thing Representative Alexander brought up. And that is if cuts are not made now deep enough for the situation that we are currently at, what he saw being approved is a budget that is negative \$2 million and then negative \$5 million. And he is not real comfortable thinking that that is what gets approved. And we all know the due process here, and likely this has been a nice conversation, but it will get approved anyway, which is probably the appropriate action. Mr. Kealy thought consistent monitoring of these events over the next year or two will definitely be in order and just see how it all plays out. Thank you for your time.

Chair Ellis asked Administrator Westhoff if he had any comments to add in light of Mr. Kealy's comments. **Administrator Westhoff** replied it was important to note with the seizure fund spending is one-time money, which is required to be spent in a certain period of time. The Commission usually has two to three years to spend it. Although optimally if we

could, we could bank the money and just use it for whatever we would want to in the future, we can't do that. It is a matter of we have to spend it on operational items, enforcement functions or we do not spend it at all. Not spending it at all is not an option. That is one thing important to note about the seizure funds and what we have to do with it. It gives us an opportunity now to improve our regulation and enforcement efforts with money we would not otherwise had, and that is the intent of seizure funds. **Chair Ellis** replied that, as pointed out in the chart providing an overview of the benefits to tribes and licensees from seizure spending, the seizure funds not only reduce the tribal regulation rates, but also reduce the field operation rates and the licensing operation rates. They are a benefit to the other licensees. **Administrator Westhoff** added the seizure funds also defray fee increases that would undoubtedly have been needed to be implemented if not for that money.

Commissioner Reichert asked at what point Mr. Westhoff would deem it appropriate, along the lines of Mr. Kealy's question, where the working capital fund balance hits a certain point. At what internal point would it be necessary to come back to the Commission and say things are going downhill here pretty quickly, or whatever the circumstances. Does Mr. Westhoff have that indicator in mind and, if not, should the Commission set one?

Administrator Westhoff replied he thought the minimum is around the \$2.2 million/\$2.3 million, which is the OFM recommended balance and is about what we recommend as the minimum to be able to cover any cost and any risk with regard to our working capital balance. If we estimated that we projected our working capital balance to get much below that, at that point is when we would be coming back and saying we need to do something.

Commissioner Reichert replied he would be inclined to set some number in this budget approval process, frankly, and say if it hits that indicator, that you're required to come back.

Director Day said, unless the Commission tells us not to, we will report back on the current status in July and August of next year, regardless of the direction of the funds. Staff could report back to the Commission as the funds change or we could provide a six-month progress report if the Commission would like.

Administrator Westhoff agreed, adding he thought it was important to know when talking about the minimum working capital balance, that \$2.2 million/\$2.3 million level, that is ending our beginning working capital balance -- what we expect it to be at that point. As we get into those periods where we have low revenue spikes, and then followed by a couple months where expenditures are exceeding revenues, at that point that \$2.2 million/\$2.3 million level will allow a working capital balance of \$300,000, \$400,000, \$500,000, which is not a very large cushion, but is a cushion that we have. When talking about minimum working capital balance, you are probably going to want to say the ending working capital balance should be no more than this versus setting an amount at any time. **Commissioner Reichert** agreed with that thought, but let's say in the middle of February something hits the skids here and all of a sudden you are down, where is that trigger? He was asking management that question more than trying to assert it from the Commission's point-of-view. What is their thinking? If it hits \$200,000, is that the bell? If it hits a million dollars,

is that the bell? **Administrator Westhoff** responded that \$2.2 million/\$2.3 million level. He thought it would be at the point if staff saw the working capital balance starting to get into that area where it is under \$500,000 at any point, which is unusually smaller than it had been in previous years. We always are projecting out to what the end is in every month that we have working capital balance. If it is lower in a particular month, let us say November, we will project it out that it is going to be lower than that \$2.2 million/\$2.3 million level at the end of June. And at that point we could say it looks like we need to do something. But as far as a dollar amount in particular months, he was not sure. But he thought the \$2.2 million/\$2.3 million ending helps the Commission get there.

Commissioner Roe thought, when you say “do something,” there is really a limited range of something that can be done. The Commission cannot increase fees without going through a lot of stuff, seems to be really pretty limited to cutting FTEs. **Director Day** replied that to have any big impact on the budget; it would have to mean FTE reductions, yes. We are continually managing these three fund sources and watching our fill level to the number of positions we have. If we see revenues declining and also workload, because we do not have the work, we do not bring on people to fill positions. That is what we had actually been doing since about 2003, 2005. We had been kind of guiding that ship in that fashion to hold down expenses as we move forward if we are seeing a drop in revenue. That is in the end where Administrator Westhoff is coming from. If we actually see a lower expense month, then we would do our best as we move forward to re-project and actually drop down that level of staff – what we are filling or what we are going to add. We actually started out in this project to say we saw where these revenue trends are going, so we did not want to have to get into a position where we had to lay off staff. So that is actually one of the goals to keep experienced consistent staffing patterns and keep licensing and charges down because of efficiency, but also because of the economic times. It has been our long term goal as we manage this budget through this process. **Administrator Westhoff** agreed, adding we had the high of 197 authorized FTE and we are down now in the 160s, about to go to 155. The agency has been able to do that through attrition and not through layoffs, which we have been very careful to try to avoid, saying that we cut positions not people as much as possible.

Chair Ellis replied if he read the proposed 2011-2013 seizure spending correctly, if there were a sudden and dramatic drop in revenue that occurred during FY 2012, then in addition to immediately perhaps moving forward with the further reductions of FTEs that you have already had in mind, you would have the alternative of moving some money from the seizure funds that were allocated for FY 2013 into FY 2012? **Administrator Westhoff** responded that was an excellent point. Yes, the Commission can; they are approving a biennial budget. As far as moving the money within those two years, we can do that. Also almost all of the seizure funds that we have that are being spent here. He thought there was a very small amount that may be left over for the next year, but we could look at utilizing that as well. **Chair Ellis** thought that amount was somewhere in the neighborhood of \$1.3

million. **Administrator Westhoff** responded it was smaller than that; maybe a few hundred thousand dollars, at most.

Director Day said staff definitely agrees with Representative Alexander about the use of one-time funds. What is trying to do is draw out of each of those pots to maximize the uses that are authorized in the period of time we are allowed to have it, and keep the gambling revolving fund in a position because that funding has general application so we are able to use that over time and help balance those three funds.

AAG Ackerman indicated he may be able to answer the Washington State Consumer Price Index question. He was onsite with Workforce Explore Washington and it appeared there were two choices: The Consumer Price Index for the United States as a whole, or one in the Seattle/Bellevue/Everett area, which is probably the Seattle CPI.

Administrator Westhoff confirmed that is the one staff used. He was not sure, but he did not see a Washington State Index when he looked at it. But then again he was looking at the Labor and Statistics website, and did not search beyond what had been on that page.

Representative Alexander interjected there was no Washington State CPI; there is a Washington State IPD, implicit price deflator, but the only CPI is the Seattle/Bellevue.

Administrator Westhoff thanked Representative Alexander.

Chair Ellis asked if there were any further comments or questions.

Commissioner Rojecki commented on Commissioner Reichert's comments and from a historical perspective noted this budget will not begin for 11 months, or just over 10 months. He was sure the Commission would see it once or twice before that with updates. Commissioner Rojecki recalled a couple times in the past where the Commission had to actually adjust these even before the Legislature had adjourned; he thought it was two years ago for the 2009-2011 budget. From a personal perspective Commissioner Rojecki did not think it was necessary to direct staff to do anything, but historical practice shows that staff continues to bring these kinds of issues forward to the Commission.

Chair Ellis thanked Commissioner Rojecki and asked for any other comments or questions.

Representative Geoff Simpson said he was curious on the flip side of this discussion about revenue. This is a regulatory agency and it has a job to do. And at some point as you keep eroding away the people that are out in the field to do the work of this Commission, it is going to have some sort of effect. He was wondering at what point you say we have reached the point that we are really not able to fulfill the mission of the Gambling Commission and we need to make adjustments on the other side of the ledger. **Administrator Westhoff** replied yes, that is one thing management is really going to be looking at as we get into the 2011-2013 biennium and as the seizure funds are dissipating. Staff already has plans to get together and look at workload and at what levels we need to do our job. As he had

mentioned in the report earlier, we are getting to a point where we are going to need to do fee increases to increase our revenue so we are able to maintain the FTEs necessary to do our jobs.

Chair Ellis thought we could get some consolation from some of the projects that were included in the strategic plan. There were a number of items in that plan indicating greater reliance on computerized reporting, computerized applications, and fewer FTEs involved in handling that kind of processing. Hopefully that will provide some benefit to the agency's FTE level and revenue situation. **Director Day** replied that, from a practical application of the question, Special Agent Drumheller as the Acting Assistant Director of the Field Operations meets regularly to go over licensees, inspection levels, and caseloads to determine how many staff are needed and whether they are meeting the requirements for inspections that have been set. That is an ongoing process and not a static one at any given time of the year.

Chair Ellis asked if there were any other comments or questions; there were none.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to approve the recommended budget of \$32,420,000 for the Fiscal Year 2011-'13 biennium. *Vote taken; the motion passed with four aye votes.*

Director Day indicated that, unless the Commissioners tell him they do not want to be bored by it, staff would plan to update them on revenue and expenditures in February/March, to give them a sense of how things are going.

Commissioner Reichert said he appreciated Director Day and thanked Administrator Westhoff for his great presentation. He admitted to teasing out management's thinking on this, but he thought it was important for him to understand how to approach these questions as they hit. He thanked Director Day for his direct and very transparent answers.

Director Day introduced Ms. Michelle Rancour who is sitting next to Ms. Gail Grate. Ms. Rancour is an administrative assistant and is Ms. Grate's relief. She is taking over at this Commission meeting so she is available and ready to support the Commission in the event Ms. Grate is not here.

Chair Ellis welcomed Ms. Rancour.

Representative Simpson joked that nobody could replace Ms. Grate.

Correspondence

Director Day noted the Commission approved two large raffle requests. Under the correspondence tab there is a memo from Assistant Director Tina Griffin that describes the

two large non-profit raffles that came in, the Broadway Center for Performing Arts of Tacoma and the Evergreen School District Foundation. They had the larger ticket prices authorized by the legislature. And you will note without going into it, both of those projects fell quite short of their anticipated revenue. One anticipates a minor loss and the other only netted \$8,000. Because there was a lot of discussion and we do have a new rule on factors the Commission will consider in this, we thought you would like some results back as to what happened.

Chair Ellis responded it was certainly a very unfortunate situation for both the Broadway Center for the Performing Arts and the Evergreen School District Foundation. Maybe some of the card room licensees in seeing those kinds of numbers in those limited gambling areas would feel slightly better about the reductions in their revenue. But in case all of the members of the audience do not have the numbers, the Broadway Center for the Performing Arts had hoped to reach a ticket sale level of 34,000 at \$99 a ticket, and they ultimately sold 2,894. With regard to the Evergreen School District Foundation, they had hoped to sell 7,500 tickets and they sold 223. So it is tough times out there. **Director Day** replied he did know particularly from the Broadway Center that they informed us that they felt it was a success anyway because of their new customers and their coverage that they got for downtown Tacoma and those things through Evening Magazine. So maybe not as much cash, but they still felt it was a positive adventure.

Monthly Update Reports

Director Day pointed out the federal update summary. On July 29, 2010, the House Financial Services Committee amended and passed HR 2267 sponsored by Barney Frank, which has been under discussion for a long time. It proposes to license and regulate internet gambling. This is a licensing scheme that would be through the Department of Treasury. There were numerous amendments and all kinds of comments. We've incorporated some of the comments in those two articles that are in front of you. One of them has sort of a Washington twist on it, so we thought you might be interested. There were a number of changes to the bill. It was ultimately passed and now moves to a floor vote in the house. A couple of the most significant amendments were that it would continue to prohibit sports betting, which is a major change in the bill itself. And it would also allow the states a full legislative session to make the decision to opt out, instead of the 90 days that was in there. There are some other changes, and we have not fully digested them and we do not think our legal staff has, but they are trying to trace these and put them all together with the bill. We are not as familiar with the federal process as we are the states, so he found it a little bit more confusing. But as we go through there, we may provide further updates to the Commission if this bill continues to move. There is a Senate bill that was authorizing just internet poker. We will see what happens as this moves forward, if it moves forward.

Commissioner Roe asked how the Commission would opt out of internet gambling. **Director Day** responded that, right now, the state has sort of opted out. The law is clear that it is prohibited. The discussion he has seen in this bill would make it the Governor's

decision as to whether to opt in or opt out, which presents another interesting question because if the Governor opted in and the law in the state would say it is prohibited, that would present another quandary of sorts. **Commissioner Roe** asked, as a practical matter, how the Commission would opt out. **AAG Ackerman** replied the last version of the bill he saw basically is like some credit card offers in the old days; you are in unless you opt out. And the Governor was designated as the state official with the authority to make that decision. And so essentially he guessed if you wanted to opt out – again, there aren't regulations on this at this point, this is just proposed legislation. So who knows what it would look like when the Treasury got done with it. And the last version he saw, Treasury was the federal agency designated to do the rule making to implement the Statute. But unless they came up with a prescribed format, he assumed the Governor would simply send a letter to the Treasury Department, or whoever ultimately is designated to receive these notices and say we're opting out. It raises many interesting potential legal issues because for instance, our state has a constitutional prohibition against gambling that is not specifically authorized by a super majority of the legislature or a super majority of the electorate voting on an initiative or referendum. The question would be can you repose that authority in the Governor when our constitution appears to place it with the legislature and/or the people. And that would probably raise some interesting federal pre-emption questions and who knows how it would shake out. He guessed he would just comment that for all of the publicity surrounding these various bills, they are simply just that. And as Director Day pointed out, there is no companion Senate measure. And in fact these bills have been struggling for the better part of three years just to get out of Committee. So he was not sure that anything is imminent, but stranger things have happened. **Commissioner Roe** asked if Washington opted out, and she is a Washington resident, but Oregon did not opt out, could she go to Oregon and legally engage in internet gambling. **AAG Ackerman** responded he did not know, and did not think anyone would know until they saw the final version of the bill. The bill that cleared Committee was significantly amended. It would depend obviously on how they write the final product.

Comments From the Public Regarding the Director's Report

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

Chair Ellis called for a break at 3:05 p.m. and reconvened the meeting at 3:15 p.m.

3. Defaults

a) Samuel Adame, Class III Employee, Revocation

Ms. Hunter reported neither Samuel Adame nor Nicholas Molthen are working right now and actually both happen to be incarcerated, though these cases are not related at all. Samuel Adame was a Class III employee. The recommendation for revocation is based on his criminal history for a felony involving harm to individuals. And he was sentenced to three years of incarceration and then three years of community custody. He also did not report his criminal history to us. The Director issued an order of

summary suspension. And that means that he had to stop operating as soon as he had received the order. He was personally served, so we know that he received the order, and he did not respond. So by failing to respond he has waived his right to a hearing. Under the Administrative Procedures Act the Commission may enter an order in default. Staff is requesting a default order be entered revoking his Class III certification.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Samuel Adame or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Rojecki** that the Commission enter an order revoking by default the Class III certification to conduct gambling activities of Samuel Adame, as presented by staff. *Vote taken; the motion passed with four aye votes.*

b) **Nicholas Molthen, Card Room Employee, Revocation**

Ms. Hunter reported staff is requesting that his card room employee license be revoked. The revocation is based on him robbing another card room and taking approximately \$2,500. In this case the Director also issued an order of summary suspension and we also personally served it. He did not respond, so by failing to respond he has waived his right to a hearing. We are requesting a default order be entered revoking his card room employee license. Additionally, after the order was issued he was charged with and pled guilty to Robbery in the Second Degree and he is currently incarcerated.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Nicholas Molthen or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Rojecki** that the Commission enter an order revoking by default the card room employee certification to conduct gambling activities of Nicholas Molthen, as presented by staff. *Vote taken; the motion passed with four aye votes.*

4. **Approval of Minutes – Regular Meeting – July 8-9, 2010**

Chair Ellis asked if there were any comments or changes to the minutes.

Commissioner Roe thought she came in right before the Fee Restructure report, because she remembered all of it. She also remembered Representative Alexander coming in shortly after her. She thought maybe those two items were reversed.

Chair Ellis asked Ms. Grate to look into it.

Commissioner Rojecki made a motion seconded by Commissioner Roe to approve the minutes from the July 8 and 9, 2010, regular Commission meeting subject to a potential correction as requested by Commissioner Roe. *Vote taken; the motion passed with four aye votes.*

5. New Licenses and Class III Certifications

Deputy Director David Trujillo reported the Commission Approval List of new licenses and class III certifications for August 2010. At this point staff does recommend approving all new licenses and Class III certifications listed on pages 1 through 15.

Chair Ellis asked if there were any questions.

Commissioner Rojecki made a motion seconded by Commissioner Roe to approve the new licenses and class III certifications listed on pages 1 through 15. *Vote taken; the motion passed with four aye votes.*

6. Other Business / General Discussion / Comments From the Public

Chair Ellis called for public comment.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association (RGA), had a question on the Card Room Connection newsletter on the back table. It lists the violations and there were a handful of them relating to allowing a minor to gamble. She knew while it is not in the purview of the Commission, she wondered if any of those minors were also charged since the new law – she did not know if it went into effect at the time when they occurred. **Acting Assistant Director Drumheller** believed those were inspections that were conducted. **Ms. Chiechi** thought it would be interesting to know as we go forward where the penalty was given on the other side. **Acting Assistant Director Drumheller** agreed those should all have been inspections.

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

At 3:30 p.m. Chair Ellis called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 4:15 p.m. and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, AUGUST 13, 2010
APPROVED MINUTES**

Chair Ellis called the meeting to order at 9:00 a.m. at the Heathman Lodge in Vancouver and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
Commission Vice-Chair Keven Rojecki, Tacoma
Commissioner Michael Reichert, Maple Valley
Representative Geoff Simpson, Covington
Representative Gary Alexander, Olympia
Senator Margarita Prentice, Seattle
Senator Jerome Delvin, Richland

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

RULES UP FOR FINAL ACTION

7. Staff Proposed Rule Change – Temporary licenses issued by the Director

Amended Section WAC 230-03-080 - License approval process

Deputy Director Trujillo reported this proposal was discussed at the April study session, filed for discussion in May, discussed at study session again in July, and is before the Commission for final action. This rule amendment is a housekeeping change needed to make the WAC consistent with RCW 9.46.070 authorizing the Director to temporarily issue or suspend amusement game manufacturer, distributor, service supplier, and individual licenses subject to final approval by the Commission. The current rule as worded does not recognize the RCW authorization or current practice. To date there have been no statements supporting or opposing the rule change. Staff recommends adoption with the effective date to be 31 days from filing, given recent discussions with applicants about the confusion caused by the inconsistency.

Chair Ellis understood the purpose of this rule was to facilitate licensees after being investigated and going through the normal application process to be able to proceed and begin operations immediately without having to wait for a meeting of the Commission. **Deputy Director Trujillo** affirmed.

Chair Ellis called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Reichert** to approve the amendment to WAC 230-03-080, license approval process, effective 31 days from date of filing. *Vote taken; motion passed with three aye votes.*

8. Petition From the Public – Great American Gaming, Corp. – Progressive jackpots for card games

Amended Section WAC 230-15-695 – Adjusting progressive jackpot amounts

Acting Assistant Director Drumheller reported the proposed change would allow house-banked card rooms offering progressive jackpot card games to reduce or reserve a secondary jackpot, to seed different progressive jackpot games without recognizing this amount as gross receipts. There were some housekeeping changes at the May Commission meeting to remove the word “properly” in three places and “record” to “recognize.” Staff recommends final action. The petitioner is requesting an effective date of 31 days from filing; however, if the Commission chooses to adopt this rule change, staff recommends an effective date of January 1, 2011, pursuant to WAC 230-12-005.

Chair Ellis asked if the petitioner indicated why they felt it was important, or at least useful, to have an effective date of 31 days from filing. **Acting Assistant Director Drumheller** replied he did not know. **Chair Ellis** replied that, as he read the WAC, the Commission needs to have some finding of need in order to expedite the effective date. He guessed we could ask the petitioner that if they were present. Are there any other questions of AD Drumheller? Apparently not, so we’ll open the matter for public hearing.

Chair Ellis called for public comment.

Mr. Dave Fretz, Great American Gaming Corporation, explained WAC 230-15-710 currently allows removing the progressive jackpot, or portions thereof, to seed a different game, but it does not talk about the re-seed. This rule change will allow taking the re-seed money from one progressive game and moving it to another progressive game without recognizing it as gross receipts. It’s just as simple as that, which is why Mr. Fretz is looking for that change.

Chair Ellis asked if Mr. Fretz could tell the Commission why he thinks it is important to expedite the effective date of the rule to 31 days after filing rather than the January 1 effective date that would otherwise apply. **Mr. Fretz** replied it was simply because they are taking money from one place and moving it to another. They are not really making anything

on that, they are just giving it from one player fund to another player fund. So is it important for an effective date of 30 days; it is not critical. **Chair Ellis** thanked Mr. Fretz.

Commissioner Rojecki made a motion seconded by **Commissioner Reichert** to approve the amendments to WAC 230-15-695 to be effective January 1, 2011. *Vote taken; motion passed with three aye votes.*

RULE UP FOR DISCUSSION

9. Texas Hold'em Work Group Proposal – Texas Hold'em Wager Increase Pilot Program

Alternative #2 Filed at the July 2010 Commission Meeting

Proposed Amendments to Original Version

New Section WAC 230-15-189 – Card game licensee pilot program on wagering limits for Texas Hold'em poker

Acting Assisting Director Drumheller reported this rule is a new section on house-banked and Class F card game licensed pilot program on wagering limits for Texas Hold'em poker. This rule change was proposed by the Texas Hold'em work group. It would create a pilot program to test the regulatory and economic impacts of increasing the wagering limits from \$40 to \$100 for Texas Hold'em poker. In addition the pilot program would help to determine whether there is a demand for higher wagering limits for Texas Hold'em poker. The pilot program will last 18 months. Card rooms participating in the pilot program will document and retain required information. At the end of the pilot program the Commission will evaluate the data collected in the report and use it to determine whether the wagering increase should be made permanent. At the July Commission meeting, the Commission filed Alternative #2. Currently 70 house-banked and 5 Class F card room licensees have the opportunity to request to participate in this program. Proposed amendments to the original rule filed for discussion at the July meeting required staff to report pilot program findings at the November 2012 Commission meeting. Language was changed and staff will now provide a mid-program report at the July 2011 Commission meeting and report the final results of the pilot program along with recommendations at the May 2012 Commission meeting. Language was added that if approved by the Commission, licensees in the program may continue to operate at the \$100 wagering limit until the Commission finally approves or disapproves that wagering limit or until December 31, 2012, whichever comes first. Language was added requiring card rooms to notify staff when higher limit games will be operated. Industry representatives believe the higher wagering limits may increase overall card room revenue and attract new players who in turn will play both house-banked and non house-banked card games. Food and beverage sales may increase due to the increase in players. Regulatory concerns and increase in the wagering limit for Texas Hold'em poker would have little or no effect on the regulation of these card rooms. Staff recommends discussion of the amended original version.

Chair Ellis asked if the Proposed Amendments to Original Version on the front page was the version staff recommends. **Acting Assistant Director Drumheller** affirmed.

Senator Jerome Delvin commented that, when looking at the information, he did not see the need for a pilot program. His concern was the increase in paperwork; that there was going to be new paperwork that would interfere with the job they need to do to manage the card rooms. Senator Delvin indicated when he sees the daily food sales, he thinks it says it is an increase in paperwork and regulatory. He wondered about the purpose of why staff needs to know that much detail; just take the information that the card rooms already collect, which is a lot of information already. He asked why there was a need for more and what purpose that served. **Acting Assistant Director Drumheller** replied he was not part of the work group; that is probably a question for the work group.

Chair Ellis agreed it would be good for one of the members of the industry from the work group to respond. Having facilitated the work group that topic was a very important issue in his mind, and it was an important issue for all of the members of the work group. From the response to the basic paperwork that has been included as part of the work group package, which includes the document entitled “The Washington State Gambling Commission Texas Hold’em Pilot Study Daily Tracking Record,” the work group understood it was not going to be particularly burdensome for card rooms to collect this information. It did not go much beyond the information they were already collecting. The information would be useful in assessing the impact of the increases in betting limits for the card rooms that choose to participate in the study. There are a number of members of the industry present who could tell the Commission whether they feel that in reality the information to be collected now within the proposal would in fact be significantly more burdensome than initially foreseen.

Director Day said he had a conversation with Senator Delvin and the information is the same requirement; the collection has not changed from the original proposal of the rule. Part of the requirement was already in the form. After the last meeting there was discussion that it would be clearer if there was a single list, which is why it is listed in the rule. The form is still pretty simple. Director Day understood from Assistant Director Mark Harris, that the format and the kind of form is something that is currently familiar to the industry. One of the factors that might be important is whether this has any impact on the law that provides a license for the purpose of commercial stimulant.

Senator Delvin was concerned about the resource impacts. It seems they are going to have increased time tracking this stuff and he asked if that was really worth a pilot project. He suggested just letting the rule go and see what happens. If it doesn’t work, it doesn’t work. Senator Delvin was not sure what the Commission was going to find out at the end.

Chair Ellis thought one of the important purposes served by the information concerning the number of players who were playing in games subject to the higher betting limits was simply to see what the demand was for these games. The Commission knew that there

would be some concern by some people in the public about any increase in betting limits. The working group was not able to get a lot of information about what the demand was for higher betting limits. They did look at the limits in other states, and that was not particularly helpful as many states limits are extremely low or there is no provision for poker. This was the only way that the work group was able to address the question of how many players were really interested in playing in games with a higher limit than a \$40 betting limit. But again – We have Mr. Kealy primed to tell us more about it. Chair Ellis asked, are there any other questions of AD Drumheller?

Director Day commented he has seen the Commission and Commissioners struggle with decisions on wager limit increases over the years and what factors or facts does the Commission use to assess to make a decision on whether this would be good policy or not. That is the reason for this data collection. Through this pilot project, some of these things like commercial stimulant, number of players, is it something that is in demand in the industry, was there any additional evidence of cheating, was there any evidence of problem gambling. Those are things that allow the Commissioners at least to look at a number of facts related to a specific decision and then help support them in their ultimate decision whether to enact the rule or not.

Senator Delvin asked if this was going to be a trend.

Mr. Chris Kealy President of the RGA thanked the Commission for hearing about this subject, and everybody in the pilot program study. Yesterday we ended up having a lively discussion during work study, and some people could get confused. We had a lot of different operators come to the table. This work study group chose to try to work through to an outcome. He thought there was a lot of information exchanged yesterday and there were a lot of points that we could try to rehash and go into the record and on and on, but we have a pretty good history with the Commission on working through pilot programs. When we did the \$200 limit we did it on five tables for about a year-and-a-half and then determined it wasn't that onerous of a situation, and in fact we were at \$300 limits in this state and that seems to be causing no particular wrangles. RGA was grateful for the process, and understood most of what was going on. We had a real commitment to work through some of those details. As Commissioners, it is hard for you to commit to binding future Commissions because, of course, Chair Ellis, you would not even be here when this comes back around the horn. And Commissioner Parker was here through a lot of the history of it. And so it gets confusing when we look out in the future and we are saying we are going to take a chance on a pilot program when poker has been run in this state for 36 years. That starts to confuse some people. But in good faith with the process, we would like to move forward with what this is and just see what happens and take that walk of faith with the Commission.

Chair Ellis asked Mr. Kealy to address Senator Delvin's question and remind the Commission whether Director Day is right in his recollection that the tracking record form

that was prepared as a result of the working group work is in fact something that is very close to a record that is currently maintained by card rooms. **Mr. Kealy** replied it is not, he thought it was a record that has gotten a little confused, but he did not think there was any intent that staff would not work through us on that subject. We should be able to come up with a working process and we have great confidence that we can solve that. **Chair Ellis** responded having been present during most of the study session discussion yesterday concerning the Texas Hold'em proposal that he certainly agreed with the idea. There were some extended discussions on a number of points, in particular the provision that requires licensees to notify the Commission when they will have games at the higher limits. Certainly that is an issue that really was a non-issue in terms of anybody violently disagreeing with the concept. It was simply a matter of how to accomplish it, and he agreed entirely that the Commission and the licensee should be able to do that very effectively. **Mr. Kealy** replied they do all the time, and if one were to look through their strategic plan and outline rules that are – he did not know what the word was. There is important, and there is mandatory – there is three different ways they rate things. He would say that some portions of this rule are going to be at a high level where there is no room for error, and then there are other portions of this rule that we will work our way through what was trying to be developed for information, and come forward in a year and report what is going on.

Chair Ellis thanked Mr. Kealy and asked if there were any further questions.

Mr. Gary Murrey representing himself as a poker player. He started playing poker in the state in 1982. At that time we played a game called Razz, and Seven Card Stud, and Texas Hold'em wasn't even really being played. In the 1980's when we started playing Texas Hold'em, it was all limit. It was \$2 and \$4 limit, \$5 was the max bet at the time, and we had five little tables. There were no center dealers, no jackpots. What he was getting at is the evolution of the game of poker is real. Going from no center dealers, no jackpots, \$5 limits. He said he recently left Atlantic Canada where he ran two casinos. There are 26 poker tables in Atlantic Canada now. Not a single one of them play limit poker. They are all no limit poker. No limit means spread limit the same thing we are talking here where you can bet \$2 to \$100 any time. Out of 26 tables, all 26 are this form of poker. It is the new way of poker being played. Not every hand is a \$100 bet. He spent a month in Las Vegas recently, and as you go down the strip and you look at these poker games, every room has a majority of no limit hold'em, and the buy-ins may be \$40, or \$60. But you build up to maybe \$100 or \$150 and you can bet any amount you want. In Washington State the limit in most tribal rooms is \$500, but it is still a spread limit. There is a limit to it. But it is a different type of game. You cannot find a limit game in a lot of the tribal casinos, beyond maybe 4 8, or 3 6. As a poker player, this is the new wave. And if you cannot play it in the smaller card rooms, then it will go by the way of bingo or some of the other games of chance in the state that have fallen off; pull-tabs and everything else. It becomes old hat. What he is doing is encouraging the Commission to understand that this is the evolution of poker. Approve the pilot program. He would not be there next month to testify. He will be marrying off his son, so will be tied up. But he asked that the Commission understand that even if there is

not a large increase in the number of play or food and beverage that you will see a shift eventually in what games people choose to play. And he thought it is clear that if the Commission look back in the record in the 1970's when we started these to now, the game of poker is quite different. And it will continue to evolve as every sport and every game evolves. Mr. Murrey asked if there were any questions.

Representative Simpson asked where Mr. Murrey saw the logical conclusion of it; if it has evolved to this point, where did he see it eventually heading. **Mr. Murrey** replied it was hard to say. He believed that for the foreseeable future in live or cash game poker that the Commission would see that no limit or spread limit in Washington will be the game of choice. He thought that tournament play is really strong as you watch all the TV stuff. And one of the things that we face here in Washington is the limits on tournament entries and stuff. But we do not have the rooms big enough, and cannot extend the offerings big enough to draw some of those big WPT events to the state. They travel all over the country and we just do not have the regulatory framework to allow those. But he did not see a whole move to spread limit of \$1,000 or \$10,000, or absolutely no limit. People will play as long as the parameters allow them to protect their hand when they make the wager. If the pot is \$40, if you can only make a \$5 bet, you cannot represent or make a decision tough for somebody else, so you make an easy call and you cannot protect your hand. If you understand poker, you cannot protect your hand. If you watch the TV poker, when they push all in, it is not always that they have the best hand, it is they have to force the other person to make a decision whether or not they are going to put everything at risk. And that is the mentality of the poker game. It is not always to win the most money or whatever, but if you do not have a limit high enough above the minimum bet to force that decision, if it is too easy, if it is always just 20 bucks, it is just 20 bucks. There is \$60 in the pot, it is only \$20, and you cannot make that person. It is the mindset and the logic of what makes poker work. He saw it gradually increasing with the conditions of the economy. We started with 25 cent pull-tabs, 50 cent, and \$1. He sees them going to \$2 or \$4 eventually as the economy rises. My parents bought their first house for \$12,000 in 1972. That same house just sold for \$400,000. So as the economy grows, he said that that would rise to \$100, \$200, \$400 over the next few years. Mr. Murrey pays a lot of attention to poker, and he does not see a big shift in the fundamental game of poker right now. But in 10 years who knows.

Chair Ellis asked if there were any other questions; there were none.

Director Day responded with a couple notes; one thing is on number 3 in the amended version, house-banked or Class F card game licensees must notify us when they – we have had some discussion in study session which would lead us to believe that we should insert “when they plan to conduct limit games” so there is not the impression that every time that they may use a \$100 wager while they are in their pilot program that they have to call or notify somebody. This was intended to be a staff management issue so that the staff could preplan in some cases, if they need to. He would like to make sure the Commission was aware of that. Also Director Day was almost positive that Assistant Director Mark Harris

said that the form that was involved was taken from something that was used, or is used, in some format. He will bring that information for the Commission purposes when they consider final action. **Chair Ellis** replied it was his recollection too, but it would be good to get it from the horse's mouth once Assistant Director Mark Harris was back.

Commissioner Rojecki asked Director Day hypothetically if he were an operator and he planned on hosting his game every Tuesday and Thursday at 6:00 p.m., did he need to notify every Tuesday and Thursday before that? Or if you have a revolving game this week and it is on Tuesday, next week it is on Wednesday – there has to be some sort of variance in there, he would assume, that either shows up on the staff side, or shows up on this. **Director Day** replied remember the testimony from Teresa Malphrus at the last Commission meeting. We had in mind that if the licensee planned to promote the game on a Thursday that they would send something in that says they planned to generally conduct it on Tuesday and Thursday. They would not even have to do it in writing. They may call their agent and say we are planning to do it on Saturday and Sunday over the next month, or something to that effect. That does not mean things would not come up in the meantime, but that is why the Commission thought maybe a plan would relieve tensions over it a bit. **Commissioner Rojecki** affirmed.

Chair Ellis asked if there were any further questions or comments; there were none. This item was up for further discussion and presumably will be on the agenda for final action at the September meeting. From what Director Day said, paragraph 3 of the proposal will be amended, as indicated.

Other Business / General Discussion / Comments From the Public

Chair Ellis opened the meeting to other business, general discussion, and comments from the public.

Mr. Frank Miller, the firm of Miller, Malone and Tellefson out of Tacoma, on behalf of their client, Gaming Arts, shared an issue that had recently come to light and that they needed some help and guidance with. Mr. Miller was present on behalf of his client, but also as someone who spent fifteen years with this agency, including seven years as its Director. He was greatly concerned with this issue and the impacts it could have down the road. It is an issue that may, at some point, seem relatively trivial and somewhat simple when Mr. Miller gives examples, but it is one that needs to be addressed. His client sells a game called Super Bonanza Bingo, which they developed. They enter into license agreements, or contracts, with charitable bingo halls or tribal bingo halls around the country. They are currently involved with four charitable halls in Washington State. This game has been offered since 2005. They are licensed as a manufacturer by the Washington State Gambling Commission. They sell the product and the charity runs the game once a day, advertised as Super Bonanza Bingo. And 25 cents of every card or face that is sold in the game goes back to Mr. Miller's client as a fee. And they keep 5 cents, or whatever, out of each card and put it into a pool jackpot. If a player wins a blackout within so many

numbers, it is paid off. It allows the smaller bingo halls and the smaller tribal halls to have a larger prize. So they are offering the game; they own the game; it is their game. When they first became licensed by this agency, there was a concern that maybe they were in the business of selling insurance, not a bingo game, and it was sent over to the Office of the Insurance Commissioner (OIC). The initial reaction was this was not insurance; it is gambling, so not a problem. In the past few months, they had a modification on one of their contracts, and being licensed, they submitted their contract for review. An agent sent it over to the OIC again to review and the legal team at the OIC looked at this and looked at their contract and said that under the definition of insurance, this was insurance and his client needed to be licensed as a company to offer insurance in Washington. And also that if they were going to sell this product to these halls, they needed to have licensed brokers sell it. They also said that, furthermore, they would welcome discussion, but they would like Mr. Miller's client to stop doing this immediately. So, Mr. Miller's client, being licensed throughout the country, stopped offering the game. Mr. Miller went down and met with the legal team of the OIC and had a very good discussion. They wanted to make it very clear that they were not out looking to regulate this activity, but it came to their attention so they had to look at it – everyone knows how government works. So Mr. Miller had a very good discussion with OIC.

The definition of insurance is one line under RCW 48.01.040: Insurance is defined as a contract whereby one undertakes to indemnify another or pay a specified amount, a jackpot, upon determinable contingencies, so many numbers. Sure sounds like gambling. If you take the definition of gambling, you can reverse it around and put that definition right there. Mr. Miller told OIC there was a fundamental problem; he was talking about a gambling activity that was licensed by the Gambling Commission and OIC was talking about the business of offering insurance. Mr. Miller's client is not an insurance carrier; this is not Lloyds of London where you go to and buy a policy for a hole in one or some type of special event in case a certain thing happens. They have to be licensed; no one questions that. But this is a company that sells a bingo game. If you take this and start looking at the application of your interpretation, where does it end? Mr. Miller could go to any tribal casino that offers class II and they have linked bingo games. A lot of those are his clients. They are all linked; they hold part of the pool, and when the jackpot is hit, they send the check. They own the game; the tribe leases the machines. The tribe is the operator and there is a contractual arrangement. Technically it fits. What about a casino that offers insurance playing 21? Right there on the table is the word insurance. Do they have to be licensed as an insurance company? Mr. Miller knew it was nonsensical, but where does it end? So they had this discussion and tried to explain that one was a game, but they just were not able to get there. OIC said they understood, but it is what it is; it is insurance and they thought the solution was legislative. It is easier said than done to get an exemption from the Insurance Code of what is not insurance. In the definition of gambling, insurance is not gambling; but under insurance, gambling is now insurance. Mr. Miller's client stopped offering the game, yet they are licensed by the Commission, because they are concerned with what action might occur. Mr. Miller pointed out his concern, as someone

that has been here for many years, was that Chapter 9.46.285 was pretty clear in its intent: licensing and regulation authority, exclusive. This Chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity. Then it goes on to talk about how the state preempts local jurisdictions and certain licensing functions, but that first sentence, the intent was to create one body in the state to regulate gambling that was authorized. That is this Commission. The Insurance Commissioner's office is not looking to regulate gambling; they are not looking for this; it fell into their lap. Mr. Miller was concerned for his client. Where do they go given that they are licensed by the Commission to conduct the game and they can't now do it unless they want to get into a costly court action; or try to become an insurance carrier which could be very burdensome, very difficult, very costly; or seek legislation; or is there a better way to handle this, maybe at a policy level. Mr. Miller said he was here to ask for Commission assistance to authorize the Director and/or AAG Ackerman to sit with his cohort down at the AG offices and see if they can find a way to resolve this. Mr. Miller said the way to resolve this was very simple; it is a policy call. It is for someone to say if someone is licensed by the Gambling Commission, we do not want to touch it – like the first e-mail said back in November from the OIC; although, Mr. Miller was told that person had no authority to speak, which was unfortunate, because that person was right. Mr. Miller said he was here to ask for some guidance; maybe an authorization. He is going to meet with Director Day and Deputy Director Trujillo next week, but his client asked if he could come and meet with the Commission before hand because of the urgency. They stopped selling their game; they are holding approximately \$19,000 in money they have collected to be paid out and they do not know what to do. Mr. Miller pointed out they are in about 40 different jurisdictions throughout the country and nowhere has anyone determined this to be insurance. Nevada made it very clear this is gambling; we do not want anything to do with this. It technically fits, but it is a game; it is a bingo game.

Mr. Miller asked forgiveness for saying this, but he had to share it with the Commission. He was thinking of examples, like when he gets into a wreck, he doesn't call his insurance company and ask where his prize is. You do not. If someone dear to you passes, you do not call and say you need to collect; where is his prize. That's how difficult this issue is. It is hard to sit down and talk about, yet Mr. Miller thought it had potential to go a little far. And once again, no one is looking, but it has potential to go a little far. It certainly impacted his client to the point where they are no longer operating and they need to find some resolution here. Mr. Miller asked for the Commission's assistance.

Chair Ellis address a little further the interplay between gambling and insurance as Mr. Miller described it. It seemed to Commissioner Ellis that when a person reads the definition of insurance with regard to this issue or any issue, the key language in that definition was indemnify another. There has to be a third party that is going to indemnify a person. When someone gets into an auto accident and they call their insurance company, the insurance company is the third party that is going to indemnify them for their damage. So in the normal gambling situation where a player is in a house-banked game and is playing against a

dealer, the player beats the dealer and the dealer pays the player. There is no third party. So all gambling is not going to be subject to some definition of insurance that might apply. It is only when there is a third party such as Mr. Miller's client involved. His client owns the game; the gambling establishment is the operator; that raises the issue of the third party where his client is actually paying on behalf of the operator, or to the operator, for the win of the operator's gambling client. **Mr. Miller** said he had addressed that issue with the team and was told that it didn't really matter if there was a third party or not in this situation. The key was "indemnify" or the language they used was "pay a specified amount," which is also in the definition, which is the jackpot amount. It is that "pay a specified amount" that they focused on. Mr. Miller asked them what if his client set up a bank account directly, because his client could pay directly to the player if they chose. There are many ways to make this work, but they just were not willing to move. Mr. Miller was not being critical, but OIC just felt it clearly met the definition and they just could not move any further. As long as his client had stopped operating, then the matter was closed for them. That is why Mr. Miller was here. He made that argument, not as eloquently as Commissioner Ellis did, but it didn't seem to matter. The resolution was seeking legislative exemption, which is very difficult. It seemed to Mr. Miller that, as a matter of policy, this could be resolved with the higher ups looking into it. **Chair Ellis** said it would seem to him that the first question would be the reaction of the Commission. He asked if Director Day or Mr. Ackerman had a suggestion as to how to proceed. It seems a little premature to turn it into a Commission matter.

Senator Delvin commented it reminded him of several years ago when he started shipping fire trucks down to Peru and someone came to him from a state agency and said he couldn't do that. And Senator Delvin told them to show him in the law where it says he can't do it. They said "Well it doesn't say you can't do it, but it doesn't say you can do it either. So you've got to get the law changed to say that you can do it." Senator Delvin thought that was the point where they were. **Chair Ellis** asked if Senator Delvin was volunteering to assist Mr. Miller.

Mr. Miller stated his client has an effective license with the Commission as a manufacturer and they are not able to operate. That is a real issue here.

Commissioner Reichert thought that was a key question; it seems to be a jurisdictional question. The Commission needs some guidance on how to form the question, because there are two entities that apparently have jurisdiction that may be in conflict. The Commission has a license issued. Commissioner Reichert was not sure whether he favored or supported – he was not on the Commission when this went forward. He turned to AAG Ackerman and asked what process he would do to ferret out these two issues. **AAG Ackerman** responded that, assuming the situation is what Mr. Miller has divined from having conversations with the OIC, this is something that would benefit from a conversation with Director Day and someone at OIC to make sure that the Commission clearly understands what OIC thinks the scope of insurance is with regard to activities that would otherwise meet the definition of gambling. AAG Ackerman agreed that when the definition

of insurance that Mr. Miller read is examined, it is very, very, very close to the definition of gambling; just rearranging the three elements. The tricky part is while RCW 9.46.285 gives this Commission exclusive authority over gambling activities, the Chapter goes on to exempt insurance from gambling activities. He thought that was the rub; the tension here. Now that this issue has surfaced, it may well surface again in the context of something else that traditionally has been regulated as gambling. AAG Ackerman thought it was probably good to at least understand what the OIC's position is and to try and decide whether or not this has the potential to be something that is going to have an even broader impact than Mr. Miller's client. He did not diminish the significance of this to Mr. Miller and his client, but thought for the Commission to take it up, they would be well advised to try and understand where this may go in the future. There may be some sort of short-term agreement or understanding that could be accomplished between the Gambling Commission and OIC. If a fix is necessary, that may just be a stop gap thing until legislation could be proposed to perhaps clarify. The ex officios sitting here could decide for themselves whether or not they think this is something that might merit the Legislature's attention. That was the advice AAG Ackerman could offer the Commission at this point. **Commissioner Reichert** thanked AAG Ackerman, and asked if, with all the years that have gone by, this was the first time the issue had been raised in this light. **AAG Ackerman** replied it was the first time in his 11 years with this Commission. **Mr. Miller** added it was the first time in his 28 years. **Commissioner Reichert** said it was stunning to him.

Mr. Miller noted there were issues before with insurance entities that would offer policies for large prizes, but that was a different ball game. They were not owning the game; they were not involved in the game; they were out there independently, like Commissioner Ellis pointed out. Clearly that is insurance and they need to be licensed – Lloyds of London is a classic example. No one is questioning that. OIC was very gracious to meet with and talk to, but they were not able to resolve the issue. Mr. Miller thought this had potential to grow and fester beyond just his client.

Representative Simpson asked if Mr. Miller could remind him how this came to the attention of the OIC. **Mr. Miller** replied it was interesting; the original Super Bonanza game and some others of their bingo games were owned by a company called Las Vegas Gaming that his client bought in 2009. Las Vegas Gaming had been licensed by the Commission since 2005. Back then someone raised the issue and it went back to the OIC and from what Mr. Miller could tell there was not a problem, although he could not seem to get the clear facts on that. Then in 2009, his client purchased Las Vegas Gaming, applied with the Commission to get licensed and, once again, someone in the Gambling Commission licensing staff raised the issue that maybe this was insurance because of a WAC rule that talks about insurance. In November 2009, it was sent over to the OIC and it came down from a licensing person there saying no, this was gambling, not insurance, and they did not want anything to do with it. Once again, the right response. Then his client, because they are regulated and they take it seriously, had a modification to a contract. They submitted it a few months back and, once again, someone raised the issue and sent it back over to OIC.

They suggested Mr. Miller talk to the OIC, which he did. Someone new looked at it, did the analysis, and said his client better cease and desist because it is insurance and they need to be licensed and, furthermore, they could only sell through a licensed broker. It was an e-mail, not a formal cease and desist. It did not get up to the Commissioner's level, but it had the effect of stopping the game. When language is included, like gross misdemeanor and a felony, it is taken very seriously. Mr. Miller was certainly not going to advise his client to go in and ignore that type of a letter. That is how it happened, and that is where his client is today. Any temporary fix to allow his client to keep operating, that is where the dilemma is. Mr. Miller cannot in good conscience advise his client to go forward on this unless they have some protection.

Commissioner Rojecki said it sounded like what AAG Ackerman was saying that there would be a concern if this was in fact true. **AAG Ackerman** agreed. **Commissioner Rojecki** asked what, if that is the case, does the Commission need to do to have AAG Ackerman and Director Day make those contacts at OIC. Whether it is Kreidler at the Director level, Watson, or between the attorneys.

AAG Ackerman thought that, in response to Commissioner Rojecki's first question, it is concerning if there are two Statutes that are as close as these appear to be and there is that potential overlap because of situations like what Mr. Miller described where the public, or the business entity, is caught between the two agencies. One agency is saying his client is regulated by the Commission; they are properly licensed, so go forth and conduct their business. Then another agency is saying whoa, his client cannot go forth. Yet they are regulating on exactly the same basis; they are not regulating different activities with different sets of laws. That is always troubling. AAG Ackerman thought the definition appears to be so broad that this has the potential to keep coming back to the Commission. In the licensing statutes, if a business is violating some other law, then normally that puts their license with the Commission in jeopardy. It has the potential to significantly affect the Commission's licensing scheme if OIC is interpreting it in the manner that Mr. Miller is suggesting they are. AAG Ackerman does not doubt that Mr. Miller's representation is accurate. He thought a conversation would be very beneficial. AAG Ackerman did not know that the Commission needed to do anything other than one or all of them asking Director Day to contact the Insurance Commissioner's office to see if he could get a handle of what their position is and then report back in whatever manner the Commission desires. AAG Ackerman thought that Mr. Miller could supply Director Day with the names of the folks he has been dealing with at the Insurance Commissioner's office. That would be a good place to start, informally, and then a decision could be made if the matter needs to be elevated to Commissioner Kreidler at the Insurance Commission or to whoever the right person is. AAG Ackerman thought it was always advisable to start these discussions with the folks who have already been addressing it, rather than jumping over them.

Chair Ellis noted, when looking at the potential implications for the Gambling Commission, he saw no particular reason why under the Gambling Commission's Exclusive Jurisdiction

Statute the answer may not be that the Gambling Commission has jurisdiction over the gambling aspect of the transactions and the Insurance Commission has jurisdiction over the insurance aspect of it – which is the third party payer part of it.

AAG Ackerman thought the real issue was separating the two, which is what he is struggling with; how to separate those two. He thought Mr. Miller's client could just sell a game and not have the feature whereby they withhold the nickel and pay off later, but that would be a different game from what they offer. **Mr. Miller** agreed it would.

Chair Ellis indicated they have a practical problem too. If they are subject to insurance regulation, it does not just mean they get licensed as an insurer, as Mr. Miller described, but they also need to sell through brokers and it gets quite cumbersome.

Mr. Miller added the other thing that is unique is that under the definition of gambling, in theory if this is insurance then it is not gambling, so then they do not need to be licensed by this Commission. That could cause a problem, even though it is a bingo game, which is why Mr. Miller thought it was critical to get this clarified. Mr. Miller looked at the contract, and being very candid, he thought there might be a better way to structure the contract. These contracts were there before he got involved, but the issue was bigger than that. Mr. Miller thought the issue was the definition of a jurisdictional issue, which is why Mr. Miller was here. It is secondary; most important is getting his client back up and running, but also making sure this does not grow out and go into something bigger than expected.

Commissioner Reichert had an additional concern. There is one licensee who has run into an issue here; are there other licensees now operating with similar kinds of activities that the Commission is not aware of who may be in jeopardy? So it raised his concern that Commission address this deliberately through legal counsel; instruct Director Day to look into this and get back to the Commission because there may be other licensees out there doing things that unbeknownst to them is subjecting them to some potential criminal –

Chair Ellis agreed.

Mr. Miller knew Commissioner Ellis had looked at this issue once before, and they had a little chat yesterday, but when Mr. Miller met with OIC – and they did stress the third party distinction – asked, what if his client did make it into a two party. OIC said it did not really matter because the second party definition talks about paying a specified amount. So, arguably, in Mr. Miller's opinion, the way it is written, a bingo hall that says they will pay you so much on 47 numbers is no different from his client saying they are offering a Bonanza Bingo game that will pay so much in so many numbers. Mr. Miller did not see a difference in a casino playing blackjack or Pai Gow and a player buying insurance. Under the definition; the way it is interpreted. That is the concern.

Commissioner Rojecki thought it even gets to the point of Lotto, to blow it out. The bottom line is we need to have a conversation; we need to fix the problem.

Chair Ellis suggested, if it was acceptable to the other Commissioners, that Director Day, with or without AAG Ackerman, start discussing it with the Office of the Insurance Commissioner to flesh out the issue a little more extensively and then report back to the Commission.

Representative Simpson suggested staff involve the nonpartisan research staff in the House or Senate right from the beginning so they can be involved in discussions. If there is some sort of legislative remedy that comes out of this, at least they will be able to begin preparing for that for the upcoming legislative session. Representative Simpson offered his office to help arrange that if the Commission wanted, or he was sure Senator Prentice's office could help. In the House, it is John Hedegard and Alison Hellberg on the Insurance Committee.

Mr. Miller thanked the Commissioners.

Chair Ellis thanked Mr. Miller for bringing it to the Commission's attention. He asked if there was any more public comment. There was none.

Adjourn

With no further business or public comment, **Chair Ellis** adjourned the meeting at 10:00 a.m. The next meeting will be held in Olympia at the Washington State Investment Board.

Minutes prepared by:

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