

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, JANUARY 14, 2010
APPROVED MINUTES**

Chair Keven Rojecki called the meeting to order at 1:40 p.m. at the DoubleTree Guest Suites in Tukwila and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki, Tacoma**
 Commission Vice-Chair John Ellis, Seattle
 Commissioner Mike Amos, Selah
 Commissioner Michael Reichert, Maple Valley

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

Chair Rojecki reported that Commissioner Peggy Ann Bierbaum officially tendered her immediate resignation as Commissioner on the Gambling Commission to Governor Gregoire. Chair Rojecki congratulated Commissioner Bierbaum for her five years of excellent service as a Commissioner on the Washington State Gambling Commission.

Director Rick Day echoed Chair Rojecki’s sentiments, adding he had enjoyed working with former Commissioner Bierbaum and wished her the best in her future endeavors. Director Day said former Commissioner Bierbaum explained she had gotten overwhelmed with her private practice, other activities she had taken on, and her time on the Commission. She decided it was not fair to the Commission; that it deserved a full-time available Commissioner. .

Director Day asked if the Commissioners would like Ms. Grate to draft a letter to that effect and forward it for each Commissioner’s signature. **Chair Rojecki** affirmed and asked that a letter be drafted.

1. Agenda Review / Director’s Report

Director Day briefly reviewed Thursday and Friday agendas. The section for approval of the minutes should only be for Friday’s regular Commission meeting; not for the work session. It was not staff’s intention to ask for the Commission to approve the work session minutes because they are not true minutes, but were compiled from notes that were taken at the work session. They were included to let the Commissioners review them to see if there was anything they felt was incorrect. The formal approval of minutes is only for the

November regular meeting. Director Day pointed out one requested change to Friday's agenda under the Defaults, Item 8.c. Staff is requesting the Commission remove Terry Phair from the default hearings because they cannot confirm that Mr. Phair received the charges.

Chair Rojecki agreed, and then asked whether the intent was to move Mr. Phair's default hearing to next month. **Director Day** replied Mr. Phair's license had expired, so staff would not be bringing the default hearing back to the Commission.

Director Day announced that Tina Griffin was appointed as the Assistant Director for Licensing Operations. AD Griffin graduated from Portland State University with a Bachelor of Science in business administration with an emphasis in accounting. She is a licensed and certified public accountant and a certified fraud examiner. She has worked for the Commission for 17 years and has held various positions that included being involved in the undercover program, the licensing program, financial investigations, and as a tribal certification manager. AD Griffin is a very experienced individual and Director Day was confident she would do an excellent job as the Assistant Director for Licensing Operations.

Agency Consolidation Study Report

Director Day commented briefly on the Agency Consolidation Study Report, pointing out it is also available on our Website. The report includes all of the attachments and appendices that were submitted and turned in by the Office of Financial Management (OFM). During the last legislative session there was a lot of activity and discussion about consolidation of smaller agencies, in which the Gambling Commission was included in some of the bills. The bills affecting the Commission did not pass in the last legislative session, but a study was added to the budget bill directing OFM to consider consolidating the Lottery Commission, Liquor Control Board, Horse Racing Commission, and the Gambling Commission to achieve potential cost savings and regulatory efficiencies. The study was completed and submitted to the Governor and the Legislature in November 2009. In summary, the conclusion was "because the four agencies have few licensees or activities in common, consolidation would not likely provide time or cost saving for most of the clients or licensees." The study did note there was cooperation between the agencies and commitment to continued cooperation and looking at some areas that may result in additional efficiencies. One of those areas was licensing and the possibility of expanding its work with the Master License Program. Deputy Director Trujillo is involved in examining that relationship and process. The study concluded each agency may have a component of regulation and licensing and because of that component there has developed over the years the perception that everybody does the same thing, but what is in common often does not reflect the dominant activity of that particular agency or the same knowledge base. The Lottery's dominant activity is sales and marketing. The Liquor Control Board is dedicated toward liquor sales and distribution; although, it also does liquor and tobacco enforcement. Horse racing's primary endeavor is jockey and horse health. The Gambling Commission is directed at regulation and enforcement.

Update on November 30 Texas Hold'em Discussion Group Meeting

Director Day reviewed the Texas Hold'em Discussion Group meetings. Chair Rojecki has appointed eight volunteers to the Work Group, with Commissioner Ellis volunteering to serve as the non-voting Chair of the group. Those that have been appointed are: George Teeny, representing the RGA; Mark Bailey, an employee of the Cadillac Island Casino; Nick Ruff, Casino Caribbean; Ed Fleisher, a private attorney who has represented the Cowlitz tribe; Ernie Stebbins, Washington Indian Gaming Association Executive Director; Linda Graves from DSHS and Problem Gambling; and Jess Lohse and Dan Frey, both agents with the Gambling Commission. The first meeting has been scheduled for January 19, at the Commission's Lacey office. The group is tasked with exploring appropriate changes in the wagering limit and other rules that may impact the play of the game in Washington; identifying goals and objectives; and setting a completion timetable and a meeting schedule. Director Day delivered a disclaimer that this does not bind the Commission to approve the group's proposals or to use a similar process with other topics. The intent is to generate a productive discussion between the various interested parties, which may lead to a proposal to the Commission.

Commissioner John Ellis said he was looking forward to working with the group in his non-voting capacity and was hopeful that all the members of the group would be able to attend the meeting and that it will be a very productive meeting in establishing the parameters of the process.

Chair Rojecki added that his personal beliefs were that this could be positive for the industry and for the Commission and looked forward to seeing the information this group puts forward. Chair Rojecki thanked everyone who had volunteered; the names were pared down to a smaller, working group of eight participants. **Director Day** added that these meetings are open to the public to listen to the discussions of the group, and staff hopes people will continue to follow the progress of the group. **Chair Rojecki** asked that information from the meetings and dates, times, and locations of future meetings be posted on the agency website.

Gambling Lab and G2E Conference Update (PowerPoint)

Director Day explained that in previous years the Commission has expressed an interest in being updated on the G2E Conference in Las Vegas, particularly in the area of new technology coming into gaming. Director Day thought it would also be a good time to update the Commission on the role, purpose, and responsibility of the agency's gambling lab.

Mr. Paul Dasaro, Administrator of the Electronic Gambling Lab (EGL), provided some background about himself: he has been the Administrator for a little over a year and was the senior engineer for EGL for about eight years; prior to state service he worked as an IT specialist and in the military as a Korean linguist. Mr. Dasaro explained the Electronic Gambling Lab is responsible for conducting the technical evaluation and analysis of electronic gambling equipment. As the agency's subject matter experts on electronic

gaming, staff is in a technical support role to assist tribal and state gaming agents with electronic gambling regulation and to provide technical expertise necessary to enhance and improve the regulatory process in Washington. EGL performs testing on both tribal and commercial gaming equipment. The review processes are focused on identifying and creating the tools and strategies necessary to regulate the activity. EGL has four main goals in testing:

- Identify any potential non-compliant functions or features. For tribal lottery systems (TLS) testing staff verifies, but does not duplicate, the results of an independent testing lab, which is a required step of Appendix X2.
- Document all relevant aspects of system operation and structure.
- Identify weaknesses within the systems and the components that can be mitigated by good regulatory practices.
- Create security templates that can be utilized by gaming agents in the development of standards and controls.

Because of EGL's place in the review and approval process, it can deal with compliance issues on a statewide level. If there is a problem with a particular component, staff works with the manufacturer to get the problem addressed at all facilities in the state. Problems can range from minor security issues to major compliance failures, which have the potential to negatively impact a manufacturer's license. EGL also hosts regular manufacturers' meetings to which tribal regulators are also invited to discuss current submissions and ongoing incident investigations. Every approved component, network structure, and device configuration are tracked and documented in EGL's database and made available on the agency website. Formal training is provided to both tribal and state regulators as part of agency-sponsored classes, and informal training to smaller groups of gaming agents. Classes are generally focused towards assisting regulators, but policy makers are also invited to attend. Technical inspections are crucial for regulating electronic gaming because one minor configuration error could put an entire system out of compliance. Mr. Dasaro explained some of the procedures, which are shared with tribal gaming agencies during inspections and training, and can be quite detailed. EGL assists regulatory staff in the development of internal controls by creating sample documents based on test findings, which can be used by tribal gaming agencies as a template when they work to develop their own controls. EGL's main goal is to support the regulator in the regulatory process by creating tools and strategies, which hopefully ensure that onsite regulators are confident about the systems they regulate.

Mr. Dasaro explained about tribal lottery systems and the approval process, as detailed in Section 10 of Appendix X2. The manufacturer submits to an independent test lab that issues certification documentation once it completes its review. Then it comes to EGL who does its own review process. EGL is not duplicating the independent test lab's efforts, but are verifying what they did and performing its own independent checks. One single tribe will sponsor a particular manufacturer's product, and most products the manufacturer puts out are sponsored by that tribe. EGL has found that almost every major new TLS submitted since 2003 has been out of compliance with one or more of the requirements of either Appendix X or Appendix X2. The findings had all been subsequent to independent lab

testing. The review process is just one step in an overall process that involves manufacturer's own internal quality assurance, independent lab testing, business negotiations between the tribes and the manufacturers, internal control development, and final installation. One of EGL's greatest challenges in getting submissions out on time is the reliability of the test systems that are in the lab. Various measures have been implemented to ensure that manufacturers perform the necessary technical support to keep the systems functional and available for testing. EGL has seen a 65 percent increase over the previous year in the number of TLS manufacturers in the state. EGL's role in gaming regulation in Washington is an important one and is a contributing factor in making Washington's gaming regulation so excellent and world renown. EGL works closely with the agency's gambling equipment team (GET) to analyze and test commercial gambling equipment, such as electronic table games, card shufflers, and pull tab dispensers.

Mr. Dasaro briefly reviewed the G2E Conference, pointing out one of the most important factors of going to G2E is meeting with stakeholders, licensees, existing manufacturers, potential new manufacturers, and other regulators. The Nevada Gaming Control Board hosted a technical regulators round table discussion on such things as the use of independent test labs, electronic table game technology, technical glitches that some jurisdictions have seen in slot machines, and recent increases in casino crime. EGL staff was provided a tour of the testing facilities of BMM, which is one of the newest independent testing labs. Mr. Dasaro said there was not anything particularly new or innovative at this year's conference. The Gambling Equipment Team met with one company that manufactures RFID chips, which is a type of wireless technology put into gaming chips. Mr. Dasaro was not sure if this particular manufacturer actually intends to come into the state, but it was interesting to see the technology and analyze what potential impacts it could have on regulation. There were demonstrations of some new TLS, but not much as far as the casino floor – most were back-office upgrades and software that will improve the speed and reporting of those systems. New visual appearances on player terminals include 32" LCDs turned on their side so the game will appear as a much bigger screen. They are not substantive technological changes.

Commissioner Ellis thanked Mr. Dasaro for the briefing and asked if there was a simple, generalized explanation as to why EGL finds so many instances of non-compliance with products that have been submitted as compliant after a review by an independent testing lab. **Mr. Dasaro** replied there was no simple answer. In part, the reason is new manufacturers coming into the state. Washington has some very unique rules in Appendix X and X2, which do not really exist in other states. These manufacturers will come in with a product that has been approved in Nevada, New Jersey, and places like that, and the testing labs who may not quite understand some of Washington's specific rules, will approve the product without understanding that Washington requires encryption, which is somewhat unique in the gaming industry. EGL is constantly working with the testing labs to improve how they catch this type of thing. But it seems like almost 100 percent of the time a new system submission or a new manufacturer or system is received, something gets missed.

Commissioner Ellis assumed that after Appendix X2 was approved a lot of time was spent working with the independent testing labs at each end figuring out exactly what was going to

be required. **Mr. Dasaro** affirmed EGL had several telephone meetings with GLI, which was the only testing lab at the time that was approved in Washington, and sent them a document summarizing the differences between Appendix X and Appendix X2. What happened in the case of Appendix X2, which is where staff really started to see these issues, was the lab that normally handled Washington State testing farmed out some of the testing for some of the products to their Nevada lab that normally does not handle Washington State, so the engineers were not aware of some of those unique requirements.

Chair Rojecki asked about the submission processing and games software and the number of days they take to process. There has been testimony in the past on the non-tribal side and concerns over the time that it takes for their products. Chair Rojecki asked if Mr. Dasaro could explain that process a little more in depth so when the Commission looks at these they are comparing apples to apples. **Mr. Dasaro** responded that Section 10 of Appendix X2 mandates that the state has a certain amount of time once it receives an independent lab certification. Once that certification is received, EGL has either 15 days or 60 days to approve or disapprove that component. The 15-day timeline would be for modifications of previously approved software, which would be most of the game submissions received. The 60-day timeline would be for system software, which could be anything from a modification of a bill acceptor to a brand new system. **Chair Rojecki** asked Mr. Dasaro to remove his answer from the tribal side and explain the process for a gaming manufacturer that wanted to go into a house-banked card room. **Mr. Dasaro** replied there are no required time limits when it comes to the non-tribal types of submissions, such as the commercial gaming equipment. When the manufacturer submits their product, the Gambling Equipment Team will take that product, begin an initial evaluation that may take anywhere from a few days to a few weeks, and then make a decision as to whether that product should be tested in the lab. Then EGL staff will put it in the testing cue and work on it at the point it comes to the top of the testing cue which, depending on the nature of the cue, can be anywhere from a few days to a few months. Once the testing process is done, which usually takes a few weeks, a lab report is issued, which is not an approval or disapproval but is just a report summarizing the findings as to whether the manufacturer was accurate in its description of how the product actually works and what security weaknesses were found on the particular product. The Gambling Equipment Team will then take that information and use the lab report as part of the process in determining whether the component is allowable under RCW or WAC. The whole process can take awhile depending on the nature of the product. Typically EGL's portion is just a small part of the process, especially if it is something new that staff has never seen before and there are questions as to whether it would be allowable. **Chair Rojecki** asked if when they were making that initial determination, at least on the tribal side, staff was actually confirming what an independent lab had done. So there is a lot more in depth testing, which is what Chair Rojecki was trying to get at. **Mr. Dasaro** affirmed.

Commissioner Michael Reichert asked about the independent lab relationship and if a manufacturer that was being proposed by a tribe was directed back to a lab that EGL has confidence in. He asked for a sequence. **Mr. Dasaro** replied that Section 10 of Appendix X2 has a process for identifying independent test labs that are able to do testing on the systems. EGL will evaluate a new lab that comes in, certify them, and put them on a list as

an approved testing lab, which is actually a requirement of the Appendix. At that point it is up to the manufacturer and/or the tribe to determine which of those testing labs to utilize. **Commissioner Reichert** asked if there was a ranking of quality of testing labs that Mr. Dasaro felt was better than the other, and why would staff go through the process of allowing or encouraging a testing lab they did not have confidence in. **Mr. Dasaro** replied he generally avoids ranking them, in part because there are currently three approved independent testing labs. Two of the three came onto the list within the last year, so staff does not have a good history with any of them yet. Most of the independent lab misses were from GLI, which is the largest testing lab in the world. They normally do a good job. As far as ranking, Mr. Dasaro said staff has opinions as to which individuals working for those labs are good and which are bad, but it might be difficult to rate them. If a tribe asks EGL staff what they think, they would certainly be willing to provide the tribe with their opinion and past experiences and provide an idea of what to look for in the independent lab.

2009 Agency Employee Survey

Director Day reported that the Department of Personnel conducts an employee survey every two years and the Gambling Commission has conducted a companion survey with some additional questions. Both surveys are anonymous and confidential in their structure. Results of those surveys were included in the agenda packets. Ms. Lisa Benavidez, our Human Resources and Training Division Administrator, prepared a memorandum summarizing the surveys. The Gambling Commission had a 96 percent participation rate. Whether the verdict is good, bad, or indifferent, the most important thing is that staff felt comfortable and were interested enough to respond on the surveys. Overall, the Gambling Commission ranked number five on scores for survey results out of 33 statewide agencies with over 50 respondents. In addition, the Commission outscored the statewide average in every question. Director Day briefly reviewed the survey materials. The survey is used as an integral part of our strategic planning process, and management value the survey information. The agency's Strategic Planning Team actually takes the survey questions, boils them down to themes, and then meets with groups of employees to discuss what is behind the responses, what the agency might do, and what the Team's recommendations are about steps that may be incorporated for change or improvement in the future. The surveys are not just something to ask staff to complete and then set on the shelf and ignore them – they become a very important part of the implementation process and communications. What becomes difficult at times is to figure out exactly where some changes can be applied and how to incorporate some improvement or belief with the employees that the communication has improved. Agency management enjoys and appreciates staff's participation in following up on those questions and their suggestions. It has always been productive for the agency.

Presentation on Tournaments (PowerPoint)

Jess Lohse, Special Agent in Field Operations Division, reported that over the last few years, card tournaments have increased dramatically. In 2003, an amateur poker player by the name of Chris MoneyMaker won \$2.5 million in the World Series of Poker Main Event Tournament, which had 839 participants. Joe Cada won \$8.5 million in the 2009 World

Series of Poker Main Event Tournament, which had approximately 6,500 participants. SA Lohse described a card tournament as a competition between a relatively large group of players, playing the same game, competing for a prize, whether cash or merchandise. Each player in a tournament is initially given the same amount of chips, the players play the game according to the game's rules by placing wagers, and the player who wins all the other players chips or has the most chips after the game is finished wins the tournament. Typically with these tournaments, there is going to be more than one place – a first, a second, a third, and a fourth place. The person that accumulates all the other players' chips or has the most chips in the end is essentially the best player for that game in that tournament. From the card room's perspective, the demand is very high, especially with poker, and offering tournaments with a small cost gets players in the door. And maybe after they are done playing in the tournaments, they will stick around and buy some food or drink, or potentially play on some of the other games offered in the card room. From the players' perspective, they can wager very little to win a potentially very large prize. Tournaments feel more social, friendly, and less intimidating when players are sitting down with a group of people, not wagering against a dealer like in a house-banked game. There are two types of card tournaments: poker tournaments limited to ten players per table (Texas Hold'em poker is the most popular); and house-banked game tournaments limited to nine players per table (blackjack has been the most popular). SA Lohse explained some of the general rules and restrictions, including the 30 day limit on any card tournament. Card rooms make their money off entry fees, which are limited to \$100 per player and paid at the beginning of the tournament. Entry fees must include all separate fees for various phases and events of the tournament and are considered gross gambling receipts, which the licensees have to pay gambling taxes on.

Commissioner Reichert asked if the cost of additional food or beverage would be above the \$100. **SA Lohse** replied it would still be within the \$100 limit, but would have to be disclosed to the players.

SA Lohse explained that card rooms can also charge a buy-in or a re-buy, which is the cost to buy chips to play in a tournament, is limited to \$400 per player, and must be returned to players in cash or merchandise. Commission rules allow exclusive tournament entry to specific groups as customer appreciation, such as a ladies night or a card room employee night. All restrictions must be included in the tournament rules and must be posted for the players in advance. In addition, discounted fees to specific groups can be offered as customer appreciation. Most of the card rooms in Washington are running Texas Hold'em tournaments, which is very popular and has an appeal to all age groups. It is one of the easiest poker games to learn, so it has brought a lot of people into the card rooms and has a very high demand. SA Lohse provided some examples of typical tournament play.

Commissioner Ellis recalled from the initial Texas Hold'em working group session that it was mentioned that there has only been one instance in which a professional has won the World Series of Poker; that all of the other winners have been amateurs. **SA Lohse** affirmed there have been very few; although he did not know the exact number. **Commissioner Ellis** commented that, as far as the amount of the entry fees and buy-ins, agency rules have a \$500

collective maximum. SA Lohse had given a tournament example where there was only a \$25 initial entry fee plus buy-in. Commissioner Ellis asked if there were many tournaments held in this state that would approach the \$500 amount as opposed to the \$25 amount – or if virtually all of the tournaments are very low level in terms of the amount of the buy-in. **SA Lohse** replied that, in his experience in the Northwest region, he has only seen a few that offered a \$100 entry fee and a \$400 buy-in. Generally he sees entry fees and buy-ins up to \$50. He added that if a single or multiple buy-in is over \$50, the card room has to get Commission approval for the tournament. They would have to submit the tournament to a Commission agent for review to make sure it follows agency rules before they could offer it.

Commissioner Amos asked about the 30-consecutive day limit, and if the card room could only have one tournament at their establishment in 30 days. **SA Lohse** clarified the card rooms could have multiple tournaments, but each one has to conclude within 30 days. One of the reasons for that 30-day requirement is that the buy-ins are considered players' money because it has to be returned back to the players in the form of prizes. **Commissioner Amos** asked George Teeny if he had played against Chris MoneyMaker in 2003. **Mr. Teeny** replied he had not; that he was waiting.

Commissioner Ellis had gotten the impression there were tournaments that were limited to the winners of the previous tournaments; kind of a progressive concept and asked if those were permissible in this state with the 30-day limit. **SA Lohse** affirmed they were, adding they are called satellite tournaments where a smaller tournament leads up to a larger tournament. The winners of the smaller tournaments are given vouchers, which are considered prizes, and the vouchers will pay for their entry fee and buy-in for the larger tournament.

Chair Rojecki asked how long tournaments normally last. **SA Lohse** replied a few hours; one day. The tournaments are structured to get everyone in the door because they want a lot of people in their card rooms. They want the games to go fairly quickly because card rooms are not making as much money on tournaments as they would probably make with a live game where they can collect a rake and a fee. They want them to be able to play some of the other games that are there. Usually a tournament lasts for about two to three hours, with the exception of some of the ones that Commissioner Ellis talked about with the satellite ones which are bigger.

Legislative Update

Director Day explained this was a short legislative session, so the process moves much faster and the Commissioners have fewer opportunities to review the bills and comment. As a result, staff will be bringing more things to the Commission at the meetings because this may be the last opportunity to get them into the Legislature before the first vote is taken.

Ms. Amy Hunter apologized for the number of items brought to this meeting. There were a few things that were pre-filed, but not too many. If the Commission wants to take a position on a bill, whether for or against, in the past they have done that in the form of a motion and

then staff prepares a letter of support or opposition for the signature of the Chair of the Commission. Ms. Hunter reviewed Senate Bill 6103 (modifying the definition of gambling) recalling the Commission supported the bill last year and staff would recommend they support the bill again this year. This bill redefines gambling in light of the Betcha.com court case that came out last February. Staff's concern with the case is that it has broader implications than just the particular facts that were before the court; if the definition is left unchanged there may be an opening for crimes such as bookmaking and professional gambling. Last session the bill passed the Senate 38 to 10, but it did not make it out of the House committee. Staff expects the bill will go to the floor for a vote relatively soon. Two other bills that were almost identical to 6103 were Senate Bill 6152 and House Bill 2355, except for an additional sentence about fines and forfeitures. House Bill 2355 has been scheduled for a hearing next Wednesday in the House Commerce and Labor Committee. Senate Bill 6152 is not expected to move, since Senate Bill 6103 is moving. Staff would recommend the Commission support all three bills.

Chair Rojecki asked what the technical difference was between the two companion bills and Senate Bill 6103. **Director Day** replied there was an additional section added to Senate Bill 6152 and House Bill 2355 because at the time those bills were viewed as necessary to implement the budget. In that additional section just one sentence was added to the existing law. **Chair Rojecki** asked which bill came first. **Director Day** replied Senate Bill 6103 came first – just as a policy bill – then the two bills necessary to implement the budget came afterwards. All three bills were sponsored by Senator Prentice and the House version by Representative Geoff Simpson.

Chair Rojecki called for public comment from the public; there was none.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission approve staff proceeding to support each of the three bills: Senate Bill 6103, Senate Bill 6152, and House Bill 2355.

Director Day asked if Commissioner Ellis' intention was that the proposed position statement for Senate Bill 6103 drafted by staff was acceptable to the Commission. **Commissioner Ellis** affirmed that was his intent and asked if that was acceptable to Commissioner Amos. **Commissioner Amos** affirmed.

Vote was taken; the motion passed with four aye votes.

Ms. Hunter reported that House Bill 2162 dealt with regulating house-banked card games and permits local governments to limit house-banked card games within their jurisdiction, but does not freeze the number of card rooms statewide. Ms. Hunter explained that House Bill 2873 would be the bill that moves through the Legislature, if a bill moves this session, not House Bill 2162. This bill deals with about 14 or 15 ordinances, and staff is not recommending the Commission take a position on the bill. The local government's authority over where house-banked card rooms can be placed has been an issue for over ten years, and there has been a bill every session dealing with it. Until last year, the

Commission's position was either a neutral position or was against the bill, depending on how the bills were drafted. State law makes it clear that local jurisdictions can prohibit gambling, but cannot change the scope of the license. Court cases have interpreted the Statute and made it clear that cities cannot pick and choose which businesses to allow. Subsection (3) explains that part of the purpose of the bill is to reduce the uncertainty by legalizing prior efforts made by local jurisdictions to limit house-banked social card games. Ordinances in effect as of December 1, 2009, that limit house-banked card rooms would be deemed to be adopted in compliance with the law. Section 2 allows local governments to prohibit gambling activities, which they have always been able to do. New language allows local governments to limit them if done in accordance with Section 3. If a city does limit them, they cannot repeal their ordinance for ten years. Section 3 says that local governments can adopt an ordinance to limit the number of house-banked card games they have to the number the jurisdiction had on the effective date of their ordinance. If the jurisdiction passes a limiting ordinance and had ten house-banked card rooms, they would be limited to ten house-banked card rooms indefinitely. The number is reduced if a business ceases to operate. This section deals with freezing the number of tables. A licensee or purchaser of the business may not increase the number of tables to a number greater than the number authorized at the time of the ordinance. Ceasing to operate is defined as not owing any gambling taxes for six months. Section 4 explains that local governments have to file their ordinances with the Gambling Commission, but they can be filed electronically. There is absolute immunity for the Commission when interpreting the different ordinances and deciding whether to renew or issue licenses. Staff is not requesting the Commission take a position until after review of the substitute bill.

Commissioner Reichert asked about the grandfathering of the bill and if Ms. Hunter's recommendation to the Commission would be based on an analysis of each of those 14 or 15 existing ordinances. He asked if there was a red herring in the middle of that group that might cause the Commission trouble. **Ms. Hunter** replied she did not think there was a red herring yet. Staff have looked at it and have paused the most over what to do with the jurisdiction that has a moratorium. Some jurisdictions were using moratoriums a lot for awhile and saying they were going to study the issue for six months; then several of those got renewed. One got renewed so much that a court finally said they could not keep renewing it; they were supposed to be studying it and making a decision, not just continuing to renew their moratorium. Staff is going to look at that language. Ms. Hunter said staff would be happy to put together a summary.

Ms. Hunter reviewed House Bill 2394, which codifies the Centennial Accord. Last year marked the 20th anniversary of the Accord. Staff has participated in 15 or 16 of the Centennial Accords. Most of what this bill requires is already being done by this agency as staff prepare for the Centennial Accord. The bill requires collaborating with Indian tribes to develop programs that directly impact the tribes; appointing a tribal liaison who reports to the Director; training staff on cultural competency and effective communication with tribes; and submitting an annual report to the Governor on activities involving the tribes. The bill also creates a joint legislative committee on state and tribal affairs that would meet quarterly with the tribes. This bill was heard this morning and several agencies signed up in support

of it, including the Lottery Commission, Liquor Control Board, and the Department of Natural Resources. Staff would recommend the Commission support this bill. Representative McCoy is the prime sponsor on the House Bill.

Commissioner Reichert asked if there was a Senate companion to this bill. **Ms. Hunter** replied she was pretty certain there was none yet.

AAG Jerry Ackerman pointed out that Section 6(1)(a) says eight members of the Senate shall be appointed by the President of the Senate, two of whom are members of the majority party and two of whom are members of the minority party. AAG Ackerman asked where the other four people were coming from, noting it might be a question for Ms. Hunter to ask House staff. **Ms. Hunter** replied she did not know, adding there were several questions asked at the hearing but that was not one of them. **AAG Ackerman** indicated the same thing was done in Section 6(1)(b): eight members of the House shall be appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority party. There is another sentence in both sections that says appointees shall be chairs and ranking minority members of Senate standing committees with jurisdiction of issues that impact Indian tribes. As a drafting matter, Ms. Hunter may want to ask what they are trying to say in this bill. **Ms. Hunter** responded that executive action was not taken on the bill today, so she would make a quick call to the Legislature.

Chair Rojecki called for public comment on House Bill 2394; there was none.

Commissioner Reichert made a motion seconded by **Commissioner Ellis** that the Commission adopt support of House Bill 2394 as presented. *Vote taken; motion passed with four aye votes.*

Ms. Hunter reported that Proposed Substitute Senate Bill 6268 is an amendment to the Administrative Procedures Act, which would impact not only the Gambling Commission but every other agency that does rule making and has adjudicative proceedings. The bill had a hearing yesterday and the substitute is much less broad than the original bill and should be the one to focus on. The substitute bill would require an agency when it adopts a rule to include the number of votes for and against adoption, and requires an affirmative vote of all members of a body that have the legal authority to adopt an agency's rules. That means that when there are five Commissioners they would need three votes to pass a rule, and explains that ex-officio members who are state legislators cannot be counted when determining how many people are there. The bill requires all of the materials made available to boards and commissions in notebooks have to be posted electronically on the agency website at least two days in advance of the meeting. One question that came up in testimony yesterday was whether they meant to say the rule making parts, since the other two sections of the bill deal with rule making, or did they mean general business notebooks. Ms. Hunter explained she would count the Commissioners' entire binders as being their general business notebooks, with a smaller portion within being the rule making part of it. The Chair was clear he thought that needed to be clarified before the bill would have executive action taken on it.

There was discussion and drafting going on during the hearing and after the hearing concluded, so Ms. Hunter expected there would be an amendment to make that clear.

Commissioner Reichert asked, in terms of what constitutes a quorum or a majority for action, if that also implied something to do with the ex-officio's role in approving Compacts and whether it would have any impact on that special case. **Ms. Hunter** did not think so because it is worded to deal with adopting rules.

Ms. Hunter reported that House Bill 2603 would require agencies to give licensees a copy of any rule they had violated and then give them two days to correct the violation before the agency could issue any type of a sanction. One exception is whether the licensee has been warned before. Another exception is if they have done something very serious that would be against the public interest to allow two days to correct, the agency does not have to give them two days to do it. The bill had not been scheduled for a hearing this week, but has a lot of signatures on it, so Ms. Hunter expected it would have a hearing. She did not think the Commission needed to take a position on the bill. Director Day had pointed out that staff may want to suggest a small change to make it clear that it would be at least two days notice, as opposed to exactly two days notice. Staff is not asking for a position on this bill. Ms. Hunter explained there were a number of consolidation bills carried over from last year that are technically alive; however at this point staff does not expect them to move. There have been new consolidation bills that have been introduced, but none that impact the Commission. Ms. Hunter listed the bills: Senate Bill 6146, House Bill 1497, Substitute Senate Bill 5589, Senate Bill 5588, Substitute Senate Bill 5994, and House Bill 2151. Ms. Hunter mentioned staff is also working on getting Commissioner Reichert confirmed this session, adding that the cutoff dates do not apply to confirmations.

Director Day indicated that although staff may not ask the Commissioners for a specific position, they will usually supply a technical comment back to legislative staff. These are not big things, but there are some disadvantages as well to a couple of things that were mentioned. For instance, on the concept of how many Commissioners it would take to vote to approve a rule, it is very likely with a small Commission that it may delay final action on a rule because at times there are not the number of Commissioners needed on a final vote. Also, on the requirement of posting the information on the agency's website, that sounds pretty good for notice if the internet is used, but it works to the disadvantage for people who get their materials in late and have the expectation that those materials would get before the Commission. It would probably work contrary to people who wanted to get information to the Commission and just did not get it in two days before. As these things go forward, there needs to be some discussion on both the pros and cons of some of this, because it may limit the Commission or the public in an unintended fashion.

Commissioner Ellis asked if House Bill 2603 had already been subject to a hearing. **Ms. Hunter** replied it had not been scheduled for a hearing this week, but she suspected it would probably be scheduled for next week. **Commissioner Ellis** said his reaction to this bill was that, as far as the Gambling Commission goes, staff would be complying with this as a matter of course. But when considering the definition of small business, which means a

business with 250 or fewer employees, he supposed quite a few businesses that have gambling licenses would fall into that category when the area of pull-tab and punchboard licensees are considered, as well as some of the smaller card rooms. As far as the application of this to agencies, Commissioner Ellis thought it may in many instances put an agency that feels they should impose a sanction without providing this notice in the position of having to determine how many employees the business has, which can be quite burdensome in many circumstances. The Gambling Commission may know because it has a count of at least the licensed employees in the context of card rooms, but in many other instances, it seems like it would add significantly to some processes. That is just an observation, but Commissioner Ellis would be curious down the road as to how it plays out in the context of public hearings on the bill. **Ms. Hunter** imagined there would be additional discussion, and as the legislative liaison she attends a meeting once a week with other general government legislative liaisons. This bill got attention at the meeting on Monday, as did the Senate bill because these impact all agencies. Lots of time some of those details just have not been worked out. Ms. Hunter thought the bill was a result from last year's bill about small businesses and is another effort to work with that. Ms. Hunter noted one of the comments made was that this bill in part almost sounds like it conflicts with the bill that passed last year. There will be more discussion, and it is good for her to be active in those meetings. **Commissioner Ellis** added that even if there was an issue, there may be no harm, no foul, because all it would mean for an agency that does not know how many employees a business has is that they have to give them 48 hours notice, which most agencies are going to do anyway. **Ms. Hunter** agreed.

AAG Ackerman indicated House Bill 2603 says when an agency learns that a small business is violating, it has to give it a 48 hour opportunity to correct the violation before the agency may impose any fine, civil penalties, or administrative sanctions for a violation. He thought that worked when what is being talked about is a continuing violation, but did not know how it would work when a violation occurs but is not continuing. In other words, there are many violations that cannot be corrected; they just happen, they are over, they are done with. AAG Ackerman asked how this would apply in that context if there is no ability to correct the violation. **Ms. Hunter** replied she had added his question to her list.

Correspondence

Director Day reported that as part of the Gambling Awareness and Education Program the Commission approved this year, in conjunction with the federal forfeiture funds, staff has taken steps to provide public information to enhance our enforcement efforts regarding illegal activities. This time of year is usually associated with increased sport betting activity, so on January 5, 2010, a statewide public service announcement (PSA) was launched focusing on giving the public accurate information about illegal gambling activities. Hopefully this will increase compliance of state laws and help keep the criminal element out of gambling in Washington. The PSA informs the public about the types of sports betting allowed and the risks associated with illegal sports betting. Authorized gambling activities are regulated, which protects the players and requires operators to be licensed. Additionally, the taxes generated from those authorized gambling activities benefit

local communities. With illegal gambling activities, the games may not be fair, there is no recourse if the players are cheated or not paid, and the proceeds could be used for other criminal activities such as drugs and prostitution, or may go to illicit organizations. In one bookmaking case, the bookmaker was receiving \$20,000 to \$40,000 a week in bets. The PSA lets people know that bookmaking is one of the larger illegal forms of gambling and is one that staff is concentrating on. The PSA is paid for by proceeds seized during investigations of illegal gambling activities. Banners saying “Don’t Bet On It” will be placed on transit buses in Spokane, Seattle, Tacoma, and Pierce County.

Director Day drew attention to the OFM Implementation of SACS Directive. The Governor directed agencies to consolidate several accounting-type functions from several agencies into what is called Small Agency Client Service (SACS). It is a function that is housed in the Office of Financial Management (OFM) and was originally designed for very small agencies that barely had enough people to staff, let alone carry out administrative functions like budget and accounting. At this point, there are several agencies including the Gambling Commission that were identified and directed to consolidate some of these services into the SACS at the Office of Financial Management. As part of staff’s review for efficiency and whether there were ways the agency could make reductions, staff had previously looked at SACS providing this service to the agency. Terry Westhoff, Business Office Administrator, reviewed this and determined that at the rate the service was charged, it would cost the Commission more than it would save to make this conversion. He also concluded that if the Commission were to get smaller, then at some point it would become cost effective to go forward with this. He has been working closely with OFM and the impact and the level of the proposal has changed fairly dramatically. Discussions are continuing with OFM to determine if this is a step that would save the Commission money or increase efficiency. Mr. Westhoff made sure that he conveyed that if this kind of proposal would result in cost savings or efficiencies for the agency, he was sure the Commissioners would support it. At this point staff is involved in very productive discussions about how or if this transition would take place.

Monthly Update Reports and News Articles

Director Day reported that Representative Barney Frank’s internet bill had a hearing on December 3, 2009, and a summary of that hearing was provided in the agenda packets. None of the gambling bills listed in the federal update have moved. Director Day pointed out there were about 21 news articles included in the agenda packets. **Chair Rojecki** commented that on the federal side he thought there were some health care items being worked on.

Comments from the Public Regarding the Director’s Report

Chair Rojecki called for public comments on the Director’s report; there were none.

2. **Approval of Minutes – November 20 Regular Meeting**

Commissioner Ellis made a motion seconded by Commissioner Amos to approve the minutes of the November 20, 2009, regular Commission meeting. Vote taken; the motion passed with four aye votes.

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

Commissioner Amos made a motion seconded by Commissioner Ellis to enter an order approving the list of new licenses, changes, and tribal certifications as listed on pages 1-20. Vote taken; the motion passed with four aye votes.

Chair Rojecki called for a break at 3:35 p.m. and reconvened the meeting at 3:50.

4. **Petition for Review – Revocation – The Club - Everett**

Assistant Attorney General H. Bruce Marvin was present for the State, as well as **Tommy Hightower** from the law offices of John A. Sterbick representing The Club. Mr. Hightower and AAG Marvin provided their testimony in the matter for review. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Rojecki** recessed the meeting at 4:25 p.m. to deliberate the petition in executive session. The public meeting was reconvened at 4:45 p.m.

Commissioner Ellis made a motion seconded by Commissioner Amos with regard to the petition for review of The Club that the Commission affirm the findings of fact and conclusions of law of the ALJ as expressed in the initial order. And that on the basis of the record before it, the Commission revoke the license of The Club to conduct any gambling activities. Vote taken, the motion passed with four aye votes.

Commissioner Ellis explained to Mr. Hightower that the Commission appreciated his appearance and his efforts on behalf of his client. The Commissioners looked over the record very carefully and found that virtually every document in the record indicated to Mr. Hightower's client that the result of the administrative proceeding could be suspension or revocation of the license, in addition to the sanction specified for any violation of the settlement agreement. The Commissioners thought it was quite clear from the documents that Mr. Hightower's client was squarely on notice. They were also impressed by the fact that at several pretrial hearings, as well as in the administrative hearing itself, there was almost always a colloquy between counsel and the ALJ as to whether there were sanctions at issue in that process going beyond just those specified in the settlement agreement. Commissioner Ellis thought it became clear in each instance that the ALJ emphasized, in fact, the Commission was seeking revocation of the license and not simply the 18-day suspension, so the record is abundantly clear that Mr. Hightower's client understood that. Although the Commission has received a significant amount of briefing on this matter, Mr. Hightower's client has never taken the position that those findings of fact and conclusions of law regarding the violations were incorrect. Commissioner Ellis did not recall any

allegation that any of the ALJ's findings and conclusions were wrong, and he thought the record was compelling and the amount of money, of course, exceeding \$560,000 was also very compelling.

AAG Ackerman asked AAG Marvin if he had indicated he had an order for Mr. Hightower. **AAG Marvin** affirmed he had a proposed order, but was not sure it necessarily aligned with the Commission's ruling. **AAG Ackerman** asked if Mr. Hightower had any comment. **Mr. Hightower** replied he had received the proposed order and had no objection to the order in light of the ruling. **AAG Ackerman** said the Commission would review the proposed order before signing it, but noted the Commission may issue its own order.

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

Chair Rojecki called for public comment. There was none.

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

At 4:50 p.m., **Chair Rojecki** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 5:30 p.m. and immediately adjourned the meeting.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, JANUARY 15, 2010
APPROVED MINUTES**

Chair Rojecki called the meeting to order at 9:10 a.m. at the DoubleTree Guest Suites in Tukwila and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki**, Tacoma
 Commission Vice-Chair John Ellis, Seattle
 Commissioner Mike Amos, Selah
 Commissioner Michael Reichert, Maple Valley (arrived at 9:15a)

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

Chair Rojecki explained that the Defaults were going to be taken out of order and heard first

8. Defaults (*Taken out of order*)

Ms. Hunter reminded everyone that the Default hearing for Terry Phair was removed from the agenda.

a) Robert W. Brown, Card Room Employee

Ms. Hunter reported that Robert Brown was working as a supervisor at Great American Casino in Tukwila and was issuing comps to people by falsifying their player rating slips. Mr. Brown issued those comps to another person and received some cash and perhaps drugs in exchange for doing so. He admitted that he was falsifying the records and why he was doing that. Mr. Brown is not currently working. He did not respond to the charges, so staff is asking that his license be revoked.

Chair Rojecki asked if Robert Brown or a representative was in the audience; no one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission enter an order revoking the license to conduct gambling activities of Robert W. Brown. *Vote was taken; the motion passed with three aye votes (Commissioner Reichert was not present).*

b) Jamie S. Flores, Class III Employee

Ms. Hunter reported that Jamie Flores had a warrant that was issued for not appearing, which was a violation of his conditional certification. This is somewhat of an unusual case only because staff does not see a lot of conditional certifications ending up being revoked. As the Commissioners may recall, the conditional certification is something that can be done with tribes if they have someone who does not meet the normal qualifications. Mr. Flores had a conditional certification in part because of the conviction that he did not go back to court on. The conditional certifications require that staff be informed when the person is arrested and, basically, the person has to engage in law abiding behavior. Mr. Flores did not show up at court and did not notify staff about it. Mr. Flores was served and did not respond, so staff is asking that his certification be revoked.

Chair Rojecki asked if Jamie Flores or a representative was in the audience; no one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission enter an order revoking the certification to conduct gambling activities of Jamie S. Flores. *Vote was taken; the motion passed with three aye votes (Commissioner Reichert was not present).*

d) Anthony J. Thomas, Card Room Employee

Ms. Hunter reported that Anthony Thomas worked as a card room employee and allowed a minor to gamble at the Macau Casino in Lakewood. Mr. Thomas was issued a Notice of Violation and Settlement (NOVAS) and had the choice of either paying a \$200 fine or requesting a hearing. Mr. Thomas did nothing, so staff issued charges. Mr. Thomas has not responded to those charges, so staff would recommend a 30-day suspension.

Chair Rojecki asked if Anthony Thomas or a representative was in the audience; no one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Amos** that the Commission enter an order suspending for 30 days the license of Anthony J. Thomas to conduct gambling activities. *Vote was taken; the motion passed with three aye votes (Commissioner Reichert was not present).*

Chair Rojecki announced the arrival of Commissioner Reichert.

6. Program Review/Qualification Review – Seattle Junior Hockey Association

Danny Lisa, Special Agent Supervisor with Field Operations in the Everett regional office, reported that in August and September he and Special Agent Jay Summers conducted a nonprofit program review and financial inspection at Seattle Junior Hockey Association in

Mountlake Terrace. The review focused on the verification of programs, record keeping, and independent management control structure. The purpose of the program review was to verify the licensee has made significant progress towards its stated purpose during the 12-month period preceding the date of application for a license renewal, continues to qualify and operate as a bona fide charitable or nonprofit organization, functions in accordance with the licensee's bylaws, and there is the existence of program services. The purpose of the financial inspection was to verify an independent management control structure exists, adequate internal controls exist, compensation levels are reasonable, funds or assets are not being misused, the financial record keeping is accurate, rents, leases, and loans are reasonable, and funds or assets are not being misused or diverted. SAS Lisa noted that Ric Newgard, Director of Gaming and former Executive Director, was his primary contact during the review and was present to answer any questions. SAS Lisa reported that the mission of the Seattle Junior Hockey Association is they are dedicated to the maintenance and dynamic growth of youth hockey in Washington State while developing Seattle Junior Hockey Association as one of the premier youth athletic programs in North America. Seattle Junior Hockey Association seeks to provide stewardship facilities and financial foundation to direct the efforts of players, coaches, and parents into a proud, ethical, and cohesive unit. SAS Lisa verified the licensee's board of directors' and general members' meeting minutes from the last fiscal year and the election of officers were in adherence to their bylaws and our rules. As of June 30, 2009, there were 39 general members and 262 volunteers. SAS Lisa conducted a review of the licensee's internal controls and verified they maintained an independent management control structure overseen by a board of directors and officers who were elected by a process in which all full and regular members had a single vote. He reviewed the licensee's payroll records and ensured compensation levels were reasonable and no hidden benefits existed. He also interviewed a selection of individuals that included a board member, a voting member, a program service manager, and an employee to obtain their perceptions of the organization's purpose, program services, and lines of authority within the organizational structure.

SAS Lisa reviewed brochures, pamphlets, and the organization's yearbook, which gives a good snapshot of what the organization does and what they have done for that year. They have two ice skating rinks. The licensee and the Seattle Skating Club formed a partnership to create the Washington Ice Skating Association (WISA), which owns the Olympic View Arena Ice Skating Rink and the Lynnwood Ice Center. The rinks provide young people with arenas and ice time to develop ice skating and hockey skills. The Olympic View Ice Arena is a private rink focusing on the development of hockey and figure skating. The Lynnwood Ice Center is open to the public and focuses on beginning levels of ice skating. The ice is used from about 5:00 a.m. every day until about midnight. When SAS Lisa and SA Summers toured the Olympic View Ice Arena with Mr. Newgard, they observed about 100 children in the facility; most were playing hockey and some were gathered together in a group listening to an adult discuss the U.S. Hockey Team. Mr. Newgard said one of the coaches was a professional hockey player who used to be one of the children who had benefited from Seattle Junior Hockey. They have many different levels and teams and also hold camps and events. According to Mr. Newgard, Seattle Junior Hockey's program

benefited 495 kids during the winter season and 514 kids during the summer season. The licensee has programs that support their stated purpose.

Special Agent Jay Summers, Financial Investigations Unit (FIU) in Lacey, reported he reviewed the number of members, employees, and volunteers; the check register, bank statements, accounting general ledger, and fixed assets; and contributions and services provided compared to the financial statements and federal tax return showing their qualification as a nonprofit entity in all lease, loan, and rental agreements and board meeting minutes. Seattle Junior Hockey has 9 board members, 3 full-time employees, 10 part-time employees, 262 volunteers who donated 25,575 hours to program services, and conducted five meetings during the fiscal year. The foundation disbursed over \$936,000 in cash and services directly to the Washington Ice Skating Association and, therefore, met their goal and needs for the operating year. Based on the onsite review and an analysis of the financial statements, narrative, and supplemental information provided with their application, Seattle Junior Hockey Association is in compliance with all requirements set forth in their bylaws and is actively engaged in providing services directly related to their stated purpose. In addition, Seattle Junior Hockey Association made significant progress toward accomplishing its stated purpose, which is measured by confirming expenditures to ensure they spent at least 60 percent of their net gambling income on functional expenses to operate programs. The morning of the review, the computer holding the accounting records for Seattle Junior Hockey burned out or crashed and, therefore, they were unable to produce a general ledger, chart of accounts, check register, and trial balance. SA Summers reviewed the bank statements and check register for both the bingo accounts and the hockey accounts and traced the transfer of funds, pulled source documents from the hockey account and traced those transfer of funds, and pulled source documents that included facsimiles of checks, receipts, and purchase invoices. SA Summers found no indication of inurement or misuse. He reviewed the depreciation schedule and confirmed fixed assets, examined their federal tax returns which showed their qualification as a nonprofit, and confirmed their tax status through a review of the federal database at IRS.gov. There were no material findings during the qualification review; however, due to their inability to provide immediate accounting records, a warning letter was issued under WAC 230-07-140, failure to provide sufficient supporting documentation for expenditures.

SA Summers reported that in 2007/2008 the organization reported awarding 21 scholarships to children totaling over \$17,000. Seven of the scholarships for a total of \$6,200 were given to related parties, which was not recorded in the meeting minutes; therefore, a second warning letter was issued under WAC 230-07-075(4), failure to maintain an independent operating environment. SA Summers and SAS Lisa followed-up in early December to check the accounting records they were unable to review initially and to see that the meeting minutes more accurately reflected the related parties. They found that everything previously investigated in regards to the bank statement, the accounting records, and purchase invoices matched what had originally been investigated, and that all other issues discussed during the exit conference had been corrected. Staff recommends that Seattle Junior Hockey continue to be certified to conduct gambling activities in the state of Washington as a nonprofit organization.

Commissioner Reichert asked if there was an independent audit done of the Association. **SA Summers** affirmed they have an independent auditor, adding that questions on what the independents were reviewing were discussed and SA Summers was confident the situation was fixed. **Commissioner Reichert** asked if, technically, they are a foundation under the IRS Code or nonprofit 501(c)(3). **SA Summers** said he would have to check; that he did not know off hand. **Mr. Newgard** replied they were under 501(c)(3).

Commissioner Ellis thanked SA Summers and SAS Lisa for their reports, indicating the reports were very well done and, obviously, both of them were persistent in getting the records that were not initially available. **SA Summers** thanked Commissioner Ellis.

Chair Rojecki asked if Mr. Newgard would like to make any comments.

Mr. Newgard indicated he had been with Seattle Junior Hockey Association for 32 years and has seen all the highs and the lows of the nonprofit organizations and the nonprofit industry. His organization is extremely dedicated to the development of youth and believes strongly that youth athletics go a long way in molding the youth; the young men and women of today who are definitely needed for future development. The morning the audit was started, and after he and his administrative assistant stayed up the night before until about 10:00 getting all the records secured, his assistant told Mr. Newgard that her computer would not boot up. Mr. Newgard thought it had to be something simple, so they checked everything, and then called their IT guy who told them the computer was fried. Mr. Newgard thought the IT guy had to be kidding; it couldn't happen on the very day the Commission shows up; they have never had a problem with the computer in however many years there have been computers. Anyway they got that all fixed and have made a secure backup system so they do not have any issues with that in the future. The day Mr. Lisa and Mr. Summers showed up, they wanted to tour the rink. Mr. Newgard also oversees the operation of the two ice arenas, but does not know on a daily basis exactly what is going on at the rink and at what time. He is the President of WISA, and he meets with his rink directors to go over schedules, but they are months out. The agents wanted to check out the rink to see how it's operating. As they were walking over to the rink, Mr. Newgard was saying to himself, "please dear God, be hockey players and not figure skaters." He didn't want to show the agents a bunch of girls and boys in skirts – that just really hit true to home to what they do. But thank God there were 100 kids on the ice and they had a special camp going at that time, so the agents got to see what they truly do. Mr. Newgard said they have been doing this for a long time and hope to continue to do this for a long time. The charitable and nonprofit industry is struggling dramatically. Mr. Newgard said they just don't have the tools that they wished they had to compete in today's market, but they will keep working towards those ends. He asked if there were any questions - he would be more than happy to answer them.

Commissioner Ellis asked how the recession had affected the Association. **Mr. Newgard** replied "Youch." **Commissioner Ellis** asked, more specifically, how much the participants in the program, the parents of the junior hockey players, pay to participate in the program.

Mr. Newgard replied that it ranges dramatically. A beginner will pay \$175 to \$190 and the Association will supply the skates and the pads, but the players have to supply their own sticks. With the older kids, ages 16, 17, in the rep leagues, and those kinds of things, can cost around \$2,500 to \$3,000. It is not an inexpensive sport by any means. Ice costs for his particular facilities run about \$250 an hour. Outside facilities, like Comcast arena, can run around \$345 an hour. The money from the nonprofit bingo and pull-tabs offset the cost to the parents for the ice. The ice arenas run at a marginal profit, just to keep the cost down for the parents because it is simply an expensive sport. The parents out on the west coast have no idea; parents on the east coast or the Midwest really know what hockey costs. But out here, because their bingo helps subsidize the sport, it is a luxury that they enjoy, but sometimes just don't really realize the cost. **Commissioner Ellis** asked if the Association had quite a drop off in participation by juniors as a result of the recession and parents unable to pay those kinds of costs. **Mr. Newgard** replied that, to be exact, last year they had over 500 kids and this year they have 493, so it has not been a huge drop off. What they have seen, though, and what they are really excited about is that the beginner program was up about 20 percent over last year. And the beginner program is like any program, it is the base of the pyramid, and as it grows there are drop outs. So **Mr. Newgard** was really excited when he could see a large beginner base – that just gets more kids involved in the sport and helps the program grow. **Mr. Newgard** has not seen a huge drop off, but has seen more requests for scholarships, and that type of thing, but with the way the economy is going and bingo and pull-tabs, the Association is being very careful as to who gets scholarships. They would love to give out a ton of scholarships, but in today's environment it is just not practical. **Commissioner Ellis** said the reason he had asked was that the numbers look very impressive; almost a million dollars distributed by the nonprofit, more than 250 volunteers donating more than 25,000 hours of time, and 500 kids in the program. It looks like the Association has done extremely well under the current economic circumstances to be able to keep the program going. The overall impression to **Commissioner Ellis** was extremely impressive. **Mr. Newgard** responded that the hockey community is probably one of the tightest communities as far as a sports community, as far as volunteers. When asked for help, they come out of the woodwork, whether they have kids in the program or not. They have a huge men's league, and a lot of their coaching staff and managers do not even have kids in the program. As far as any sport that **Mr. Newgard** knew, if he wanted somebody to have his back, it would be a hockey guy. They are as tight as tight can be, and they take care of each other. So the Association is very fortunate to have a very strong volunteer core, so when they put out the call for help, it is amazing what kind of results they get. **Commissioner Ellis** agreed, adding there is some very good reasons for that. He went to high school in Canada, and having moved up there from the U.S. he had no exposure to hockey. But Vancouver is filled with hockey leagues and many of his friends played hockey, which meant in most instances that the parents were getting up at 3:00 a.m. to take the kids out to play hockey, with other parents doing the same thing, and doing that from the time the kids were very young until they were through high school. So **Commissioner Ellis** could imagine that the parents doing all that form a very tight knit community and give a lot of support. **Mr. Newgard** agreed that was true. And those parents love those 7:00 a.m. games.

Chair Rojecki thanked Mr. Newgard, adding that his oldest daughter is a figure skater, so he knew all about 7:00 a.m. skate time, and several hundred dollars a month. **Mr. Newgard** agreed figure skaters were great, but he wanted the agents to see hockey players.

Commissioner Ellis thought Rosalynn Summers had used one of those rinks for most of her training. **Mr. Newgard** affirmed, adding that Ros has been a continuing supporter of the Association. She comes out and does promos and clinics; in fact, she is due in town in a couple weeks to do a program. She does stay involved in the organization and is a wonderful supporter. It is sure nice to have a name like that to relate to the organization. Mr. Newgard thanked SAS Lisa and SA Summers for their patience and their professionalism. As far as professionals in their field, they are outstanding. They had a few excellent suggestions that have since been implemented. Mr. Newgard would like to personally take his hat off to those two gentlemen as far as doing an excellent job communicating. They offered good recommendations in the exit review, and it was a good experience. Nobody likes to go through an audit, but they made it as painless as it could be.

Chair Rojecki thanked Mr. Newgard, and then called for public comment; there was none.

Commissioner Ellis made a motion seconded by **Commissioner Reichert** that the Commission continue to certify the Seattle Junior Hockey Association to conduct gambling activities in the state of Washington as a nonprofit organization. Vote was taken; the motion passed with four aye votes.

Commissioner Reichert asked if staff review the federal form 990s on nonprofit organizations as they come through as part of their review. **SA Summers** replied not usually; most of the information is requested annually on their annual relicensing, which is when they do that. **Commissioner Reichert** asked if staff collect their own information. He just wondered if staff reviewed the federal form 990 that they would file as a not for profit. **SA Summers** affirmed he had.

Chair Rojecki thanked Agents Lisa and Summers for their work and for the comments of Mr. Newgard.

7. Request to Exceed Raffle Prize Limit – Evergreen School District Foundation

Deputy Director Trujillo reported this was the second large-scale raffle request that has come before the Commission to exceed prize limits since the Legislature increased the cost for a raffle ticket up to \$100. The Evergreen School District Foundation is requesting permission to conduct a raffle for prizes valued from \$10,000 up to \$250,000, depending on the number of raffle tickets sold. Specifically, our rules do not allow an organization to offer raffle prizes in excess of \$80,000 within a one-year period unless the organization has requested permission, demonstrated good cause to exceed the limits, and received the Commission's permission to do so. Evergreen School District Foundation is proposing to conduct this large scale raffle as their primary fund raiser for 2010. They are seeking to raise \$500,000 by selling 5,000 tickets for \$100 each. It is planned that up to one-half of the

raffle proceeds would be used to fund 10 scholarships. Included in the materials is a chart representing how the raffle prizes will be awarded under a tiered system. For example, if 200 tickets are sold, ten winners will receive a prize of \$1,000; if 1,000 tickets are sold, ten winners will receive a prize of \$5,000; if 4,000 tickets are sold, ten winners will receive a prize of \$20,000. The minimum amount to be awarded will be ten scholarships at \$1,000 each. The maximum amount to be awarded will be ten scholarships at \$25,000 each. Their research has indicated the raffle will be successful; however if for some reason raffle tickets do not sell, the Foundation has sufficient reserves to cover the ten \$1,000 scholarships. After scholarships have been awarded, the remaining money is earmarked for Evergreen School District Foundation operating expenses, college scholarships, grants for individual teacher programs, funding for musical instruments, and travel expenses to learning events. They do have a long range plan that includes expanding the support they already provide. Field staff reviewed the process and the operation of the raffle and concluded that it is within current RCW limitations and WAC guidelines. Licensing staff also conducted licensing investigations and found nothing that would preclude licensure. Based upon these reviews and investigations, and if the Commission finds the licensee has demonstrated good cause in these materials, staff would recommend allowing Evergreen School District Foundation to exceed the raffle prize limitation. Christopher Green, president of the Evergreen School District Foundation is present and would enjoy a chance to come before the Commission.

Chair Rojecki noted the flyer shows a maximum prize of \$8,000 versus the spreadsheet that shows it differently and he wondered if that was a typo or if it was changed and the flyers were drafts because of the printing costs.

Commissioner Reichert asked, in terms of how the work of this group relates to the school board and the elected officials, if this was part of the PTO/PTA system. He asked how the financial accountabilities were managed; who sanctions the formation of the Foundation; if it was something the school district authorizes; and if it was separately established by the Parent/Teacher Organization or the Parent/Teacher Association.

Mr. Christopher Green, President of the Evergreen School District Foundation, replied the Foundation was started in 1996. It is a separate entity, but they have a contract with the Evergreen School District to raise monies and provide additional funding for several different programs. **Commissioner Reichert** asked if it was self-governing though; apart from the school district. **Mr. Green** affirmed it is self-governing. **Commissioner Reichert** asked if board members were self-selected or elected within the family of groups. **Mr. Green** affirmed it is all separate, but they are all one big happy family, so to speak. **Commissioner Reichert** said he understood. **Mr. Green** explained they have been authorized by State regulations to give away \$80,000, which is why the collateral material says ten awards up to \$8,000 because that is under existing statute. Mr. Green added that they were almost finished with the artwork, but wanted to give the Commission a sample of what they were doing. He wanted to come to the meeting today to meet the Commission, put a face on the Evergreen School District for the Commission, and to answer any of their questions. The idea behind this program is to create a lot of excitement within the

community in Vancouver, which it has. They have talked to more than 75 percent of the PTAs and the PTOs and pretty much every principal has been invited to, and discussed with them, the importance of these funds. The excitement of the raffle itself has gone through the roof, in Mr. Green's opinion. Mr. Green was going to do his best to make sure this program is run with a lot of integrity. An outside bookkeeping company was hired to manage all of the books, so they will handle all the documentation needed.

Chair Rojecki wanted to make sure the Commission gets some sort of proposal from staff on how to proceed in the future with these significant raffles, as was discussed last month. Not that the Commission is necessarily against them when they are prepared very well. Chair Rojecki noted this request was significantly smaller than the Broadway Center, which was very comparable in preparation and documents and in showing that it was a very reputable thing. The Commission does need to have some sort of policy guidelines from WAC to further clarify where they should go, otherwise these could continue to get bigger. **Deputy Director Trujillo** agreed, reporting that staff is working on a rule that actually does what Chair Rojecki asked. Deputy Director Trujillo had hoped to have a draft ready for study session this month but it was not finalized. He expected there would be a draft at the next study session. When staff was working with Mr. Green and using the Tacoma materials as a template, they tried to ensure it was slimmed down but still contained all the relevant information. Deputy Director Trujillo pointed out Mr. Green's attempt to summarize information to help the Commission make its good-cause determination was sent separately from the original materials.

Commissioner Reichert said, just to comment as staff prepares the working papers for consideration on policy. For instance, he is a school board member at the Wa He Lut Indian School. If the Chief Leschi School decided to do a lottery ... It is just a question that perhaps legal counsel and Director Day could answer. It is another one of those tribal relationship questions that might be factored into staff's thinking. **Deputy Director Trujillo** affirmed that was a very good idea.

Chair Rojecki called for public comment; there was none.

Commissioner Ellis made a motion seconded by Commissioner Reichert that the Commission authorize the Evergreen School District Foundation to conduct a raffle with total prizes up to \$250,000 as presented by staff. *Vote was taken; the motion passed with four aye votes.*

9. Staff Proposed New Rule – Prevent card rooms that share a common wall or structure from appearing as one large card room with more than 15 tables

- a) **New Section WAC 230-06-046** – Additional requirements for licensed business premises of Class E, F, and house-banked card rooms

Deputy Director Trujillo reported WAC 230-06-046 was designed to provide some guidance to those seeking to open new licensed card room locations that are located adjacent to another. The rule specifically requires that a licensed business premises of Class E, F, or

house-banked card rooms that are adjacent to one another share no inside public access between the two licensed business premises, have no employee access between the two licensed business premises visible to the public, post signs at each entrance that is accessible by the public clearly notifying the customers of the licensed business premises identity, and does not share windows or similar structures that allow customers to see into other licensed business premises. These restrictions would not apply to Class E, F, or house-banked card rooms physical locations that have these features and were licensed on the effective date of this rule. Over the years, the Commission has approved many locations for card games, the majority of which are easily discernable as fully separate and distinct locations from one another. RCW 9.46.0282 states the number of tables authorized shall be set by the Commission, but shall not exceed a total of 15 separate tables per establishment. The recent house-banked card game license application in August of 2009 brought to light just how close these locations could become under the existing rules. Staff does not want to create a situation through the rule or application process that bypasses the 15-table legislative limit. Staff does not know what creative form future card game license applications may look like, so the Commission asked staff to work on a solution that would not penalize the existing licensees but would provide guidance for future applicants. This rule is staff's proposed solution. Staff received two letters regarding this proposal. Michael Marquess objects to language in the last paragraph that has been removed. Bruce Meyer questions why the Caribbean Cardroom in Kirkland was recently approved under the same rules in which he was denied ten years ago for a similar situation causing him to expend a great amount of money to comply. DD Trujillo indicated that it was a different time; it was ten years ago. He looked at the rules that existed then and the rules that exist now and was not sure what staff would have done that would have caused Mr. Meyer to expend more money, but suspected that Mr. Meyer was in the audience and may ask that question. Staff recommends approving this rule for filing and further discussion. If filed for further discussion the minutes from the 2009 Commission meetings would be included for reference to provide a back story in further discussion.

Commissioner Ellis asked for an explanation of the intended significance of paragraph 2, section 2, of the proposed rule where it says the restrictions do not apply to Class E, F, or house-banked card room physical locations that have these features – he assumed “these features” are the features specified in the preceding section (a) through (d) – and were licensed on the effective date of this rule. **Deputy Director Trujillo** called that the grandfather clause. When discussed before, Representative Alexander and one or two of the Commissioners expressed a desire not to penalize anybody who was presently licensed. This is staff's attempt at doing that; it applies to future locations, but does not penalize those that were licensed at the time this rule was enacted. **Commissioner Ellis** said he was missing something in the intent of this section. He understood what staff was saying, but it looks as though paragraph 1 says they must do (a), (b), (c), and (d) in the future; then paragraph 2 says they do not have to do (a), (b), (c), and (d) if at the time they were originally licensed they did (a), (b), (c), and (d). Commissioner Ellis asked if the rule wasn't requiring both newly licensed and previously licensed facilities to do the same thing and meet the same test. **Deputy Director Trujillo** replied that would definitely not be the intent. **Commissioner Ellis** recalled the issue related to the restroom in the Caribbean

Casino and the fact that if they were to comply with the requirements of paragraph 1, they would have to put in a very expensive restroom in their second card room. **Deputy Director Trujillo** affirmed that was correct. As staff was drafting this rule, they struggled trying to find language for the grandfather clause that met the Commissioners' intent. Staff thought they had it, but if it is ambiguous then it needs to be clarified. **Commissioner Ellis** thought that since the issue before the Commission today was whether to accept the rule for further discussion and filing, there would be an opportunity to address the specific language if his concerns had any rational basis. He did understand the concept though. **Chair Rojecki** agreed it was also not clear to him and indicated that if the Commission adopted this rule for further discussion, they should direct staff to rework that language. **Deputy Director Trujillo** said there were a couple of options. If the Commission were to file it for further discussion staff would work on the language. Or if the Commission chose not to file it for further discussion, staff would come back next month with revised language.

Commissioner Reichert asked if it was the intent for that exemption, or grandfathered provision, to be forever or until the next licensing round; that is just a clarification that would help. **Deputy Director Trujillo** replied it would be at that location, basically forever. **Commissioner Reichert** added as long as they were licensed at that point in time. **Deputy Director Trujillo** affirmed.

Chair Rojecki said Deputy Director Trujillo made mention of Mr. Meyer's letter and that some of the concerns in his letter were actually stricken, and that Mr. Meyer may be in the audience. **Deputy Director Trujillo** clarified it was concerns in Michael Marquess' letter. In fact, when staff was struggling with the grandfather language, there was a section in there that would have triggered these requirements had some form of ownership change occurred. That ownership change language was what was stricken.

Chair Rojecki called for public comment.

Mr. Gary Murrey, representing himself, understood the process of this filing for further discussion and had no issue with doing that. He was actually encouraged to make sure that the rules are clear and concise, and do not have any ambiguous language or misunderstandings between different sets of rules over time or decades. As time passes, memories fade, so Mr. Murrey appreciated this effort. He did have a problem with the language and what it ends up doing as it goes forward. He had an issue with 1(a) that says share no inside public access between two licensed business premises. If taken literally, that means that only one of these could be in a mall. One location could be 800 yards away from the other location and not be able to be there. Mr. Murrey would prefer language that separated out the gaming activity that has to be fully separate from any other gaming activity. This has more far reaching implications when talking about trying to have gaming activities in a building that may share common walls and such with bingo, or fund raising events, or when trying to partner up with charities to raise more money for the charitable organizations. Because they already have gaming in one section of the building, in the other part of the 400,000 square foot building they could not do that. Mr. Murrey would look at language that says what the gaming activity is and where it is located and address that itself.

The entire property, and whether or not a restroom is shared does not change the fact of whether or not there could be a gambling activity in one section versus another that are not tied to each other. The card room has been denied the ability to partner up with a charity organization to run a fund raising event in its building while it is running its tables because it is only allowed 15 tables in the entire building. That is the way “premises” has been currently defined, but where the 15 gambling tables actually take place, a legal entity is, in and of itself by law, all by itself. Mr. Murrey said it does not matter if those two legal entities that are totally separate share a wall, now they can no longer coexist in the same building. He did not know any other business that has that strict of a regulation that says they cannot share their business in a building with any other business. That is so far reaching of taking away somebody’s right to where they conduct their business to say any other business in the world can be in that building but you. That is too restrictive and Mr. Murrey thought the Commission should step back a bit and look at what the activity is that is in there. He did not like a regressive type approach that this is what is allowed; let’s take it away from everybody else. Mr. Murrey thought what was needed was to have a rule that defines where they need to be, but look at the gaming activity as making sure that is totally separate, clear, and concise. But whether they share bathrooms, or a hallway, or all that, he thought that gets beyond the scope of two legal entities sharing a space and it should be allowed.

Mr. Bruce Meyer, Michels Development, explained he wrote the letter to the Gambling Commission concerning this recent approval, but he was not objecting to any approval the Commission has made. That was not why he wrote the letter. He wrote the letter because it appeared that Michels Development and Chips Palace Casinos were being used as an example in this case. Eleven years ago, they were instructed by then Director Ben Bishop and staff that everything had to be totally separate and unique, which they did; they may not have agreed with it, but they followed it. They have always followed whatever they were instructed to do. Their two properties in La Center are adjacent to each other, as are George Teeny’s two properties in LaCenter – they are adjacent to each other also. Mr. Meyer’s properties are totally separate and unique; separate restrooms, separate restaurants, separate surveillance rooms, separate everything. All the laws and procedures were followed as far as customers having to go outside to go into the other property, as they did in Lakewood. The reason why this was brought to his attention was because they thought they were being used as an example. They spent a great deal of money in LaCenter and Lakewood in following the directions of staff and the Director, which was Mr. Bishop at the time. Mr. Meyer did not necessarily agree with putting multiple properties under one roof, as has been approved, but so be it. If that is what the Commission approves, then he will follow it. But Mr. Meyer wanted to make it clear and go on the record that what he went through 11 years ago was totally different. He has been accused of having the same walkways under the same roof, which is not true. None of the walkways are adjacent to the buildings; none of them are connecting. The roofs actually go under each other, they do not touch. Mr. Meyer wanted to make that clear and to go on the record that he followed the rules, and whatever staff approves now that is fine and he will follow it; no problem.

Chair Rojecki asked if Mr. Meyer saw a significant difference at times in each of those facilities as far as gross receipts. **Mr. Meyer** replied that one property is more popular than the other property. When one property closes down, people want to continue to gamble so they go over to the other property. In La Center when his places close down, people go over to Mr. Teeny's across the street. And when Mr. Teeny closes down, his people come over to Mr. Meyer's property. It is kind of like four revolving doors. **Chair Rojecki** thought it was fair to say if the Commission does take action, staff will need to work on the language because there are a lot of clarification issues and Mr. Murrey brought up a good point. What **Chair Rojecki** heard from the Commission was they do not necessarily want to change the Caribbean Cardroom from what happened, but do want to prevent some things from happening. This is a work in progress if approved for further discussion. The next step, if approved, would be that it would go to study session for discussion next month. **Director Day** affirmed, indicating he has noted the areas that were brought up and the question that Commissioner Ellis raised. If it is filed, the rule would go back for staff to look at the draft, and then the revised rule would be brought to study session next month. Then, if staff felt a number of the issues had been resolved, the rule would come back to the Commission the following month. **Deputy Director Trujillo** added that if it was filed for discussion today and went to study session next month, it could come before the Commission next month also for discussion, if requested. **Director Day** clarified it is up to the Commission whether to add it on the agenda for discussion at the next meeting. If the Commission files it today, it goes to the study session next month and it can come back to the Commission just for discussion purposes to allow another month before the Commission has to take final action. **Chair Rojecki** thought going to the study session next month was sufficient.

Commissioner Ellis commented, in part responding to Mr. Murrey's comments, that he what was being done with regard to this rule was enforcing the legislative provision that says card rooms shall not have more than 15 tables and trying to come up with a workable and economically feasible set of rules that will ensure that card rooms are not able to get around that limitation by sharing facilities and essentially having two 15-table card rooms functioning as a single entity. There has got to be a way to enforce the legislative intent, which is what staff is trying to do. There will be lots of opportunity for input to ensure that what the Commission comes up with makes sense.

Commission Ellis made a motion seconded by **Commissioner Reichert** that the Commission accepts for further discussion and filing the proposed new rule, WAC 230-06-046. *Vote was taken; the motion passed with four aye votes.*

10. Staff Proposed Rule Change – Punch board and pull-tab operators may only award cash or merchandise as prizes

a) Amended Section WAC 230-14-090 – Controlling prizes

Ms. Hunter reported this rule change would restore the requirement that punch board and pull-tab operators give prizes in either cash or merchandise, which was inadvertently left out during the rule simplification project. There was quite a bit of discussion at the study session about the rule. One of the things that came up is a practice or convenience that has

been allowed in the past. What has happened is if players win \$3 cash as their prize, the players have been allowed to say they would like to go ahead and buy three more tickets, assuming that each is worth \$3. Staff has allowed what could be a two-part process to be done in a one-part process. Rather than paying the players \$3 cash, only to turn around and have them buy \$3 more of pull-tabs, it has been allowed for the players to say this is what they want and what has been allowed to occur. There were quite a few questions about whether this rule was changing that and how it was going to be enforced. There was no intent to change the current process or practice, and Ms. Hunter did not see how this rule changes that. But since that question was raised, staff will be happy to go back and look at that language again. She thought it was always wise not to have all of the work occur during this limited time. Staff would recommend filing this rule change for further discussion.

Chair Rojecki asked if there were any questions, indicating it seemed pretty clear to him – rather than transferring money back and forth just to get the pull-tabs. **Ms. Hunter** pointed out the prior rule did not address it in that detail, so this was just meant to restore that language to make it clear that either merchandise or cash has to be given back.

Chair Rojecki called for public comment.

Mr. Gary Murrey testified the standard practice had been going on for over 20 years, since he has been involved in the industry, but memories fade and current practice should be codified or put into rule, instead of just saying here is current practice so go ahead. He would like to see it in a rule that this is allowed. That is his only point. If it is going to go forward, put in the rule what is allowed and what is the standard practice. And not expect that in 30 years a new commission is going to understand what was talked about and what was understood at this time when the rule went in. Mr. Murrey asked that it be addressed and actually put into a rule that says that playbacks are allowed.

Chair Rojecki was curious how it operated and asked if currently players have to play the same game or can they play another game. If he is playing one game and wins \$3, is that practice just for that game or can he switch to another game? **Mr. Murrey** replied, from his experience, it has been allowed; whatever games are being played, as long as the player sit in the establishment, at that same sitting they can ask to put it into that game. It is usually just \$3 or \$4. Mr. Murrey could put \$5 in that game and get \$2 cash back and ask for the other \$3 put in a different game and try that one. So it is usually not a large number; it is the credit. **Chair Rojecki** understood the personal opinion of the silliness behind transferring money back and forth if they are just going to buy some more pull-tabs – from a business perspective also.

Mr. Ric Newgard, representing Washington Charitable and Civic Gaming Association (a trade association of the nonprofits) and Seattle Junior Hockey Association, testified that if this rule was going to be rewritten, let's codify the fact that a trade-in of a pull-tab is considered a cash transaction. Mr. Newgard thought everyone could understand the cumbersomeness of giving the players cash, then the players giving the cash back for more pull-tabs. The fact is that if the players are given cash, the operator wants to make sure that

the cash does not just go in the players' pockets and then they leave. Mr. Newgard said he was there to facilitate sales and generate revenue – for youth in his particular instance. Seattle Junior Hockey is the largest pull-tab licensee in this state and probably every dime goes to the kids. Mr. Newgard was also on the original advisory group on the RSP when this was rewritten about two years ago. If staff would like any input, he said to feel free to give him a call; he was sure they had his number and he would be more than happy to work with staff on whatever language the Commission wants to come up with. He thought it would be nice if the practice was in black and white and everyone was clear on how this actually worked.

Chair Rojecki asked if there were any legal issues surrounding this subject to pull-tabs. **AAG Ackerman** replied he thought the legal issues would be drafting issues to make sure that it achieves exactly what the Commission wants to achieve and not have unintended consequences. He said he could think of some, but they may be overcome by drafting.

Mr. Jay Gerow, ZDI Gaming, testified he had a great concern for this proposed rule change and filing it the way it is. He also sat on that RSP with Mr. Newgard and, at that point, it was staff's recommendation to remove that language because it was a rule that was never being enforced so they saw no need for it. He was not so sure it was inadvertently omitted. The bigger concern is, and he was not quite sure how this worked but it was mentioned yesterday at the study session, if the Commission goes ahead and files the rule – he was hearing Ms. Hunter and staff saying they won't enforce it – so how do the licensees of the state know whether they are going to get it enforced or not? There are often times miscommunication from the agents as to what is policy and what is not, so that is a great concern. One guy across the street could get a fine, while the other guy doesn't. It seems rather unjust, and Mr. Gerow thought there would be some legal ramifications there, as Chair Rojecki asked AAG Ackerman with that exact problem. Mr. Gerow recommended that the Commission not file the rule as is, but he had no problem with it being rewritten. It would be very detrimental to the pull-tab industry because of the time consumption that it would take to do the transaction as it is written and how it would properly need to be done.

Ms. Hunter clarified, since there were several people at the study session and Mr. Gerow brought it up, that hopefully this was the way it came across yesterday, but based on Mr. Gerow's comments, she was afraid maybe it had not. Ms. Hunter believed the discussion about the enforcement was that agents would not be enforcing this new rule any differently than they enforced the prior rule, was the discussion about the enforcement.

Commissioner Reichert asked, in terms of the last point raised, if there were complications in the enforcement aspect that should be brought out. It sounded to him like the last commenter was suggesting that the Commission not move the rule forward in its present form. Commissioner Reichert asked if AAG Ackerman shared that concern. **AAG Ackerman** replied it was enforceable in its present form. That is not the issue and he did not think that was what Mr. Gerow was suggesting. If AAG Ackerman understood what Mr. Gerow was saying, it was that he was concerned there could be selective enforcement of the rule in its present form. **Commissioner Reichert** heard that part, but thought the

important part of Mr. Gerow's statement was that the Commission not move ahead with the rule in its present form. He asked if there was anything in the present form that caused AAG Ackerman concern. **AAG Ackerman** replied no, he thought it was enforceable in its present form. AAG Ackerman understood Mr. Gerow's question to be that it may be enforced in one situation and not in another, but presently, as it is written, it could be enforced legally.

Director Day thought most of the comments have been around the playback issue and Ms. Hunter said she would take a look at that issue. AAG Ackerman had commented on the question about how to draft it and make sure it was particularly applicable, so staff will take a close look at that issue. Staff recommends the Commission file this for further discussion.

Commissioner Ellis commented that it certainly seemed to him that the issue could be dealt with in the context of further discussions in the study group, and the rule before the Commission was one that was previously adopted and was inadvertently omitted.

Commissioner Ellis made a motion seconded by **Commissioner Reichert** to accept for further discussion and filing an amended version of WAC 230-14-090, as presented by staff.

Chair Rojecki asked if Commissioner Ellis was expecting the Commission was going to have an amended version. Or was Commissioner Ellis just referring to this version.

Commissioner Ellis said he would not go so far as that, but that was his understanding. He thought there was going to be an opportunity to address that issue and he was not going to say right then that there would definitely be an amended version or not. He would leave that to the experts.

Commissioner Amos asked for clarification that if an agent was standing there and Commissioner Amos was the bartender, and a player wins and wants more pull-tabs out of the bin, the player hands the bartender \$3 and the bartender gives the player back \$3 in pull-tabs instead of exchanging money, could the bartender be cited for that? **Director Day** affirmed that a literal interpretation of this rule could result in that, if that was the case. The rule has been on the books for many years and has always been enforced as a matter of common sense and convenience to not require the physical change.

Commissioner Reichert asked if that wasn't the point of the prior commenter; the assertion that it hasn't been evenly enforced. **Director Day** clarified the rule has always been enforced, but the agents have not required the physical return of the \$3 in cash.

Commissioner Reichert said that was Commission policy and he was just trying to split the real world because of what he heard Mr. Gerow say. **Director Day** replied staff is proposing that specific practice be put back in the rule, relative to the rule simplification process.

Chair Rojecki asked if there was any concern that there was a separate application or two different applications. **Director Day** was not sure that it was realistic that an agent would enforce that, but he understood the concern. It is kind of like going 62 miles an hour down

the interstate. **Chair Rojecki** said some will let the driver go; some will pull the driver over. **Assistant Director Harris** clarified that the flare says the prize is \$3 or \$1; it does not say a free pull-tab was the prize. So the flare still discloses that as a cash prize, and the agents are basically just allowing a two-step transaction to be a one-step transaction. **Chair Rojecki** indicated that was because everything in the rules talks about cash or prizes. **Assistant Director Harris** affirmed. **Director Day** added that part of the rule is to ensure that a player who wants cash can get cash; it is not just a one-way transaction. **Chair Rojecki** wondered if it opened a can of worms to talk about the pull-tab being a prize in the instance of buying the same pull-tab. He thought that was something for further discussion, noting it could probably go a bunch of different ways.

Mr. Gerow affirmed Commissioners Amos and Reichert had hit it right on the money. What he said was exactly what he meant; that it can cause a problem. He asked AAG Ackerman if there was a rule on the books and it was not being enforced, who is it enforced to and who is it not. The bigger point is why the Commission would have a rule they were not going to enforce. **AAG Ackerman** thought the 62 in a 60 mile zone is the classic example; the rule is not less valid because it says what it says. What is before the Commission today is whether they try to clarify the rule to reflect a current enforcement practice, which is what staff is talking about, or should the Commission clarify the rule to reflect the fact that evidently exchanges are being allowed to condense a two-step process into a one-step process for common sense reasons. It does not make the rule any more or less valid. The Commission can amend the rule to reflect current practice if they choose to do so. AAG Ackerman understood what was being contemplated at this point was to put back into place a rule that was dropped as part of the rule simplification process. He did not know whether Mr. Gerow was advocating this or not, but some of the speakers have come forward and suggested that while staff does that, let's update this rule to reflect the current practice in the industry. That is what AAG Ackerman was hearing. If Mr. Gerow was asking something different, AAG Ackerman did not know what it was. **Mr. Gerow** replied he just wanted some clarification from AAG Ackerman. He was hearing two different things. The Commission has been without this rule for two years and then told by staff that there has been no issues to bring this back up. The Commission got rid of it because it was never enforced, and if it is not going to be enforced, what is the point of adding it? The whole point of the rule simplification was to simplify the rules, so why is it being brought in if it is not going to be enforced? Mr. Gerow did not care if the speed limit was 60 or 62; the law says it is 60. That is what is supposed to be the law. So why is the Commission putting back in a rule that has not been enforced? According to staff, there have been no issues whatsoever, and staff admits now there are no issues with doing it, so why is staff bringing back something of that nature? **AAG Ackerman** said Mr. Gerow was asking the wrong guy, that he did not propose this rule. **Mr. Gerow** directed his question to Director Day.

Chair Rojecki indicated the Commission was right in the middle of a motion and he probably should not have let Mr. Gerow speak, but he did. **Mr. Gerow** replied he just wanted to bring the point, because it was brought to his attention. **Chair Rojecki** said he thought the Commission understood Mr. Gerow's point. Staff has brought several other changes over the past two or three years that were inadvertently left off during the rule

simplification process because there have been significant difference between what happened then and now. **Mr. Gerow** replied he was not denying that; he totally understood that, but it still comes back to why is the Commission putting back in a rule when it is not being enforced or going to be enforced.

Chair Rojecki thanked Mr. Gerow. There is currently a motion and a second to file amended WAC 230-14-090 for further discussion. *Vote taken; the motion passed with three aye votes (Commissioner Amos voted nay).*

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

Chair Rojecki called for public comment.

Mr. Gerow, ZDI Gaming, commented that, in reading through the handout yesterday, he noticed with the EGL activity and notes in the letter from the Agency Leadership Team dated December 9, 2009, regarding the G2E Conference in Las Vegas that in the third paragraph staff is discussing that due to RCW and WAC restrictions, the biggest impact could be seen in field operations. It will be difficult for commercial businesses to move towards using electronic equipment due to RCW restrictions and the cost of the equipment. The Commission could continue to see gambling activities such as pull-tabs, bingo, and card rooms decrease due to the current trend to move towards electronic equipment. In reading that statement, it reminded Mr. Gerow of the November round table the Commission had in Lacey. Mr. Gerow said he had brought up the concern of the pull-tab industry and the rapid decline that it is in and the affect it had on the budget. And the Commission had mentioned that they were going to be taking a look at that particular issue. The Commission made the comment that they would have to take a look at what innovative technologies they could bring into the private sector. Mr. Gerow's question was whether anything had become of that or gone anywhere with that yet. Has staff been directed to look at anything or is everything just status quo at this point? **Chair Rojecki** replied nothing to his knowledge had been looked at yet.

Commissioner Ellis pointed out to Mr. Newgard that the yearbooks he distributed to the Commission looked fairly expensive and asked if he would like them back after the Commissioners looked at them. **Mr. Newgard** responded that in the hockey community when he asks for help, like with those yearbooks, he announces that he would like to have a sponsor to help offset the cost of the yearbooks, so a printer stepped up to do the printing at cost and another volunteer stepped up and wrote a check for the cost. Thus, the yearbooks actually cost the organization nothing. That is another beauty of the hockey community. Mr. Newgard offered them to the Commission to keep them, frame them, take them home to their kids; especially the figure skater ones. **Commissioner Ellis** said some of the Commissioners have looked over the yearbooks and they may just get recycled if Mr. Newgard did not want them. **Mr. Newgard** replied he did not need them back; they were all theirs.

With no further business, **Chair Rojecki** adjourned the meeting at 10:40 a.m. The next meeting will be held in February at the Great Wolf Lodge in Grand Mound.

Minutes prepared by:

Gail Grate,
Executive Assistant