

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, JULY 8, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 1:30 p.m. at the Washington State Senate Hearings Room in Olympia and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commission Vice-Chair Keven Rojecki, Tacoma
 Commissioner Mike Amos, Selah
 Commissioner Rebecca Roe, Seattle
 Senator Margarita Prentice, Seattle
 Representative Gary Alexander, Olympia

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

1. Staff Accomplishment: Paul Dasaro, 10 years of State Service Award, all with the Gambling Commission

Director Rick Day called Paul Dasaro forward and **Commissioner Ellis** presented Mr. Dasaro with a certificate and pin for ten years service to the state of Washington and Gambling Commission. **Director Day** reported that Mr. Dasaro started with the Gambling Commission in July 2000 and was promoted to the position of Electronic Gambling Lab Administrator in February of 2009. Mr. Dasaro has participated in the testing of the equipment of all the systems that went into tribal casinos around the state to ensure compliance with both the Compacts and federal law. He has also been responsible for developing many of the processes for the lab ensuring they comply with the Compact provisions. Mr. Dasaro spent four years with U.S. Army Intelligence as a Korean linguist and six years with a title insurance company. He has a BA from Evergreen State College and lives in Olympia with his wife Renee and two sons: Nicholas 10 and Jacob 6. He enjoys spending time with his family and staying in excellent condition. Director Day and Commissioner Ellis congratulated Mr. Dasaro.

2. Agenda Review / Director’s Report

Director Day briefly reviewed the agenda and the last minute documents that were provided to the Commissioners, and requested the Commission agree to remove the Motion to Strike Petition for Reconsideration and the Petition for Reconsideration for Angela Pagnossin

(Item 6) from the agenda, because of a quorum problem. Staff is working on rescheduling it in the near future. **Chair Ellis** affirmed removing Item 6 from the agenda. **Director Day** pointed out his “E-Link” behind the Director’s Report tab. The E-Link addresses the whole concept of freezes and furloughs. It stresses to staff that even during this tough period, the Commission is dedicated to keeping a positive place to work and strives to keep its staff and their experience within the Commission. Director Day explained staff has recognized the need to revise the fee system because it is about 30 years old and fairly complex. However, the system is designed to collect the funds needed to pay for the costs of licensing and enforcement under RCW 9.46 and related statutes. Staff spent a great deal of time and effort trying to come up with an equitable solution. Any fee restructure is a significant policy matter and the Commission needs to be involved in that decision making process. Tina Griffin, Assistant Director of Licensing, and Terry Westhoff, Business Operations Administrator, both play key roles in the design and restructure.

Chair Ellis announced the arrival of Representative Gary Alexander from Olympia.

Fee Restructure Report (PowerPoint)

Administrator Terry Westhoff, Business Operations, explained the purpose of the presentation is to provide information on the restructure of the license fee schedule, rules, and to provide a recommendation to the Commission on how to proceed. The items covered in the PowerPoint presentation include:

- Background information
- The process and how the restructure was determined
- Summary of the fee restructure proposal
- Feedback received from stakeholders
- Pros and cons received
- A recommendation.

Mr. Westhoff reported the current fee structure is pretty much what it was when the Commission began in the mid-1970s. There are about 191 different fees for the authorized gambling activities that are licensed. Most organizational license fees are based on gross gambling receipts and are divided into classes; however, some smaller activities have a single fee and others, such as house-banked card rooms, are based on the number of tables instead of gross receipts. Some state government developments that have happened over the past several years include:

- I-960, which requires legislative approval for fee increases. The Office of Financial Management (OFM), legislative staff, and legislators review requested fee increases. Having a smaller, simplified fee structure could assist in those parties having a better understanding of our fee structure. Staff did request a fee increase under I-960 during the 2008 legislative session and received comments from OFM and legislative staff about the complexity of our structure. In the end, our fee increase was not approved by the Legislature. Staff believes the confusion over our fee schedule may have been one of the factors.

- The business portal was started about five or six years ago to have one site where different state agencies could have their license information so the public could go to one place for the license information they needed.
- Executive Order 06-02 “Regulatory Improvement” – Governor Gregoire stated that one of her top priorities was simplifying the licensing, permitting, tax collection, and other state business systems. She directed agencies to improve and simplify services to citizens. Although the Gambling Commission is not normally subject to executive orders, the Commission has historically followed the spirit of the orders when possible.
- The Consolidation Study came out last year and it stated that efficiencies would not be gained by combining the four agencies that were involved in the study. It did note the high level of cooperation between the agencies and stated that further use of the Master License System (MLS) would be beneficial for the agencies. The study noted one barrier was the complexity of the Gambling Commission’s fee structure.

Prior to the Consolidation Study, staff realized the need to look at the fee structure as a whole and at certain activities within that structure. Therefore, there were projects in past agency strategic plans to address fee structure issues. A group of agency employees reviewed the fee structure and options and came up with the following goals:

- Simplify the fee structure in accordance with the Consolidation Study and other state initiatives.
- Be revenue neutral for the agency. At the time, staff wanted the issue to focus on the fee structure itself and believed wrapping a request for a fee increase in with it would detract from the issue of simplifying the structure, especially when bringing it forward to licensees and stakeholders for feedback.
- When consolidating fees, there are going to be some fees that go up and some that go down. That is unavoidable; otherwise there would be negative revenue to the agency. Because the fee structure is somewhat regressive in that those with smaller gross gambling receipts pay a higher percentage of their gross receipts and license fees than larger licensees pay, staff wanted to concentrate on ensuring the smallest licensee’s burden was reduced. Staff also wanted to give some relief to certain activities that pay a higher percentage of gambling receipts and license fees than other activities.

Chair Ellis asked if the gambling receipts of commercial pull-tabs was really gross receipts or if it was gross receipts minus prizes. **Mr. Westhoff** replied it was gross gambling receipts before prizes are paid or other net activities.

Chair Ellis announced the arrival of Commissioner Becky Roe of Seattle.

Mr. Westhoff summarized the impact of the fee restructure proposal. The overall numbers in the first row of the graph include individual licensees, which are about 17,000 (over 80 percent of the total number), and are mostly untouched by the restructure. To get a better idea of the impacts of the fee structure, look at the organizational licenses on the second row. The fees were restructured in a way that reduced fees at nearly 2 to 1 ratio when compared to those that were increased. Most of the class A licensees and other smaller licensees who make up the highest number of our organizations would experience a discount. House-banked card rooms and employees and tribal certifications are not

impacted by this proposal. Some other highlights of the proposal include eliminating 93 fees (from 191 to about 98) and lowering fees for organizational activities:

- 63 percent of punchboard/pull-tabs
- Almost 90 percent of bingo
- Over 80 percent of manufacturers
- Nearly 70 percent of raffle licensees.

Revenue neutrality refers to the overall amount of expected revenue to the Commission. Within the individual activities, the fee revenue to the agency may go up or down. Although the last slide showed that over 80 percent of manufacturers would experience a fee decrease, the overall fee revenue goes up for the agency. This is a result of manufacturer licensee revenue increases on the largest manufacturers. The impact to manufacturers nets out to about \$79,000. Service supplier licenses go up \$35,000 and amusement game licenses are reduced \$24,000.

Assistant Director Tina Griffin reported staff conducted extensive outreach to licensees in the past four months. In March, letters were sent to over 3,500 licensees impacted by the proposal asking them to take a survey to let staff know whether they supported or opposed the simplification of fees. 254 responses were received; 109 opposed, 142 supported, and 3 provided no response. By consolidating classes, many licensees faced fee increases and opposed the proposal. Staff revised the first proposal, and the final proposal is what was provided to the Commission. Some of the changes made to the original proposal included changes to the fees for class A, B, and C manufacturers, distributors, and service suppliers. They still pay less than what they are currently paying, but the gross sales in the license classes was increased, allowing licensees to have higher gross sales before being required to pay the higher licensee fee and move to the next license class. A fourth class was added to the commercial amusement games, class A raffle fees were reduced, and class B punchboard/pull-tab fees were reduced. A second letter was sent to the 1,100 impacted licensees asking them to take a second survey. Of those, 41 took the survey; 20 supported the proposal, 20 opposed, and 1 did not vote. Overall between the two surveys, less than 10 percent of the impacted licensees responded to the surveys. The proposal was discussed at the March, April, and May Commission study sessions and a few comments were provided by some licensees. Staff also held two meetings in April with the manufacturers, distributors, and service suppliers to answer any questions and to hear feedback. In an effort to mitigate some of the additional costs borne by the manufacturers in the new classes F, G, and H, it was agreed that should the proposal be adopted by the Commission, staff would not bill staff time for routine audits. Manufacturers in those classes would continue to pay the travel costs and any staff and investigative time outside of the routine audits. Staff met with Department of Licensing representatives in a continuing effort to respond to the 2009 Consolidation Study report. Staff shared the proposal with them to see if reducing the number of classes would allow more opportunity to work with Master Licensing Services (MLS). While it does make it more of a possibility, there would still require considerable programming for the MLS program. The number of license classes per license make it difficult for Master Licensing's computer system right now, and there are still ten license classes in some license levels.

Chair Ellis asked if there was any consideration of trying to further reduce the number of license classes to make it even more likely that the Commission could use the Master License process. **Assistant Director Griffin** replied the easiest process would be to go to a flat fee, but that could prove to be very difficult. Trying to come up with an equitable flat fee would potentially be cost prohibitive to most of our licensees because most of them have lower gross receipts. They are mostly in the class A and class B levels. **Chair Ellis** imagined that would be the case in most of the classes.

Assistant Director Griffin reported that staff evaluated the pros and cons of the proposal. In slow economic times, the proposal decreases fees or results in no fee change for 75 percent of current commercial and nonprofit licensees. About 46 percent of organizational licensees would see a fee decrease as compared to the 25 percent of licensees that would experience an increase. In the past eight years, the Commission has only increased fees twice; 3 percent in June 2007 and 5.5 percent in June 2008. The proposal would lower license fees for 63 percent of commercial and nonprofit pull-tab licensees and 68 percent of manufacturers, distributors, and service suppliers. It would also lower fees for more than 60 percent of raffle licensees, which are all charitable/nonprofit organizations. Most class A commercial and nonprofit licensees, who have small gross gambling receipts, would see a decline in fees. The proposal simplifies our fee structure and would reduce the amount of staff time working with licensees who exceed their license class. The restructure may assist in partnering with the MLS program in the future, which is something the Commission is looking at in response to the November 2009 Consolidation Study report that was completed for the Legislature. It also updates our fees to better reflect the current gambling environment in Washington. It accomplishes what many licensees have been asking for by making the fee restructure fairer for our smaller licensees and simplifying the fee rules for licensees and the Legislature. The change would increase fees for 25 percent of organizational licensees:

- 37 percent of the commercial punchboard/pull-tab licensees would see an average fee increase of 15 percent.
- 31 percent of raffle licensees would see an average fee increase of 26 percent.
- 33 percent of nonprofit punchboard/pull-tab licensees would see an average fee increase of 21 percent.
- 18 percent of distributors and 30 percent of manufacturers would see an average fee increase of over 143 percent.
- Service suppliers pay an annual flat fee of \$687. Under the proposal, they would pay fees based on gross gambling receipts in Washington, which could be up to \$51,162 annually based on gambling gross receipts of over \$50 million. It would put service suppliers in the same license fee structure as manufacturers and distributors.

Additional fee increases may be especially burdensome to licensees in these economic times and they may choose not to renew their licenses rather than pay a higher fee, which some pull-tab licensees have already indicated. It would negatively impact the Commission financially if those licensees are lost. Beginning July 1, some licensees saw a 0.3 percent increase in B&O taxes charged on gambling contests of chance greater than \$50,000, which impacted social card games, bingo, raffles, and punchboard/pull-tab activities. The proposal does not generate an increase in revenue, so a fee increase would likely need to be addressed

in the future. In addition, there would be significant expenses of time and resources spent on the change, which will require legislative approval and is revenue neutral. Staff estimates it will take about two months of programming time to program our license database with the potential fee restructure. Applications and training materials would have to be updated and about 40 rules would need to be changed because many of our rules talk about license classes, which this proposal changes. If the proposal is approved by the Commission, it may be confusing to licensees since it would not actually be effective until approved by the Legislature. Staff has done a lot of work in the proposal and feels it is a significant policy decision for the Commission. Staff recommends the Commission not proceed with the proposed license fee simplification and consider including it with any future fee increase.

Chair Ellis understood it was staff's belief that, regardless of whether the Commission decides to proceed at this time with the simplification, the work that has been done will be quite valuable down the road if the Commission decides to proceed with simplification, with or without fee increases. **Assistant Director Griffin** affirmed, with all the outreach and feedback received from the licensees, it would prove to be beneficial in the future.

Commissioner Amos asked if staff had ever sent a survey to licensees in regards to any topic, similar to what was done with the 3,500 letters sent out for the first survey. He brought it up because he was concerned with the poor response of less than 1 percent. **Assistant Director Griffin** responded this was the first time, to her knowledge, that a survey had been posted on the website, with letters mailed that directed them to complete the survey online. If people did not have access to the internet, a phone number was provided where they could reach staff. Some responded directly to the Communications and Legal Department, and those responses were also logged. AD Griffin noted that staff had done mass mailings before.

Representative Alexander asked what the basis was for the license fees; if they were being based on cost or recovery of a certain share. **Mr. Westhoff** replied that overall, the fees are based on gross receipts and are expected to cover all the costs of licensing, regulation, and enforcement. But the fee schedule is not based on a certain workload, in a certain area, or anything like that. The overall fees are to pay for our regulatory costs, which is by statute. **Representative Alexander** summarized they are to pay for the costs of providing those services from the Gambling Commission. He asked if staff could justify that to the people paying the fees and explain how the fees are distributed. He asked what the difficulty was with regards to the inability to deal with the MLS system. He recalled when he was heading up the UBI program, there was quite a differential in terms of rates, fees, and increases that were provided to Department of Licensing, Revenue, Employment Security, and other agencies that were involved with that process. It would be very helpful to the consumer to be able to have one master license system that would incorporate lottery requirements, gambling license requirements, liquor license requirements, and business license requirements. **Mr. Westhoff** affirmed, noting there are a variety of different fee structures, but the 191 fees plus the gross receipts-based structure the Gambling Commission has is pretty unusual. According to MLS, they do not see that very often and it makes it very difficult for them with their information technology system. When we originally went to

them, they did not think there was any way our fee schedule could fit into their system and what they do. Since then they have leaned a little bit towards being able to do it and saying that it is a possibility now. There are still several issues that staff has get through, but it is at least a possibility at this point. **Representative Alexander** asked Mr. Westhoff to keep him posted on that, because he may be able to provide some benefits. If there is something that needs to be done through legislation or just in administrative support, he would be glad to help in that process. **Mr. Westhoff** thanked Representative Alexander.

Chair Ellis called for public comment on the fee simplification structure, given the fact that the Commission will be voting to proceed with it, or to not proceed with it.

Mr. Chris Kealy, Iron Horse Casino, testified that in speaking to this issue and watching the whole fee simplification move forward over the last few months, he felt strangely confused about how there is a recommendation not to proceed with it. He did not care either way, but it just kind of surprised him. His second comment had to do with the presentation of the overall fee structure as a percentage of gross revenue. Having been involved in the development of most of the rules over the last 10-12 years, he would like to shed some historical light on that. When looked at on its face as a percentage of gross revenue, it can be seen that the card room industry is on the purple line on the one graph, the number sticking in his mind from the presentation represented something like .75 percent of gross receipts. What appears to be a greater fee for a smaller entity on a pull-tab ends up being that way because the infrastructure that is on a card room basis is so much larger. Mr. Kealy would not want that to be mistaken in this venue, that there are internal accounting features and staff that are in real time monitoring those activities. His surveillance room is an excellent example of that. It is a major record keeping force and certainly a cost he bears as a business. Mr. Kealy's decision to close the facility in Everett, on the revenue basis for just the card room activity, it could have survived, but when the fixed costs are added in for the business regulatory obligations and the Gambling Commission's regulatory oversight, it does not work. It has a break point that is a lot larger, so it is kind of inherent to the whole system that although those fees look lower on a percentage of gross revenue, the cost of operating it is actually the opposite; it is far greater. Mr. Kealy wanted this Commission, with a lot of new, different faces that have not been here for that 10 or 12 years, to have that information. **Chair Ellis** thanked Mr. Kealy.

Ms. Teresa Malphrus, Hideaway Casino in Shoreline, said she actually came in regards to another subject that is going to be discussing later, but she had a question on this. One of the comments under the con column was that there would be a cost associated with changing the current fee structure. Ms. Malphrus asked what those cost savings were over the next two, three, or four years to streamline and to make this a more efficient and equitable system. **Administrator Westhoff** replied that, when talking about the costs associated, staff realized that when the Commission has to move forward with this, there are several rules that will need to be amended to change processes and those types of things. Those are going to be costs in the short term for the agency. As far as cost savings in the long term, one of the main things as we move forward with the understanding of our fee structure will be some administrative cost savings, but staff does not have a dollar amount. There will be some cost savings on things like having fewer licenses and being able to do those types of

things. But initially, and especially in these economic times, there will be a significant cost as far as administrative time. **Assistant Director Griffin** clarified one of the cost savings would be staff time and the number of license classes that would be reduced. Currently, once licensees have gross sales at a certain level, they have to pay a higher fee. There is a lot more monitoring on the part of the licensee because there are quite a few license classes and the variances between those gross receipts is very small. In eliminating license classes, staff has increased the span in terms of gross receipts. So where currently it may only be \$100,000 between license classes, there would potentially be \$250,000 to \$500,000. So there would be some staff savings in terms of monitoring licensee compliance with payment of fees and adjusting their license accordingly. **Chair Ellis** thanked Ms. Malphrus for her comments.

Mr. Charles Cook testified he has two sports bars in Grays Harbor County, and between he and his family they have probably a dozen or more bars and restaurants; all with pull-tabs. Of those, when it comes to the structuring part, they have 22 now and are dropping it down to 6. Mr. Cook understood almost all of their places right now run between \$200,000 and \$300,000 in gross sales. Unfortunately when it comes to gross sales, it does not mean a whole lot. Mr. Cook has two places and on one he gets taxed generally on gross sales, and the other one is on net sales. It makes a huge difference. When it comes to the structuring of it with all their places, most of them run between \$200,000 and \$300,000 in gross sales. Mr. Cook thought staff should look at where they made the cutoffs. He did not have all the numbers for every place else, but did know they said that 63 percent of the pull-tabs and punchboards fees were going to get lowered. Well of that, a lot of are nonprofits who get taxed differently than the pull-tabs generally. So when it comes to licensing, there is a little bit of a difference too. Mr. Cook did not understand when it comes to all the mail outs; staff mailed out 3,500 of them and they only had three comments coming back, He knew he had made a comment and his brother-in-law made a comment, which is two of the three, so Mr. Cook was a little confused. Then the second survey of 1,100, Mr. Cook never got that survey, so none of the people he knew responded to it. He did not know how the surveys went out there. When talking about the licenses, they have not changed a whole lot, but some things changed that in the last few years have gone up 7 percent and 5 percent, which is 12 percent right now. Mr. Cook is in a situation where they are going to make it up another 15 to 20 percent with the licensing. As mentioned, now is not a good time. Mr. Cook understood that things have to be changed around, but he did not have the big numbers to look at to find out where most of the state is. He knows a lot of class A and B, and they are not doing much of anything. He understood they might need a little bit of a break, but when looking at this, it is going from \$200,000 to \$500,000, which is a huge jump. A lot of licensees are in that area, especially around \$200,000 or \$300,000 and they are never going to get to \$500,000. That is a big amount for them to try to even be in that classification. And to go from \$1 million to over \$8 million, that is bringing all of them into three licenses. When the bottom half three there makes a huge difference and he did not know how many people go above a million outside of the casinos and stuff like that. But the lower end that he is into have to struggle right now too. Mr. Cook thought that if something like this is going to be done, \$200,000 to \$500,000 is a big jump for a license, especially in the gross gambling part of it. He has two of his places that run between \$215,000 to \$270,000, and that has not really changed over the last 10 years. He is not going to make the jump to

\$500,000. Of the 12 places he could think of where he has talked to people, they are all in that same boat. Mr. Cook knew that was not a big percentage compared to however many licenses there are in the state, but based on the people that he knows, they are all in kind of that medium area – not big, big, but not small. There has to be a lot more out there that take consideration for that license to go to \$300,000 instead of maybe \$200,000. And then at the same time, with this last one, Mr. Cook does not want to do it because it could increase the fees again. Staff are talking about jumping anywhere from 15 to 100 percent, depending on what kind of licenses, and what manufacturer, and stuff like that. That is huge already. A 20 percent or 15 percent jump is enormous right now, and then to potentially go even higher is a little nerve wracking as well. Mr. Cook said they are going to try to change this. He understood simplifying it from 22 licenses, but suggested looking at the medium to low end licenses. It might take a little bit more looking at to come up with a better way of doing that because it seems kind of big.

Chair Ellis thought that Mr. Westhoff's comments, in particular, showed the staff did attempt to look very carefully at whose ox was being gored in looking at the small players in the industry as well as the large players. And some of the numbers reflect that, but obviously – **Mr. Cook** said there were a lot of really small ones and there were a lot of bigger ones. It is kind of the low end of the medium area that is kind of a touchy thing. For \$500,000 for a license, they are doing some pull-tabs – that is a lot. And the small ones like Mr. Cook's that are not really, really small, they are doing something, but there are a few of them down there. **Chair Ellis** thanked Mr. Cook.

Mr. Joseph Mahoney, Sports Page Pub in Auburn, testified that he, like Charlie Cook, is in the 20 percent gain, and currently has a \$300,000 license in gross play. The Sports Page Pub will see approximately a 15 to 20 percent increase in its next license if this proposal goes forward. Mr. Mahoney has recently been feeling the effects of the economy; sales tax going up, cost of liquor going up, rent going up, everything's going up. This is not a time to raise fees for anybody. Mr. Mahoney agreed this was a revenue neutral situation where some people will benefit and some will not, but those in the middle are really going to feel it because 20 percent of any dollar is a lot of money to come up with at the moment. He is feeling the effects of tribal gambling expanding in Auburn with the Muckleshoot Casino around him. He has lost gambling dollars, so he is not moving forward but is definitely going down the ladder. It will not get better for him, but will only maintain where he is, hopefully, or get worse. Mr. Mahoney testified he was opposed to the proposal. **Chair Ellis** thanked Mr. Mahoney.

Commissioner Rojecki made a motion seconded by **Commissioner Roe** that the Commission not proceed with the proposed license fee structure at this time, but to consider including it with a fee increase in the future, if necessary. *Vote taken; the motion passed with four aye votes.*

Community Impact/Charitable Payments (PowerPoint)

Director Day explained that under the Tribal-State Compacts and Amendments, each gaming tribe is required to make a combination of payments, referred to as local impact/

charitable impacts. Problem gambling and smoking cessation payments were added with the approval of Appendix X2 in 2007. Gambling Commission agents are required to verify these disbursements each year, and a summary report is provided for the Commission.

Agent in Charge Cathy Harvey reported she would provide a brief summary about the four types of the contributions and the amounts. The requirements for these contributions are outlined in the Compacts and Appendix X2 and include: community impact; charitable; smoking cessation and prevention; and problem gambling education, awareness, and treatment. Tribal Gaming Unit (TGU) agents monitor compliance with the Tribal-State Compacts by independently verifying the accruals and disbursements for charitable, smoking cessation, and problem gambling, and verify the disbursements for the 2 percent payments. AIC Harvey explained there are some timing issues with the payments; some are in 2008 and others in 2009. The tribes accrue the amounts for the 2 percent and charitable contributions in 2008, distribute the funds in 2009, and TGU agents verify and present that information in 2010. The 2008 total tribal net receipts for the year were \$1,571,898,000. Community impact contributions, or 2 percent disbursements, are intended to reimburse local governments and agencies that are impacted by the operation of the tribal casinos. The Compact language varies on types of impacts mentioned (actual impacts, potential impacts, material impacts, or impacts based on documented costs and impacts). Under most of the Compacts, tribes are required to distribute up to 2 percent of net win (gross play minus prizes) of table game revenues. No payment is made if there are no impacts. Some categories that are not included include: satellite wagering, sports pools, class II gaming (bingo and pull-tabs), charity table proceeds, non-gaming revenues (food and beverage, retail sales), and some Compacts do not include Keno in the calculation. Tribal Lottery System (TLS) revenues are also not included in the 2 percent structure. Some tribes have 2 percent community impact committees that decide on disbursement of the funds. A few tribes do not have committees because their Compacts list specific entities that the money is to be paid to so there is no committee to decide. Some of the tribes do not have state representatives on the committees. Gambling Commission staff participate on some of the committees. All 2 percent payments are made at least annually, with some tribes making them quarterly. There were 59 different agencies that received funding during the year in the amount of \$5,035,127. All the tribes were found to be in compliance for their distributions.

Chair Ellis noted, when looking at the \$5,035,127 number and comparing it to 2007 and 2006, there was a continuous decline in the amount of community impact funds overall that were distributed. Chair Ellis recalled those were years in which the level of tribal gaming overall was significantly increasing as opposed to perhaps 2009. He asked if AIC Harvey knew why there was that downward pattern in the total funds distributed. **Agent In Charge Harvey** could not give Chair Ellis an absolute answer, but speculated that Tribal Lottery System play has increased and many of the casinos have reallocated their floor space to have more Tribal Lottery System machines, so the table game play is decreased because there are less tables. **Chair Ellis** said that made sense.

Agent in Charge Harvey reported the Tribal Lottery System charitable donations are required under Appendix X2. Tribes are required to distribute half a percent of TLS net win

to bona fide charitable or nonprofit organizations within Washington State. Net win, in this case, is the amount wagered less prizes paid, plus deductions for the cost of developing, licensing, and otherwise obtaining the use of the Tribal Lottery System. Brand new tribal casinos are also allowed a reduction for the first and second year. The largest category of TLS charitable donations was made to social/community services. Other organizations receiving funds were tribal programs, education programs, youth programs, church organizations, and sports programs. There was an increase of \$569,618 between 2007 and 2008; from \$7,193,974) to \$7,763,592. Those numbers only reflect TLS contributions. The tribes make many more contributions that are not reflected in those numbers, which would be reflected in the Community Investment and Contribution Report. There were 1,038 organizations that received charitable distributions during the year from the tribes, which was a decrease from the year before; although, the amount increased.

The smoking cessation and problem gambling contributions are a requirement of Appendix X2 and are for 2009. Tribes are required to distribute 0.13 percent of TLS net win to governmental, charitable, or nonprofit organizations within Washington State. Net win is the amount wagered, less prizes paid, less allowed deductions. If a casino is completely smoke free and does not serve alcohol, the tribe would not need to make payments. If a tribe has more than one facility and one is smoke free, the tribe can reduce the actual amount proportionally. There are four casinos that have a reduced payment for not serving alcohol and having smoke free facilities. There were nine charities that received funds. There was an increase between 2008 and 2009 of over \$568,000. There were 27 organizations that received distributions from the tribes versus 24 the year before.

Senator Prentice asked if there were any statistics or a way of knowing the success rate of those programs. She noticed a lot of dollars, but was not sure about the success rate. **Agent in Charge Harvey** responded the agents just verify that the money actually goes to the organizations.

Commissioner Roe asked if there was a listing of the actual names of the organizations by the amount of money they received. **Agent in Charge Harvey** replied she had a listing that she could have copied for Commissioner Roe or she could just read the information.

Commissioner Roe said she was just interested in who was getting big chunks of those dollars. **Agent in Charge Harvey** read the names from her list of organizations; although she did not have any amounts.

Agent in Charge Harvey reported problem gambling represents 0.13 percent of net win of all class III activities; not just the Tribal Lottery System revenues. The contributions are made to governmental, charitable, or nonprofit organizations within Washington State. There were six charities, one state agency, and 14 tribal programs that received contributions totaling \$2,642,204. All the tribes except one were in compliance, and staff is working with that tribe to ensure the distributions are made. Their accruals were made, but the distributions have not yet been verified. Twenty-one (21) organizations received funding for problem gambling versus 16 the year before.

Representative Alexander was curious why staff was able to receive 2009 numbers for certain categories but not for others. **Agent in Charge Harvey** replied it was a timing issue. The 2 percent and the charitable contributions were accrued in 2008, but the tribes do not have to disburse the money until 2009, and staff report them in 2010. The Compact requires problem gambling and smoking cessation contributions to be made the following year, so 2009 numbers were available because they were made in 2009. **Representative Alexander** noted it was not necessarily an availability of the numbers; it was just a question of the timing of the distribution of the numbers. **Agent in Charge Harvey** affirmed it was timing plus what the Compact sets out. **Director Day** clarified the process was governed by the language in the Compacts specifically. As a matter of fact, most of the impacts on impact payments go back before there were machines. Many of the committees were designed and implemented before there were TLS machines. **Representative Alexander** asked if the distributions go directly from the tribes to the organizations that receive them. They do not go through any kind of a state system? **Agent in Charge Harvey** replied that with the 2 percent money, staff sit on the committees and, in some cases, are a part of the committees that make those decisions. But everything else is going directly from the tribes to the recipients and our agents verify that the payments are made.

Budget Update (PowerPoint)

Judy Pittelkau, Senior Budget and Accounting Analyst with the Business Operations Division, reported the purpose of this presentation was to get the Commission's approval for the proposed staff changes to the fiscal year 2011 budget that was approved in August 2009 and to provide an update on the changes that were implemented by the Legislature during the 2010 legislative session. Staff is asking for feedback on the preliminary budget for the 2011-2013 biennium, which will be brought forward for Commission approval next month. Ms. Pittelkau explained that as a non-appropriated agency, we do not receive any general fund dollars and are expected to cover all costs through fees and other revenue sources. The Commission is not required to have any appropriation from the Legislature to permit expenditures from the gambling revolving fund. All the expenses relative to the Gambling Commission's business are to be paid out of the gambling revolving fund, and the disbursements are authorized by the Commission, or a duly authorized representative. All expenses paid with the seizure funds are paid out of the gambling revolving fund and then reimbursed with the seizure funds. Fees are to be adequate to cover all costs incurred by the Commission relative to the licensing and enforcement of the provisions of Chapter 9.46 of the RCW. The Commission has the power to establish fees to offset costs of administering other programs such as the lab review costs and ID stamps. Ms. Pittelkau explained that revenues are cyclical and the peak periods occur at the end of the quarters. Revenue ranged from a low of \$511,000 in October 2009 to a high of about \$3 million in December 2009. Revenues are about 4.6 percent below the estimates, which is in line with the decline being seen in the active licenses. Punchboards/pull-tabs are still our largest single source of revenue; however, that percentage continues to shrink. Tribal regulation continues to be the second largest source, followed by house-banked card rooms. In February of each year the Business Operations Division meets with experts in the areas that generate revenue for the agency and reviews historical and future trend information. Staff also receives input from

our licensees on their future plans to determine any changes that need to be made in the estimates.

Ms. Pittelkau noted the data for June expenditures would not be available until next week. Overall expenditures are just slightly below the estimates. The spike in January expenditures was due to the purchase of agency vehicles. Historically, the gambling revolving fund expenditures have remained relatively flat on a month-to-month basis where the revenues are cyclical, which is one of the reasons for maintaining a working capital balance. The allotted FTE level was 166.4, while the actual FTE level was 159.7. Because our revenue stream will not continue to support 166.4 FTEs in the future, attrition and the seizure funds are being used to reduce staffing over a longer term. 153.7 FTEs are paid from the gambling revolving fund, while 6 FTEs come out of seizure funds. The working capital balance is a result of managing revenue and expenditures and the use of the seizure funds. Staff estimates the ending fiscal year 2010 working capital balance will be about \$3.8 million. There are items that can affect our working capital balance so when the budget is built, staff uses the best information available at the time, taking into consideration internal and external factors. It is important to maintain a working capital balance that is sufficient to cover our needs during the lower revenue periods. As a non-appropriated agency, our revenues come mainly from license fees. The number of licenses is expected to go down, so the working capital balance provides time to respond to the decreases and make reductions in expenditures. Also, the State has increased the employer contribution for health care costs significantly for fiscal year 2011. Charges are also going up for other agencies like General Administration, Printer, and Attorney General's office, who then pass the additional costs on to the agency for the services they provide. Like most agencies, salaries and benefits are the greatest expenditure item, and future salary and benefit increases have a significant impact on our working capital balance. An adequate working capital balance provides the Commission the ability to pay for these items without immediate fee increases. Ms. Pittelkau reported that, although the Commission approves our fee increases, I-960 requires all fee increases to be ratified by the Legislature, which could cause a delay or even a denial of fee increases in the future. It could also cause our revenues to be lower than necessary to maintain an adequate working capital balance.

In fiscal year 2011 there is a \$2,000 increase for pension costs and \$174,000 for increased health care costs. Because staff anticipated these increases and included them in the agency compensation model, the Commission is not being asked to make any adjustments for the increases during the fiscal year 2011 budget. In August 2009, the Commission approved a biennial budget of \$33,630,000 and 165.4 FTEs. Staff are asking approval for adjustments to expenditures that were transferred to fiscal year 2010 for positions funded by the federal seizure funds. Adjustments need to be made to the start and end dates on those positions for the fiscal year 2011 budget to reflect when the actual expenditures occurred. Because these adjustments occurred between fiscal years in the current biennium, there is no impact on the biennial budget. Staff recommends approval of a revised fiscal year 2011 budget of \$16,740,000 and 165.2 FTEs.

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

Commissioner Rojecki made a motion seconded by Commissioner Roe to approve the revised Fiscal Year 2011 Budget of \$16,740,000, reflecting 165.2 FTEs. Vote taken; the motion passed with four aye votes.

Ms. Pittelkau reported the 2011-2013 biennium covers fiscal years 2012 and 2013. Staff would appreciate any comments the Commission has to assist as staff complete the preparation on this budget, which will be up for final approval next month. The preliminary budget does not include any new fees or potential fee increases. There is no reliable way of knowing how much or when the agency might receive any seizure funds, and the agency is not allowed to anticipate them, so no additional seizure funds have been included in this budget. The estimated revenue for the 2011-2013 biennium is \$26.4 million.

Chair Ellis asked if the difference between the estimated revenue for FY 2012 and FY 2013 was the reduction in revenue over that time period in anticipation of a continuing deteriorating economy or, at least, not an economy that is going to result in significant improvement in the industry. **Ms. Pittelkau** replied staff has no way of knowing when the economy is going to rebound, and historically at this point, staff has been seeing a decline in the number of licenses and anticipate that decline will continue, at least for awhile.

Commissioner Roe wondered how close staff was on the predictions of how many decreases there would be in active license certifications from February 2009 to February 2010. **Administrator Westhoff** replied that, overall, the 2010 revenue was at about 95 percent of what was estimated. Whenever yearly estimates are done, there will always be adjustments, just like what was seen with the quarterly estimates statewide. In this particular case, especially with the downturn in some of the card room employees and tribal certifications, that was one of the areas that went down quite a bit more than estimated. As far as some of the organization licenses activities, the estimates were very, very close – within about 1 percent at the end of the year. Historically, staff has done a very good job of estimating revenues. There are performance measures in that area and staff has been able to meet those nearly every year.

Ms. Pittelkau reported the Commission has received approximately \$8.5 million in federal funds from the Department of Justice and the Department of the Treasury. By the end of fiscal year 2011, it is anticipated there will be about \$3.9 million still available for the next biennium. Federal guidelines require that these funds be accounted for separately, be spent by the receiving agency for specific law enforcement purposes, and generally be spent within two to three years. In addition to the federal seizure funds, the Commission has received almost \$3 million in state seizures. There are no plans to spend any of those funds during fiscal year 2011. Like the federal seizures, there are stipulations for the use of the state seizure money: they must be accounted for separately, spent by the receiving agency for gambling related law enforcement activity, and the funds cannot supplant existing fund sources. The seizure funds provide benefits to the tribes and the licensees because they help defray some of the costs to the agency and delay potential fee increases. Seizure funds continue to help offset fiscal year 2011 reimbursable rates and costs through the next biennium. The carry forward level is the starting point for the budget and carries over the current biennium allotments, less any one-time costs. An example of a one-time cost would

be the replacement of conference room furniture that was done in fiscal year 2010 for about \$25,000. Then the carry forward level adds in the costs of the statewide adjustments such as salaries, benefits, and service agency charges, which could be increases or decreases, but are usually increases.

Director Day asked if the down arrow before the \$15/hour rate charges meant the rates are \$15 an hour lower than they would be without seizure funds. **Mr. Westhoff** affirmed the charges are not going down \$15 from what they currently are this year, but is \$15 from what they otherwise would be.

Ms. Pittelkau reported on the proposed budget for the 2011-2013 biennium for the gambling revolving fund and its impact on the working capital balance. Staff anticipates beginning fiscal year 2012 with approximately \$2.4 million. Estimated revenue is \$26.4 million and planned expenditures are \$26.5 million, is within the OFM recommended working capital balance of about two months expenditures.

Representative Alexander asked if that was going to be sufficient. He recalled this discussion about a year or two ago when the Commission was having some serious concerns about being able to cover the monthly fluctuations and revenue and expenditures. Then along came the federal funds and that helped us through that period of transition. He asked if somebody has done a monthly analysis of where this puts the Commission in terms of 2011-2013 in terms of being able to have sufficient working capital to cover not going into the red. **Mr. Westhoff** affirmed the Commission has the minimum working capital balance and the \$2.2 million that OFM recommends is a level that is sufficient within 2011-2013 in order to handle all of our requirements as far as expenditures and those fluctuations. **Mr. Westhoff** explained all of the seizure funds are not going to be spent during the 2011-2013 biennium, so there will be some of those funds available as well thereafter. Staff feels this amount is sufficient. **Mr. Westhoff** affirmed that prior to receiving the seizure funds, the Commission was in a situation where the working capital balance was going down to \$1 million or less. When the Working Capital Balance gets down to that level, it gets to a point where the Commission is not able to meet those changes. **Representative Alexander** thought it was just a word for his colleagues on both sides of the aisle in the Senate and House. Hopefully, they will have enough knowledge to protect that money to be able to continue to be used and not be swept for some other purposes that would put the Commission in a precarious position.

Ms. Pittelkau reported the proposed spending plan for the seizure funds includes both the federal and the state seizures. The law enforcement FTEs are existing positions that are being funded out of the gambling revolving fund at this time. The decision package is for a public opinion survey, which was last done in 2005. At that time, it was anticipated doing one every five years. The survey provided valuable information to the Commission, such as the feedback received regarding the public's concern for underage gambling, which provided an incentive for the patrols that agents have been doing. The proposed spending plan for the seizure funds during the next biennium is \$5.9 million and includes 18.4 FTEs. The preliminary expenditure plan for the 2011-2013 biennium begins with the carry forward level of \$29.6 million. Almost \$2 million of the seizure funds spending is already included

in that carry forward level and the remaining almost \$4 million is added in the second item. The total proposed budget for the 2011-2013 biennium is \$32,418,000 and 155.5 FTEs.

Chair Ellis asked if there was anything staff could say at this point as to what types of positions would be ones that would be reduced in lowering the Commission staffing. **Mr. Westhoff** replied that, as far as what is in the seizure fund spending, it is agent positions because it is required to be enforcement positions. However, as we move through 2011-2013 and continue to plan 2013-2015, staff will be looking at our positions overall and what can be afforded within the budget. It does not necessarily mean those 17 enforcement positions will be what is reduced in the end. It is likely there will be retirements and other vacancies that can be looked at. Staff also looks at workload levels and determines the positions that are needed for whatever the minimal level is and plans accordingly. **Chair Ellis** asked whether there was any specific program change that is anticipated to accomplish the reduction in FTEs. **Mr. Westhoff** replied there were none at this point.

Ms. Pittelkau reported the working capital balance declined significantly between fiscal years 2002 and 2004 when the Legislature directed the transfer of \$4.95 million from the gambling revolving fund to the state general fund. Since then, staff has consistently been working to get the working capital balance down within ranges sufficient to meet agency needs. The preliminary biennium budget is approximately \$1.2 million and almost 10 FTEs less than the current biennium. The budget will be presented for approval at the August Commission meeting. **Director Day** added that the previous slide helps depict how the planning process is moving forward as staff continue to look at the revenue, the license trends, and the workload. Staff is subsequently building the budget and, as that decline is seen, the agency is slowly and steadily lowering the required FTEs through action by the Commission. So in the end, if the trends are as bleak as staff is predicting, those FTE numbers will have to continue to move down. But on the other hand, there may be a recovery of the economy and additional licensees and additional workload that will cause staff to move in a different direction.

Chair Ellis indicated his view was that, as always, the Commission staff and the Business Office do an admirable job of staying on top of the present and the future in ensuring there is enough money to be able to run the shop. He thanked Mr. Westhoff and Ms. Pittelkau for the presentation.

Chair Ellis called for a break at 3:15 p.m. and reconvened the meeting at 3:30 p.m.

Legislative Update

Director Day provided a brief recap of 2009 activities and a brief update on plans for the 2011 legislative session. Staff had over 65 meetings with legislators, reviewed over 1,500 bills, prepared about 7 fiscal notes, attended 40 hearings, and testified at 14 hearings on 8 different bills. There is no agency proposed legislation to bring before the Commission.

Correspondence

Director Day pointed out an article entitled “*Governor Announces Plan to Transform Washington’s Budget*” and a memorandum from Marty Brown about the Governor adding an additional eight questions and a committee to work through the budget issue on the larger side of the equation. Business Operations staff will take the lead in preparing answers to those questions and meeting the requirements to submit them, as requested by the Office of Financial Management.

Chair Ellis noted that Representative Gary Alexander is one of the members of the committee that will be looking at substantially restructuring the state budget.

Monthly Update Reports

Director Day pointed out the federal update is getting quite lengthy because there are a lot of bills that have at one point been introduced federally. The only new bill since the May Commission meeting was Senate Bill 3418 (Comprehensive Problem Gambling Act of 2010) that was introduced by Senator Merkley from Oregon, amending the Public Health Service Act. The bill was referred to the Senate Committee on Health, Education, Labor, and Pensions, which is where it currently resides.

News Articles

Director Day pointed out the news article about Federal Way’s decision to cut in half its gambling taxes, which may allow a house-banked card room to go back into business. There is also an article documenting that Tracie Stevens was nominated for the position of Chairman of the National Indian Gaming Commission. Director Day indicated there were a series of four articles pertaining to the recent argument at the end of May about the cases before the Supreme Court involving online gambling. Those cases were capably argued by Jerry Ackerman, Senior Counsel, Attorney General’s Office. The Commission sponsored a public information campaign regarding the risks of internet gambling, which a number of people were unaware of. Gambling has a history of connection to crime and corruption and, as a result, there is a lot of money involved, but it is strictly controlled everywhere it takes place. Just because gambling occurs on the internet, it does not change the potential or concern. Internet gambling has always been illegal and is not legal anywhere in the United States, but that information is often confusing. It may seem harmless to gamble online; however, unlike licensed and regulated gambling activities, internet gambling sites are not regulated anywhere in the United States. Players have no idea who is operating the gambling site, if the games are honest, if the winnings will be paid, or if the money will be used for criminal purposes. Players have no recourse if they are cheated or not paid and they put themselves at risk for credit card fraud, identity theft, and other financial crimes by disclosing information that should be secure. Internet gambling creates an uncontrolled environment for those with gambling addictions and for minors. The debate will continue and we will see how the Supreme Court decides the cases.

Comments From the Public Regarding the Director’s Report

Chair Ellis called for public comment on the Director’s Report.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, introduced herself to and welcomed Commissioner Roe, adding she hoped to work with her closely. **Commissioner Roe** thanked Ms. Chiechi. **Ms. Chiechi** alerted the Commissioners to a 3 percent increase of the B&O tax on gambling contests of chance that took place with the Legislature this session. This increase snuck past most of those in the gambling industry, including the staff at the Commission. As Assistant Director Griffin identified earlier, it would be an impact and a con against raising the license fees. When that is added into the sales tax on bottled water, the tax on carbonated beverages, the 50 cents per gallon tax on mass produced beer, and the \$1 a pack on cigarette taxes, obviously licensees are being impacted by a number of the taxes that are coming down. But that increase on the B&O makes the B&O tax paid by licensees the highest in the State and it certainly does impact their ability to keep their doors open, as has been identified by some of the closures that have taken place. This one snuck past them; they did not realize it. Ms. Chiechi got calls on July 1 from licensees saying what is this and how did this happen. When they went back and researched, there was just one little line in the budget bill that said “oh, and a tax effecting RCW 84 point blah, blah, blah” and she had to do an RCW search to backtrack it around and figure out that was what it was. Ms. Chiechi just wanted to raise that awareness to the Commissioners so they keep that in mind. She knew that was not anything the Commission could effect a change regarding; it is a temporary tax, but everyone knows how that works when taxes are temporary, it is often extended. It is something Ms. Chiechi will be raising with legislators as she speaks to them over the interim and in the future. She just wanted to raise that awareness and bring that to the Commission’s attention.

Chair Ellis asked what the aggregate B&O tax on gambling activities was with that increase. **Ms. Chiechi** replied it was 1.93 percent, which results in about an 18 percent increase in what the operators were paying prior. **Chair Ellis** thanked Ms. Chiechi.

Mr. Chris Kealy, Iron Horse Casino and President of the RGA, said that when listening to the Director’s Report and looking at the statistics, he had a couple business observations, questions, or comments. When looking at the gambling revolving fund pie chart that was shown, a couple of the charts grabbed him in a different way than maybe it was grabbing the Commission. Mr. Kealy wanted to have public comment on a couple of these charts. That chart in particular demonstrates the continual erosion of the pull-tab industry. Sometimes you have to back up a little further to see what’s really happening. When that page is flipped, it shows that the tribal certification and tribal regulation components of the pie chart have gotten a lot larger, which stands to reason when you flip over to the next page and see 10,488 tribal employee certifications being done. But what he certainly was aware of over the last three or four years is that we have seen a growth in the tribal gaming units themselves; the sovereignty of the tribes, their monitoring, and doing a fair amount of their own work. Mr. Kealy has talked to colleagues on the other side, and that was their position. When looking at the growth of that, and then the reduction of the card room employee licenses, the punchboard/pull-tab licenses, and the house-banked card rooms, which can be seen on the page over, we are going from 80 card rooms to 72. If you back up just a little further, you will see that we peaked out at almost 100 about four years ago, and we are right around 64 today. Mr. Kealy’s real point in all of this was that somewhere in this FTE head count he did not see what he would consider to be an appropriate reduction based on the

numbers that really exist in this state, and where the market share is, and who is really regulating it. It would be Mr. Kealy's business judgment that there would be missing somewhere like 30 to 35 FTEs. He did not see how 155.5 accurately reflects the reduction in the commercial gaming industry in the state of Washington and encouraged the Commissioners to scrutinize this a lot further. The industry relies on the Commissioners to keep the Commission regulating and doing a great job, which they do, but the over regulation becomes a problem. When Mr. Kealy was in Everett – and he was the second to the last of 10 to go out of Everett – his agency visit rate was skyrocketing, and he would often say to the agent, “do you just not have anything else to do?” And frankly, it was kind of true. Mr. Kealy ended up dealing with an agent four days a week and hand-holding him all the time, which takes his staff time to wander around with an agent that does not have enough to do. Mr. Kealy said he had to call it out to the light of day that he does not think the FTE reduction is sufficiently matching the industry reduction.

Chair Ellis thanked Mr. Kealy for his comments. The Commissioners always appreciate getting Mr. Kealy's insights from a business standpoint, as well as his own business and the RGA, and the impact of these numbers and issues. Chair Ellis recalled when staff were talking about the reduction in Commission staffing and, when thinking of the days when there were more than 100 card rooms, at some point in that time period there were also 197 FTEs on Commission staff. So there has been a much more dramatic drop from the allotted 165.6 for this biennium to the actual of less than 160. Mr. Westhoff is still present and Chair Ellis was sure that Mr. Westhoff and the Business Operations office would certainly take those items into account.

Mr. Kealy said that, along those commenting lines, when looking at a peak of possibly 196 FTEs, which may or may not have been the case in 2002 or 2003, there was a growth of tribal gaming and commercial gaming, private owned via pull-tabs. Pull-tab licensees peaked out at about 3,600 or 3,200, somewhere a lot more than the 1,400 today. One of the other positions Mr. Kealy put forward was in an ever changing gaming environment, which he thought the Gambling Commission did a fantastic job on the internet position and he agreed whole-heartedly with how hard it must be to try to regulate something that is such a monster, and so they have new and different dynamic challenges which he completely respected and that may well involve different personnel a decade from today than we see now, but that withstanding, they have a pretty stable/eroding industry that from every viewpoint is either stabilizing or shrinking. So, in 2002 when the Commission might be licensing a brand new Native American casino with hundreds, if not thousands, of VLTs and maybe a new card room or two, probably five a year were coming online, which would involve new employees that are newly trained, newly background checked, and all that, but now there is more of a stabilized force in decline that is not new to anybody. The dance is not new. The 20 modules licensees go through every couple years at a card room have been done by most of them now five times because they have been at it for a decade. So they kind of know the modules, know the dance, know what is expected, and have every intention of complying, but they even know today better how to comply. Mr. Kealy thought that a lot of this was a pretty scripted affair that really did not demand as many people. And he thought as they shift – and everybody does do a great job given their current mission, but if they don't put out there that they think the mission has changed and nobody looks at that,

then they will just go status quo. And the industry is in trouble right now; they need to make sure that they are vigilant with public dollars in any direction.

Chair Ellis thanked Mr. Kealy, and pointed out that Commission staff is looking for ways to accomplish the further reductions in FTEs that are built into the biennium budget for the next biennium.

Director Day said he did not want to do a point/counter-point, but wanted to at least end the discussion by saying he appreciated Chair Ellis pointing out the other part of the facts, which is that the Commission staff was at an authorized level of 197. This proposed budget would bring the Commission staff to an authorized FTE level of 155 by the end of 2013. And there is no request in the budget for additional fees from licensees; recognizing that process. So although staff may very well need to look at even further reductions as those years come forward – hopefully things are a little more positive when that time comes – but staff are poised to do that. Director Day thought it should be clear that those reductions have already been fairly significant. **Chair Ellis** agreed they certainly have been.

3. Default – Pioneer Roadhouse/Town Tavern, Licensee, Revocation

Ms. Amy Hunter reported staff are requesting the Commission revoke Pioneer Roadhouse's pull-tab license based on two violations: failure to submit their punchboard/pull-tab activity reports and for exceeding their gross gambling receipts. Charges were issued by certified and regular mail. The certified mail was unclaimed and returned. The regular mail was not returned, so it was presumed the licensee received it. An agent confirmed the licensee was no longer in business, which is typical practice. When charges have been issued to a business and they have not responded back, an agent goes out to make sure they received the charges. In this case the tavern was not operating. By failing to respond they have waived their right to a hearing. Staff is requesting the Commissioners enter a final order in default revoking the license.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Mark Wertz or a representative was present on behalf of Pioneer Roadhouse/Town Tavern; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission enter an order revoking by default the license to conduct gambling activities of Pioneer Roadhouse/Town Tavern, as presented by staff. *Vote taken; the motion passed with four aye votes.*

4. Approval of Minutes – Regular Meeting – May 14, 2010

Commissioner Amos made a motion seconded by **Commissioner Roe** to approve the minutes from the May 14, 2010, regular Commission meeting as submitted.

Chair Ellis had one comment, if it was acceptable to the mover and the seconder, regarding on page 11 of the minutes the references to the petition for review of the New Grove. It indicated that Assistant Attorney General Marvin provided testimony in the matter, and then

refers to the conclusion of Mr. Marvin's testimony. Just to make sure that things do not get confused down the road, it would be more appropriate to refer to what Mr. Marvin did as argument. He was not a witness and did not literally testify the way us picky attorneys mean it. **Commissioners Amos and Roe** agreed to the change. *Vote taken; the motion passed with four aye votes.*

5. New Licenses and Class III Certifications

Deputy Director David Trujillo reported that, along with the Commission Approval List of new licenses and class III certifications for July 2010, there are three informational pre-licensing reports. Two are from manufacturers and one is for a new house-banked card room. Behind the pre-licensing report for the new house-banked card room is an article that appeared in a local paper highlighting the opening of that facility.

Chair Ellis asked if there were any questions.

Senator Prentice asked what newspaper the article was from. **Deputy Director Trujillo** replied it was the Ellensburg Daily Record. **Senator Prentice** said she had wondered where that reporter was; she used to work in Olympia.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to approve the new licenses and class III certifications listed on pages 1 through 21. *Vote taken; the motion passed with four aye votes.*

6. Motion to Strike Petition for Reconsideration and Petition for Reconsideration – Angela M. Pagnossin, Card Room Employee, Revocation

Chair Ellis pointed out that, as indicated at the start of the Director's Report, this item was deleted from the agenda.

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

Chair Ellis called for public comment.

Ms. Teresa Malphrus, Hideaway Casino in Shoreline, admitted she was not sure this was the time for her to comment – it may be tomorrow – but she wanted to be able to answer any questions today that she could. The Commission is going to have a vote, or a consideration, in front of them tomorrow to raise the wagering stakes in poker to \$100. /She believed there were going to be three proposals presented. Proposal #2 would be for house-banked rooms and class F card rooms. Ms. Malphrus said she was here just to be the face of the small group of class F card rooms. There are only five in the state of Washington and she wanted to make sure before the Commission considers the proposals tomorrow that they understood who the class F card rooms were and to answer any questions they might have about what distinguishes them from a house-banked room.

Chair Ellis asked if Ms. Malphrus was planning to attend the session tomorrow. **Ms. Malphrus** affirmed she would be present tomorrow and asked if it would be more helpful to

comment tomorrow. **Chair Ellis** explained there would be an opportunity to speak at that time and that Ms. Malphrus may want to comment then so her comments would be fresh in the Commissioners minds. **Ms. Malphrus** agreed, adding she did not know and just wanted to make sure.

Senator Prentice asked if that was like the Sidetrack in Kent or not. **Ms. Malphrus** replied she did not know who that was; she just knew there were only five class F card rooms.

Chair Ellis said it was up to Ms. Malphrus; she could continue now, but would be welcome to address the Commission tomorrow. **Ms. Malphrus** wondered if anybody had any questions before this consideration tomorrow, if it would move it along tomorrow. She did not know how long the meeting would last tomorrow. **Chair Ellis** replied there would be a full discussion of the proposal, and members of the public would have an opportunity to address the Commission at that time, adding the Commission would welcome Ms. Malphrus' input. **Ms. Malphrus** affirmed that would be fine, and asked if there were any questions on what or who they are.

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

At 4:00 p.m., **Chair Ellis** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 4:50 p.m. and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, JULY 9, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 9:00 a.m. at the Washington State Senate Hearings Room in Olympia and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commission Vice-Chair Keven Rojecki, Tacoma
 Commissioner Mike Amos, Selah
 Commissioner Rebecca Roe, Seattle
 Senator Margarita Prentice, Seattle
 Representative Gary Alexander, Olympia

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

RULES UP FOR DISCUSSION AND POSSIBLE FILING

9. Petition from the Public – Casey’s Dead Game Service – Increase income threshold for a pull-tab service business from \$25,000 to \$30,000

- a) **Amendatory Section WAC 230-03-020** – Punchboard and pull-tab service business permit
- b) **Amendatory Section WAC 230-03-210** – Applying for a gambling service supplier license

Ms. Hunter reported Casey’s Dead Game Service is a business that has a punchboard/pull-tab service business permit, which means they enter into agreements or contracts with pull-tab operators to weigh their games, do counting of them, and do a certain amount of bookkeeping required by our rules. These service business permits are for small businesses. The petitioner is asking that the gross billings threshold for this type of business be increased from \$25,000 to \$30,000. Currently, if the gross billings go over \$25,000, they have to get a gambling service supplier license, which requires more backgrounding and sourcing of funds, and there is a fee difference between getting a permit versus getting a gambling service supplier license. The permit has an initial fee of \$236 with a renewal fee of \$56. If the business goes over that threshold and has to get a gambling service supplier license, the license fee is \$687 every year. The petitioner would much rather be paying \$56

a year as a renewal. He explained in his petition that he wants to be able to increase his billing rate, but was concerned he might go over the threshold amount and have to get that higher license. Staff recommends filing this petition for further discussion.

Commissioner Roe asked how long the threshold had been at \$25,000. **Ms. Hunter** replied it was changed from \$20,000 about four years ago in July 2006 through a petition; although, the petition was not through this same company. **Commissioner Roe** asked how long it had been at \$20,000. **Ms. Hunter** was not sure, but offered to check and provide an answer next month, or before then if Commissioner Roe wanted. **Deputy Director Trujillo** believed it had been \$20,000 since the creation of the rule, which had just been a few years prior to the change to \$25,000.

Chair Ellis asked if there were any questions or comments from the public; there were none.

Commissioner Amos made a motion seconded by **Commissioner Roe** that the Commission file proposed rule changes to WAC 230-03-020 and WAC 230-03-210 for further discussion. *Vote taken; the motion passed with three aye votes (Commissioner Rojecki was not present).*

10. Petition from the Public – ShuffleMaster – Authorizing Pai Gow’d

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

Acting Assistant Director Jeannette Sugai reported the petitioner is requesting the house-banked card game Pai Gow’d be authorized for play. Pai Gow’d is a proprietary card game where players have the option to place a wager on the dealer’s hand, which current rules do not allow. This rule change would only allow a player to place the wager on the house’s hand in the game of Pai Gow’d. By allowing this proprietary game, staff could receive additional requests to allow wagers on the house’s hand. The Commission may wish to consider if they prefer to address each request for a new game that would allow players to wager on the house’s hand, or perhaps remove the restriction and allow wagers on the house’s hand. At the October 2008 Commission meeting, the Commission expressed concern about allowing staff the broad authority for games that would allow players to place a wager on the house’s hand. At the same meeting, the Commission did approve the game mini baccarat, which does allow players to bet on two spots; one is labeled the banker’s hand and the other is labeled the player’s hand. However, in Pai Gow’d the players could place a separate wager on the house’s actual hand, sometimes referred to as the dealer’s hand. Staff recommends filing for further discussion the petitioner’s amendment #1.

Chair Ellis said, before getting to that, AAD Sugai mentioned the possible alternative of rather than simply approving this particular game for the benefit of ShuffleMaster and the card rooms that offer it, the possibility of the Commission adopting a broader rule that would generally permit betting on a bank hand or a dealer’s hand. Does staff have a recommendation on which approach would be preferable? **Acting Assistant Director Sugai** thought it was considered a policy concern because, in the past, the Commission had

expressed concerns about giving that broad authority. She was not sure if staff would have a recommendation either way.

Commissioner Roe said she was not a player of this particular game and asked for an explanation on what the concerns have been about allowing a player to place a bet on the house hand or the dealer's hand. **Acting Assistant Director Sugai** explained that currently it is required that each player makes the decision on his or her own hand; they can only wager on their own hand. This proposal would, of course, let the player make a wager on the house's hand. **Commissioner Roe** asked what the danger was there. She was just trying to get the big picture of the concern about going down this path. Obviously if the Commission is going to make it a game-by-game decision, there has to be a reason why they are concerned about the general proposition. **Director Day** pointed out that at the top of the first paragraph in the rules summary, it says that in 2000 then Director Bishop felt mini baccarat did not meet the intent of what a social card game was because players are not making decisions on their own hand of cards. Rules were amended to require players to bet on their own hand of cards. Mini baccarat was not allowed at that time. The issue or problem here would be the law allows for social card games. Part of the concern is the trend to continue to allow bets on just the dealer's hand and whether it continues to be a social card game or does that move the whole concept of gambling into a different direction. What it will do is allow a number of different betting combinations and possibly increase the amount that players are allowed to wager each time there is a deal. So the Commission may see a number of different proposals for various card games; the industry is very creative. So part of the concern was that by a general approval of allowing the wager on a house's hand it would provide a lot of discretion, and consequently a number of games that have not even been proposed, or that the Commission may not have wanted to allow, to go forward. At that time, the Commission said they would rather see each of these potential exceptions and make a decision whether it was something they wanted to allow in the state's gambling environment. Hopefully that is helpful. Obviously, it always gets to the concern of whether the Commission is allowing more and more gambling activities.

Chair Ellis indicated Director Day alluded to the possible expansion of bets within the context of this game. Other than what he read in the rules summary and the presentations the Commission has had in the past, this is a house-banked game so there is a \$300 limit per bet. Under this approach, if approved could players bet \$300 on their own hands and also \$300 on the dealer's hand? **Acting Assistant Director Sugai** thought the maximum wager would be allowed, as presented by the petitioner, on their wager and on the dealer's hand. **Director Day** clarified that on each one of those betting spots, the players could theoretically place the maximum wager. He thought it might be helpful for the petitioner, if he is present, to explain a little bit about how the game is conducted. Because Director Day doubted very much how that was allowed. It would still be a proprietary restriction, not a rule restriction, so they could do it.

Commissioner Amos imagined the young man would be coming up and talking and taking care of this, but when someone walks into the casinos and the table is labeled Pai Gow, would the table name then be changed to Pai Gow'd? **Acting Assistant Director Sugai** affirmed if would, plus it would have a different layout, and the name on the layout would

be Pai Gow'd, as opposed to Pai Gow. **Director Day** added a separate set of rules for the game would also be posted.

Chair Ellis asked if the representative of the petitioner would like to step forward.

Mr. John Hemberger, Table Games Product Manager at ShuffleMaster, provided some background on how they got here. Due to an oversight, Pai Gow'd was previously approved in the card rooms and ShuffleMaster had a couple of the games installed, which were quite popular with the players and the operators. Once it was realized there was an oversight on the regulations and it was allowing for a wager on the dealer's hand, those were removed and that has led to the submission point here for the rules change. What it is, is an additional wager that considers the dealer getting a bad hand. So the top prize on a hand would be based on the dealer getting not a very strong hand by Pai Gow standards; 9 high is the top payout on the game, just to provide some more insight on what the player is actually wagering on. But to comment on Commissioner Amos' question, players would be able to place a wager on that happening, as well as place a wager on their own hands. As far as limits on the game, that would certainly be left to the operator's discretion. The game would have no impact, cost-wise, to any of the operators as far as any fees or additional costs to them. In addition to that, the training on the game for their staff is quite minimal and probably could be handled in about 15 to 20 minutes.

Director Day thought it might be helpful if Mr. Hemberger gave a quick explanation of the Pai Gow game so the Commissioners could see how this fits into it. **Mr. Hemberger** explained that in the game of Pai Gow, they are dealing with a 53-card deck because there is a semi-wild joker being used. Players receive seven cards from which they are going to make two hands; they are going to make a five-card hand and they are going to make a two-card hand. That is basically the rules on standard Pai Gow. And Pai Gow'd would be considering that the dealer's hand – the pay table was part of the submission packet.

Chair Ellis affirmed the Commissioners had the pay table, which indicates the range of payables, at least in one column goes from if the dealer's hand is a 9 high there is a payoff of 100 to 1. And at the other end of the table, an Ace high would be a payout of 3 to 1. **Mr. Hemberger** affirmed that was right; it was exactly what he was looking for. **Chair Ellis** asked if, basically, the players are betting the dealer would have a very weak hand. **Mr. Hemberger** affirmed it was wagering that the dealer would get a poor hand, very similar to an insurance wager on blackjack. **Chair Ellis** recalled Mr. Hemberger had said the players, in addition to making that bet on the dealer's hand, would also be entitled to bet on their own hands. So theoretically, depending on the limits established by the card room, the players could be betting as much as \$600 on a single hand; \$300 on their own hands plus \$300 on the dealer's hand. **Mr. Hemberger** affirmed, clarifying that under the right combination, the players had the opportunity to win both bets on any given round if the player got a strong hand and the dealer had a very weak hand. **Mr. Hemberger** added that, due to the popularity of the game, he was requesting an effective date of 31 days after the filing of the adopted rule, so he could get it back into the properties as quickly as possible and expose the players to it.

Chair Ellis explained that when the Commission acts today, they will not be attaching an effective date to the rule. If the rule is ultimately passed, at that point the Commission will need to specify the effective date. That will be the time for Mr. Hemberger to remind the Commission of his desire that it be effective in 31 days.

Chair Ellis called for public comment.

Mr. Robert Saucier, CEO of Galaxy Gaming, a licensed manufacturer of games in this state, testified they are in favor of examining this rule, but are against this particular petition. He thought the key issue that should be before the Commission was whether the Commission should allow players the opportunity to wager on the outcome of the dealer's hand. That really should be the issue before the Commission. Mr. Saucier believed yes, but he was still opposed to this petition. Mr. Saucier provided some history. In June of 2003, his company came before the Commission in LaConner, Washington, and requested this same rule. It had a different number back then, but it was the same rule. They requested it be changed in conjunction with changes to a rule then known as the Washington Blackjack Rule. They were instructed by the Commission to come back with a new petition specific to the rule change they requested, which they did. In August 2003 they submitted such a petition for a rule change to allow for the player to wager on the outcome of the dealer's hand. At the August 2003 meeting, the Commission denied their petition for filing. Mr. Saucier asked if he could pass out copies of the minutes of both of those Commission meetings with pertinent areas highlighted.

Chair Ellis affirmed the Commission would be happy to receive any pertinent information.

Mr. Saucier said his company was in favor of this rule change seven years ago, and are in favor of the rule change today. However, that is not what is happening here today. The petition addresses one company's desire to have a rule amended to apply to one of its proprietary games only. Since the Commission was formed in 1973, Mr. Saucier was not aware of any rule making that was specific to one company, one association, or one person. He thought this petition creates a dangerous precedent if specific to a particular individual or a company's needs. That has never been done before to his knowledge. There are currently 132 proprietary games approved in Washington State. So imagine if every manufacturer wanted rule changes unique to their game. And if the Commission sets that precedent, also imagine if pull-tab manufacturers requested rules unique to the thousands of proprietary games they offer. Taking this argument even further, what if each card room, each bingo operator, restaurant, or tavern, wanted a rule change only for them. A rule should apply equally to all eligible and qualified licensees, and not to do so would violate the principles of fair government. There are other jurisdictions, however, where they do make specific rules based on each proprietary game submitted; Colorado, New Jersey, and South Dakota come to mind. But that is because their Commission is required to individually approve each new proprietary game, and it is actually set in rule. So Galaxy Gaming has games that are approved in those jurisdictions where it is actually set in rule because that is what is required in that state. That has not been the case here, nor has it ever been. Mr. Saucier knows the Commission would like to examine individual games. There is always this thing that if the Commission approves something, what is the effect that it is going to have. Mr. Saucier

certainly believed that the way that it could be addressed is for the Commission to accept a petition to change the rule for everyone. Then allow all the manufacturers to come forward and say “if this rule was changed, this is the game that we would submit” – because Galaxy Gaming has a number of games that they would do as well. But to simply allow it for one particular company, on one particular proprietary game – and that is the key. The Commission has allowed specific games or rules for games that are in the public domain, but for proprietary games, it has never been done before. If the game that is in question right now wasn’t a proprietary game, Galaxy Gaming would support the petition; if it was a public domain game, they would support the petition. But because it is a proprietary game unique only to this company, Mr. Saucier could not see how it could apply to the one company only. So in conclusion, Mr. Saucier respectfully requested the Commission to deny the filing of this petition. However, if in the future the Commission is presented with a petition that applies to all licensees regarding this rule, he would endorse it for the debate that would ensue.

Chair Ellis asked if Mr. Saucier had any way of estimating, assuming the Commission ultimately were to adopt a rule that permitted all companies to offer games that permitted players to bet on the dealer’s hand or someone else’s hand, how many games that he was familiar with would be authorized under that rule change. **Mr. Saucier** replied he thought if the rule was changed according to this petition, what would happen is that every manufacturer would come forward and have to present one. He knew Galaxy Gaming would be back here with petitions for a number of games they have that they have not been able to put into the state. In terms of trying to understand how many people have previously come forward to the Commission, but were denied, probably the best source of that would be Keith Wittmers, the agent who oversees approval of new games. **Chair Ellis** clarified he was asking a somewhat different question, which was probably best directed towards Mr. Saucier’s knowledge of games that are offered in other states. Are there many games offered by manufacturers in other states that allow players to bet on the dealer’s hand? **Mr. Saucier** replied he was not aware of any jurisdiction that denied that. The closest he could think of a wager that was not allowed on the dealer’s hand would be in Colorado and has to do with blackjack. Colorado has a restriction that says there cannot be a side wager, a side bet that is different than the strategy of blackjack. In other words, Colorado does not allow players to lose their blackjack bet but win a side bet. That is the only jurisdiction Mr. Saucier was aware of that has that restriction, and it is very limited. They allow it in poker games; they just do not allow it in blackjack. **Chair Ellis** thanked Mr. Saucier.

Mr. Ralph Bell, ShuffleMaster Gaming, testified that one thing that was not brought up about this game, Pai Gow’d, is that it is approved in the state of Nevada. It is legal and it is being played at this time. One thing to address with Mr. Saucier’s comments is he would have lots of games and he would be back here seeking approval for players betting on the banker’s hand in his games. Mr. Bell would just question why Mr. Saucier did not do this in the past. Why did he wait for ShuffleMaster Gaming to come up and submit a game that is a proprietary game that is approved in other jurisdictions? It is up for approval in lots of other jurisdictions and will be approved. Mr. Bell thought it was important that the staff know

that this game is out there and is being played by people, and there is a huge request for it. **Chair Ellis** thanked Mr. Bell.

Chair Ellis asked if there was a motion; no Commissioner moved for the approval or the denial of the petition; there was none. Chair Ellis indicated that, if the effect of the Commissioners' action by not taking any action is to deny the petition, they are required to state their reasons for not taking action.

Assistant Attorney General Jerry Ackerman affirmed that was correct. And certainly if one or all of the Commissioners wish to make such a statement, and adopt that as their reason also, that is adequate for purposes of the record. Someone should state their reason for not choosing to making a motion to file the proposed rule for further discussion.

Chair Ellis asked if one of the Commissioners would like to make such a statement.

Commissioner Amos stated that, after going through the minutes from 2003, he fully agreed with Mr. Saucier in regards to bringing this to a head on prohibition against a player wagering against the house's hand. Commissioner Amos did not believe that the Commission needed to bring this up for further discussion; it had already been acted on many years ago.

Chair Ellis asked if a single statement by a single Commissioner was an adequate record. **AAG Ackerman** responded he believed that was adequate. He assumed that if the other Commissioners disagreed with Commissioner Amos' reasoning they would say so. And if the other Commissioners had additional reasons of their own, he would assume they would articulate those for the record, otherwise, that will be the statement by the Commission.

Chair Ellis asked if any of the other Commissioners would like to comment.

Commissioner Roe stated she would not move forward on this petition because she did not agree with singling out one game, particularly a proprietary game, to authorize. And failing that, she was not prepared to authorize it to be opened up to everyone. Commissioner Roe said she was new to the Commission, that she has read all the minutes and has some understanding, but would want to examine it a lot further before saying that she would support opening it up altogether, as Mr. Saucier seems to want. And failing that, Commissioner Roe was not prepared to say that it should be open for just one.

Commissioner Rojecki concurred with the two previous comments, adding that, historically, this Commission has not singled out games, or has tried not to. Commissioner Rojecki had, in fact, voted against allowing mini baccarat for similar reasons; because of historical practices by this Commission.

The petition for rule change died for lack of a motion.

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

- a) **Alternative #1 – New Section WAC 230-15-189** – Card game licensee pilot program on wagering limits for Texas Hold'em poker
- b) **Alternative #2 – New Section WAC 230-15-189** – House-banked and class F card game licensee pilot program on wagering limits for Texas Hold'em poker
- c) **Alternative #3 – New Section WAC 230-15-189** – House-banked card game licensee pilot program on wagering limits for Texas Hold'em poker

Acting Assistant Director Sugai reported there was an incorrect WAC number on the proposed rule. If the Commissioners decide to move forward with this proposal, staff would ask them to reference WAC 230-15-189 in the motion. **Chair Ellis** clarified the error was that the rule should be WAC 230-15-189 rather than WAC 230-15-190. **Acting Assistant Director Sugai** affirmed and pointed out some outline numbering errors in Alternatives #2 and #3, which would be corrected for future months if the Commission chose to file one of those. AAD Sugai provided a brief history on the Texas Hold'em work group. Because there had been three petitions in the past five years requesting an increase in the wagering limits for poker, in 2009 the Commission recommended that a group of stakeholders and Commission staff come together to discuss the various aspects of Texas Hold'em poker and the possible impacts, effects, and desired results of any potential wager increase. The group was selected in December and met monthly from January through April. At their April meeting the group agreed to recommend an 18-month pilot program with increased wagering limits of \$100 only for the game Texas Hold'em poker. The pilot program would test the regulatory and economic impacts of increasing the wager limits from \$40 to \$100 for Texas Hold'em. In addition, it would help to determine whether there is a demand for the high wager limits for Texas Hold'em. The participating card rooms would be required to maintain information that can be used at the end of the program to help the Commission to evaluate and determine whether the wager increase should be made permanent. The work group provided three alternatives for consideration. The difference in those three alternatives is who may participate in the pilot program: Alternative #1 would include all card game licenses; Alternative #2 would include house-banked card game licenses and class F licenses; and Alternative #3 would only include house-banked card room licenses.

Chair Ellis asked if AAD Sugai would explain for the Commissioners' edification, or remind them at least, what a class F licensee is. **Acting Assistant Director Sugai** responded that a class F licensee is allowed to offer player-supported jackpots, which are jackpots collected from the pot that go into a jackpot that increases and the players play for that jackpot. **Chair Ellis** said that, obviously, a class F licensee is not a house-banked licensee. **Acting Assistant Director Sugai** affirmed, adding that a player-supported jackpot is only on the game of poker. **Director Day** thought it might be helpful to have a quick education on class E and D card rooms so the Commissioners know the difference between those. **Acting Assistant Director Sugai** explained a class D card room license is just a social card room that would allow players to play in an establishment and the owner of the business would not be involved in facilitating the card game; it just lets their customers play those games on the premises. **Chair Ellis** asked if that meant the owner of the facility does not collect a fee for the customers to play. **Acting Assistant Director Sugai** affirmed that

was correct. A class E card room is just standard poker; the house does not collect a fee and is not involved in the operation of the game except to collect fees for time. The class F card room has the same activity as a class E card room but they are allowed to offer player-supported jackpots where money is taken from the pot and applied towards the jackpot and the jackpot builds up and there are certain card hands that would win the jackpot. **Chair Ellis** understood that the operators are authorized to collect their fees through a rake in addition to an hourly fee. **Acting Assistant Director Sugai** affirmed that was another addition to a class F card room. They are not restricted to just collecting for time, but could collect fees through a rake as well.

Acting Assistant Director Sugai pointed out the buff copies provided to the Commissioners show a change in subsection (3) that was the result of staff realizing that the Administrative Procedures Act (APA) that applies to pilot programs actually limits how pilot program participants can be removed from the program. Participants cannot be removed just for not complying with the draft rule, but participants are required to at least attempt to comply with the rules. The change would give the Director authority to remove a licensee from participation from the program in the event they fail to attempt to comply with the requirements of the program. **Chair Ellis** thanked AAD Sugai for explaining that as he had wondered why that language had been added. It seemed unnecessary to Chair Ellis, since he was sure the Director would not remove a licensee from the pilot program if it were shown they were attempting to comply with the rules. But it sounds like there was a good reason for including the language.

Acting Assistant Director Sugai added that another requirement for class F licensees, which is not required of class E licensees, is surveillance over their activities. **Chair Ellis** clarified that meant, basically, a taping system. **Acting Assistant Director Sugai** affirmed. Industry representatives believe the higher wager limits may increase overall card room revenue and attract new players who to both the house-banked card games and the poker games. They also believe the food and beverage sales may increase due to an increase in players. The Commission may wish to consider whether the proposal is consistent with the legislative intent in RCW 9.46.010. AAD Sugai brought to the Commissioners' attention a question that was brought up when this was discussed yesterday in the study session regarding the time period between the end of the test program and when it is determined whether the wager increase will be made permanent. The pilot program is scheduled to end March 31, 2012, with a report/recommendation to be provided to the Commission at the November Commission meeting. The question was whether participants would be required to stop the increased wagers until such time as it was decided if it was going to be made permanent. Staff did not have an answer to that question, but it is something that will be looked at, and an answer or recommendation will be brought back next month if the Commission decides to file. Staff is recommending the Commission file Alternative #2 if they choose to file a proposal. Alternative #2 would cover house-banked and class F licensees, primarily because they have the surveillance requirements that other classes of card rooms do not.

Commissioner Rojecki asked if all the classes of card rooms below class F do not require surveillance. **Acting Assistant Director Sugai** affirmed.

Chair Ellis indicated that according to the numbers that are on the third page of the rule summary, there are 71 house-banked card rooms that would potentially be included in the pilot program, if they desired, and only five class F card rooms which, under the second alternative that is being recommended by staff could participate in the pilot program, if they desired. **Acting Assistant Director Sugai** affirmed.

Chair Ellis called for public comment.

Ms. Teresa Malphrus, Hideaway Card Room in Shoreline, said she was one of the class F business owners. She had a couple of things she wanted to comment on. Number one was her great concern about the timing, if this was passed, between the successful completion of a pilot program and the permanent implementation. Ms. Malphrus noted there was a lot of time and advertising dollars and a lot of effort to establish a game in a room. If she does establish a game and commits to that time and those dollars, and that game is interrupted for up to nine or ten months, it would have a very negative impact on her card room. She would have to start back at the beginning and re-establish those times and dates. Number two, she currently spread games that probably play bigger than this game would play on an hourly basis at \$100 limit. She thought that sometimes that was swept a little bit under the rug in terms of talking about higher limit games. Ms. Malphrus knows the Commission, as a group, are all busy and don't get into the minutiae of poker. However, when talking about the size of a game that is played, she thought it was something the Commission needed to look at and suggested that as part of the pilot program they look at the average size of the pot in each hand over an hour long period. Her gut instinct was that she already spread a game that would have an average higher pot than the \$100 limit in Texas Hold'em. Ms. Malphrus thought that, if there was going to be a pilot program, it might be something the Commission may want to consider on those daily sheets. Not to do it daily because it is a lot of administrative time for a room, but to pick a certain time during the week or certain hours of the day, and require them to look at average pot size over the course of an hour. And that just has to do with how players gamble at a table, the type of game they are playing, and the limits that are set at that table. Number three was just to ask that class F card rooms get this. As a class F card room, she has poker only; she does not have any pit games. Ms. Malphrus does have a quarter of a million dollars worth of surveillance, which is three cameras on each table, additional cameras that cover the card room, the bar, the dining room, the parking lot; everything but the boys and girls rooms. And in two years of operation, she has only had two incidents in her card room and both were bar related, not poker room related, and were easily handled. Ms. Malphrus asked if any of the Commissioners had any questions that she could answer as a card room operator.

Chair Ellis asked how many tables Ms. Malphrus had in her card room. **Ms. Malphrus** replied she had seven tables. **Chair Ellis** asked if they were all devoted to poker. **Ms. Malphrus** affirmed they were all devoted to the game of poker, which was not just Texas Hold'em; she also spread Horse and spread Omaha. **Chair Ellis** asked how many tables Ms. Malphrus would normally devote to Texas Hold'em. **Ms. Malphrus** replied Texas Hold'em was her main game. She runs a fairly small spread game. What she calls her number one table is always a Texas Hold'em table. Depending on the day of the week she could have as

few as two tables going and as many as five tables going. In terms of income and revenue, normally Texas Hold'em will make up about 60 percent of her revenue, with Omaha and Horse making up the other 40 percent. **Chair Ellis** asked what the highest limit was that Ms. Malphrus had at her Texas Hold'em tables. **Ms. Malphrus** responded the highest that she had ever spread was a \$1/\$3 \$40 maximum Texas Hold'em spread. When this first came up several months ago, she actually went to a couple of tribal casinos and sat down and actually played the \$1/\$3 spread and the \$3/\$5 spread, which are what they call their no-limit games, which are in reality \$500 limit games. Ms. Malphrus found that the \$1/\$3 in particular, played much smaller than the current \$2 \$40 that she is allowed to offer, or \$3 \$40, the \$40 limit spread game. When talking about a limit, sometimes it is a little bit misleading in terms of how the game is actually played when players sit down and play the game. **Chair Ellis** asked how frequently Ms. Malphrus offered the \$40 limit game. **Ms. Malphrus** replied it was not often. She said the largest game that she spread right now was \$6/\$12, \$10/\$20 Kill Omaha game. This was actually brought up at one of the study sessions and is absolutely correct. As a business owner, she protects her players from themselves. She does not offer that high-limit game seven days a week, but only offers it two days a week and for very specific hours. Even though every week she has a sign-up list that well exceeds the number of seats she can have at that table, she will not allow it to get bigger. There is a certain amount of money that flows through a room and sometimes she has to help her players regulate how they spend it. Ms. Malphrus also said that with a \$100 limit she would probably be looking at a maximum of two days a week and with very specific hours that it is offered. **Chair Ellis** asked if Ms. Malphrus thought she had enough players who would be willing to play at a \$100 table to justify that amount of table coverage. **Ms. Malphrus** believed so, noting she runs daily tournaments in her room and at the end of the tournament several players leave and head to a tribal casino. Ms. Malphrus indicated that in the study group, it was noted there were currently not many of the higher limit games being spread at Indian casinos. She would like to take exception to that. She called three tribal casinos last night and all three were offering a no-limit game in some form or another and they are fairly regular in some of the tribal casinos. In her case, the closest tribal casino that would offer it would be Tulalip. Ms. Malphrus loses players every day. She actually surveyed her players that came in, played the tournament, and then left, and believed that, right now, she has enough players to spread the game twice a week, which would require about 25 players.

Commissioner Amos noted Ms. Malphrus had made a comment about checking at a certain hour to see how big a pot was on the table during this 18 month pilot program. He asked how large some of the biggest pots were that Ms. Malphrus had when playing a \$40. **Ms. Malphrus** replied that was really interesting. On a spread game they tend to go up and down as opposed to a limit game, but probably the largest single pot she has had in her casino would be in the neighborhood of \$400 or \$500. Ms. Malphrus thought what really needed to be looked at was the average size of a pot over an hour. In other words, if 25 hands of a game are dealt in an hour then look at the average size of those 25. Her gut instinct tells her that the average size would be larger in a game that she currently spread, which is the Omaha game, than it would be in a \$100 limit. Ms. Malphrus was not saying that in a \$100 limit that pot cannot get big, but was saying it will not get big very often. A

lot of those pots will be \$20, so it is just the nature of the beast and the way the game is played.

Representative Alexander indicated that, from his understanding, and he really appreciated all the effort that went into this group, but the whole concept of having a different number for Texas Hold'em was the ability of the game to incur bluffs. To him, the only rationality for putting the wager at a higher number was the ability to provide some sort of bluffing, which is part of Texas Hold'em. Representative Alexander agreed with Ms. Malphrus and did not think the pot was going to get any higher. He thought that an important element of the game would be introduced by having the opportunity for a higher-based wager. **Ms. Malphrus** agreed there was no doubt the game definitely gets more sophisticated, and bluffing is part of that sophistication. She did not mean sophistication in a bad way. When looking at the history of poker, players cannot really cheat at a poker game in a poker room in the state of Washington maybe the way collusion can happen in a pit game between a pit boss and a player. She simply rents a table and takes a rake, which is basically rent. The players give their money to each other so there is very little that Ms. Malphrus could do to facilitate any kind of cheating. But the game, in terms of strategy for the players, definitely gets more sophisticated at the higher levels, plus there is some ego involved. Players like to say they are playing at that table and if they have the money to do it, then it is the nature of the beast.

Chair Ellis said that since Ms. Malphrus was very knowledgeable and alluded to the rake, he had a peripheral question. One of the points that is often made by card room operators in talking about poker versus house-banked games – pit games as Ms. Malphrus called them – is the fact that the house's revenue from a poker game is normally limited to the rake, except in the lower classification card rooms where they may be charging by the hour. Obviously that can result in a significant limitation on the revenue from poker games versus the house-banked games, the pit games where the house, over a matter of time based on the odds of the games, the house can expect to – **Ms. Malphrus** said they get a heck of a lot more money. **Chair Ellis** asked why Ms. Malphrus did not offer pit games. **Ms. Malphrus** replied the Commission had very graciously allowed them up to a \$5 rake. She has been in this business a short two years, and was a business owner before that, and was astounded by the fact that every card room was still at a \$3 rake, even though minimum wage had gone up \$2.50 an hour, and rent, heat, gas, food. Starting July 1, she actually implemented a \$4 rake, and believed she was the only room in the state right now that is doing that. She reported her players have no problem with it, whatsoever. Part of the reason Ms. Malphrus did that was because, as a business owner, it is virtually impossible for her to make money right now with the current money in and money out in terms of a poker-only room. Ms. Malphrus wanted to be able to brand in a unique way. She is the only one in the area that offers poker only, and there are players that will play specifically because they are not dealing with the hustle and the bustle of a pit near them with the noise and distractions that go along with that. In most small card rooms, poker is normally stuck in the back corner. Because the pit area offers a much larger chance for big revenue, it is usually put front and center in a room. Poker players have sort of been the stepchild no one wants to talk about over in the corner. Ms. Malphrus decided that if she was going to do it, she was going to make a commitment to one or the other. She has a relatively small room in terms of its footprint, its physical

space, and chose to go ahead and take a greater chance at having this business survive in this economy and go with poker only. **Chair Ellis** thanked Ms. Malphrus.

Commissioner Roe made a motion seconded by **Commissioner Amos** to file for further discussion Alternative #2 amending WAC 230-15-189.

Commissioner Rojecki commented he would support this motion, but thought there was still a bit more work to address. The purpose of the Gambling Commission is not necessarily the success of the industry, but understanding the times that they are dealing with. Some of this came about when he was Chair and trying to resolve some of the issues the Commission was dealing with. But he wanted to support this and to look at some other issues further. One of the issues is participation; is participation of this being measured to come up with a final product? Commissioner Rojecki did not want that to be the precipice of a final approval. If that is done, the Commission needs to look at how to measure some of the participation. Commissioner Rojecki has continued to say that \$100 is an arbitrary number. We have talked about CPI and we have talked about the implicit price deflator, but where are we getting these numbers. The Commission needs to be a bit more solid on these numbers in the final product as to why this is being done. Commissioner Rojecki thought a couple of other things that need to be changed are notification of the events. It was suggested for possibly two days a week. He thought it would help our agents in the field to at least have an understanding of when these games are being played. Whether that would be 24-hours notice, or consistently on a Tuesday, Thursday, or whatever that may be. Commissioner Rojecki was not sure if the Commission wanted to limit the days of operation. He thought the market would probably limit the days of operation more than the rule, but just as a safeguard during the pilot project, it would be something to potentially look at in the future. Regardless, Commissioner Rojecki supports this project, with a little more work, to hopefully get to that final result.

Chair Ellis asked if, when Commissioner Rojecki referred to notice of the days of the week when games with a higher limit are offered, he was suggesting one logical extension of that might be when card rooms notify the Director that they intend to operate under the pilot program and to increase their limits above \$40 staff could ask them to specify an operating plan and indicate which days of the week they intend to offer tables with the higher limits. It might be a little inflexible for the card room. **Commissioner Rojecki** agreed, adding he did not think the Commission wanted to hamstring them. The Commission needs to allow the businesses to do what they need to do to market this thing but, on the other hand, they need to be able to oversee it too. The Commission does not want our agents going in thinking it is a Wednesday and it happened last night.

Ms. Teresa Malphrus, the Hideaway Casino, thought they could have both. When the program is implemented, there will be kind of a herd of people that will say they want to do it. If the Commission wanted to limit it to two days, they could say that within 30 days please notify via the daily reports what those two days are. The card rooms will need time to get with their players and find out what days work for them. It is going to be very difficult to anticipate the two days initially. So it could be asked that within 30 days they note the two days that it will be running. That will give time to run it once or twice, have

the players get together, choose those days that work for them, and then turn around and report those days to the Commission.

Commissioner Rojecki said the Commission does not want to over-regulate it, but they need to oversee it. There is a fine balance between the agents in the field and what the Commission approves. Working with the industry, obviously, the Commission does not want to hamstring the card rooms to have a pilot project that is not going to work. The Commission does not want the project to fail from day one. To truly get some sort of reflection on what this is going to do, the card rooms need to be allowed to be able to do that, but the Commission also needs to allow oversight of that. **Ms. Malphrus** thought that it was possible, so long as everyone was talking, to work that out. **Chair Ellis** agreed, adding it was important to recognize that, while oversight by the agents in the field is important, the primary data the working group focused on as the product of the pilot program was contained in the tracking records to be compiled by the card rooms participating in the program. It does not hinge on observations by the agents in the field.

The vote was taken and the motion passed with four aye votes.

Chair Ellis wanted to thank, on behalf of the Commission, the members of the working group. He thought the record that was compiled of the information that was gathered was very helpful and will continue to be useful to the Commission, and gives an excellent basis for moving forward.

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

Chair Ellis opened the meeting for public comment; there was none.

With no further business, **Chair Ellis** adjourned the meeting at 10:15 a.m. The next meeting will be held in August at the Heathman Lodge in Vancouver.

Minutes prepared by

Gail Grate, Executive Assistant