

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, SEPTEMBER 9, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 1:00 p.m. at the State Investment Board 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
 Representative Gary Alexander, Olympia
 Representative Geoff Simpson, Covington

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. Agenda Review / Director’s Report

Director Rick Day briefly reviewed the handouts and material provided to the Commissioners.

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

Director Day briefly reviewed the agenda, pointing out it is a one-day meeting; there will be no meeting on Friday. There are no staff requested agenda changes. Director Day stated there would no longer be a spot at the end of the Director’s Report for public comment regarding his report. It was determined that if there were any action items in the Director’s Report, the Chair would ask for comments before the Commission takes its vote of action. As always, there is a public comment period at the end of each business day. Director Day reported staff is not requesting an executive session unless the Commissioners believe that is necessary. Director Day drew attention to the copy of the decision in the Supreme Court of the State of Washington Internet Community and Entertainment Corporation dba Betcha.com v. the Washington State Gambling Commission, which was filed on September 2, 2010. This case involved an internet-based personal betting system that allowed people to post a wager on most anything and another party to accept the wage. The system was somewhat patterned after eBay and featured an option that allowed the loser to refuse to pay.

The most common betting that occurred was sports betting and there was a charge to both parties. Betcha, the company, contended it was not subject to Washington's prohibitions against unauthorized gambling because the bettors accessing the site were told they were under no legally-enforceable obligation to pay losing wagers. Betcha reasoned that this removed the wagering on its site from the definition of gambling. After receiving a cease and desist from the Washington State Gambling Commission, Betcha filed a lawsuit seeking a declaration that its operations did not violate the Gambling Act. The Superior Court ruled that Betcha.com's system was, in fact, bookmaking; however, the Court of Appeals subsequently overturned the Superior Court decision. The Supreme Court opinion, in a 9-0 decision, held that Betcha was engaged in professional gambling because it engaged in bookmaking, as that term is defined under the Gambling Act. Based on that conclusion, the Court also held that Betcha transmitted gambling information and used gambling records as part of its business, all of which are illegal activities under the Gambling Act. The Court subsequently reversed the Court of Appeals and reinstated the Superior Court decision in favor of the State. This is a significant decision for both the Commission and the State. Director Day extended his compliments and appreciation on behalf of the Commission to Senior Assistant Attorney General Jerry Ackerman and his team from the Attorney General's office for the excellent work on this case.

Correspondence

Commissioner Rebecca Roe arrived at 1:15pm

Director Day reviewed the correspondence items. He explained the letter from the Liquor Control Board Enforcement Chief Pat Parmer compliments our law enforcement training staff, but the purpose of both letters is to document the work and the follow-through. Director Day recalled the consolidation study report done about a year ago indicated the agencies involved in the consolidation study committed to several different areas to try to improve efficiency and take advantage of each other's services. One of those was relative to law enforcement and specialized training within the Liquor Board and within the Gambling Commission. The Gambling Commission and the Liquor Board committed to follow-through and coordinate that training. These letters let the Commission know that the staff of both agencies are working very closely on training issues relative to law enforcement training and sharing each other's resources and taking advantage of the programs and expertise. **Chair Ellis** said it was good to see how highly the Chief of the Enforcement and Education Division of the Liquor Board values the work with the Gambling Commission staff. **Director Day** agreed and thanked Chair Ellis for his comment. Tina Griffin, Assistant Director of Licensing, prepared a memorandum updating the Commission on our online efforts. In May online renewals were implemented for commercial card room employees. As of August 26, there have been about 338 renewals involving about \$58,000 in funds, which is lower than anticipated, and about \$825 in convenience fees that were charged relative to the use of credit cards. Other automated online processes include changes in a card room location and the collection of the Commission's charge for those changes. Since about 2006, staff has been exchanging renewal notices via email with tribal

gaming agencies for their employees. Staff continues to work with online processes and is coordinating and continuing to see if there is something we can do with Master License Services. Both of those items are part of our Strategic Plan. Director Day briefly reviewed the budget related items explain there has been a lot of publicity and talk about the State Budget. Information was requested by the Governor's Office or the Office of Financial Management, and copies have been included for the Commissioners. It begins with the memorandum from Budget Director Marty Brown about across-the-board cuts that are being initiated by the Governor's Office, as well as the reduction anticipated in the current fiscal year of up to \$500 million, with further reductions in the next biennium. The Governor asked eight additional questions about agencies and agency budgets, which our staff answered. The answers are all posted on the Office of Financial Management's website. The Governor's office also issued some policy statements and policy briefs, which were included in the packets. **Chair Ellis** noted when looking at Marty Brown's memorandum that the first step in the cuts described in these documents was the possibility of across-the-board cuts in the range of 4 to 7 percent in anticipation of potential allotment reductions starting October 1. His memo indicates these provisions relate to agencies with general fund appropriations, which does not include the Gambling Commission. Chair Ellis thought the Gambling Commission had already taken steps for cutting its current biennial budget to at least the extent of 4 to 7 percent. **Director Day** replied the cuts, or the rollback, seems to be directed at general fund agencies at this point, but the budget the Commission approved for the biennium was 10 percent less than the last biennium. **Chair Ellis** agreed that was what he recalled.

House-Banked Card Room Summary of Activity

Director Day explained the house-banked card rooms are required to provide some form of financial statement depending on the level of their activity; audited, reviewed, or compiled. Keith Schuster, the supervisor of our Financial Investigations Unit, has provided a memo and a spreadsheet summarizing the information. The most striking thing in this year's set of reports is that 13 of the 63 reporting card rooms have what is called a "going concern," which means it is very possible they will not be able to continue in business. That is a fairly significant finding that has not seen before on financial statements. Deputy Director Trujillo and his team produced the majority of the work on this, so if the Commissioners have any specific questions about the statements or the information regarding the card rooms, he would be happy to attempt to answer them.

Chair Ellis thought the report was very helpful every year it has been prepared. As far as the grim figure category, he was struck by the figure at the end of each report on the combined average income for card rooms, including both those that were making money and those that were losing money. The single figure for each year does not show a happy picture; the average card room in 2008 having made about \$127,500 and in 2009 that figure dropped by about \$50,000, down to \$76,000.

Monthly Update and News Articles

Director Day noted that Congress has been in recess. Staff is going to go back through the Frank bill on internet gambling (HR 2267) to ensure an understanding of the changes in the bill as it passed out of committee. Director Day planned to review those changes with the Commission in either October or November to provide a better idea of any policy implications. As this moves forward, the Commission will want to follow it more closely. Director Day did not comment on the news articles provided in the packet.

Chair Ellis commented that if he was reading the article entitled “*Joker’s gone wild as provinces wager on online gambling*” correctly, it says the risk of problem gambling among people who gamble on the internet is 37.9 percent compared to 7.7 percent for non-internet gamblers. The implications of that statement seem to be an extraordinary problem with internet gambling that he had not seen emphasized in past literature the Commission has gotten and he wondered if Barney Frank was aware of it. With more than a third of internet gamblers apparently either experiencing problem gambling problems or at risk of experiencing those problems, it seems to be a dimension of internet gambling that we have not seen before or have missed. **Director Day** recalled that several of the articles reflect that three or four of the provinces, not just British Columbia, were moving in the direction of internet gambling in some form. As that has been going on, more and more of these kinds of statistics seem to be coming to light. This 37.9 percent is one of the highest Director Day had seen, but the last information he saw showed a higher prevalence. It is something staff had assumed, but the records were not there because of the privacy of the ability to gamble, which is also something that goes with addiction. People now have the ability to address their addiction right in their home. It sounds like it would fit together and, apparently; the statistics are proving that to be the case. **Chair Ellis** agreed. The information is from a 2009 study by the Ontario Problem Gambling Research Center, so it is a recent study from an organization that presumably has good credentials. **Director Day** thought he had some other information relative to that, which he would include in the next Commission packet.

History and Past Bills Related to Local Governments Control Over Locations of House-Banked Card Rooms (PowerPoint Presentation)

Director Day explained that over the past ten years there have been bills attempting to modify local jurisdictions’ authority to prohibit gambling activities, and staff anticipates a bill this year. Staff has been participating in a work group on the topic at the request of Senator Kohl-Welles and Representative Steve Conway, which Ms. Hunter will update the Commission on in preparation for this year’s legislative session.

Ms. Amy Hunter reported there was a memorandum in the agenda packet that explained this issue more. She will also be presenting a PowerPoint that will touch on the highlights of the points. Staff thought it would be helpful to go over the ten-year history to explain why this has been an issue of ongoing interest to the Commission and to prepare for the next legislative session. Attachment #1 to the memorandum is the letter from Chair Kohl-Welles and Chair Conway asking the Association of Washington Cities to lead discussions with

stakeholders over the interim. The first meeting that Ms. Hunter has been asked to be involved with is this Monday. It was her understanding there have been a couple meetings prior to this.

Ms. Hunter explained the history about the Gambling Commission is very relevant because it is this backdrop that explains why the Commission has been interested in this issue over the past ten years. What occurred in the 1950s and 1960s with illegal gambling, payoffs, and the selling of gambling licenses in the local jurisdictions became the foundation for the Gambling Act that was passed in 1973. As it was explained to Ms. Hunter, it was because of those policies that went on that you really see in the Gambling Act restrictions on everyone involved with gambling. Our state does not tax gambling, other than a B&O tax. There is not a direct gambling tax, which is different from other states. Ms. Hunter thought part of that was to keep the state, as a whole, a bit more hands off on gambling. The Gambling Commission has different restrictions, one of which is found in the Gambling Commission's powers and duties. The Gambling Commission cannot, in an effort to restrict the number of licenses, deny an application if someone is qualified for a license. The restrictions on local governments are found in RCW 9.46.285 and 9.46.295. The history has been important and it is something that has come up as the Commissioners have considered bills in the past. It is also something staff have reminded the Legislature about, albeit delicately, because staff realize the Legislature always has the ability and authority to change the foundation of the statutes. The full recitation of RCW 9.46.285 is included, as well as RCW 9.46.295, in the memo.

When the Gambling Commission was created in 1973, the Gambling Act was the exclusive authority for licensing of gambling. Prior to that cities had the ability to issue a separate gambling license, which they cannot do now. The State preempts local government's authority, unless it is specific in the Gambling Act. Any local ordinance that was on the books relating to gambling in 1973 became null and void. Local governments can only pass ordinances that are consistent with the powers and duties that are expressly granted in the Gambling Act. That has sometimes been a surprise to city attorneys over the years because they are not accustomed to looking in the Gambling Act to see what their powers and duties are. Probably the most important part in RCW 9.46.295 is that the local government may absolutely prohibit gambling but may not change the scope of activities. What "absolutely prohibit" means has been at issue in the various court cases and also, to some extent, what it means to deal with the scope of a gambling license. Staff's perspective on the scope of a gambling license means that it is the Gambling Commission, or the State Legislature depending on if we are dealing with a law or rule, that sets, for example, the wagering limits and the number of tables. A local jurisdiction could not come in and say they know that state law would allow up to 15 tables but they really think that 10 tables are sufficient in their area.

House-banking was allowed in 1997, and it was shortly thereafter that staff started seeing a number of jurisdictions decide to pass prohibitions. Before 1997, there were only about 10 jurisdictions statewide that had prohibitions on card rooms; since then there have been about

50 new prohibitions put into place. The City of Seattle has prohibited commercial card rooms since 1974 and Vancouver has prohibited them since 1985. The majority of the prohibitions came in after 1997.

It was easy for staff to deal with the straight-forward ones, the ones that looked like absolute prohibitions. Then a number came in that did not seem to be absolute prohibitions; they may have been a partial ban or a grandfather clause. When using that term, Ms. Hunter means they may have said the card rooms that are in their jurisdiction could stay, but no new ones could operate; and those that are here can continue either indefinitely or, in some cases, for a number of years, which became the issue in some court cases. The city might say the card room could operate for five years, but after that the city's prohibition would go into effect. The Commission was left with figuring out what we were going to do with the partial bans being put in, what our process was going to be, and whether we faced liability if we say it is a partial ban and we are going to accept that. Ultimately, the Commissioners decided the best way to handle an application received for someone that was in a jurisdiction that did not appear to have an absolute prohibition would be for the Director to send a letter to the applicant letting them know the city has the ordinance, in case they were not aware of it, and that our plan was to issue them a license, assuming they qualified for it, but to also let them know at the beginning of the process that they may face a legal challenge from the city if the Commission ultimately issued them a license. Typically, staff would send a copy of that letter to the mayor or the highest elected official and to the city attorney so they knew up front what our process would be. Staff also gave applicants the ability to withdraw their application at that point, so if they said they were not sure they wanted to go into a jurisdiction that seems to have a possible prohibition coming, they would know they could apply somewhere else later. At that point there may have already been a lot of communication with the local jurisdictions; for instance, they may have applied for a building permit because they needed to expand their business. Sometimes that was not the case and there had not been very much communication.

When Ms. Hunter talks about mayors and city attorneys and cities, this also applies to local governments across the board; it could also be a county. Staff has found that, over the years, there have been fewer bans with counties, that most of the bans happen to be with the cities. Staff assumed there would eventually be court cases that would help better explain what "absolutely prohibit" meant and whether our reading of the law was correct or not. Staff's goal overall was not to get into a legal dispute with a city or a licensee directly; that hopefully it would be the licensee or applicant and the city or county that would end up going to court, which is what ended up happening. There have been five court cases that are covered in the memorandum. The first one was the most significant and the last two are not precedent setting; although, they are of interest. Ms. Hunter covered the highlights of the cases.

- The first case came out in Edmonds. It was significant because it addressed two things: whether phasing out card rooms while prohibiting new ones was an absolute prohibition or not. The Division I Court of Appeals said it was not an absolute prohibition to do

that. It also addressed the meaning of “scope of gambling.” The Edmonds’ ordinance froze the number of tables that a card room had at the time. They also had a provision that if a card room stopped operating a table for 30 days, the card room could never put that table back into play. The Court of Appeals said that was not allowed; that it was preempted by the state law.

- The next Court of Appeals case came out in 2003. It dealt with whether this was a taking or not; whether an ordinance that required people to close was going to be a taking. The Court said it was not, which was in contrast to what happened at the Superior Court level where the plaintiff in that case – a house-banked card room in unincorporated Pierce County – received \$1.5 million damages in a jury award. The card room elected to have the Court not allow the county to enforce the ordinance instead so the card room could continue to operate. Ms. Hunter said they probably felt they could eventually make more than \$1.5 million and that would be a better outcome. Ultimately, the Court overturned that.
- The next case was a King County case. The Superior Court Judge held that the moratoriums, which was another tool that cities were using at the time, could not be extended indefinitely. Normally, a moratorium would be for a city to study an issue while they figured out what they were going to do. In Kenmore, the city passed the first moratorium for six months and then continued to pass them for the next five years. The Judge said, “It was anything but temporary” and the city had had ample discussions, public input, and studies on the issue. There were also a few other cities that had moratoriums that they had continued to renew again and again. Ms. Hunter thought that, at a minimum, it probably did send a message to other cities that that could be a likely outcome if they continued to pass a moratorium over and over again.

Ms. Hunter included the public votes and public involvement in this issue to show how much discussion there was. There were a number of citizen groups that got involved in this issue; in the four votes by the citizens, on three occasions the citizens said yes, the card rooms were okay to stay, and in one case (in Tacoma) they said no. The cities of Tacoma and Lakewood are very close to each other and the card rooms that were at issue are less than a mile apart. So on one side of the freeway the citizens said no, they do not want card rooms, albeit after the city had already passed a ban, but on the other side of the freeway it was okay for them to continue to operate. They still operate in Lakewood. Ms. Hunter knew there was at least one election of a council member where the deciding factor in the particular race was where the candidate stood on the issue of gambling.

Currently in local ordinances there are about 60 absolute bans, which have not been at issue, about 9 zoning ordinances, and about five grandfather clauses. It is the last two categories that have become part of the focus of the different bills that have been introduced. Ms. Hunter pointed out Attachment #2, which is a table showing more details about those ordinances.

The Association of Washington Cities (AWC) has testified at past legislative hearings that, based on the court cases, they think the ordinances of cities that have zoning restrictions or grandfather clauses would likely be struck down if they were challenged.

There have been bills introduced for about ten years. The Commission was either opposed or suggested the current law remain unchanged for the first nine bills. In 2009, the Commission supported the bill that was being considered. At the January 2010 meeting, the Commission discussed another bill but did not take a position, based in part on knowing that significant amendments were likely on the bill and not knowing what they were going to look like. It did not seem wise for the Commission to take a position on something they had not seen or knew what it was going to actually look like. The Commission may see future bills that deal with some of the same issues. Exactly how the bill is worded always depends on exactly where the Commission is on these various topics. One overall idea has been that if the city is allowed to pick and choose the licensees, it puts the local governments in the position of choosing which licensees are okay as opposed to the Commission doing that. But the Commission is not truly choosing which licensees are okay because under state law the Commission is obligated to issue licenses to people who are qualified.

The other thing is that it was felt that cities did have certain zoning restrictions in their powers, although they cannot zone for gambling specifically, they can zone the underlying activity of food and drink businesses, parking lot spaces, and all the other things that go along with that. So it was felt that they did have other tools that they could use.

Some other concerns dealt with the complexity of the bills and how they were worded, which made the legal effects uncertain. So even if people were unsatisfied with the court cases, staff at least knew how the court was going to interpret the current law. It was felt that if there was a new law that was not clear, it was going to end up with more court decisions and more uncertainty.

Staff also wanted to make sure that an immunity clause was broad enough to cover all of the Commission's actions. The immunity clauses have been greatly improved in the bills seen in the past couple of years.

Some of the caps and different ideas would end up artificially increasing the value of licenses and could end up eliminating competition. Another thing that has happened under some bills has been the unintended consequence of expanding gambling. Currently, cities can absolutely prohibit gambling, but in some of the bills, cities would be able to pull their current prohibition and put in some new type of ordinance. Before the bill there might only be a few card rooms in an area, but after the bill there might end up being a lot more. Cities that had prohibitions may decide they were going to take the prohibition off and allow a few card rooms because they wanted the tax revenue but they did not want a lot of card rooms.

The number of house-banked card rooms in the state has decreased. When these discussions started ten years ago, there was continued growth and cities were very concerned because

they did not know how many card rooms they might end up with in their area. Those numbers peaked in the 2006 time frame and are now on a decrease, so there have been different bills dealing with what has been called the “melting iceberg.” The idea behind that was it was okay for the number of card rooms that are there to stay, but if one closes it needs to stay closed, which is going to help melt the iceberg. So part of the question has been whether the iceberg was really growing at this point and does it need to melt or is it melting automatically on its own.

The Commission did support the 2009 bill, House Bill 2162, which had a very simple approach. The bill ended up dying in House Rules, but it did take care of many of the concerns the Commission had. It also addressed annexation, which ended up being addressed in another bill in 2009. Some card rooms that were in unincorporated counties, particularly King County where they were allowed, knew they were likely to be annexed into a new jurisdiction that prohibited card rooms and they were going to have close. It was felt that was an unfair result, so the 2009 bill addressed it and also the bill that ultimately passed addressed it.

The bill that was considered last year, House Bill 2873, had a number of positive aspects. It clearly allowed about 15 of those uncertain local ordinances. So, if the city passed an ordinance that had a grandfather clause in it or it had an ordinance with a zoning clause in it, the bill allowed those ordinances that were already passed as of a certain date. That was a lot of help to the cities because then they knew that those ordinances were going to be okay and they were not going to face a legal challenge to them. The immunity clause was sufficient. The bill also required local governments to file their ordinances with the Commission and then gave the Commission rule making authority. Prior to that the Commission was only as wise as it could be with knowing when cities had passed ordinances because there was no requirement that the ordinances be sent to the Commission. This might seem like a small thing, but it is helpful for the Commission to receive the ordinances to ensure making the proper licensing decisions.

The bill did have some concerning aspects. The Legislature’s website only shows the original bill, but there were proposed substitutes and a proposed striking amendment. This bill had a lot more local control, which was a concern. Whenever there is more local control, you get into all of the historic reasons and whether that is a good policy. The bill also froze the number of tables at the number that existed at the time of the legislative act, which was considered the time when a local jurisdiction passed an ordinance. In prior bills, the legislative act was what was going to become new state law, so it was much easier to predict what the impact of a bill would be because normally the bill had built into it some type of a cut-off date. Here there was not that cut-off because local jurisdictions could pass an ordinance when they got around to it. So just predicting the impacts and effects of that bill was a lot more difficult because of the way that it was worded. Ms. Hunter did not consider that a fatal flaw, but it was just another thing as staff were pointing out different items to legislators to make sure they knew.

There were also a couple of proposed substitutes and a striking amendment that added some new requirements that had not been in prior bills. One was that a house-banked card room could only change its location if it had the city's approval. A new component that was added that was not seen in prior bills was the Tribes' approval, if the card rooms were in the outward boundaries of the tribal reservation. The other thing it did was to prevent the Commission from issuing licenses for other activities if the card room was not already licensed for those activities. All of the house-banked card rooms have a pull-tab license, but as an example, if a card room did not have pull tabs, they would not be able to add them later and they would not be able to allow amusement games. The proposed striking amendment was that if an activity might be allowed later – so something that does not exist now-- a card room would be prevented from adding it later. Those were new components that had not been in prior bills. Ms. Hunter understood that those last two points were being discussed again for a bill that might be considered in the 2011 session. Ms. Hunter will be attending the meeting on Monday and will provide an update to the Commission.

Chair Ellis commented on the suggestion that essentially the grandfathering of card rooms should not only apply to the card rooms, but the activities within the card rooms, and that card rooms should not be able to add gambling activities that they were not licensed for at the time of the local legislation. He asked what the impetus was from that and if Ms. Hunter had an opportunity to see who it was; if it was just the existing card rooms that were interested in protecting their competitive position within the local community, or if it was coming from the local government in their efforts to potentially allow gambling but limit the expansion. **Ms. Hunter** did not think it was coming from the industry. She thought they were not terribly interested in that. She did know that the industry was not involved in that bill very much, and found out about it slightly after Ms. Hunter did.

Commissioner Rojecki assumed that, in regards to the nine zoning restrictions, some of these bills address that zoning issue and that cities do not have the authority today to actually zone for gambling locations. He asked what kind of obligation the Commission has to get those cities in compliance with current gambling law. **Ms. Hunter** replied that part of the benefit in the bills introduced the last couple of years was they did make those other ordinances okay. She asked if Commissioner Rojecki was asking whether the Commission was obligated to bring its own lawsuit against those cities. **Commissioner Rojecki** affirmed, adding he did not say that as a threatening matter, but if laws are not being followed, what obligation does the Commission have? He assumed the Commission had some sort of obligation to clear up that confusion. **Director Day** replied that what the Commission has addressed was more in the fashion of, if someone applies in a city that has an ordinance that staff would view as illegal or not following a state law, the Commission would still go ahead with its authority and issue a license. Staff would notify both parties, including the city, and would warn the private party that they may be facing an action locally. **Commissioner Rojecki** said that made sense. **Director Day** added that staff felt that by doing they were still carrying out the state's authority but were not directly confronting them. **Commissioner Rojecki** indicated that was upholding our statute as far as the Commission's obligation to license somebody who was qualified. **Director Day** pointed

out that approach did end up in several of the court decisions, which clarified that the ordinance probably would not survive. **Ms. Hunter** noted that the Commissioners in 1997 had this exact discussion; what is the Commission's duty and should it do more. The letter was felt to be the best approach, not wanting to get into litigation with cities over this and feeling that applicants were in the better place to be doing that. **Commissioner Rojecki** affirmed that would not solve the problem; legislative action would solve the problem.

Commissioner Roe asked who would be at the meeting on Monday, whether the starting point was the 2010 legislation, and what Ms. Hunter was expecting. **Ms. Hunter** replied she also asked that question because she wanted to prepare for the meeting the best she could. She has seen an agenda for it and it was her understanding there would be a couple of elected officials there. She knew that Chair Kohl-Welles and Chair Conway had been involved in some of these meetings in the past, and she thought Chair Conway planned on being there. Ms. Hunter had also been told that Representative Tami Green, who is one of the legislators that is in the Lakewood area, plans to be there. Lakewood has had a lot going on there. They have also spoken with Representative Simpson and Senator Prentice about the idea. Last year's bill has been used as a base, but Ms. Hunter did not think the 2011 bill would be the same bill, but would probably have some of the same components. It was her understanding from speaking with the Association of Washington Cities and another person involved with it that there have been different parties that have spoken up on this issue over the years from the cities, to the card rooms, to the Gambling Commission, to the Tribes. They are trying to have some initial meetings and then bring additional people in. Ms. Hunter was not involved in the first or second meetings, but other stakeholders were. She will be involved in this meeting, and then they will continue to broaden that net. Ms. Hunter thought they were, to some extent, trying to be efficient with time. If some initial parties cannot get agreement, there is probably not a real reason to continue to bring in other people.

Representative Alexander asked if Ms. Hunter had the breakdown as to the reasons for the reductions shown on the chart on page 7 showing the number of house-banked card room licenses with the curve going down. Are they due to bans; are they due to zoning restrictions; are they due to just the economy where a number of licensees are closing their doors? **Ms. Hunter** replied that about four of those would be due to bans; Tacoma had three card rooms that closed and Pierce County had one. Pierce County started out with two house-banked card rooms that would have been impacted by the county's ban, but one of them chose to relocate to Long Beach before that ordinance went into effect. Ms. Hunter thought that the economy was the biggest driver on the rest of those closures.

Representative Alexander said he would appreciate a breakdown if Ms. Hunter had that information. **Ms. Hunter** affirmed.

2. **Motion to Strike Petition for Reconsideration and Petition for Reconsideration**

Angela M. Pagnossin, Card Room Employee, Revocation

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Angela Pagnossin**, representing herself.

Chair Ellis explained there were two motions before the Commission; the Motion for Reconsideration and the Motion to Strike the Petition for Reconsideration filed on behalf of the staff. The issues seem to be fairly straight-forward concerning the motion to strike the Petition for Reconsideration, so the Commission will start with that motion and will give each side five minutes.

AAG Marvin and **Ms. Pagnossin** provided their arguments in the Motion to Strike the Petition for Reconsideration. A recording and transcript of the hearing is available upon request. Ms. Pagnossin asked for a continuance to the October Commission meeting in Spokane.

AAG Jerry Ackerman stated, for the record, that Commissioner Rojecki is continuing to recuse himself from consideration of the matter. **Chair Ellis** added, for the record, that Commissioner Reichert, who was involved in the original decision, was not available for this hearing. The general approach under the rules in handling motions for reconsideration is that the persons who made the original decision should be the persons to decide the motion for reconsideration, if they are reasonably available. Commissioner Reichert is not reasonably available; however, Commissioner Roe, who was not a Commissioner at the time of the original decision, has received all of the documents and has reviewed them carefully and is prepared to be involved in the decision on this matter.

At the conclusion of the arguments, **Chair Ellis** asked if there were any questions and called for an executive session at 2:10 p.m. to deliberate the matter; he recalled the public meeting at 2:25 p.m. **Chair Ellis** asked if there was a motion concerning the Motion to Strike. **Commissioner Roe** affirmed, indicating for the record that she had reviewed the entire underlying set of documents related to this matter.

Commissioner Roe made a motion seconded by Commissioner Amos to continue the hearing on the Motion to Strike to the next Commission meeting and that Ms. Pagnossin provide copies of all documentation of a timely service that she asked the Commission to consider. Ms. Pagnossin must provide to both the Commission and directly to the Attorney General within ten days of this hearing date any documents that establishes that Ms. Pagnossin filed and served her Motion for Reconsideration in a timely fashion. Vote taken; the motion passed with three aye votes (Chair Rojecki did not vote).

Commissioner Roe asked if Ms. Pagnossin had any questions about the motion. **Ms. Pagnossin** replied she had no questions at this time. She asked where she should send the information. **AAG Ackerman** replied she should send the information to the same address

where she sent her request for the Petition for Reconsideration. **Chair Ellis** added that Ms. Pagnossin should also be sure to include the Attorney General's office in her mailing. **Ms. Pagnossin** agreed and thanked the Commissioners for that opportunity.

3. Petition for Review

Jeffrey L. Salter, Card Room Employee, Revocation

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Jeffrey L. Salter**, representing himself. Mr. Salter and AAG Marvin provided their arguments in the matter for review. A recording and transcript of the hearing is available upon request.

At the conclusion of the arguments, **Chair Ellis** asked if there were any questions and called for an executive session at 2:55 p.m. to deliberate the matter; he recalled the public meeting at 3:25 p.m.

Chair Ellis explained that during the executive session the two case reports that Mr. Salter submitted this afternoon concerning Matthew D. Mitzel and Michael J. Trunkhill were looked at. In each case, the report is basically a case report of the criminal investigation that was conducted and does not really tell anything about the licensing side of the matters and are not helpful. For that reason, those reports are not going to be included in the record.

Commissioner Amos made a motion seconded by **Commissioner Rojecki** that the Commission affirm the ALJ's initial order revoking Jeffrey L. Salter's card room employee's license. *Vote taken; the motion passed with four aye votes.*

Chair Ellis explained the reason for the Commissioners' action. On the one hand, as Commissioners they are always torn when they have a person, like Mr. Salter, who presents themselves well, presents a very good case, and has a strong background in the industry. But on the other hand, it is pretty much verboten within the Commission that if a person steals from the casino, their employer, or from other players, that person is going to lose their license. If Mr. Salter decides he wants to stay in the gaming industry, at some point down the road he would have the opportunity to reapply for a license and he would have the burden to meet; that he has a clean record at that point and is able to impress the licensing staff, at that point, that he deserves a new chance. But at this point, the Commission is revoking the license. So that concludes this matter.

Mr. Salter asked about how much time can go by before he could be reconsidered. **Chair Ellis** replied that Mr. Salter would need to talk to the licensing staff. Perhaps Deputy Director Trujillo or one of the other members of the Commission staff could give Mr. Salter whatever guidance they can in that regard.

4. **Default**

Gary Schultz, Class III Employee, Revocation

Ms. Hunter reported that Mr. Schultz instructed security officers to leave abandoned credits on a player terminal instead of turning them in to the lost and found. Mr. Schultz worked as a casino shift manager at the Shoalwater Bay Casino at the time. He did admit that he had told an off duty Class III employee about the abandoned credits and gave her “permission to play them.” The Shoalwater Bay Tribal Gaming Commission revoked his license also. The Director issued administrative charges to him by certified mail, which were signed. When staff made its courtesy call to Mr. Schultz, his phone number had been disconnected. By not responding, Mr. Schultz has waived his right to a hearing. Staff is requesting that Mr. Schultz’ Class III certification be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Gary Schultz or a representative appearing on behalf of Gary Schultz was present. No one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Roe** that the Commission enter a default order revoking Mr. Gary Schultz’ Class III Employee Certification. *Vote taken; the motion passed with four aye votes*

5. **Approval of Minutes – August 12-13, 2010, Regular Meeting**

Commissioner Rojecki made a motion seconded by **Commissioner Roe** to approve the minutes from the August 12-13, 2010, regular Commission meeting as submitted. *Vote taken; the motion passed with four aye votes.*

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

Deputy Director Trujillo explained there were six pre-licensing house-banked card room reports included. It was once a common occurrence to have multiple house-banked card room pre-licensing reports in the Commission packet, but that has become an unusual occurrence. They are all informational reports and all are related to one buyer, NG Washington, Nevada Gold. The reports are for: Club Hollywood Casino in Shoreline; Golden Nugget Casino in Tukwila; Royal Casino in Everett; Silver Dollar Casino/Mill Creek in Bothell; Silver Dollar Casino/Renton in Renton; and Silver Dollar Casino/Sea Tac in Sea Tac. The six house-banked card rooms were previously owned by Evergreen Gaming Corporation, who filed for bankruptcy in Canada and the U.S. after defaulting on a \$28 million loan. That loan was used to finance a casino and entertainment center in Calgary, Alberta. That money was not used to fund the house-banked card rooms in Washington; however, those facilities in Washington were impacted because of the bankruptcy filing. Prior to its acquisition of these six facilities, Nevada Gold had already owned Crazy Moose Casino in Pasco, Coyote Bob’s Casino in Kennewick, and Crazy Moose Casino in Mountlake Terrace. There is a representative from Nevada Gold present if the Commissioners have any questions. The specific house-banked card rooms are located at

the bottom of page 2 and the top of page 3 in the list. Staff recommends licensing all class III certifications and licenses listed on pages 1 through 12.

Chair Ellis asked if DD Trujillo happened to know whether any of those six casinos being sought to be licensed by Nevada Gold were ones that had going concerns issues on their financial statements. **Deputy Director Trujillo** did not know for sure, but did not think so. If he recalled correctly, most of the facilities in Washington were viable economic entities and the bankruptcy that erupted in Canada was because of the Alberta loan. He offered to find out for sure. **Chair Ellis** replied that was not necessary.

Commissioner Rojecki made a motion seconded by **Commissioner Roe** to approve the new licenses and Class III certifications listed on pages 1 through 12. *Vote taken; the motion passed with four aye votes.*

RULES UP FOR FINAL ACTION

7. **Petition from the Public – Casey’s Dead Game Service – Increasing income threshold for a pull-tab service business from \$25,000 to \$30,000**
- a) Amendatory Section: WAC 230-03-020 – Punch board and pull-tab service business permit
 - b) Amendatory Section: WAC 230-03-210 – Applying for a gambling service supplier license

Ms. Hunter reported the petitioner is a punch board/pull-tab service business, which means they enter into agreements with pull-tab licensees to count, weigh, and store punch board/pull-tab games that have been removed from play. The petitioner is asking that the threshold amount be increased from \$25,000 a year to \$30,000 a year. Currently if gross billings are more than \$25,000 a year, the business must have a gambling service supplier license, which is a pretty significant fee difference. The petitioner would like to increase his billing rate, but did not want to go over the gross billing threshold. When the petition was up for filing at the July meeting, Commissioner Roe asked how the income thresholds have changed over the years. The \$20,000 threshold was actually set in 1998 when the punch board/pull-tab service permit was first created. Based on another petition, the threshold was changed in 2006 from \$20,000 to \$25,000. That may help the Commission understand how much it has changed over the past 12 years. Staff recommends final action.

Chair Ellis called for public comment; there was none.

Commissioner Roe made a motion seconded by **Commissioner Amos** to approve the proposed amendments to WAC 230-03-020 and WAC 230-03-210, with an effective date of January 1, 2011. *Vote taken; motion passed with four aye votes.*

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

Final Proposed Amendments up for Final Action

- a) New Section: WAC 230-15-189 – House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker

Acting Assistant Director Jeannette Sugai reported this rule change was proposed by the Texas Hold'em work group. It would create an 18-month pilot program to test the regulatory and economic impacts of increasing wager limits from \$40 to \$100 for Texas Hold'em poker. It would also help determine whether there is a demand for the higher wagering limits for Texas Hold'em poker. At the end of the pilot program the Commission will evaluate the data collected and determine whether the wage increase should be made permanent. A couple changes were made after last month's Commission meeting. There was a question regarding what records the card room operators would be required to keep. It was explained that the Texas Hold'em pilot study daily tracking record is very similar to the daily card room record that card rooms are currently required to keep if they collect their fees based on time. A copy of the daily card room record is included in the packet for reference. There was also some discussion regarding card room operators having to notify staff when they would be offering the higher limit Texas Hold'em games. Based on that discussion, subsection (3) of the rule was amended and now requires House-Banked or Class F card game licensees to notify Commission staff when they plan to conduct higher limit games, as opposed to when they will. Earlier today, Commissioner Ellis had a question regarding the commencement date of October 11, which is in the rule, and how that would relate to the effective date of the rule. Staff suggest changing that commencement date in the rule to October 15 to make sure the commencement date occurs after the effective date of the rule.

Chair Ellis said that assumes the effective date, as indicated in the proposed rule, would be 31 days from filing and that the filing would occur very quickly. **Acting Assistant Director Sugai** affirmed. Staff recommends final action on the final proposed amendment version of the rule that includes all of the amendments that were made at the July and August Commission meetings with a proposed effective date of 31 days from filing.

Chair Ellis called for public comment; there was none. He noted that the proposal Acting Assistant Director Sugai presented is the first proposal in the packet and is titled "*Final Proposed Amendments up for Final Action at the September 2010 Commission Meeting*" and relates to a new WAC Section 230-15-189 – House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em.

Commissioner Roe made a motion seconded by **Commissioner Amos** to approve the proposed new section WAC 230-15-189 with a commencement date of October 15, 2010, effective 31 days from filing. *Vote taken; the motion passed with four aye votes.*

9. **Petition From the Public – Funland Amusement Center – Removing wager and prize limitations from Amusement Centers**

- a) Amendatory Section: WAC 230-13-135 – Maximum wagers and prize limitations at certain amusement game locations

Acting Assistant Director Sugai reported the petitioner is a current amusement game licensee who is requesting that amusement centers be removed from the list of locations required to comply with the 50 cent wagering limits and \$250 prize restrictions. This would allow amusement centers to charge more per play and offer more attractive prizes. Amusement centers are defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices. There are currently approximately 14 licensed amusement centers. The Commission has received prior petitions to increase wagering or prize limits for all locations listed in WAC 230-13-135. This petition is different because it is requesting to remove only amusement centers from the wagering and prize limit restrictions. The amusement centers would be able to set their own wagering limits on amusement games, which is what agriculture fairs and carnivals are currently able to do. They would be able to offer the newer types of games, which may increase the play by adults. They would be able to offer higher value prizes such as electronics. If allowed to charge more per play, they would likely see an increase in their gross receipts. The proposed change would increase the need for staff to verify the facilities are a permanent location whose primary source of income is from the operation of ten or more amusement devices and that the facility is providing the appropriate adult supervision to ensure minors are not playing during school hours or after 10:00 p.m. If amusement centers are removed from the wager and prize restrictions, the Commission may receive similar requests from the other eight licensee categories on the list. Staff recommends filing for further discussion. Curtis Epping, who is the petitioner and owns Funland Family Entertainment Center, is here to speak and answer any questions.

Commissioner Roe asked if the “other licensees” mentioned were those amusement games operated at the other locations like the shopping centers and the movie theaters. **Acting Assistant Director Sugai** affirmed. **Commissioner Roe** asked if staff would be taking the same position with regard to those other licensees; if they anticipate that, if approved, this would essentially be opening the door to everyone else. **Acting Assistant Director Sugai** expected that if amusement centers were removed then the other people in that category would possibly want to be removed from that list as well so they would not have to comply with the wager and prize restrictions.

Chair Ellis asked if staff had discussed the implications of that and if staff had any concerns that it would not have if it was only amusement centers that were to be freed from the restrictions. Does staff care that all the other places where amusement games are offered might come forward and want to be freed from the restrictions? **Acting Assistant Director Sugai** responded that was probably a policy consideration. **Chair Ellis** agreed. **Director Day** thought the reason staff raised that as a concern was because, as Commissioner Roe had

appropriately described, it opens the door. This rule has restricted any location where minors can play to be limited to 50 cents. In the end, staff was raising the question back to the Commission on whether this would be an appropriate direction to go, freeing up or increasing the amount that can be wagered in all these locations. **Chair Ellis** noted that staff does that type of thing fairly frequently.

Representative Simpson commented that the assertion was that the prizes would be of a certain value if the amount was raised, but wondered if there was any verification done by the Gambling Commission of what the prizes are or if the market would just be allowed to dictate whether or not people would play. In other words, he assumed that if somebody saw a bunch of \$1 stuffed animals in a machine, they were not going to put \$5 in the machine to win one. He asked if there was any enforcement in the Gambling Commission to verify the prize value. **Acting Assistant Director Sugai** replied that would be dictated by the market and the players.

Chair Ellis asked if Mr. Epping would like to address the Commission concerning the petition.

Mr. Curtis Epping, from Funland in Long Beach, thanked the Gambling Commission for their time in consideration of his request for this change. He also thank all those involved in formulating and drawing up this proposal. He provided the Commissioners with some packets of information that may help qualify some of the ideas and reasons for this petition. Included were photos of his business to show his establishment and how they try to be a professional operation and a clean and respected location in his city. Also there are some game brochures included for examples only. Not all of those will be more than 50 cents, some may be 25 cents, but just for an idea of the machines that would be available, or are available, on the market today. Also included is a paper from New Jersey, which is the other state that has similar regulations in the fact that they regulate wagers and have restrictions. They are not exactly the same, but have similar restrictions. Mr. Epping had pulled their petition from 2006 for a raise in the max wager in New Jersey, which was from \$5 to a \$10 wager. On the second page it mentions the social impact of that proposal. Mr. Epping thought that might be something that would help in this Commission's decision making. That section says the Commission believes the proposed amendments will benefit society. According to the testimony the Commission received during the public hearing, licensees need to charge more for the games they offer in order to cover the costs of operating amusement games. The proposed increase in fees ensures that licensees will be able to afford to offer these games to the public. The proposed increase in the maximum prize for an amusement game allows operators of amusement games to offer the public a prize commensurate with the price they pay to play an amusement game. It goes on to talk about what the amounts were and if it was within their regulations to do that. The second page from the Gambling Commission is just the adoption of that rule, which they decided to do on August 21, 2006. The last page, the City of Millville, explains how New Jersey regulated or defined its amusement games. What the state of Washington does – not that the Commission needs to know this because they already do the games of skill and then the

games of chance – is they kind of lump them together as a game of skill, chance, or a combination of both where a player pays a fee for an opportunity. There is just kind of an idea of what they consider amusement, they kind of lump their games of chance and their games of skill as one application. There is also a letter from the City of Long Beach in support of Funland's request. A few ideas Mr. Epping had, and another reason for this request, was the industry has been a low-quality entertainment in the past, and he would like to come out of the past and provide a higher quality of entertainment. For Funland to give the higher quality of entertainment, they need this change in price per play. Fifty cents is not conducive to giving out quality name-brand prizes; not all games will have a price per play increase, only certain ones. As stated in his earlier letter, the customer dictates the price they will pay for a game. In his center, they have found in the past that with their video games it does not matter what they pay for the game and for what they need to charge for the game. The customers have a perceived value that they consider they would pay to play that game. Their *Super GT*, which is a video driving game that moves and has pretty cool technology with 3D graphics and a big screen – they thought they could pay \$72,000 for four of them. They were a little nervous as they are a small operation in Long Beach, but went ahead and ordered them and put them in place in the hope they were correct. Mr. Epping found that the customers would not pay \$2, but would pay \$1 to play that game. So they lowered it to \$1 and found that the customers would play it for \$1. What Mr. Epping found was the customer really decides, other than the fact of what is legal and what is not, but the customer decides which games he keeps and which games that go. They vote; they decide really, because the bottom line is financial in a way because of the cost of the games and the cost of operation. If the games are not producing the income for the square footage that they are taking up, they have to be removed. They get old and Funland has to purchase new equipment ultimately.

Chair Ellis asked what the age range was of Funland's clientele. He wondered if Mr. Epping had a business model that specified that in real detail, or whether he could – **Mr. Epping** explained Funland is in a vacation area in Long Beach, so a lot of their customers are families on vacation. They are family entertainment and there are a lot of families that vacation there; also young adults. Families grow up and then the children will come to Long Beach after they have been there. Mr. Epping would say the majority is families on vacation and then young adults. Sometimes they have grandparents that come in with grandchildren, but it is mostly families. **Chair Ellis** thought Mr. Epping had, to some extent, a built-in problem with the Commission from the standpoint that they have a very, very sketchy understanding of the amusement game industry. Chair Ellis' knowledge goes about as far as some sort of a machine in a Safeway with prizes to be grabbed by a steam shovel. So it does not fit with what Mr. Epping was talking about and with the modern games that are available now, which Chair Ellis knew quite well. With regard to the New Jersey statutory scheme where the maximum charge is \$10, Chair Ellis assumed he was not talking about young teenagers, or certainly preteens, being able to play games at \$10 a crack. **Mr. Epping** replied he did not see that Funland would ever get to \$10 in his lifetime. **Chair Ellis** noted that Mr. Epping had indicated that he could not get to \$2. **Mr. Epping** affirmed. **Chair Ellis** asked if that was a gambling game. **Mr. Epping** replied it was just a video game.

Chair Ellis asked if it was a video game where two people competed against each other. **Mr. Epping** explained it was a driving game; four of them are linked together and there is a 50" screen and 3D graphics and the player drives it; it moves. **Chair Ellis** asked if the players win something; if they beat the other contestants. **Mr. Epping** replied no, it was just a video game. **Chair Ellis** indicated he now knew twice as much about amusement games as he used to know.

Commissioner Rojecki commented that Mr. Epping, in his August 3 letter in regards to WAC 230-13-135, basically made the point that he was allowed to have a prize valued at \$250, but could only charge 50 cents. **Mr. Epping** affirmed that was correct.

Commissioner Rojecki said he had been party to some of the rules that have come before the Commission on this specific issue, and thought it was time that the Commission readdress some of these and maybe look at it in a different light. Regardless if the Commission approves this or not, Commissioner Rojecki thought they should at least move it forward and discuss this issue and some of the other issues in regards to amusement games and how the Commission looks at them. **Mr. Epping** thanked Commissioner Rojecki.

Commissioner Roe indicated she actually had familiarity with some of these places and had spent way too many rainy weekend afternoons with her son and friends at FunPlex. She agreed with Commissioner Rojecki that lots of times those are situations in which the parents and the family are there so kids were not just turned loose – hers were not anyway – to spend unlimited amounts of money. Commissioner Roe thought, without promising how she would vote on this petition, she would agree with moving it forward to look at it further. Those things Mr. Epping was talking about are a thing of the past.

Chair Ellis thanked Mr. Epping for the materials he submitted, today and previously, and for his work on the petition. He called for public comment.

Mr. T.K. Bentler, representing Dave & Busters, echoed the same things mentioned by the representative from Funland. Dave & Busters is actually looking at locating possibly two to three stores in Washington State. At the 50 cent level, it does not fit their business model, so he would applaud the motion to move forward and continue discussions on potential revisions to this particular WAC.

Chair Ellis thought that raised Mr. Bentler's interest on behalf of a client that would not be directly affected by the petition as it is currently stated. He asked AAG Ackerman if that was a problem as far as the rules concerning the proceeding if the Commission were to approve this petition today that relates only to amusement centers and then down the road at a subsequent hearing were to modify it so that other categories of businesses that are currently subject to WAC 230-13-135 were also removed, without starting a new rule making proceeding. He asked if AAG Ackerman would prefer to take a look at that more carefully and tell the Commission next month. **AAG Ackerman** affirmed he would. His initial thought was that probably it was not a substantive change in APA terms because the Commission has identified the WAC that they are amending and the nature of changing a

category of premises that are encompassed by that WAC. AAG Ackerman said he would like to think about it some more, but that certainly would not prevent the Commission from moving this matter forward and filing for further discussion at this meeting.

Commissioner Rojecki had a follow-up question to that – say, hypothetically, that would be an issue, how would the Commission be able to make changes that would be significantly different if they kept amusement centers in the WAC, but created a new subsection entirely different than what this petition does? **AAG Ackerman** was not sure the ultimate number assigned to the WAC mattered. If, for instance, the Commission was to create a new WAC, in addition to the existing one, and just assigned facilities to one WAC or the other, AAG Ackerman did not think that affects the substantive change analysis. He thought the worst thing that would happen would be that the Commission might have to – assuming they wanted to approve this WAC for amusement centers – go ahead and pass the amendment that is being proposed here, and then the Commission might have to go through a second rule making process if they wanted to exempt out other types of facilities that are currently on that eight or nine item list. That would be the most problematic thing; the Commission might have to engage in a second rule making process. **Commissioner Rojecki** asked if there would be a second process. **AAG Ackerman** said he would think about it in the interim before the next meeting. It may be that is not required; this may not be a substantive change. But he would like to give it a little bit more thought. **Commissioner Rojecki** thanked AAG Ackerman.

Chair Ellis asked if Mr. Bentler wanted to comment on that. **Mr. Bentler** replied no, he would leave it at that. His other thought was that when the Commission has the definition of amusement center, perhaps a Dave & Busters restaurant and an amusement center fit within that definition. That may be a way to fit within that particular change in the WAC. **Chair Ellis** said they had to be careful about that because an amusement center is a center whose revenue is primarily derived from amusement games whereas a restaurant's revenue is primarily derived from food and beverage sales. **Mr. Bentler** said he was definitely 50/50 in that. **Chair Ellis** indicated he understood Mr. Bentler's point and thanked him for his interest. **Mr. Bentler** thanked the Commission for their time.

Mr. Don Epping, Curtis's father, thanked the Commission for letting him speak to them. The amusement center, according to the other WAC rules and regulations, has to have staff in the center at all times to monitor what goes on. It is not like the Safeway store and the other stores out there where they just set stuff out and let it go. He thought the Commission might want to take that into consideration when they were considering this.

Chair Ellis asked if Funland was responsible for ensuring that children were not playing during school hours and that kind of thing. **Mr. Epping** replied that was part of Commission rules and they have to do that. In the 20 years Funland has been there, payroll has tripled; people make three times as much as they did when Funland first started 20 years ago, so if it is the intent to not do this, it will eventually put them out of business because they cannot compete. That is the end result.

Commissioner Roe thought that was a really good point to have raised in terms of why to differentiate between Funland and numbers 1 through 9 who are not required to have that level of supervision, just in terms of the concern about kids. Commissioner Roe appreciated Mr. Epping making that distinction.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to file for further consideration Amendatory WAC 230-13-135. *Vote taken; the motion passed with four aye votes.*

Director Day suggested that it would probably be worthwhile to keep this on the agenda for next month as a discussion item. That way, if there was an alternative, it would provide the opportunity for the Commission to file an alternative at the next meeting; it could be carried forward. It seems like this petition was going to have a bit more discussion with it, so staff could put this on the agenda as a discussion item. It may be a good idea as well to schedule a review of the amusement game industry and how it fits all together so the Commissioners have the benefit of that information as they proceed to take final action. **Chair Ellis** thought that would be very helpful and agreed that this should be scheduled for another discussion before it gets to final action.

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

Chair Ellis opened the meeting for public comments.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, mentioned there was a comment earlier regarding the history and past bills relating to local government control during Ms. Hunter's presentation. She noted that Commissioner Roe had asked about the stakeholders and who was invited to the meetings. Ms. Chiechi wanted to point out, for the record, that their industry has not been invited to the meetings as of yet. Ms. Hunter had indicated last session when the bill was introduced – she reported to the Commission in January and much to the RGA's surprise, they had not heard of the bill coming forward. They were not privy to those conversations, or part of the drafting, as they have been for the past decade. Ms. Chiechi just wanted to bring that to the attention of the Commissioners. Today was the first she had heard about the meeting on Monday, and she knew there had been previous meetings that had been taking place. She wanted the group to know that as one of the largest stakeholders in the outcome of any discussion that has to do with local option and control, they are left to provide public testimony when the bill is being heard. Hopefully, at some point down the road, they may be involved in the discussions. Ms. Chiechi has been involved in this issue for the ten years it has been before the Legislature and, in fact, has gone through two different lobbyists now with the Association of Washington Cities. She assumed there was going to be a third lobbyist that is going to be working on this issue, so she for one would frankly like to see it resolved in a manner that is best for all interested parties, her industry included, and the cities and counties.

Chair Ellis thanked Ms. Chiechi.

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

Chair Ellis As indicated earlier, there is not going to be an executive session today. With no further business or public comment, **Chair Ellis** adjourned the meeting at 4:15 p.m. The next meeting will be October 14 and 15, 2010 in Spokane.

Minutes prepared by:

Gail Grate, Executive Assistant