

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
THURSDAY, AUGUST 11, 2011  
APPROVED MINUTES**

**Chair John Ellis** called the Gambling Commission meeting to order at 1:05 p.m. at the Heathman Lodge in Vancouver and introduced the members present.

**MEMBERS PRESENT:**     **Commissioner Chair John Ellis**, Seattle  
                                  **Commissioner Vice-Chair Mike Amos**, Selah  
                                  **Commissioner Michael Reichert**, Maple Valley  
                                  **Senator Margarita Prentice**, Renton  
                                  **Representative Gary Alexander**, Olympia  
                                  **Representative Timm Ormsby**, Spokane

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

**Staff Accomplishment: Director Rick Day, 10 Years of State and Gambling Commission Service**

**Chair Ellis** congratulated Director Rick Day on his outstanding service to the Commission and presented him with a certificate and agency pin, noting this was a very significant recognition item. It was almost exactly ten years ago when the Director of the Commission, Rick Day, was appointed. He came to the Commission from Montana where he was born and raised. He has three children and three grandchildren, with another grandchild on the way. Rick has a degree from Montana State University and, since moving to Washington, received his master’s degree in Public Administration from the University of Washington. He began his law enforcement career as a police officer in Montana and has worked in the criminal justice system for over 30 years. About 24 of those years have involved state law enforcement regulatory work involving tobacco, liquor, and gaming investigations. **Director Day** thanked Chair Ellis.

**Chair Ellis** also congratulated Commissioner Reichert who, just last evening, became a grandfather for the tenth time.

**1. Agenda Review/Director’s Report**

**Director Rick Day** briefly reviewed the agenda, explaining he was trying a different approach in an attempt to consolidate things and help the meeting move a little faster. Each month copies of the administrative cases, seizure updates, and news articles will be included in the agenda packets, but Director Day will only mention them in his oral comments if it is something he thinks would be of interest to the Commissioners. Director Day reviewed the handout materials provided to the Commissioners. Staff requested the

default for Brinnon Aasted (Item #9) be removed from today's agenda because Mr. Aasted has made substantial payments to clear his problems and staff would like more time to look at that before moving forward for a default. **Chair Ellis** approved removing the default for Mr. Aasted from the agenda. **Director Day** explained that the Washington Gold Casinos Rule Petition (Item #13 on Friday) had been withdrawn by the petitioner. He noted that Bonanza Press had some travel plans and had requested their rule petition be heard today instead of Friday. It is just "Up for Discussion" today and there is no particular action required. He welcomed the Commissioners and Ex-Officio members back to Vancouver, noting that, because of the legislative session, it has been quite some time since the Ex-Officio members were present. He welcomed Representative Ormsby to the Commission as the newest Ex-Officio member. **Director Day** thanked Dave Trujillo, Gail Grate, and all the staff for doing a great job in keeping things running while he was off for a couple months. Director Day offered an acknowledgment of the recent loss of Mr. Vito Chiechi. He felt privileged to have known Mr. Chiechi and offered his and staff's sympathies to Dolores Chiechi and her family. There was a news article included in the agenda packets concerning Mr. Chiechi's passing. **Chair Ellis** indicated it was a very good article. Mr. Chiechi certainly has played a major role in the area of gaming in the state of Washington over the years, as well as in many, many other areas. **Director Day** noted that an acknowledgement was received thanking Chair Ellis for participating in a presentation for the Northwest Indian Gaming Conference and Expo, which he had heard was standing room only. **Chair Ellis** affirmed it was standing room only and joked that the attendees must have misread the agenda and went to the wrong room. He stated it was a wonderful conference and he really enjoyed making the presentation and participating with the other members of the panel.

2. **2011-13 Biennium Budget Adjustments (PowerPoint Presentation)**

**Ms. Judy Pittelkau**, Senior Budget and Accounting Analyst in the Business Operations Division, reported the purpose of this presentation is to update the Commission on the Fiscal Year (FY) 2011 activity and to get the Commission's approval for adjustments to the budget for the 2011-2013 biennium, which began on July 1, 2011, and runs through June 30, 2013. The Commission is a non-appropriated agency that does not receive any general fund dollars but is expected to cover all of its costs through fees and other revenue sources. The Commission, or its duly authorized representative, authorizes the disbursements and no legislative appropriation is required. The Commission's powers and duties include ensuring that fees are adequate to cover all costs incurred by the agency's licensing and enforcement activities. As of December 2007, I-960's passage requires that any fee increases be approved by the Legislature prior to implementation.

Total funds available for FY11 were \$18 million, which includes the gambling revolving fund working capital balance and revenue, federal seizure account funds, and the Industrial Insurance Premium refund account. The actual expenditures for FY11 were \$15.2 million; actual FTEs were 152.74, and the gambling revolving fund ending working capital balance was \$2.8 million. Actual revenues for FY11 were \$12.3 million. The 8 percent difference between the estimated and the actual revenue was due to a 4 percent decline in licensees and a 4 percent change in the way deferred revenue is accounted for. Declines in major

sources of the revenue occurred in the punch board/pull-tab, house-banked card room, tribal certifications, and card room employee licensees. The decline in the tribal regulation revenue was due to the change in the accounting for the deferred revenue. If the money in deferred revenue is included with the other revenue, tribal regulation would be about 96 percent of the estimate. The Electronic Gambling Lab is below the estimated amount and had an accounts receivable at the end of June. The Lab was also down one FTE, which affected its billable hours. Punch board/pull-tabs continue to be the largest single source of revenue. Salaries and benefits are the greatest expenditure at 75 percent during FY11.

Last August, the Commission approved a budget for the 2011-2013 biennium of \$32.4 million and 155.5 FTEs. The budget included using state seizure money to fund 18 FTEs that could not be supported by the gambling revolving account. Items that may cause changes to the approved budget are revisions to the revenue estimates, adjustments related to legislative action, and adjustments that are initiated by staff. The first step in the budgeting process is to forecast revenues for the biennium, which are based on historical and future trend information that are kept for each license activity and class. Due to the increased workload, staff is proposing adding two new positions to the Electronic Gambling Lab. The Lab bills for the time it takes to process the reviews, so those positions would generate the revenue to pay for themselves and will not have any detrimental impact to other agency operations. Hourly billing rates continue to be based on cost allocation. The anticipated fee increases would be a part of these estimates; however, since seizure funds are still available to help offset some of the expenses, no new fees or fee increases were included in the revenue estimates for the 2011-2013 biennium. The last fee increase was in June of 2008 and was the first one done in over five years. Reimbursement rates only apply to the gambling revolving account expenditures, so seizure funds significantly impact those rates. For instance, instead of tribal regulation rates being around \$130 per hour, the rates would be reduced to about \$120 per hour. Even with the cost reductions made to the FTEs and other expenses, without the use of seizure funds, the Commission would likely have to ask for a fee increase because of rising costs. Proposed revisions to the 2011-2013 biennium budget include changes resulting from legislative action:

- 3 percent salary reduction and benefit changes that affects all of the Commission staff
- A freeze on the WMS and exempt salaries. The approved 2011-2013 biennium budget included salary increases for WMS and exempt staff, so these increases need to be removed from the existing budget. The freeze negatively impacts 27 of the Commission special agents; primarily a group of the newest law enforcement officers who were scheduled to get periodic increments as they went through their training programs. Those hired in 2008 will, ultimately, see a five-year period without a salary increase, plus they are being hit with the 3 percent salary reduction. The Commission has recently lost three very capable, educated, and well-trained agents who accepted outside offers with substantial salary increases. Two of those went with private auditing firms and one went with a local law enforcement agency.
- Pension contribution rates include reductions that are due to impacts of the reduced compensation in this biennium and the suspension of the Plan 1 Uniform COLA.

- Data center changes include the Commission's share of the cost for the new data center.
- Reduced billings from the Attorney General reflect the anticipated changes in billings for their services.

Every year staff reviews spending patterns by program for the non-compensation items and looks for areas that need to be realigned. This year staff was able to capture savings of almost \$219,000. The increase in facility costs are actually increases in utility costs. During the past year, staff identified ten internal decision packages for consideration in inclusion to the revisions of the 2011-2013 biennium budget. A thorough review of those items resulted in staff recommending six new items be included.

- The addition of the two positions for the electronic gambling lab
- Processing fingerprints for out-of-state applicants at renewal
- Extending the special agent position that was assigned to the undercover internet gambling activities for 18 months to the end of the biennium.
- Extending the special agent assigned to the law enforcement accreditation project for the second year that is needed to complete the process
- Continue the development of e-learning resources using contracts
- Leasing space to meet the computer forensics capacity in Spokane.

Available funds for the 2011-2013 biennium are \$35 million. The proposed expenditure level is \$30.6 million and the FTEs remain the same as approved for last year at 155.5 for the biennium. The budget the Commissioners approved last year provided for 18 FTEs in the state seizure account. Staff is proposing that those positions be moved to the gambling revolving account since reductions in those expenditures now allows those positions to be supported out of the operating account. The industrial insurance premium refund account is a refund of insurance premiums the Commission receives based on risk experience. This year, the Legislature did a statewide sweep of that account, which included \$21,000 from the Gambling Commission. Planned working capital balance during the 2011-2013 biennium is just below OFM's recommended two months expenditures. The working capital balance did go up in fiscal year 2010 because of freezes on salaries, contracts, out-of-state travel, and equipment purchases over \$5,000. Working capital balance went down in fiscal year 2011 due to the revenue being lower. FTEs were slightly higher by about 1.5 and several new vehicles were purchased during this period. Staff recommends approval of the revised 2011-2013 biennium budget of \$30,619,876 and 155.5 FTEs.

**Chair Ellis** noted that Ms. Pittelkau mentioned there was a drop down to the level in fiscal year 2011 in the gambling revolving fund account, and projections are that by the end of 2013 that drop will continue and reach almost a million dollars, which is slightly less than the level of the OFM recommendation. He asked if there was any particular reason for the drop during the two-year period, from 2011 down to 2013, rather than the lack of alternative available funds. **Ms. Pittelkau** replied that there has been a continued decline in licensees, so revenues are going down and FTEs are being reduced. Staff are managing expenditures through the reduction in FTE levels, so as expenditures go down and the

revenue goes down, that reduces working capital balance. Also, seizure funds are continuing to be used for the expenditures that are allowed.

**Commissioner Michael Reichert** asked, related to the seizure funds, if Ms. Pittelkau was anticipating no income or no seizure funds in usable income for this coming biennium; that what is in the fund already is being used. **Ms. Pittelkau** replied what is in the fund is being used; staff is not anticipating any additional funds coming in at this point.

**Commissioner Reichert** asked if Ms. Pittelkau could project what the remaining balance in that fund would be if the Commission were to approve the budget as presented. **Ms. Pittelkau** responded there is about \$3 million in each of the federal and the state seizure funds, so at the end of the biennium there would be about \$700,000 left in the federal, and there would be about \$3 million for the state seizure. The only thing currently planned to be paid out of the state seizure fund is a contract for the public opinion survey. As previously mentioned, the proposal is to move 18 FTEs that originally had been approved to spend out of the state seizure fund back into the gambling revolving fund. With the reduction in expenditures with the salary reductions and other freezes, those FTEs can be supported out of the gambling revolving fund.

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

**Commissioner Amos** made a motion seconded by **Commissioner Reichert** that the Commission approve the amended budget for the 2011-2013 Biennium. *Vote taken; the motion passed with three aye votes.*

**Director Day** noted that Mr. Westhoff, the former Business Administrator, moved on to the Department of Health and Human Services. In that process, and with the freezes effective at the time, Ms. Pittelkau volunteered to take over. Director Day stated she has done that admirably, and with Mr. Dightman's support, they have brought forward the changes and developed the budget that were needed. Director Day expressed his and the Commission's appreciation for their work. He pointed out the Commission has had about nine consecutive years of no audit exceptions.

**Chair Ellis** agreed the Commission certainly appreciates their work. He told them before the meeting began how pleasant it is for the Commissioners and Ex-Officio members to be able to receive financial analyses such as this and have absolute confidence that all of the questions have been asked and answered and that the work is absolutely reliable.

### 3. **Tribal Community Impact/Charitable Payments** (PowerPoint Presentation)

**Ms. Julie Lies**, Assistant Director for the Tribal and Technical Gambling Division, said she has been with the Gambling Commission since November of 1989 when she was hired as an auditor. She started in the Tribal Gaming Unit when the first casino opened and has moved up the ranks. AD Lies provided an overview of the Tribal Gaming Unit's role, explaining the contributions she would be talking about are community impact, charitable, smoking cessation and prevention, and problem gambling education, awareness, and treatment, then she would go through each of the distributions. The agency's role in these

funds is to ensure there is Compact compliance. The agents independently go out and verify accrual and disbursement for the charitable, smoking cessation, and problem gambling, and then they verify the disbursement of the 2 percent funds. AD Lies and her agent-in-charge participate on the Community Impact Committees.

The community impact and charitable distributions are for Fiscal Year 2009. They accrue in 2009, distribute in 2010, and are verified in 2011. There were 22 tribes operating 28 casinos. The calculations are based on net receipts, which is the amount wagered less prizes paid. The net receipts for 2009 were \$1.7 billion. Additionally, about 91 percent of those were from the Tribal Lottery System (TLS) machines. The purpose of the community impact payments is to reimburse local government agencies impacted by the operation of tribal casinos. Compact language varies, some mention actual impact, some say potential impact, some say material impact, and some say impacts based on documented costs or impacts. Almost all of the Compacts require the tribes to distribute “up to” 2 percent of net win, but some Compacts actually say the tribe “will” distribute 2 percent. Class III table games are included, which would be the casino-style gaming. It does not include the machine gaming. Satellite wagering (off-track betting, sports pools, Class II gaming) is not included. If the tribe operates a charity table, those proceeds are not included. Food and beverage and retail sales are not included. Some Compacts include Keno; some do not.

The Committee structures vary. The majority of the tribes actually have state representation on the committee. Some tribes do not have committees; the distributions are just made from the tribes, or the tribes list specific agencies that have to be paid. Up to 2 percent of table games net receipts are paid to governmental agencies impacted by the casino. There is an additional one-half of one percent out of Appendix X2 funds that could also go towards these payments. There has been an increase of about \$1.5 million in the last three years of distributions, which staff believes is due to the addition of two tribes and three casinos. All the tribes have made distributions; however the contributions of one tribe were not included because staff was not able to verify the organizations that received funds. Staff continues to work with that tribe to verify those organizations.

**Chair Ellis** asked if there was a particular reason for the significant drop between 2007 and 2008 of almost \$1 million in the total distributions. **Ms. Lies** replied that was because in that year there was a decrease in the revenue from some of the tribes: one tribe removed their Class III machines and only had Class II games; and many of the tribes contributing to law enforcement/emergency agencies outside of this process. If they receive funds outside of this process, they are not included in these figures. **Chair Ellis** recalled that AD Lies had reported that to the Commission last year.

**Ms. Lies** reported that, of the distributions that were made this year, there were 83 governmental agencies that received funds, which was up from 59 governmental agencies last year. The distribution of the funds stayed the same as last year as far as percentages. Fire and emergency services and local law enforcement swapped by about 4 percent, and general government and other organizations had a 2 percent swap between the two of

them. AD Lies explained the half percent TLS charitable distributions are the second type of distributions made by the tribes. Appendix X2 requires that one-half of one percent of the tribal lottery system net win is to be distributed to bona-fide charitable/nonprofit organizations within Washington State. In this particular distribution, the tribes are also allowed to make some deductions or reductions, which can include the cost of developing, licensing, or otherwise obtaining the use of the tribal lottery system. For the two new facilities, their first year is only one-half of that amount so they would pay a quarter of a percent, and then the next year they would pay three-quarters of the half. All of the tribes are substantially in compliance with their charitable distributions. Two tribes did not distribute all the funds they were required to, but it was a minor amount and staff are continuing to work with those two tribes to get that money distributed and verified. One tribe made the distributions but staff has not been able to obtain the list of organizations to make sure they actually qualify under the section. Staff is working with that tribe also. Once that information is received from those three tribes, it will probably be at more than the \$7.8 million; it will probably be closer to \$8 million. This year, 1,505 organizations received funds, which is up from 1,038 last year. Examples are March of Dimes, Muscular Dystrophy, Red Cross, food banks, housing authorities, veterans organizations, fraternal organizations, cultural programs, tribal organizations (primarily museums, cultural programs, educational, environmental, and other Native American type of organizations), schools, academies, PTAs, colleges, scholarships, libraries, Boys and Girls Clubs, Boy Scouts, Girl Scouts, YMCA, churches, academies, ministries, festivals, and sports (baseball, basketball, Little League).

Smoking cessation and problem gambling are separated into two types of distributions. Like the charitable and community impact, they accrue in one year, pay the next year, and are verified the following year. When Appendix X2 was agreed to, the smoking cessation and problem gambling payments were to be paid 15 days after the end of the tribe's fiscal yearend. Because these are almost an immediate payment, staff looks at them differently. The calculations are based on net receipts from the 22 tribes operating 28 casinos. Smoking cessation is 0.13 percent of TLS net receipts that are paid to governmental, charitable, or nonprofit organizations in Washington State. The tribes are allowed to have some deductions and reductions similar to the charitable, which is the cost of developing, licensing, and otherwise obtaining the use of the Tribal Lottery System. If a casino is completely smoke free, they are not required to make this payment, but if they have a non-smoking area, they do not get to reduce the payment. The actual, whole facility needs to be smoke free like the Muckleshoot Casino #2. The other exemption is tribes are not required to make this payment if they do not serve alcohol, like the Yakama Legends Casino. There were a few challenges this year obtaining the 2010 payment information due to some confusion on the part of some new tribal staff that were confusing this distribution with the community investment contribution report. They were reporting the distributions on the community investment contribution report and thought they had met the requirement. Staff is continuing to work with the five tribes that are in this category. Staff expects that the amount to substantially increase once that information is received. There were 23 organizations that received funds this year, which is very similar to the 27 from last year. The most significant thing to note is that the state did not receive any funds

for smoking cessation, which in the past had been about 1 percent of the amount that had been contributed. There were 8 charities that received funding and 12 tribes.

**Chair Ellis** asked if the reason the state did not receive any funds was because the funds available under the state's tobacco recovery greatly exceeded the amount that would have been available to the state under this program. **Assistant Director Lies** replied she was not sure. She had heard, as she participated in some of the Department of Health conferences, that a lot of the tribes have their own program for smoking cessation and education so they are applying the funds directly to those programs rather than coming through the state and going back to those programs.

**Ms. Lies** reported the problem gambling contributions are 0.13 percent of all Class III net receipts including table games, not just the TLS receipts. There are the deductions, or reductions, for the cost of developing, licensing, or otherwise obtaining the use of TLS. But a little more money gets wrapped into this because the table games are added. Staff had similar problems with the problem gambling distribution as with smoking cessation. The same five tribes, dealing with someone new, were confused about what they needed to provide. In that \$1.6 million for problem gambling contributions there were 24 organizations that received funding, which was up from 21 last year. The State did not receive any funding for problem gambling contributions this year. Five charities and ten tribes were included.

#### **4. 2012 Agency Request Legislation**

**Ms. Amy Hunter** reported that a very important Senate Resolution was introduced regarding Senator Prentice's 80<sup>th</sup> birthday on February 22 during the legislative session. Since Senator Prentice has not been at a meeting since that date, staff wanted to acknowledge her birthday. She has served in the Legislature since 1988 and was the first Latina elected to the Legislature in Washington State, so she is literally part of history in many different ways. Senator Prentice has been an ex-officio member of the Gambling Commission since 1994 and has set the bar for the participation of the ex-officio members. Staff appreciates the participation of all of the ex-officio members. One of the last paragraphs in the Senate Resolution summarizes Senator Prentice's accomplishments. It talks about her effective leadership, warm heart, strong backbone, vigorous bipartisanship, exceptional work ethic, and her consistent ability to bring people together using her unique "nurse voice" to take charge and calm difficult situations. For those of you who may not know this, Senator Prentice has a long history of being a nurse and, according to the Senate Resolution, most notoriously a graveyard ER nurse at Valley Medical Center where the new state-of-the-art trauma center bears her name and is commonly referred to by emergency workers as Margaritaville. On behalf of the Commission, staff wants to wish Senator Prentice a belated 80<sup>th</sup> birthday.

**Chair Ellis** added he did not know how the Commission could have recognized your service in this regard without mentioning which birthday it is. Every time he hears it mentioned, he thinks: "Oh, I bet she's grinding her teeth about that."

**Senator Margarita Prentice** disagreed, noting that she had just visited her sister who will be 87 who has less wrinkles than Senator Prentice, and she would aspire to that; it is one of those things that she thought may be genetic. She thanked everyone, pointing out this was the birthday that lasted all day, incidentally, because she has worked with so many people and there are so many places. She thought this was her 16<sup>th</sup> year on the Gambling Commission and said she would not have been hanging around this long if she did not completely respect what the Commission does. Senator Prentice said she sees a lot of agencies and she has watched this one closely on what it does and how they do it. She did not think she had praised the Commission and staff enough, but there is a reason that she has been hanging around this agency for this long. She has learned more from Jerry Ackerman just sitting here and wondering out loud, and he lets her – it is all part of her education. But as some know, Senator Prentice does strive to be fair, although it may not always feel that way. She really values what she has learned throughout the state. Everyone has opened their doors to her; the card rooms she has visited and every tribe. She admitted she is kind of brazen; she just invites herself and gets in. It is one of the privileges she has had being in the Legislature. Senator Prentice thanked everyone.

**Chair Ellis** indicated the work that Senator Prentice has done over the years has been a very significant part of the success of the Gambling Commission as an agency. The Commissioners and staff appreciate it very much, as well as the rest of the industry itself.

**Ms. Hunter** reported there were very few changes to the agency request legislation for 2012. The main updates are that staff heard back from a few more stakeholders. The fiscal note is now in the correct fiscal note format, and the proposed bill itself is in what is called a “Z draft form” which it has to be for submission. All agency request legislation must be submitted to the Governor’s office for approval; the due date will be some time in September. This bill deals with extending to 18 months the length of time for which a license can be issued by the Commission. The current law states the Commission can only issue licenses for one year. This change is a beginning step so the Commission can consider looking into the possibility of using the Business Licensing Services (BLS) administered by the Department of Revenue. It used to be administered through the Department of Licensing and was called the Master License Service. There were some questions and concerns raised during today’s study session about how this would impact the two-part payment plan. Currently, there is an option available through Commission rule for organizations, not individual license holders, that allows them to pay their license fee in two installments. When staff first started talking to Department of Licensing about using the Service they said their system would not be able to handle a two-part payment plan. Staff does not know if that will be the same for the Department of Revenue. Ms. Hunter was not sure what parts of that system transferred over, so that is certainly something that staff would be looking at and working with them on. It is an important item to licensees. Before being able to implement anything with BLS, any change would have to come through a rule change because there is a current rule on the books saying the Commission can do the two-part payment plan. Ms. Hunter was sure all of the concerns would be addressed at that time. She did not think she did a good job of explaining during the study session discussion that there should not be any panic over the two-part payment

plan automatically going away. It definitely does not automatically go away with just the introduction or passage of this bill; this is really just step one – a very beginning step. Even the language itself is drafted in a way to not say the Commission will necessarily be doing BLS. It actually says if the Commission chooses to do so.

Staff heard back from Department of Revenue, who said they did not believe this bill would impact them. They explained it just removes a barrier in place right now that limits the Commission from partnering with them; it does not add any requirements for revenue. They said if the Commission did pursue a partnership, Department of Revenue would incur the normal costs associated with bringing on a new partner. From the outreach staff did, seven e-mails or telephone calls were received about the proposal: two supported the request; three opposed mainly due to concerns about increased costs of using BLS, and one did not take a position. Under the current system, during the first year, the licensee would pay an increased cost of \$19 and each year after that they would pay \$11. Staff is asking the Commission to approve submitting this request to the Governor's office.

**Chair Ellis** indicated there were concerns expressed during the outreach process about the amount of the \$19 fee, which in the overall scheme of things does not seem like a lot of money in the context of the organizations that staff were talking about. He asked if it was likely there was going to be a reduced cost on the part of the Gambling Commission licensing process, as a result of this, that may result in actual lower fees due to efficiencies to licensees. **Ms. Hunter** affirmed staff anticipates there would be some savings because BLS would be doing a part that staff would no longer have to do. There may also be some impacts on the business office staff; although, it sounds like at this point, occasionally, someone will submit their check to BLS, which is really for the gambling license and then those fees come to us. Based on her very elementary understanding of accounting, Ms. Hunter had the impression from the business office that there were a bunch of accounting entries that have to be made. So, for the business office staff not physically getting the check and not physically getting that piece of mail might not translate into much of a savings. But staff does think there would be some savings for licensing. **Deputy Director Trujillo** confirmed there is anticipated savings to licensing in moving the application through the process. As far as the administrative portion of moving the application physically around our agency, that would decrease some. The investigative process would not be moved over to the Department of Revenue, but would be maintained in its entirety.

**Chair Ellis** asked about the specific language of the proposed statutory section that indicated the section only goes into play if the Commission decides to issue licenses for a period of 18 months. He noted it also says the purpose is to transition to the use of the BLS program. Chair Ellis thought that was a little odd to see in a proposed statutory section and asked if the only purpose of that statutory section was to address a transition period, which presumably would be soon over, but the statutory section would continue to be in place as written until it was amended. **Ms. Hunter** affirmed that was correct. It was her understanding it was only in year one that the Commission needs to be able to issue a license for longer than 12 months. After that, it would be on an annual basis. She thought part of what staff wanted to do was make it clear why they were doing it. **Chair Ellis**

thought that, from that standpoint, the language of the section would only be valid during that transitory period. **Ms. Hunter** affirmed. **Deputy Director Trujillo** clarified there is also a transitory period for each new application. While there will be a period of time where staff would transition existing licensees into that process, every new applicant from here on out would fall into the alignment license process. So, it would be for longer than 12 months. **Chair Ellis** asked if staff would need the continuing authority to issue 18 month licenses. **Deputy Director Trujillo** affirmed.

**Chair Ellis** asked if there were any other questions or public comment; there were none. **Director Day** reminded Chair Ellis that staff needed a vote from the Commission on whether to move the agency request legislation to the Governor's office. He indicated one of the motivations for moving this forward was for the possible availability of a one-stop shopping opportunity for business owners, which cannot be done at this point. Staff will still have some evaluation to do because of the complicated nature of our class structure. This legislation would allow for this system to be adjusted to accommodate it.

**Chair Ellis** recalled the Commissioners indicated last month that they did not have a problem with this being submitted to the Governor's office. He asked if Director Day would now like a formal motion approving the submission of this proposed legislation to the Governor's office as agency request legislation. **Director Day** affirmed.

**Commissioner Reichert** made a motion seconded by **Commissioner Amos** that the proposed legislation be forwarded to the Governor's office for approval. *Vote taken; the motion passed with three aye votes.*

## **5. Texas Hold'em Pilot Program Update**

**Assistant Director Harris** reported the Texas Hold'em Wager Limit Pilot Program Mid-Program Report was included in the July packet and is also in the packet this month. The report was held over from the July meeting based on time constraints. The pilot program began October 15, 2010, and is scheduled to run through May 2012. Staff provided the licensees with a daily and monthly tracking record, which they are required to submit to the Commission by the 10<sup>th</sup> of the following month. Included in the report is information collected since the pilot program began through the end of May 2011. There were 28 house-banked card rooms and one Class F card room that requested to participate in the program. Fifteen house-banked card rooms and the Class F card room actually offered the higher limits, which were over \$50 and \$100. As of the end of May, only 15 house-banked licensees were still offering the higher limits and, as of the end of June, that number has actually dropped to four.

**Chair Ellis** thought he heard AD Harris say that, as of the end of May, there were 15 licensees using it; but he thought it was five licensees.

**Assistant Director Harris** clarified that, as of the end of May, it was five licensees. Fifteen had actually operated since the program began and the number had dropped to five, and then as of the end of June, it dropped to four licensees. One of the card rooms has

stopped offering gambling and just has the restaurant open; one card room is closed; one withdrew from the program; and one has requested to withdraw from the program. During that time period, 12 customers have requested to be self-barred when the higher limits were being offered at the establishment. Staff has not received any reports of cheating at the tables offering the higher limits since the program began. AD Harris received one call at the beginning of the program from the public with concerns about problem gambling. Staff also looked at the food and beverage numbers that showed there really was no correlation that staff could find between the increase in food and beverage sales and the games that were being offered. It was pretty much all over the board.

**Representative Gary Alexander** asked if the 15 respondents felt the program was being impacted by the economy and, therefore, people were just not willing to participate with the higher rates. Or if it was something that, maybe, the early estimation of the anticipation or desire to pay higher stakes was not really there when it came down to offering the pilot program. **Assistant Director Harris** replied staff has not solicited that response from all the licensees but, from the couple that staff talked to, there did not seem to be as big of interest as some of the licensees thought there would be. Another item was that when they had the higher limits, people would wager higher; consequently, going through their money faster so they were not able to participate in the card game for a longer period of time. Basically, they participated once a week for a certain number of hours and the interest seemed to drop off.

**Representative Alexander** asked for clarification that it was not just the question of the economy but that the interest in general was dropping off. **Assistant Director Harris** replied he had not heard about the economy but thought one of the licensees in the audience may be able to answer that.

**Chair Ellis** called for public comment.

**Ms. Jo England**, Last Frontier/New Phoenix Casino, reported she had been with George Teeny for the last 21 years and explained Mr. Teeny would be so happy to get up here and talk to the Commission today but he is on vacation with his family. Ms. England wanted to report on the success they have had with the pilot program, and introduced her gaming employees: Mike Holt, General Manager; Mike Santoro, Casino Manager; and Jason Gardner, Poker Manager. Mr. Gardner has developed a report to show the success that they have had with the program.

**Mr. Jason Gardner**, Poker Manager at the Last Frontier Casino, presented some updates, reviews, and comparative analyses associated with the Texas Hold'em Pilot Program, in which they are currently participating. All of the games they offer within the parameters of the pilot program are Texas Hold'em; there are no other variations of poker that can participate. The various limits of the game are offered: 15/30 kill; 20/40 kill; 30/60 limit; and 5/100 spread limit. In the past, they were only able to offer up to a \$40 maximum wager. On Mondays, the Last Frontier Casino features their highest limit game, which is a 30/60 game that seems to be growing in popularity. They have seen an increase of 6.6

percent in total poker revenue on these feature Mondays since offering the 30/60 game to the public. Their house-banked games have been impacted on those days. There has been an increase of 2.5 percent on Mondays during the pilot program compared with previous Mondays. Comparing the first six months of this year, January 1 through June 30, they have seen an increase in total poker revenue over all the months averaged in 2010 by 6.1 percent. They have been operating longer hours, which is good for their guests and employees because Mr. Gardner can offer them more work. From the inception of the program on October 15, 2010, through June 30, 2011, Mr. Gardner has tracked each hour that they participated in the pilot program as required. The total number of hours of operation under the pilot program's parameters for those tables operating at higher limits was 5,505 hours. There is an average of 8.3 players per table, per hour, which would equate to 45,691.5 hours played by the players on the pilot study tables. The poker room is open 160 hours a week. Sometimes there are three or four tables that are participating, but if just one table was operating the pilot program during all of their hours of operation, with all the hours logged, the casino would have had to run 240.84 days consecutively. From October 15, 2010, through June 30, 2011, there have been 258 days. That would imply, on average, they would have one game playing in the pilot's parameters 93.35 percent of the time. Also they have a players club at the casino, which offers benefits and rewards to their guests. It is a like a membership card that they receive. From October 15, 2010, through June 30, 2011, the casino has had rated play 2,143 independent players play on the poker tables. In that time frame, the casino has also had 431 new players sign-up for the player's club since the pilot program began, which would mean 20.1 percent of the poker players were brand new players. As was mentioned by Mr. Harris, there was not any suspected cheating reported, which Mr. Gardner believed was statewide, not just at the Last Frontier. Contrary to what the Commission heard earlier from Mr. Harris, their average food and beverage sales during the pilot program had increased 11.8 percent, as compared to seven months prior. Mr. Gardner thanked the Commission for the opportunity to participate in the program. It is a success and there is a demand for it.

**Chair Ellis** thanked Mr. Gardner. One of the issues that flows from these reports is the fact there are really only two card rooms in the state that seem to be succeeding in offering the higher limit Texas Hold'em, one of which is the Last Frontier and the other is a card room in Arlington. That leaves the question of why those two card rooms are succeeding. Chair Ellis thought, in the case of the Last Frontier, that the City of Vancouver prohibits card rooms. **Mr. Gardner** affirmed that was correct. **Chair Ellis** asked where, other than the three other card rooms that are in La Center, Mr. Gardner's nearest competitors were on the Washington side of the border. **Mr. Gardner** replied he thought it would be the Lucky Eagle tribal casino at Exit 88B. **Chair Ellis** asked if that was in Chehalis. **Mr. Gardner** replied it was in Rochester. **Chair Ellis** said that was a fair distance. He recalled that during the working group sessions that gave rise to the pilot program, Mr. Teeny indicated that one of the reasons he thought this would be a good thing for his casino was the fact there were a number of illegal poker games going on in Portland and this would enable the Last Frontier an opportunity to compete against those games. As he recalled, there were a few robberies of those illegal games in Portland that probably had players worrying about their security. Chair Ellis asked if Mr. Gardner had heard things

along those lines and whether he thought they were competitive factors that explained, in part, the success that the Last Frontier has had. **Mr. Gardner** affirmed that location is the primary reason for the success, that there is not a lot of competition locally. There seems to be a lot more competition with the density of the tribal casinos in the northern part of the state where a lot of the other card rooms exist. They are competing with the tribal casinos, which offer no limit poker. Poker players are creatures of habit, and when they get comfortable, they don't usually taper off and go to other places, even if they offer similar or the same product.

**Ms. England** expanded on those statements a little bit pointing out that Mr. Teeny had told the Commission about the poker rooms that are not regulated in Portland. There is hardly any regulation that goes on and, because of some of the robberies and because of the talk about how closely regulated the Last Frontier casino is and how safe it is, Ms. England felt very strongly that having the opportunity to have them come and play the higher limits at the Last Frontier casino has been a big thing. And Mr. Teeny would tell the Commission that a lot of the clubs in Portland are actually closing because they are running illegally. Ms. England said she did not know how much of that has to do with the Commission listening and hearing what they have to say. They have always been concerned that Oregon and Washington being so close together, and Oregon having the same type of gaming that the Last Frontier has, but not being regulated, is not good for the industry in Washington State. Ms. England offered a belated happy birthday to Senator Prentice.

**Assistant Director Harris** followed up on the previous comments, indicating that when looking at the intent of the program and looking at the Last Frontier and its numbers, that card room would be the example of what the Commission would like to see from a test program to meet the measures that were put in place. AD Harris said he could not dispute what was said as the Last Frontier's numbers have gone up, but when looking at the state as a whole, that is not the case.

**Chair Ellis** asked if AD Harris had any comments as to why the card room in Arlington, the Aces card room, seemed to be having some success even though it is surrounded by tribal casinos, including the Tulalip casino that is not far away. Chair Ellis said he would think they would have a lot more competitive pressure to make their program work.

**Assistant Director Harris** replied poker players are creatures of habit so if they like the location they will keep going to that location. Apparently Aces is doing something correct; however, AD Harris did not know what. **Chair Ellis** thought there were a lot of other card rooms that would have the same advantage in being able to appeal to their long-standing customers, but that does not seem to be working. At any rate, the Commissioners will await the final report.

**Assistant Director Harris** asked the Commissioners to let him know if there were any other areas they would like him to include in the next report and he would make sure to have that information available. **Chair Ellis** said the Commission appreciated that.

6. **Approval of Minutes – Regular Meeting - July 14, 2011**

**Commissioner Amos** made a motion seconded by **Commissioner Reichert** to approve the minutes from the July 14, 2011, Commission meeting as submitted. *Vote taken; the motion passed with three aye votes.*

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

**Deputy Director Trujillo** reported there were two pre-licensing reports for house-banked card rooms: the Lucky Bridge Casino in Kennewick and the Red Dragon in Mountlake Terrace. Both card rooms have been previously licensed and are also included on page four of the list. Also included in the packet is the public card room report that shows 62 house-banked card rooms that are licensed and operating. He noted there were no other unusual items and staff recommends approval of the New Licenses and Class III Certifications listed on pages 1 through 21.

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

## **RULE UP FOR DISCUSSION**

8. **Petition From the Public: Bonanza Press**

**Allowing manufacturers to sell pull-tab jar tickets to other manufacturers**

- a) Amendatory Section: **WAC 230-16-015** – Punch board and pull-tab sales restrictions
- b) Amendatory Section: **WAC 230-16-035** – Pull-tab construction
- c) Amendatory Section: **WAC 230-16-195** – Additional requirements for sales invoices

**Assistant Director Harris** reported the petitioner does not have the capability to manufacture jar tickets and wants to get into that part of the market. Bonanza Press would like to be able to purchase the tickets from another manufacturer, add its own flare, package the tickets as a completed pull-tab series, and then sell them to a distributor. Mr. Norris states he can package the games at a much lower cost than he can buy a completed set from the manufacturer. A jar ticket is a small, paper folded banded tab that comes in a single ticket format or can be bundled into a group. They are generally sold out of a plastic container or fishbowl. Players purchase the tickets and open them to reveal a seal, a symbol, or a set of numbers. Those are matched to the flare or the board on the game, which shows whether they have a winning ticket and what the dollar amount or merchandise item is. At the request of staff, the petitioner agreed to make some changes to his rule petitions, which are listed as Petitioner's Amendment #1 in the agenda packets. The current rule authorizes manufacturers to sell pull-tabs to either a distributor, distributor representative, or a pull-tab licensee, but not to other manufacturers. The reason manufacturers are not specifically authorized may be a holdover from the rules on restrictions for sales, promotions, discounts, and pricing that were removed and repealed in 2005. Currently, there are six licensed manufacturers of pull-tabs and 14 licensed pull-tab distributors in the state. Notification of the proposed rule change was sent to them. The petitioner believes the rule change may enable pull-tab manufacturers to increase their

sales. There would be additional steps that would have to be added to the review process, both for manufacturers that would make and sell the tickets to another manufacturer, and for the manufacturer who is purchasing them. Restrictions on manufacturers not selling to each other have been in the rules for many years, so it is not easy to determine what the impact would be on the rest of the pull-tab industry at this point. Staff received one letter of support; two with concerns – one of those has since sent in a letter opposing; another opposing; and then the petitioner himself also sent a response letter addressing some of the concerns that were presented in the other letters.

**Chair Ellis** asked if there were any questions; there were none. He asked if there was anyone in the audience that would care to address the petition from Bonanza Press authorizing manufacturers to sell pull-tab jar tickets to other manufacturers.

**Mr. Wes Fults**, proprietor of Bonanza Press, reported that Mr. Norris was back East representing Bonanza Press at a trade show. Earlier, Mr. Fults got a copy of the letter from Mary Magnuson of NAFTM. He commented that, on the second page, it says the proposed rule will increase the cost of jar tickets in Washington, but the information Mr. Fults has is that Arrow has recently lowered their price on jar tickets, which from a marketing standpoint is probably a pretty good move. If they hear manufacturers have a chance of getting into the market, they want to consolidate their market share, so it is not a bad move. This will lower the price, no matter what anybody says, because competition always does that. Washington is a very competitive state for tickets, so the pricing in Washington is really, really defined by what the customers will pay. It is very simple. Mr. Fults did not think there would be an increase, but Bonanza Press would send a letter answering this more specifically. The responsibility of the manufacturer who sells the product should be an advance press, as an example. The Gambling Commission in 1975 started to establish all the rules and guidelines of how the tickets are made. The mission was to create honest games for the public; that has been accomplished. By buying from a manufacturer who is licensed in the state, who has been audited in the state, who is inspected by the state, the Commission really has accomplished what it wanted to accomplish. The manufacturer is just making a part of the product, which is delivered to Washington, and which by adding a flare and a stamp to it then makes it a complete game. Mr. Fults thought the fact that the Commission maintains such a tight ship relative to how the quality of the games are done; this would not be any problem at all. The tracking is very simple. It is all by form number and serial number, just like is done now. Nothing can appear magically from any place but a licensed manufacturer, so Mr. Fults thought that resolves that particular concern and Bonanza Press would like to have this opportunity, if possible. Mr. Fults said he was unable to cover all of this at this time, but if there are any questions, he was there to answer them.

**Chair Ellis** said one of the concerns expressed by Ms. Magnuson was that it was questionable whether distributors with manufacturers' licenses would have the equipment and the controls that would be required to do a good job of completing packages, or repackaging partially completed deals. He asked if Bonanza would have its own equipment and systems to be able to do that. **Mr. Fults** replied Bonanza Press currently

has that. They have quite a bit invested in making sure that every game and stamp that is sold within the state is tracked. Regarding the distributor getting involved in this – currently the distributors buy generic tickets, which they would herd into merchandise games where they will set-up prizes. But they are using a generic ticket; a ticket that is made by manufacturers. Bonanza Press makes them for the marketplace; Arrow makes them. Mr. Fults thought everybody makes generic tickets for the market where they send the flare that has the winners identified. Distributor figure out what merchandise they want to put on the board, they tie it to the winners and the ticket, and they, in effect, have created another product. The idea that a distributor would want to get into this business with the margins where they are, does not make a lot of sense. The capital requirements are huge for inventory and there is already an inventory problem in the state. Mr. Fults said they could do this from a different standpoint; they have what he refers to as brands; games.

**Commissioner Reichert** asked what the inventory problem was in the state. **Mr. Fults** replied there was just a lot of it and there has always been an inventory problem in the state. It used to be really huge, but it has since reduced. **Commissioner Reichert** asked what the nature of the problem was. **Mr. Fults** replied there used to be too much inventory and he thought there still was, to a certain extent, because there is always a lot of inventory that gets tossed or is unable to sell. For a long time there was so much product being sold in the state that it just – distributors really were going “I’ve got to have that, and I’ve got to have that, and I’ve got to have that.” And as a result, they overbought. That was been quite a while ago, but lately, in the last five years, the distributors have really started cutting back in the amounts purchased. And they really learned some pretty good business practices about how much it really costs to carry inventory because it is very expensive. Mr. Fults did not believe any distributor in the state had the capital, frankly, that would be required to become a manufacturer of these products. They would still buy sets for merchandise stuff, as they do now, but it is a pretty big commitment in capital. He was not sure anybody really wanted to do it. And the margins are not what they used to be, so that is the other side of it.

**Chair Ellis** asked if the partially completed sets had the name of the manufacturer on them and if the distributors would then add their own name. **Mr. Fults** affirmed that was correct. That was the one area that he was really not sold on yet. He did not think it was necessary to have imprints of everybody on it because you have absolute control. You have control of the form number coming in to the state; you have control of the serial number coming into the state. That is the two most important ingredients. The distributor sells a form number and a serial number; that is the product. The vehicle is the paper, but there is a form number and a serial number that is tracked from the day it starts in the system until the day it goes out on the street. Mr. Fults thought they were audited every five years by the state for procedures and making sure that everything is being done correctly, so he just did not see it as an issue. All enforcement wants to be able to do is verify the form number and a ticket and serial number, who was it sold to, and when. Or there is a problem and the distributor has to write the check for the problem. So Mr. Fults thought that would not be necessary.

**Chair Ellis** asked if the phone number was the manufacturers and whether the manufacturer places the serial number on it. In order to track the ticket if there was a problem, the agent would go back to the manufacturer and find out who they sold it to. **Mr. Fults** affirmed that was correct. He also gets calls from various states saying they have a form number and a serial number and asking if Mr. Fults could tell them who it was sold to and when. That does not happen much in Washington anymore because there is such tight control in this particular market. It is really easy; everything is computerized. Mr. Fults said he has more computer space than he ever thought he would have, and they are the small guys. So he just did not think the imprint was a requirement.

**Commissioner Amos** asked if Bonanza Press prints something like this at its plant. **Mr. Fults** affirmed. **Commissioner Amos** asked how many of these tickets are in a game when Bonanza Press sells them. **Mr. Fults** replied it could range anywhere from 200 to 12,000. **Commissioner Amos** asked how many that would be in jar tickets. **Mr. Fults** replied it was the same range. The jar tickets are sold by the thousand; that is the pricing component. Some games are 12,000; he thought the limit was 25,000 or 24,000. Some are made to that specification. There are what they call single tickets or single jars. There are staple jars, which are either stapled three, or stapled five, or stapled ten. This is merely another delivery system for their brands, which is how Mr. Fults looks at it. He is not going to take the brands that another manufacturer makes. Bonanza Press has a game ZigZag that they have been making for 30 years plus, which is their brand and is copyrighted / trademarked. So they would make a game called ZigZag. All they are doing is getting, basically, a banded ticket made for them with their art and all of their record keeping and everything attached to it.

**Assistant Director Harris** said he would like to follow-up on the question about the distributor putting its name on the game. When the distributors get the substitute flares that they put on the game, they usually cut around the ID stamp where it was on the flare and staple it over the top so the bottom ID stamp shows through, whether they put a new flare to make the payouts different or to make it a merchandise game. Agents can track that from the operator's standpoint because the distributor invoice is onsite and they can match that number and know what distributor it came from at the operator level. But, if it were two manufacturers then going to a distributor, agents would have to go from the operator to the distributor to the manufacturer to the other manufacturer, if both names were not on the pull-tab at that point. **Chair Ellis** asked if that would be a problem. **Assistant Director Harris** responded that it would just create an extra step. As the petitioner said, right now agents have to call and verify where that game was sold.

**Chair Ellis** asked, from the enforcement standpoint, if staff saw any problem with the concern that was made that distributors with manufacturer's licenses would not have the equipment and controls to properly repackage sets. **Assistant Director Harris** responded no, because now the manufacturer is selling to the distributor license, as opposed to the manufacturer license. And the distributor technically can put the substitute flares on as a

distributor, not as a manufacturer. So why they have the manufacturer license has to do with another component of what their business is.

**Chair Ellis** called for public comment.

**Mr. Lane Gormley**, Arrow International, stated he had some concerns about the petition, although he finds himself actually agreeing with a couple things Mr. Fults said. Over the past 30 years, the integrity of the game has been improved and is much better than it was 30 years ago. Mr. Gormley said he has been in the industry since 1982 and went through some of the pain as they got better from the manufacturing standpoint. He would also agree that Bonanza Press has done an excellent job of manufacturing its tickets, from what he has seen, so the quality of their tickets is not a question. Where he disagreed was that the ticket was not being manufactured by Bonanza Press. It is going to be manufactured by somebody else; it is going to be put in a bag; and it is going to be sent to Bonanza. Bonanza has no idea what is inside that bag of tickets they received. If they can tell him with the samples that they have what is inside those tickets before they are opened, that is a bigger problem. And they are going to have the same problem at Bonanza doing that. So Mr. Gormley questioned if the controls are in place to do that. The idea that it is going to take a large capital investment – he does have a concern about distributors that have manufacturers – he did not believe it does take a large capital investment. To repackage the games, they are talking about having a shrink wrap machine or color copier to print a flare. That is similar to what is going to go on in the manufacturing process that has been – so far as we have been described – so it is a concern. It is also one as an industry. Arrow International manufactures jar tickets. In fact, on the proposal there is a picture of the tickets that they manufacture with their logo on there. If there is a problem that occurs with that game, Arrow is going to get lumped in with everybody else that has gone through. Mr. Gormley thought the integrity, again, is paramount in this. When Arrow produces something internally in its plant, if there is an error in that game as it is going through the process prior to getting the packaging, particularly when they get in the last step of the process when they are going to die-cut that window -- if they detect there is something wrong with the ticket, they scrap the whole game because they do not want to try to go in and fix something. Mr. Gormley has several states, Minnesota, which he does business in. If the shrink wrap is broken on the packaging, the game comes back because there is questions of integrity of the game. When he gets returns back from customers, if there is perceived a problem or the shrink wrap is broken, the game is destroyed because they cannot verify integrity of the game. For Arrow, these are very important keys. As far as the pricing, Mr. Gormley was going to check into that with his sales rep. As far as he knew, they have not lowered their price. He said he would tell the Commission right now that when he has tried to discuss that with the guys that own his company, that is usually something that he would know about. They do not just go around and change pricing that frequently. So there are some big concerns and Mr. Gormley did not think the idea of a distributor being a manufacturer was farfetched. He knows several of them that would jump on this immediately if they could do that, so those were his concerns.

**Chair Ellis** asked if AD Harris had any further comments or responses. **Assistant Director Harris** replied not at this time.

**Chair Ellis** explained that for the convenience of many members of the audience, Item #10, Other Business, General Discussion, Comments from the Public, would be moved forward before the Defaults so that anyone who would like to address the Commission can do so before the break.

**10. Other Business/General Discussion/Comments From the Public (Taken out of order)**

**Chair Ellis** opened the meeting to other business, general discussion, and comments from the public; no one stepped forward. He called for a break at 2:45 p.m. and reconvened the meeting at 3:00 p.m.

**9. Defaults**

**Ms. Hunter** reported staff was requesting that all six licenses or certifications be revoked. The first default is for a commercial business and the other five are for individuals. In the interest of not repeating the same thing with each case, Ms. Hunter made a few general statements:

- None of the individuals were currently working.
- Typically staff sends the charges by certified mail and regular mail, and none of the charges that were sent by regular mail were returned.
- In two of the cases, the person was personally served with the order, so staff absolutely knows that they received the order.
- In all cases, the legal secretary or paralegal tried to contact the licensee to remind them of the deadline to request a hearing, and the details of those calls are in each memo.
- In all the cases except Mr. Martelli, the licensee or employee waived their right to a hearing by not responding.
- Therefore, under the Administrative Procedures Act, in each case the Commission may enter an order in default.

**a) Prospector's Steak & Ale, Organization, Revocation**

**Ms. Hunter** reported Prospector's Steak & Ale may sound familiar because it was before the Commission back in April for a default order for a 30-day suspension. Unfortunately, the licensee continues to have difficulty in getting its activity reports in on time, or getting them in, period. This particular case is about an activity report that was due on January 30 and still has not been submitted, as well as not being received for the third and fourth quarters. The certified mail receipt was signed and sent back. Staff has had several phone calls with the licensee and the daughter involved. Staff recommends the Commission revoke both its Class B punch board/pull-tab license and Class D card room license.

**Chair Ellis** asked if there was anyone present representing the Prospector's Steak & Ale; no one stepped forward.

Commissioner Amos made a motion seconded by Commissioner Reichert that the Commission revoke Prospector's Steak & Ale's licenses. Vote taken, the motion passed with three aye votes.

**b) Heather Ihlan, Card Room Employee, Revocation**

**Ms. Hunter** reported that Heather Ihlan was a card room employee who failed to pay court ordered fines and fees, and currently owes almost \$3,800, which amount has actually been sent to collections for failure to pay. As a result of these fines and fees, the Court issued her ten failures to appear. At the time the charges were issued, Ms. Ihlan also had an outstanding warrant for failing to appear. Since the charges were issued though, she has cleared that warrant; however she has made no progress on reducing the court ordered fines and fees. Because of that, staff recommends the Commission revoke Ms. Ihlan's license.

**Chair Ellis** asked if Heather Ihlan, or a representative, was present; no one stepped forward.

Commissioner Amos made a motion seconded by Commissioner Reichert that the Commission revoke Heather Ihlan's card room employee license. Vote taken, the motion passed with three aye votes.

**c) Kelly L. Bang, Card Room Employee, Revocation**

**Ms. Hunter** reported that Kelly Bang was a former card room employee at Roxy's Casino and Magic Lanes. This case is related to a \$10,000 theft that occurred when Mr. Bang worked for a different business as their financial manager. On March 3 he did plead guilty to a Second Degree Theft charge. He was originally charged with Theft in the First Degree. Mr. Bang was served an Order of Summary Suspension. When staff spoke with Mr. Bang, he said he would not be sending in a request for hearing and that he did understand that his license would likely be revoked. Staff recommends the Commission revoke Kelly Bang's license.

**Chair Ellis** asked if Kelly L. Bang, or a representative, was present; no one stepped forward.

Commissioner Amos made a motion seconded by Commissioner Reichert that the Commission revoke Kelly L. Bang's card room employee license. Vote taken, the motion passed with three aye votes.

**d) Duong Luu, Class III Employee, Revocation**

**Ms. Hunter** reported Duong Luu was a Class III employee who was formerly working for the Snoqualmie Casino. This revocation is based on his involvement with bookmaking. Mr. Luu told agents that he did not think it was illegal to bet with his friends; however, he did admit that he placed bets with an alleged bookmaker and also paid a fee to the alleged

bookmaker to place the bets. Mr. Luu originally said he did not receive the charges, so staff did re-mail them to him and the certified mail receipt was signed. Staff recommends the Commission revoke Mr. Luu's certification.

**Chair Ellis** asked if staff knew whether the Snoqualmie Tribe fired Mr. Bang. **Ms. Hunter** responded she was not sure if he was fired or whether the Tribe revoked his license, but he was definitely not working there anymore and has not worked there since March 3, 2010.

**Chair Ellis** asked if Duong H. Luu, or a representative, was present; no one stepped forward.

**Commissioner Amos** made a motion seconded by **Commissioner Reichert** that the Commission revoke Duong Luu's Class III Certification. Vote taken, the motion passed with three aye votes.

e) **David J. Fisk, Class III Employee, Revocation**

**Ms. Hunter** reported David Fisk, while working as a craps dealer at the Red Wind Casino, which is owned by the Nisqually Tribe, intentionally placed free bets and failed to collect losing bets. This caused the casino to lose approximately \$10,000, so the Tribe revoked his Class III license. Mr. Fisk signed the certified mail receipt. Staff recommends the Commission revoke Mr. Fisk's certification.

**Chair Ellis** asked if David Fisk, or a representative, was present; no one stepped forward.

**Commissioner Amos** made a motion seconded by **Commissioner Reichert** that the Commission revoke David J. Fisk's Class III Certification. Vote taken, the motion passed with three aye votes.

f) **William J. Martelli, Class III Employee, Revocation**

**Ms. Hunter** reported William Martelli, a former Class III employee for the Yakama Tribe, was charged with Unlawful Imprisonment Domestic Violence; a Class C felony. Mr. Martelli's criminal case is still pending and the Tribe did revoke his tribal license. In this case, the Director issued an Order of Summary Suspension, which was personally served to Mr. Martelli. In addition, Mr. Martelli told the legal secretary that he wanted a hearing and wanted to know if he still needed to make the request in writing. She explained that he did and what the deadlines were for submitting the request. When the Director issues an Order of Summary Suspension, the licensee has to stop work immediately, so they actually have a right to two different hearings. The first is for a stay hearing where the licensee would ask the judge to allow them to continue to work. The second is a hearing on the merits of the case. Mr. Martelli had until May 2 to request a hearing on the merits and April 26 for the stay hearing. The legal secretary told Mr. Martelli that if a written request for the hearing was not received by those dates his certification would be before the Commission for a default. Staff received a request for both hearings but did not receive them until May 13, so the first request was about 17 days late and the second request was

about 11 days late. The legal secretary called Mr. Martelli to let him know this would be up for default, which was originally scheduled for last month. When the legal secretary attempted to call Mr. Martelli to let him know the default proceeding would actually occur here in Vancouver instead of Seattle, the telephone number was no longer in service. Mr. Martelli has waived his right to a hearing because he failed to request the hearings on time. Ms. Hunter indicated that Mr. Martelli did report to staff that he had been arrested for Assault, and staff started looking more closely at what had led to his arrest. Staff recommends the Commission revoke Mr. Martelli's certification.

**Commissioner Reichert** wondered if there had been an adjudication of the allegation of a VUCSA crime, and asked what prompted staff to take this action; whether it was the action of the Yakama Nation or the charges issued. **Ms. Hunter** responded she believed it was mainly the charges and the seriousness of the allegation. She thought staff had actually heard about it first from the Tribe and then started looking into what Mr. Martelli had been charged with. He actually had a trial date set and then waived his right to have a speedy trial, so that was postponed and staff does not have a date for when his trial will be. If Mr. Martelli were to end up being found not guilty, he certainly would be able to come back and reapply once his case had been disposed of. **Commissioner Reichert** said he was inclined to favor Ms. Hunter's recommendation; it just caught his attention as an interesting question. **Deputy Director Trujillo** clarified that, generally speaking, this action was taken to mirror the Tribal revocation. **Commissioner Reichert** thanked him, adding he had started poking around the Commission's practice, in a sense, in this question and would encourage the Commission to take that into account. It struck him that if he had not yet been finished in his court proceedings, the Commission might be premature. **Director Day** responded that staff are pretty judicious with the use of a Summary Suspension, but if staff does see that a particular charge or circumstance would pose a threat to the public if the licensee was allowed to continue at the time, a summary suspension would be issued. It is not done very often. **Commissioner Reichert** said he supported that and thanked Director Day for that clarification.

**Chair Ellis** asked if it was true that one of the statutory grounds for the Commission to revoke a license was an arrest for a felony. **Ms. Hunter** responded it actually does not even have to be a felony; it can just be a crime against a person, whether a misdemeanor or felony. **Commissioner Reichert** said arrest versus a conviction. **Chair Ellis** added misdemeanor also. **Ms. Hunter** affirmed.

**Chair Ellis** asked if William Martelli, or a representative, was present; no one stepped forward.

**Commissioner Amos** made a motion seconded by **Commissioner Reichert** that the Commission revoke William J. Martelli's Class III Certification. *Vote taken, the motion passed with three aye votes.*

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

**Chair Ellis** called for an Executive Session at 3:15 p.m. to discuss pending investigations, tribal negotiations, and litigation. He announced that at the end of the executive session, the public meeting would be resumed solely for the purposes of adjourning.

**Adjourn**

**Chair Ellis** called the meeting back to order at 5:25 p.m. and immediately adjourned.

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
FRIDAY, AUGUST 12, 2011  
DRAFT MINUTES**

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

**MEMBERS PRESENT:**     **Commissioner Chair John Ellis**, Seattle  
                                  **Commissioner Vice-Chair Mike Amos**, Selah  
                                  **Commissioner Michael Reichert**, Maple Valley  
                                  **Senator Margarita Prentice**, Renton  
                                  **Representative Gary Alexander**, Olympia  
                                  **Representative Timm Ormsby**, Spokane

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

**RULES UP FOR DISCUSSION AND POSSIBLE FILING**

**12. Petition From the Public: Galaxy Gaming, Inc.  
**Linking Progressive Jackpots Between House-Banked Card Rooms****

*(PR = Proposed Rule)*

- PR1** New Section: **WAC 230-xx-xxx** – Defining “linked progressive jackpot prize”
- PR2** New Section: **WAC 230-xx-xxx** – Defining “linked progressive jackpot prize fund”
- PR3** New Section: **WAC 230-xx-xxx** – Defining “linked progressive jackpot prize aggregator”
- PR4** New Section: **WAC 230-xx-xxx** - Defining “linked progressive jackpot prize operator”
- PR5** New Section: **WAC 230-xx-xxx** – Defining “winning triggering event”
- PR6** New Section: **WAC 230-xx-xxx** – Requirements for linked progressive jackpot prize aggregators
- PR7** New Section: **WAC 230-xx-xxx** – Establishing and administering linked progressive jackpot prize funds
- PR8** New Section: **WAC 230-xx-xxx** – Operating procedures for linked progressive jackpot prize operators

- PR9** New Section: **WAC 230-xx-xxx** – Operating procedures for linked progressive jackpot prize aggregators
- PR10** New Section: **WAC 230-xx-xxx** – Payment of linked progressive jackpot prizes
- PR11** New Section: **WAC 230-xx-xxx** – Recordkeeping requirements for linked progressive jackpot operators
- PR12** New Section: **WAC 230-xx-xxx** – Recordkeeping and reconciliation requirements for linked progressive jackpot aggregators
- PR13** New Section: **WAC 230-xx-xxx** – Terminating a linked progressive jackpot prize fund
- PR14** New Section: **WAC 230-xx-xxx** – Removing a linked progressive jackpot prize operator from a linked progressive jackpot prize fund
- PR15** New Section: **WAC 230-xx-xxx** – Linked progressive jackpot prize aggregators required to have audited financial statement
- PR16** Amendatory Section: **WAC 230-06-170** – Defining “net win”
- PR17** Amendatory Section: **WAC 230-05-050** – Minimum cash on hand requirements

**Assistant Director Harris** introduced Mr. Saucier and Mr. Tull who would like to show their PowerPoint presentation first. **Chair Ellis** said that sounded fine.

**Mr. Bob Tull**, a lawyer representing Galaxy Gaming, explained that they had anticipated the staff review would take place first, but he was ready to give their presentation. He introduced the general topic, which is a package of rules that are the third, or fourth, or fifth, or sixth iteration of some proposals that were initiated last winter and led to a series of discussions, and phone calls, and e-mails, and redrafts with staff. The purpose of these rules is to provide some additional sizzle in the operation of certain games within card rooms that decide to undertake it. The process has been laborious with staff, but productive. They raised certain issues, which Galaxy has tried to fix. Mr. Tull said he would get into those a bit later on. He said they were very pleased that staff does recommend these rules be filed for further consideration and he asked that the Commission do that. Without further ado, Mr. Tull introduced Rob Saucier who is the CEO of Galaxy. Mr. Saucier does have a short PowerPoint that they hoped would help introduce the basic concepts, and they would be happy to take questions. After the PowerPoint, Mark will do his review, and then Mr. Tull and Mr. Saucier would come back and touch on a few more points. Mr. Tull wanted to make it clear that he is very appreciative to staff for all the effort they have put into this, thus far, and the encouragement to continue to work on some of these issues to find solutions so this can become, perhaps, a useful tool for card rooms in this state. And for other players – nothing would prevent it from being used by Tribes, though the current rule language, at staff suggestion, addresses only card rooms.

**Mr. Robert Saucier**, CEO of Galaxy Gaming, explained his PowerPoint was going to touch on three areas. One is to show what progressive jackpots are today that are allowed in Washington State. Second, he would show his proposal, which he let the Commission know that the name of what they are seeking is still being debated. Originally, it was called Linked Progressive Jackpots, and that is what is in the petition. But in discussions

with staff, and he agreed, they thought that was an improper term because linking suggests electronic linking, and the proposal is not electronic linking. Perhaps the term of combined progressive jackpots, or inter-casino progressive jackpots, is better. But Galaxy would settle on the proper term, but the method of what they are doing has not changed. Currently by WAC rule, the Commission has allowed progressive jackpots in the state, and has allowed them ever since house-banked games came in to play. For approximately 15 years, casinos have employed progressive jackpots. There is a special section within the WACs pertaining to card rooms that refers to progressive jackpots. A progressive jackpot starts out with a player placing a wager, which is usually a separate wager; in fact he knew of no instances where it was not a separate wager apart from a primary wager that a person would play at a game. The wager is voluntarily and is usually \$1. The dollar wager is taken and gets split up into different categories. The percentages shown in the presentation are typical, but are not required. The percentages will vary from one establishment to another, but that is generally in the range they tend to be. So the purple area on the slide is what is used for what is referred to as odds based payouts, or non-metered payouts. These are smaller payouts that are easier to win, but maybe they pay \$5, or \$10, or something like that. That really represents the bulk of what the player is receiving. So roughly, one-half of every dollar the players are wagering is returned to them in these smaller based payouts. The red area on the slide shows that 25 cents of every dollar goes into the progressive jackpot pool. So that money is collected, 25 cents each wager, and accumulates, or progresses, until somebody has the winning triggering event. That could be a royal flush or some other predetermined hand that allows them to win the large progressive jackpot. And so if a lucky player is playing this game – this particular game is the Deuces Wild game – and somebody has five wild cards, they would win the \$136,910. The little sliver that you see in green is a backup fund. When the jackpot is hit and the \$136,910 goes to zero, the operator wants to start this over again so he takes a piece of it that goes into a backup fund, and now the backup fund becomes the new starting amount of the progressive jackpot. In this case, roughly a nickel would be stored in the backup fund, but when the jackpot is hit, that money would flow over, which is where you see the green arrow that says future seed money. That would flow over and be the starting amount for the new progressive jackpot. Finally, the yellow sliver on the slide is the casino's profit. They have determined what percentage of the dollar they would like to have as their house win and that is how that breaks down. That is what has been done all along, and the basic theory for Galaxy's concept has not changed.

The other thing Galaxy has allowed is through electronics, primarily – but it does not have to be electronics – is that they allow more than one table within a single casino to be linked together to combine the jackpot amounts. In the example on the next slide, the Commission can see three of the same tables; all three of those tables are contributing to a common jackpot fund. The metered display is identical on all three tables, so instead of having five or six players per table, that has now expanded because they have increased the number of tables into the common jackpot. In many instances, the establishments that have popular games where they can have more than one table, they always link the tables together for the common jackpot. Mr. Saucier did not know of any exceptions to that. The slide shows how a player would win. In the top left, the player is placing a wager; that

wager is sensed and the money is collected by the casino. The casino takes the funds for the two jackpot funds – the one that goes on the meter and the backup fund – and put that into a dedicated bank account. Those funds have to be separate and apart from the casino's other funds, and that fund is monitored by the Commission and is specifically set aside for the jackpot. When the player has the winning hand, that player is then awarded – usually by check – he thought Galaxy allows up to \$5,000 by cash out of the cage, but the remainder can be paid by check by the casino from that dedicated fund that they have. That is how things work today.

**Mr. Saucier** explained Galaxy's proposal was to do exactly the same thing they are doing now, but instead have a common pool for the various casinos. They are taking the concept of spreading it through multiple tables within a single casino and, instead, spreading it across multiple tables in multiple casinos. But the role of the casino is still the same. The percentages that he has shown are roughly the same. So the casinos would be collecting the money; they would be responsible for hanging on to that money; and then in this proposal, they would weekly be depositing the funds into a central bank account. Then, when one of those players in one of those casinos was fortunate enough to have the winning event, that the money would flow from the central bank account to the casino, and the casino would then pay the player. One of the things that is interesting, that a lot of people do not understand, is just because more tables are being linked and, therefore, more players into a fund, that does not necessarily make the jackpot amounts any larger. That is because there are odds to be able to win something, so it does not matter if it is one table or 100. Yes, there are more people contributing, but there are a direct number of people who have an opportunity to win. So, theoretically, the way the jackpot sizes are determined is the frequency that something would hit. For example, one of the games that Galaxy has is called "Emperor's Challenge." To win the jackpot on that game, the player has to have a seven-card straight flush without using the joker to obtain it, which happens roughly every 4.8 million hands. It would not matter if they went ahead and had it on one table or had it on 100 tables; it still is going to happen every 4.8 million hands. The difference is there are now more people contributing to the jackpot, but there are more people that have a chance to be able to hit it. So if that jackpot, theoretically, would hit at \$232,000, it would hit at that amount regardless of how many tables that they had contributing to it.

**Chair Ellis** asked Mr. Saucier what the point of his proposal was if that was true. **Mr. Saucier** replied there are two things that happen. Number one is there is an inequality between establishments so, for example, in Chair Ellis' district there are two establishments that are probably 200 yards from each other. One has a jackpot that is around \$50,000 and the other has a jackpot that is around \$400,000. So it can be determined where all the play is; all the play is obviously at one establishment. What happens is there is competition between them because of the size of the jackpots. So now what happens is if the one that has the \$400,000 jackpot gets hit and goes back down and starts at \$10,000, the play either moves to the other casino that has \$50,000, or the players will seek out something else in that area that has an even larger jackpot. So there are hoards of people who are chasing jackpots, and it is oftentimes difficult for these establishments to build up any sort of customer loyalty because people are chasing that.

The second thing that happens is the reseeding of the jackpot. Typically, statistically it is found that once a jackpot gets over \$100,000, they really start to peak. So the establishments are very happy; tables are full; people are going after this. Think of it like the lottery; when the lottery gets a very high jackpot, everybody is buying tickets. But what happens when it gets hit? It resets and all of a sudden there is not the activity. So this is designed to kind of soften the peaks and valleys and keep it on a more steady keel. Mr. Saucier said they could offer higher jackpots. He did not want to mislead the Commission, but to offer higher jackpots, they have to decrease the frequency of the winning triggering event from happening. One way to do that is to make it a more difficult hand for the players, or they could increase the amount of that dollar that goes into the jackpot fund.

**Mr. Saucier** moved on to the advantages of this. The first two bullet points are what he just addressed; it equalizes the jackpot offering, and it also reduces the reseed ramp up. Many jackpots in this state start at \$5,000 and are very, very slow. It took a long time to ramp up, but once they finally got to that, then they started taking off. The third bullet point is the prize fund money is judgment free and lien free. Unfortunately, what happens is that even though the establishments today are required to put the money into a separate bank account, the bank accounts that they set up are not judgment free or lien free. And it has actually happened that a creditor could go in and nail those funds. The way Mr. Saucier looked at it, those funds were set aside for the benefit of the player because they were designed to be player funds and they were designed to go back to the player. There have been times when it could be a taxing authority; it could be a creditor; anybody could get a judgment against that establishment and wipe out those funds. What Galaxy is proposing is that it goes into a separate escrow or trust account that is going to be judgment free and lien free. The fourth bullet point is that as an aggregator – which is what Mr. Saucier would call the manufacturers that participate in this – they have no vested interest in the outcome. It does not matter to Galaxy which player; it does not matter which casino; they have no interest in the outcome whatsoever. The jackpot funds are immediately verifiable 24/7. Galaxy has arranged in the rules to have all the funds available to the Commission electronically, as well as paper based. The funds are repaid to a player even if a casino closes. Unfortunately, there have been a lot of closures in the state. When the casino closes and shuts down and nobody has won that jackpot, nobody is certain what happens to that money. In this case, because it is in a central fund, even if the casino closes those funds are safeguarded to be returned to the player. Finally, additional regulatory protections have been incorporated. As Mr. Tull indicated, they have spent a lot of time with Commission staff and put a lot of extra safeguards in this proposal. Even though there have not really been any problems with progressive jackpots in this state for the last 15 years, Mr. Saucier thought some of the things that were put into these rules would provide additional safeguards. He would not be surprised if, at some point, six months or a year from now after these have been tested out, assuming they get approved, they may use some of the initial WAC rules that Mr. Saucier showed on the first slide as a model to update some of the previous rules. Galaxy thought the state this was because they see the statistics all the time. As reported yesterday, there are now 62 establishments left. There have been a number of things that have hurt the establishments, which Mr.

Saucier referred to as the triple whammy. The minimum wage is extremely high in this state and that has hurt a lot of these establishments; the smoking ban a number of years ago hurt them; and then the economy has not helped either. So those three things have contributed to that, in addition to competition from other areas. So clearly the establishments need something. As can be seen, net receipts from the establishments is clearly on the decline as well. That has an effect on a number of things. Obviously the previous slide showed the closures, but if you take a look at the loss of government revenue, which has in the past year alone decreased 31 percent, between fiscal year 2005 and 2010, the cities and counties have lost over \$8 million per year in taxable revenue, in Galaxy's estimation, just from these commercial card rooms. Also, as was pointed out yesterday in the Commission's fiscal year 2011 budget, 25 percent of those revenues come from commercial casinos and their employees in terms of licensing fees. And finally whenever a business closes, there is more than just the obvious tax; there are a lot of other taxes that are affected: the state B&O tax and unemployment claims go up. Each establishment employs roughly 140 to 150 people, so when there are these types of closure it is very significant. In conclusion, Galaxy is proposing this change; they have broad industry support, and Mr. Saucier thought there were a number of letters in the agenda packets, as well as a number of signatures on a petition. Mr. Saucier believed their proposal offers superior protection of players' funds over what exists today and enhanced regulatory benefits. He believed that it would save jobs, which is also contributing to the state's economic recovery. I thought that was important; it would protect the government tax base and protect the Commission revenues. That is what Galaxy believed their proposal would do.

**Mr. Tull** indicated it was easy for him to remember how people on that side of the podium are expected to understand every single aspect of every gaming operation. Some people do understand; some eventually will understand, and others are slow learners. He asked Mr. Saucier to explain what his company does in providing equipment, games, and technology because that point was kind of skipped over, and what they supply to the card rooms, the casinos, the tribes.

**Mr. Saucier** explained Galaxy is a game manufacturer and equipment manufacturer that designs proprietary table games. There are certain games that have been around for a long time in the public domain, such as blackjack and the basic game of Pai Gow poker. On the tribal side, craps and roulette are in the public domain. But companies like Galaxy have proprietary table games where they design unique games and secure their intellectual property rights with patents and trademarks. These games are very popular in the state. He could not speak to the tribal arena, per se, but Mr. Saucier knew clearly that in the non-tribal arena, the amount of proprietary games exceed those in the public domain, so they are very popular. Galaxy provides those and gets a fee for that. In this case, what they are doing is continuing to provide the games, and will provide the mechanisms for the wagering that occurs; why somebody would wager on different types of games. In his case, Galaxy would also provide equipment to the casinos that would count the wagers. There is equipment that are used on the tables that count the wagers, but it is not necessary that they use equipment; there are manual means that have been done in the state. It is far

more awkward, but in their case Galaxy would provide the establishments with the type of equipment that would count and also display the jackpot amounts. Galaxy's role, overall, in the program is to act as the aggregator. They would be the central point to where each of these establishments would send a daily report. The daily report would indicate how much the establishments collected; the amount of wagers they had and the amount of money they collected. Galaxy would compile that information and then once a day, they would calculate what the new jackpot amount would be. They would then communicate that out to the establishments and tell them how much that day's jackpot was going to be. That would be a daily cycle where the establishments collect the information and provide it to Galaxy. They calculate the jackpot and send it back to them. That is Galaxy's role as an aggregator; they have no direct interest in the funds, but monitor the system.

**Commissioner Reichert** asked if Galaxy's fee would come out of the 20 cents in the earlier model. **Mr. Saucier** replied their fee would not come directly out of this program at all; their fee basis would be the same as it is now. They charge the casinos for the use of Galaxy's games or equipment.

**Chair Ellis** asked if the casinos would be able to advertise the amount of the progressive prize, other than simply displaying it in the casino itself. He asked if there was any mechanism the casinos could use, or that they do use now, to advertise the amount of the progressive jackpot. **Mr. Saucier** explained that many of the casinos have electronic reader boards on the outside that they advertise on now. Clearly, if one casino has a \$300,000 jackpot, they would be advertising it if their neighbor has a \$75,000 jackpot who is likely not to advertise that fact. **Chair Ellis** asked if it was possible to do that accurately, even though the amount of the jackpot is changing daily, or by the minute, theoretically. **Mr. Saucier** replied no, their proposal is that it only changes daily. **Chair Ellis** said he understood Galaxy gets the data daily, but he was thinking more of the existing progressive jackpots. **Mr. Saucier** responded that the existing progressive can be done one of two ways. It can either be done by the operator where every coin that goes in, the meter moves. Or the other way it can be done is a daily jackpot. Both are very common. In the proposal that Galaxy has, it would only be a daily jackpot program because there is no electronic linking that is going on between the casinos and the aggregator.

**Assistant Director Harris** reported the petitioners are requesting to link progressive jackpot prizes on house-banked card games together in different card rooms across the state and allow the manufacturers to be the aggregator. AD Harris pointed out that, although the rule summary does say electronically, that is not the case. The petitioner is asking that the manufacturer be authorized as a linked table game aggregator to facilitate the progressive jackpot prizes by: maintaining the jackpot prizes in a separate bank account, escrow, or trust account; controlling the seed money, which the manufacturer will deposit into the trust account; maintaining records by determining the amount of linked progressive jackpot prize; and reporting the jackpot prize amount to the house-banked card rooms for posting. Linked progressive jackpot prizes will allow players at different house-banked card rooms to compete for a common jackpot prize in a particular card game and

allow a portion of each of the players' wagers to be contributed to this linked progressive jackpot prize. If a player wins the jackpot at a card room, the card room will pay up to \$5,000. Within 48 hours, the remaining jackpot amount will be sent by the manufacturer to the card room to then be paid to the player. Progressive jackpot prizes are currently being authorized, as Mr. Saucier said, in house-banked card rooms, but they are offered by individual operators and are not linked. So this would be a completely new activity in that area and may increase revenues to card rooms. The proposal may fall under the definition of insurance, and the Washington State Insurance Commission may determine that it is a form of insurance and the manufacturer may be required to get a license by the Insurance Commission. Table games can be linked within a tribal casino, and if the linked table games between the non-tribal facilities are allowed, the tribes may be authorized to do the same based on the terms of their individual Compacts. Tracking the funds between the various card rooms, their individual bank accounts, and the aggregator's bank account would be difficult even if all the documentation was in place. It would be extremely difficult, if not impossible, if some of that documentation was not being kept. Unlike the current authorized activities, if one card room operator does not follow procedures, this could have impacts to the other card rooms that are operating.

RCW 9.46.0282, which is the definition of social card game, allows that no one participate in a card game or have an interest in the proceeds of the card game who is not a player or person licensed by the Commission to participate in a social card game. The proposed rules would allow the manufacturer to deposit seed money into the linked progressive jackpot fund that he has collected from the operators, and designate the amount accrued of the instant prize and the reserve prize sub-funds. The manufacturer would be paid a fee for allowing the operators to operate the game, which is currently being done. It would allow the manufacturer to distribute the prize to the card rooms and to the players. In the current rules, the manufacturer would pay the expenses for the fees associated with establishing and maintaining the fund, and they would also be able to keep the proceeds of interest earned on the bank account. But the petitioner said he is open to changing that if it is an issue. The law also limits card rooms to 15 tables per establishment. There is the question that if the card tables are linked together in the card rooms, if that is considered exceeding the 15 table limit.

RCW 9.46.070 authorizes the manufacturer to engage in the selling, distribution, or otherwise supplying or in the manufacture of devices for use within the state. The proposed rule would allow the manufacturer to do some additional activities beyond what this RCW is authorizing. This proposal would include collecting the proceeds and holding them in a trust account; determining the amount of fees collected to be contributed to the instant prize and the reserve prize sub-fund; withdrawing fees from the funds to pay the prizes; and determining the prizes that are offered to the players and the card rooms. There are some additional WAC considerations also. The rules for manufacturers would probably need to be changed to include an additional definition of what they can do, since it is not specifically addressed in an RCW. Some other examples would be how jackpot prizes are displayed, which is not disclosed in any of the rules, and how the Commission

would get access to the records. The petitioner has addressed these, but they do not currently appear in any of the WAC rules.

Some state-by-state research done by staff indicated that no other states allow this. Nevada and New Jersey allow linked jackpot games only within the properties of the same owners. The petitioner has done some research and, with his contacts, disagrees with that. Staff may have to do some follow-up with the different regulatory agencies to find out what it actually is. Additional staff time would be needed to: establish an approved tracking program in our Licensing Division; create regulatory programs for both the card rooms and the manufacturers; create record keeping forms; train staff on the new activity; and, potentially, conduct a higher level of financial investigations on manufacturers choosing to do this because of the potential control over a large dollar amount. An additional program in the agency's database would need to be established to track the participants, and could lead to increased submissions to our Gambling Lab for testing. Those costs would not be able to be recouped under the current licensing structure, and any new fees need legislative approval.

**Chair Ellis** said he was curious about the point made that there could be an increase in submissions for Electronic Gambling Lab testing, and asked what the staff had in mind there. **Assistant Director Harris** replied that when they use the wagering on the tables, there is electronic tracking devices as far as the wagers and tracking the bet so they know how much money would be deposited into the bank account. Mr. Saucier has some equipment that has currently been approved, but if other manufacturers get into the program, they would have to submit equipment for approval. This is an ongoing process where equipment keeps evolving, so new versions would be submitted to the Lab as new functions, and details are put into the devices.

**Assistant Director Harris** explained staff is also concerned about the difficulty of verifying the amount of jackpots at multiple locations. Agents would have to obtain records from each individual card room, verify the amount that is being contributed to the jackpot, and verify the full amount is going in there or if the individual card room was keeping a portion. So agents would have to look at every location to verify that the total amount is what is being deposited. If the records are not being kept, that would make it very difficult to do. Some policy considerations would include whether:

- The proposal allows a manufacturer to participate in a social card game, which is limited only to a player and a person licensed to participate in a social card game. The manufacturers and those licensed to conduct social card games are expressly different.
- The proposal allows other than a player or person licensed by the Commission to have an interest in the proceeds of a card game.
- The proposal conflicts with the statutory limitation on manufacturers, as this statute clearly differentiates between a manufacturer and an operator.
- The petition is consistent with limiting the nature and scope of gambling.

Staff received four letters in support and a copy of a petition with 56 signatures. The petition actually shows 57 signatures, but one person signed it twice. Even though there are some potential RCW issues and staff is concerned with covering the costs of regulating the activity, staff recommends filing the petition for further discussion.

**Chair Ellis** said he got the impression yesterday from Mr. Saucier's comments during the study session that staff concerns about the role of Galaxy in this case was inconsistent with the statutory provisions relating to manufacturers; that those concerns had been addressed successfully by Galaxy. But now it sounds like staff is saying there are still responsibilities the manufacturer would have in this scheme that are not consistent with the provisions relating to manufacturers in RCW 9.46. He asked if that was right. **Assistant Director Harris** affirmed that was correct. Staff has a different understanding of that. His understanding was that Galaxy was hanging it on the portion of RCW 9.46.070 that says "or otherwise supplying." And they feel that what they are doing would fall under that section of the RCW. Staff is not 100 percent sure that it falls under that category. The other portion is the activities being proposed do not fall under the definition of manufacturer in the WAC rule. So the WAC would have to be changed to add those activities, if that is what the Commission would like. **Chair Ellis** asked, with those statutory and WAC concerns on the part of staff, could AD Harris explain a little further why staff is recommending the Commission file the proposal for further discussion. **Assistant Director Harris** explained that, based on the complexity of what is proposed, staff felt it would make more sense to have it discussed at this level and ongoing. If the Commission felt the activity fit under that definition was legitimate, then staff could work towards coming to a better version of the WACs that are being presented to include those activities. If the Commission does not feel it falls under that RCW definition, then it would not make sense to file it for further discussion because the Commission cannot change the RCW. **Chair Ellis** understood & thanked AD Harris. He asked if there were any other questions.

**Representative Gary Alexander** asked if staff has incurred any issues with the current casino jackpots as to record keeping. **Assistant Director Harris** responded that most of the record keeping violations found were minor, like irregularities with math errors or an entry that was not made on a specific day. For the most part, they are operated quite well. As with any activity the agency regulates, there are minor errors and irregularities found on day-to-day review of things. **Representative Alexander** asked if it was the complexity of the combination that would cause the concern rather than the history of record keeping by the casinos today. **Assistant Director Harris** affirmed and explained how it is operated now, each individual card room can operate a jackpot. So agents can go to that location and the records are all right there. If the operator makes a mistake, it just impacts that jackpot and is pretty easily fixed onsite. If multiple jackpots are linked together, one operator could have a mistake that would affect the others. And if two or three have mistakes – so it sort of compounds with the more that are involved.

**Representative Timm Ormsby** asked if AD Harris could help him figure this out. There are these casinos collecting their portion of the progressive jackpot that is somehow

transferred to a central location outside of the house-banked card room. Now it is in a central bank of some kind. Then, within 48 hours, the winner receives some kind of check for whatever the difference is over the \$5,000. He asked AD Harris to explain how that transfer works from the casino, to the bank, back to the winning casino, to the person – and kind of the nature of where the money is, because usually it is in the house and now it is not. He asked if AD Harris could “just dumb that down” for him. The other thing that Representative Ormsby thought was interesting was whether or not this falls under the purview of the Insurance Commissioner and what that connection was. **Assistant Director Harris** explained that what the petitioner has proposed would be the individual card rooms would collect a portion of the wager. Then, at the end of the day or at the end of the week, they would have a set dollar amount that they would either electronically transfer to the manufacturer, the aggregator, or physically send a check. AD Harris did not think it was specified in the rules which way it would go. The aggregator would collect that money; they would have a bank account (an escrow or trust account) set up where the money would be deposited, either physically or possibly electronically transferred, and the money would be accumulating in this trust account. If a player at a card room happens to win a \$50,000 prize, the rule would allow the individual card room to pay the winner \$5,000 up front. They would then notify the aggregator who would, within 48 hours, either electronically transfer the money to the bank of the operator or send them a check. The operator would then write out a check to the individual for the remainder of the prize won. The aggregator would submit \$50,000 to the operator, and the operator would write a check for \$45,000 since they had already paid \$5,000 out of their own bank to the winner. That is sort of how that process would work. In response to the question on the Insurance Commission, in the past there were linked bingo games where a linked bingo game operator, not called an aggregator, was providing the funds. Portions of the money from each individual bingo game were going to the linked provider who would pay the prize back to the player when it was won. The Insurance Commission deemed that to be a form of insurance. So staff’s concern was, since this is similar, whether the Insurance Commission would deem that to be insurance and fall under their purview, which would require Mr. Saucier to get a license to do that.

**Chair Ellis** asked about the fact that the materials for this Commission meeting show that one of the card rooms in Seattle, or right outside Seattle, is currently in the red in their taxes to the tune of more than \$600,000. He was wondering what would happen if that were to occur in the context of the linked jackpots, but gathered that basically the funds are being collected, recognizing that if they are sent by a check, there may be a question about whether the check can be cleared quickly enough to avoid including a bad check in the day’s count. But apart from that, assuming that all of the participating card rooms were to send their transfers electronically and there was no question about the validity of the transfers, a new total would not be computed until the end of the day. And from that standpoint, there should not be a situation where a card room initially reports a very large amount of fees received, but is unable to actually pay those fees to the aggregator. Chair Ellis gathered that would not happen. **Assistant Director Harris** replied that should not happen under the proposed scheme.

**Mr. Tull** said there were a number of things he and Mr. Saucier would like to address. Part of the problem that has been involved here is that the original proposal is substantially different than what is in front of the Commission now. Some of the arguments that are expressed in the staff report were modified to take into account those changes. Others were relegated to a lesser status, and a few may be artifacts. For example, the question of the manufacturer's role needs to be better explained to the Commission. Right now, if Mr. Saucier and his company want to propose a game for play in Washington, it needs to bring in not only the technology, which is reviewed by the lab, but all the rules and procedures that will regulate the play of that game. Those rules, those procedures, those forms, and that equipment are all reviewed by the Commission staff. That is the way things have worked and will work in the future. When you get down to it, despite the package of rules, it is a very small modification. It is to go ahead and take those progressive games that already exist and to have the card rooms combine their efforts. That combined effort is being proposed by the provider of this proprietary game, by the manufacturer. In order to ever put those games into play, this modified game, which he called the common jackpot progressive jackpot or common progressive, would have to be submitted to this Commission, pursuant to rules that Galaxy is trying to get passed; the complete package. So all the rule changes, all the procedure changes, all the forms, and all the bank account and other accounting procedures have to be approved before any play can commence. What Galaxy has done in evolving these rules is establish a framework; they have not, and never would under the rules, establish every single detail. That is what the staff review of rules, procedures, and equipment is all about. Mr. Tull believed that all those costs are fully recoverable; he knows the lab costs are billed and that any change in card game rules are assessed a cost recovery, so he believed that could be worked out. Secondly, it is certainly not Galaxy's intention to have uncompensated costs; they would find a way to work that through the system. He thought most of those costs automatically come back. Mr. Tull thought that preserving the business viability of the card rooms in turn maintains the licensing revenue support of the Commission – that is a reach of an argument, but it is valid; it is true.

**Chair Ellis** asked if, when Mr. Tull talked about the costs being recovered by the Commission, he was not talking about costs that would be reflected in fee increases that would have to be approved by the Legislature. **Mr. Tull** replied no, he did not see that as a problem. Galaxy would work with this Commission and with the staff to make sure that its costs in reviewing a game change, which is what a submission under these proposed rules would be, was appropriate. They have to work with this Commission and they have to make it work out over time. He believed that was all recoverable. **Chair Ellis** asked if Mr. Tull did not think that any statutory changes requiring action by the Legislature would be required to accomplish all this. **Mr. Tull** replied no, in fact he also differed – and it is a relatively new argument, new issue – on even defining manufacturer. Galaxy sees this as a change in how a game is played. And, therefore, it is covered by the existing rule processing requirements that apply to a manufacturer of a card game. However, if the staff, after some further consideration and debate on those topics, wanted to have a revision for that, Galaxy certainly was not resisting to having a consistent set of rules; they just do not see that as a current problem. They believe the Commission currently has the clear

statutory authority to establish how social card games are played, which is what this falls under as part of the legislative allowance for commercial stimulation. Food and beverage establishments are the only ones that get to do these things, and RCW 9.46 is very clear that stimulation of that is a public policy, and the use of social card games in a public place. That is why Galaxy does not see the useful relevance of the recitation from the legislative preamble about limiting the scope. The scope is not changing; the activity is not changing; it really is just a change in how a particular game would operate. They would be able to combine some jackpots for the reasons that Mr. Saucier has set forth. Mr. Tull said he loved the insurance thing; that was amazing. **Chair Ellis** asked if Mr. Tull was not going to defer to Mr. Miller on that issue. **Mr. Tull** replied that all he knows is that the gambling statute regulates gambling; the gambling statute carves out an exception for insurance. Galaxy is here talking about gambling activity. Under the original proposal where some bingo guy was going to provide all this stuff, maybe it was different. But the way this has evolved from the original submission back in February to now is that Mr. Saucier's money, Galaxy's money, is not going into this. Mr. Saucier is not putting money in, and he is not getting money out. So any theory of Galaxy guaranteeing a prize in some insurance context – Mr. Tull did not resent staff mentioning it, but it just does not track from a lawyer's perspective.

**Commissioner Reichert** asked whose account that money would then be held in. **Mr. Tull** replied it was going to be set up in a completely separate trust or escrow account. **Commissioner Reichert** asked: for the beneficiaries being – . **Mr. Tull** said the players. The rules would be set up so that the card rooms direct deposit the funds. Galaxy believed they would have no difficulty giving the Commission 24/7 monitoring access to those deposits. **Commissioner Reichert** asked who the custodian was of that fund. **Mr. Tull** replied it would be the manufacturer, but its ability to disburse would be subject to the escrow terms, which would have been pre-approved under these rules by the Commission staff. For example, appropriate notifications would be required, all the accounting access, and so forth. Mr. Tull saw that as an intensification of scrutiny over the current rules that apply just to the card room operator. The reason for that intensification is that by having two or more card rooms cooperating in this fashion, they want to make sure they have a higher level of assurance, so the money would not be disbursable to Galaxy. If for some reason the process came to an end, then it would be disbursed probably in accordance with the current rules for abandoned money, which Mr. Tull thought would go to problem gambling, or to another nonprofit, or something like that. But it would not be to Galaxy's benefit; those funds would not be Galaxy's money; Galaxy would not have access to them. Theoretically, if Galaxy had creditors, they would not be accessible to that as well.

**Chair Ellis** said that was good. **Mr. Tull** explained there was one part of the rule that he thought triggered the ongoing comment about the manufacturer's role, which was the mention of the aggregator depositing seed money. In the beginning, that was Galaxy money; they took care of that. What they need to do in that particular section now is make it clear that the aggregator, or manufacturer, is not depositing money; the card rooms are depositing the money. And then, Mr. Tull thought, there was no remaining argument about the manufacturer being a participant on any level. The manufacturer is supplying a

new version of a game, which with an appropriate package of implementing rules, procedures, and forms would be available, which Mr. Tull thought would be a successful addition.

**Chair Ellis** asked if there were any other questions for Mr. Tull before he called for public comment. **Mr. Tull** asked if they could have a moment or two at the end of public comment. **Chair Ellis** affirmed.

**Assistant Attorney General Jerry Ackerman** said he had a couple questions for Mr. Tull, for informational purposes only and not intend to offer a comment on the proposal. Just so he understood, they have talked about this being linked, but to the extent there is a link, he asked if the links would actually run from the individual casinos to the manufacturer, that there would not be a link from casino to casino. In other words, information would be supplied from the house-banked card rooms. **Mr. Tull** affirmed; the reports go from the card rooms to the manufacturer. **AAG Ackerman** asked if there was any other type of connection between the house-banked card rooms themselves. **Mr. Tull** replied he did not think so. **Mr. Saucier** replied the short answer was no, there is no connection between each establishment. **AAG Ackerman** asked if one card room was not sharing some type of information with another card room, but would be sharing it with Galaxy. **Mr. Saucier** affirmed the only information the card room would be entitled to was – that he would expect that any card room that was in the program, as well as the Commission – certainly the ability to go in and audit the account. So if they wanted to go in and see what money came into the account and what money went out, this account would be totally transparent to anyone, but not as far as individual information from one establishment going to another. Mr. Saucier also wanted to let the Commissioners know he thought they chose a bad term when they called it “linked.” They called it “linked” because originally they were patterning this after the linked bingo rules. The original proposal given to staff was based on the linked bingo rules because they knew statutorily that was acceptable, and they knew the Commission had approved those, which is why they based it on those rules. In fact, AD Harris was kind enough to actually give Mr. Saucier some of the old archived linked bingo rules. That was why their original proposal was based on that. But then what happened was when it was realized that all they were doing was exactly what the state had been allowing for progressive card games, they said there was no reason to reinvent that, but just do that but instead of the money going into each individual account, the money goes into one central account.

**AAG Ackerman** responded the state can clearly go in and audit any card room’s books, as appropriate, but Mr. Saucier was not suggesting that one card room could somehow go and examine the affairs of another card room, was he? **Mr. Tull** replied no. **AAG Ackerman** asked if the payment to the manufacturer was in any way dependent upon the size of the prize fund or the number of players that participate in the progressive jackpot. **Mr. Saucier** responded that none of the fees that Galaxy earns come out of the fund whatsoever; they earn their fees in the same manner that they do today. There are a number of different ways that manufacturers earn their fees. Historically, fees can be earned through a negotiated fixed monthly rate per table – so \$500 for every table they

have. Or it could be a fee for activity – so for every wager that is placed. Galaxy does not do this, but the Commission has allowed manufacturers, in the past, to collect a percentage of the win from operators. He did not know if anybody was doing that today, but historically that has been allowed. **AAG Ackerman** asked about the repository for these funds and whether Galaxy was contemplating the ability for this fund to be held in an out-of-state bank or escrow. **Mr. Tull** replied it would be in Washington. **AAG Ackerman** asked if Mr. Tull had given any thought to the application of RCW 9.46.240, the ban on the electronic transmission of gambling information and its application. **Mr. Tull** replied it does not apply to any authorized activity. Staff raised that early on, so they looked at it early on and that was his conclusion – as long as it was an authorized activity, which this is a card game. **AAG Ackerman** said he would leave it there and think about that. **Mr. Tull** said they could follow-up if AAG Ackerman wished. **AAG Ackerman** said okay, and asked if Mr. Tull's answer was the same with regard to the bookmaking statute and the interpretation of that in the Betcha.com case. **Mr. Tull** affirmed. He reviewed all of that and the conclusion he reached was that the statute – .225 – makes it clear that authorized regulated activities do not violate the professional gambling prohibitions of the state. He thought that was the similar thing in the transmission section. He explained staff had kindly raised all those issues earlier, and Galaxy responded in writing a couple months ago and believed those issues were resolved. **AAG Ackerman** said he was asking specifically about the bookmaking statute, and asked if Mr. Tull thought that was the same answer there. **Mr. Tull** affirmed, he thought it was an authorized activity. **AAG Ackerman** asked if Mr. Tull believed he could make any private bank account free from creditors, judgments, liens, and seizures. He thought that would be a very huge shock to most judges. **Mr. Tull** said he would take a shot at answering. A court could issue an order on any account. The process that is normally involved is for notification to be made, and for the operator of that account to respond as to who owns the funds. The purpose of this account will be explicitly recited as part of the arrangements, all of which have to be reviewed before they could start, to make it clear that these are player funds, generated in accordance with the already existing procedures of the Gambling Commission. There may be five card rooms in one of these common schemes, and seven somewhere else. They will have separate accounting instructions and contracts, and those agreements would clearly recite that players own the money and it can only be disbursed in accordance with the rules. Galaxy has no interest, period; card rooms have no interest, period. So he believed they could make it safer than at the present. Mr. Tull could not say that they can never, ever be attached wrongly by a court - not that a judge would ever make a mistake – but he knew that there would not be a righteous claim by any lien holder of a card room or of a manufacturer if they fulfill the theories that Mr. Tull built into it.

**Mr. Saucier** added that one of the things that he looked at was what happens with an attorney's trust account; that those funds are separate and apart from the firm. So they got a lot of clarity on that. And the other thing that was interesting was there are a number of services; one is fairly well known in the Seattle area called AFTS, which Mr. Saucier thought stood for Automatic Funds Transfer Service. His company has used them in the past; they do a lot of lock box but also do attorney trust accounts. In his conversations with them, he asked how they could be completely 100 percent sure these funds would

never end up in the hands of anybody they were not intended for. To his surprise, they actually have a number of accounts where the beneficiary of the account is the state of Washington – it is a trust account set up where the beneficiary is the state of Washington, and so they actually have these various accounts that he found out about. He assumed that, if the state of Washington wanted to get their hands on the money they probably could, but nobody else could.

**Chair Ellis** said that was an interesting question. From his own experience as the supervisor of the state of Washington Attorney General's Bankruptcy and Collections Unit, this state has a sales tax, of course, that is the primary tax. Sales tax is generally collected by retailers and others and held in trust for the state of Washington, but when you get before a bankruptcy judge and are explaining why all of the other creditors in the case may not have the state of Washington's trust funds, it becomes an iffy proposition as to whether you win. We have won some, and lost some.

**Chair Ellis** called for public comment on this petition.

**Mr. Victor Mena**, representing the Recreational Gaming Association, reported he is the vice president of that Association and they support the filing of these rules for further discussion.

**Chair Ellis** asked AD Harris if there was anything more he would like to say on behalf of staff. It has been awhile since he had an opportunity to approach the lectern and a number of issues have been raised. **Assistant Director Harris** replied no, he stood by what he previously reported.

**Chair Ellis** asked if Mr. Tull would like to make a final comment. **Mr. Tull** asked the Commission to file these for further consideration. He believed that would give them an opportunity to achieve a few more refinements that should make it possible for staff to remove some of its qualifications and some of its reservations from its report. Mr. Tull said he would be happy to be available to counsel in the coming weeks to either provide him with written arguments on any of these points or to discuss them in a more informal collegial way. He believed the arguments that have been made over the months with staff, and the arguments staff has convinced him on, have been a good example of a cooperative, almost negotiated, rule-making type of process. Mr. Tull thought this was one of the reasons why staff is recommending this for filing. There has been a lot of work, and they know there are a few more areas where Galaxy can probably reduce the opportunity for friction to a very low level. And then at the end of that process, it would be a lot simpler set of questions for this Commission to answer. Mr. Tull believed it would be worthwhile; another example of this Commission being open to all license categories to propose things that can let their businesses grow. In this case, manufacturers would like to see it and card room operators obviously like the idea of some additional sizzle. When Galaxy's first package went in, it referred to both card rooms and tribes. Mr. Saucier's company does business with tribes, and he would love to have these products be adopted in those settings when, and as, appropriate. So first they have to work to have a framework

established. If that framework is approved by this Commission, then they have to bring in all the technical information for review by the Lab, by the lawyers, and by the field people to make sure that it can work. Unless, and until, they are satisfied with that package, those rules, those procedures, and that equipment, then play would not change from the way things are today. And as previously said, Mr. Tull believed the costs and fees could be recovered and they would find ways to do that. He asked the Commission to file it so that Galaxy has a chance to work out a few more of these kinks and get back in front of the Commission next month.

Commissioner Amos said he has listened to both sides, and agrees with both sides. He made a motion that the Commission file the petition for further discussion in future meetings. Chair Ellis asked if there was a second. Commissioner Reichert responded he was choosing not to second this motion at this time. His reasons were that he was not clear yet to this moment about the legal implications and the Commission's authority to act on these matters. And, frankly, until clear on that matter, he just did not feel the Commission should promote the idea that this was open for discussion. He was concerned about whether the Commission has the authority to get into this area of expanded definitions for manufacturers and so on.

**Chair Ellis** recalled that under the circumstances in this situation it was possible for him to request that Commissioner Reichert accept the gavel and allow Chair Ellis to step aside as Chair for the purposes of seconding the motion. On the one hand he was not thoroughly opposed to the concept of further discussion on this set of rules, but thought it was a serious set of rules that needed to be considered. It is important to the industry, but obviously there are a lot of questions, and he was not convinced they would ever be fully answered. On the other hand, the success of this plan really hinges upon – the reasons for it are to provide more income for jobs in the card rooms, more income in the card rooms, and more income to the governments. Chair Ellis knew there were many governments under the current economic situation that were looking for gambling income, but he was not certain that the best way to address these economic difficulties was to have Washington gamblers be paying more money and having more people gamble at the moment. So Chair Ellis declined to ask Commissioner Reichert to take the gavel, with the expectation that this may not be the last thing the Commission heard about this petition. But, at any rate, the petition must be deemed to be denied, based on the fact that the motion to file did not get a second. Commissioner Reichert has already stated his reasons for feeling the Commission should not file the motion. Chair Ellis did not know if anything more needed to be added at this time with regard to the reasons for the Commission denying the filing of the petition.

**AAG Ackerman** did not believe that anything needed to be added, unless Commissioner Amos wished to add more than he has. Certainly Commissioner Reichert and Chair Ellis have stated reasons that will be reduced to writing, which is the requirement under the statute.

**Commissioner Amos** said the only thing he would add was that he agreed with Commissioner Reichert; there are some issues with some of the RCWs and some of the WACs, but this is the first time the Commission had a chance to look at it in any length and any depth. He would think the Commission would need to look at it a little bit closer and be able to read into some of the things that staff is now going to end up going back into and redefining some of these areas. That was the reason he wanted to see it go for further discussion; so the Commission could at least get a chance to look at it for another couple months.

**Mr. Tull** asked, on behalf of the petitioner, if this matter could be continued to next month. They may be able to answer some of these questions. They would not make the same type of presentation, and would not expect to prevail upon the Commission's time to this extent, but would ask that the matter be set forward. Mr. Saucier may be able to come up with enough explanations to satisfy the members of the Commission that could then lead to filing. Mr. Tull asked that it be set aside and continued until next month.

**Chair Ellis** asked for AAG Ackerman's response. **AAG Ackerman** replied that, at this point, the Commission has already taken an action to deny the motion. **Mr. Tull** said that could be reconsidered. **AAG Ackerman** said there would have to be some motion to rescind the action. He was not quite sure how the Commission would make the motion, but there would have to be some motion to rescind what the Commission had done, which was to deny the petition and make the statutorily required statement of their reasons. **Chair Ellis** thought that was right. He told Mr. Tull that he did not think that would foreclose Galaxy from knocking on staff's door. And, of course, the Commission would remember what they have received and what they have heard today in the event the matter should come back to the Commission. But, for present purposes, the filing of the petition is denied.

**Chair Ellis** called for a break at 10:15 a.m. and reconvened the meeting at 10:30 a.m.

## **RULES UP FOR DISCUSSION**

**14. Petition From the Public: Robert Bearden – Charitable and Nonprofit Organizations  
Increasing the Number of Bingo Cards in Electronic Bingo Daubers from 66 to 144**

a) Amendatory Section: **WAC 230-10-185** – Electronic bingo card daubers restrictions

**Ms. Hunter** explained this is one of the three petitions that was on July's agenda. The petitioner initially submitted other petitions: one was withdrawn; one the Commission did not have a motion to file it last month, so it was denied; one that will likely be on the September agenda, which deals with having the Commission's license fees be based on some type of a net number versus a gross number. Staff is waiting to find out what definition the petitioner wants to have for that, although staff has heard a couple of ideas they have. Ms. Hunter reported this petition deals with electronic bingo card daubers, and staff recommends continued further discussion on it. Staff has received ten statements in support of the proposal. On page two of the rule summary are some questions and answers

and additional information from last month about the cost to rent the daubers and how that is turned over to customers to pay or not. The 66 dauber limit has been in place since 1994 and was the result of a bingo study committee that occurred then. There have not been any proposals or petitions since 1994, so it has been unchanged since then. This change might increase revenue to the charities because they would now be able to have more cards on a dauber. Staff also thought there was a chance that it would reduce the demand for the paper cards. So where a bingo operation might end up overall is not known. There is also a possible impact on the manufacturers because it might discourage manufacturers from staying or entering the Washington market if the demand for the bingo paper has gone down. As discussed last month, there are three states with limits and the rule summary explains the reason why those three states have the various limits. Staff recommends further discussion.

**Chair Ellis** asked about the information from New Jersey where the person that staff talked to indicated it would create an unfair advantage to play more than 59 cards. However, the rule summary states that was not the reason for the 59 card limit, which gets to the general concern about the competitive advantage of the daubers, whether it is 66 games or whether it's 144 games. With his simplistic understanding of the technology being dealt with, Chair Ellis assumed that if he was sitting there with his one paper card and there was somebody sitting next to him with a dauber that has 66 or 144 cards in it, he would be at a disadvantage. The odds are probably 66 to 1 against him, or 144 to 1 against him, but from the material going back into the late 1990s there is information suggesting that those are not the real odds. Chair Ellis was not sure why. There was information to the effect that, basically, the odds were more like 13 to 1 for somebody playing a dauber. Chair Ellis asked if staff was able to sort any of that out and get a feel for what the real competitive advantage was with a dauber. **Ms. Hunter** replied she did not have a good answer on the odds part, but it has kind of been an argument that could go both ways, which is why staff has it in here so the Commission could be thinking about it. On the one hand, she thought it was exactly what Chair Ellis said about the idea of having an advantage because the electronic dauber can go more quickly than a human can. Ms. Hunter thought there was some consideration given in 1994 about 66 being the correct number because it was thought that was how many someone could actually physically daub. So if Ms. Hunter was at a dauber with 66 and Chair Ellis was doing the handheld dauber, which is really just a stamp, they would both be about equal. So then the question becomes if someone has 144, could someone really possibly daub 144 with accuracy. Certainly the electronic daubers give accuracy. The other side of the unfair advantage is there is nothing that prevents someone from saying they want 144; that is going to let that player make the decision of going ahead and getting their game on the electronic dauber. Ms. Hunter thought there were two sides to that argument, but she had not done any of the math on it.

**Chair Ellis** clarified for the record that the information he was talking about was contained in the excerpts from the July 15, 1994, meeting minutes in which Mr. Bishop said that statistics say that 12 percent of the players were playing almost 33 percent of the cards with daubers, which is expected, because the machines have the ability to play more cards.

So 12 percent of the players are playing 33 percent of the cards, but what was unexpected was that the dauber players only won 20 percent of the prizes. So apparently the odds are not as superficial as one might have thought.

**Chair Ellis** asked if there were any other questions; there were none. He asked if Mr. Bearden would like to comment on his petition.

**Mr. Bob Bearden**, representing American Veterans in Washington State and a number of charitable organizations that asked him to speak on their behalf, thanked the Commission for the opportunity to work with the staff and come up with this proposal for review. He said he was asked yesterday how they came up with 144. It is a simple number; it is divisible by 12; it is really divisible by 6, because that is what comes in a package. A second concern that some folks had was the unfair advantage for someone playing different cards. It is the same cost whether a player has 66 pieces of paper in front of them or a machine with 66 cards in it; it is not going to cost any different. It is the cost of the game itself, so there is no cost, it is just a matter of what the player wishes to gamble. Do they want to gamble a buck, or gamble 10 bucks?

**Chair Ellis** thought staff's concern about the competitive advantage was on a simplistic level, perhaps; that they have envisioned somebody who is not electronically apt and is sitting playing one card next to someone who has loaded 66 cards into their dauber and simultaneously are playing 66 cards. It seems like they would have a substantial advantage from the prospect of winning, not from a cost standpoint. **Mr. Bearden** agreed, noting if someone went into a charitable bingo parlor, for those that do have handheld daubers, they would usually see a handheld dauber and 6 cards because most of the folks that are sitting there – and generally they are elderly ladies to be more accurate – the paper ones give them something to do in between the numbers being called. Otherwise, if the number called is B 12, they hit B 12 on their dauber and they sit there for 30 or 40 seconds, so they will usually play both, just for something to do. Another concern was possible regulation and enforcement of this. There is no regulatory work that Mr. Bearden could determine, and he talked about it, that would change if the number changed from 66 to 144. There is no extra effort, no extra cost, and no extra jurisdiction that needs to be involved in this. It is a matter of what the maximum machine is set up; 144, or whatever the Commission would like to give them. They are asking for 144 because it is just a number divisible by 6; it is convenient, and it would double the amount of chances right now that someone could play. It is a win/win for all three entities: the bingo player has a better chance of winning, the facility itself has a better chance of bringing additional folks in because now the players have better chances of winning, and the state always gets a piece of each play. So it is a win/win/win across the board.

**Chair Ellis** had a question about the cost factor Mr. Bearden mentioned. He had looked through the materials trying to find out what it cost a player to get a card to load into the dauber. He knew Mr. Bearden had indicated the organizations he worked with were not charging for the use of the dauber itself, but Chair Ellis assumed there was a charge for each card the person using that dauber loaded. He asked how much that was. **Mr.**

**Bearden** asked Donna Buck to answer that question because she has been in the industry for 30 years.

**Ms. Donna Buck**, an officer with the auxiliary for AMVETS, explained she was a distributor representative for 32 years. She responded that the minimum buy-in on any dauber or on paper is 12 cards. For a single pay it is \$10, which is an average because each hall can establish what they do; single, double, triple. A single would be \$10 and a double would be \$20.

**Chair Ellis** asked if that was \$10 for 12. **Ms. Buck** affirmed. So really, when talking about competitiveness and stuff, someone will be playing a single pay and someone will be playing 66 triple plays. It is like playing a dollar slot or a penny slot; it just comes out the same way. The player has to determine what they can afford to spend. And they do things according to what jackpots are. **Chair Ellis** said he was only concerned about the actual costs. So the person who is playing the dauber and is playing 66 cards is going to pay \$60 dollars for the 6 packages of 12 cards. **Ms. Buck** affirmed that was correct. **Chair Ellis** said he thought his math was wrong there, but at any rate that was close enough. **Ms. Buck** replied it was very close. But again, it is determined by the player's ability to spend. And some people will go together as partners; that way putting more in.

**Commissioner Amos** asked how many daubers Ms. Buck had at her facility. **Ms. Buck** replied she thought they had 134 little handheld ones and about 20 larger ones, like a TV screen, that are stationary. Those units are very, very popular even with the elderly because it does enable them – they have even created daubers that were easier to grip with arthritis. They have come a long way in bingo. **Commissioner Amos** asked if 250 people came in and there were 150 of these machines, would it be first come or do the players have to reserve them. **Ms. Buck** replied they cannot reserve them; it is first come, first served. The only exception is to accommodate a disability under the Americans with Disability Act. Other than that, no, the first through the door gets the first.

**Director Day** pointed out the rule summary indicates staff did some research and found that Minnesota has a 36 limit, North Dakota has 72, New Jersey has 59, and Washington currently has 66, which was a 1994 change. Obviously, there is concern that these limits exist. He asked what Ms. Buck's perspective was on any possibility of disrupting part of the game, or negatively impacting the charity or nonprofit as a result of increasing the number.

**Ms. Buck** replied part of their problem was the location to tribal games that allow more cards. People that come to the hall want to purchase more because that is what they normally play. There would not be 132 people in there that want to play it all; there may be two, there may be one, or there may be none. But its availability to them is the premise of it, or the idea behind putting it in, because there have been requests to buy two machines, but that is a no-no under the gambling rules, because it would then bring it up to 132 because it is 66 now.

**Mr. Bearden** added another issue is that back in 1994 the Commission at that time took up this same issue as far as the numbers that operators should actually do. They found out – and this is even after research – that most places ran 60 total. But there is actually one that had allowed 246 games. And the whole purpose of that was for competition, so if they had more, they would go to that one. But the Commission took it up at that time to make it a level playing field across the board, which is basically what he was asking for now; that all the charitable organizations still have that level playing field.

**Ms. Hunter** indicated that staff was anticipating that at least the petition dealing with fees would be on the agenda for a few additional months to have an opportunity to provide additional information such as was done today. It is really up to the Commission as to whether they want to keep these two petitions on the same timeline, or if they want to wait and take final action on both of those at the same time. Staff's original idea was they probably ought to stay together, but that is certainly up to the Commission.

**Chair Ellis** responded that, from a personal standpoint, unless one of the Commissioners had a different idea, he would defer to Mr. Bearden and his travel schedule with regard to that issue. He asked if Mr. Bearden would like to have the two petitions stay on the same agenda. **Mr. Bearden** replied that, in fact, he thought the precedence had already been established being that he submitted the petition last month. One of the petitions was completely eliminated at that time. He thought they could make individual decisions throughout as they go, so he would love to have this one enacted. In fact, if it is enacted, he would love for it to start immediately and not have to wait until January 1 if that was an option. It is kind of a far-fetched option, but he wanted to present that to the Commission and ask for it anyway. **Chair Ellis** responded that Mr. Bearden could talk to staff about the timing of each of his remaining petitions as to when they will be heard for final action. **Mr. Bearden** agreed.

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

**15. Staff Presentation: Overview of Licensing Regulatory Program for Charitable/ Nonprofit Organizations (PowerPoint Presentation)**

**Assistant Director Griffin** reported the memorandum included in the agenda packets provides an overview of programs in the post-licensing enforcement program and the time that staff spends on these programs. After a nonprofit meets the qualifications for licensure, it must undergo an annual financial statement review to ensure that it still meets the qualifications set out in the statute to allow it to continue to hold its gambling license, which provides funds towards its stated purpose or programs. The annual financial statement reviews involve a number of complex analytical calculations to ensure that nonprofits are not operating for the purposes of gambling. In addition, staff monitors adjusted cash flow to ensure the gambling activity is making money for the stated purpose or the programs and not operating at a loss.

RCW 9.46.0209 states that a charitable/nonprofit organization must have at least 15 active members, as defined by RCW 9.46.0261, each with the right to an equal vote in the election of officers or board members, if any, who determine the policies of the organization in order to receive a gambling license. The charitable/nonprofit organization must demonstrate to the Commission that it has made significant progress towards the accomplishment of the purposes of the organization during the 12 months preceding the application for license or license renewal. The Commissioners have enacted numerous rules defining “significant progress,” as stated by this statute. Our enforcement program is structured around this statute and the associated rules.

Nonprofit licensees report the number of active members they have each year on their annual renewal license form, as well as on their annual report of activities. The four parts of our annual financial statement review program include:

1. Verifying that the organizations have 15 active members so they can still meet the statutory definition of a charitable/nonprofit organization and continue to have the license for their gambling activities. The reason for looking at the membership of the organization is to make sure the organization is legitimate and not a group of related parties formed for the purposes of gambling. An extreme example of this occurred many years ago when a family applied for licensure as a religious organization with the stated purpose of their organization to provide funds for the religious organization, which in essence was the family. Another example was an organization where all the participants of their program were members of the organization. The members were not involved in the administration of the organization or the election of board members but were solely program participants, and the 24 members were recruited from outside the service area of the program. The program’s stated purpose was to provide the youth of a specific Washington county certain activities. But they did not provide any of those; the program participants were recruited from Illinois, Florida, Kentucky, California, Texas, and Wisconsin. The organization paid all the housing costs for their members, or their program participants, and then classified those housing costs as program expenses. In another instance, an organization reported they just had 12 active members in their organization; therefore, they were no longer qualified to hold a gambling license because they did not meet the statutory requirements as a nonprofit. Findings such as these do not occur every year, but they have occurred in the past ten years. Verification of actual membership within the statutory requirements is vital to ensure that the organization is a legitimate charitable/nonprofit organization.
2. Verifying that 60 percent of the net gambling income goes towards the organization’s stated purpose. Licensees with combined annual gross gambling receipts of \$3 million or more must submit an annual report of their gambling activities, as well as financial statements. Staff does analytical calculations set forth in the rule to ensure that the organization is showing significant progress towards its stated purpose. The financial statements include an income statement of their gambling activities for the year, and then staff verifies through calculations and review that 60 percent of their net gambling income has gone towards their stated purpose, such as providing care and support to their clients. One thing to note is that the expenses related to the

organization's stated purpose are also program expenses. A couple examples of violations in this case include an organization that was licensed for gross gambling receipts up to \$3.6 million, reported actual gross gambling receipts of \$2,983,059, had net gambling income of \$334,000, and program and overhead expenses of \$191,524. So of that, only 59 percent of their net gambling income went towards their stated purpose. Only 49 percent of their net gambling income, which was \$41,400, went to their program and overhead expenses, after having actual gross gambling receipts of \$1.8 million. Of the actual gross gambling receipts taken in by that organization, only 2.1 percent went to the stated purpose.

**Commissioner Reichert** said he was just trying to figure out what the process would be and asked if the license would be revoked for the 59 percent or would they get a corrective action. **Assistant Director Griffin** replied the WAC allows for licensees who are not in compliance but showing significant progress to ask for a waiver, which would make it an administrative action. So the Director can review certain aspects.

**Representative Ormsby** asked what would constitute overhead expenses. If someone is an employee, for example, what would constitute overhead expenses and the contributions towards the stated purpose, and what might not? **Assistant Director Griffin** replied that management and overhead expenses are defined in WAC. Specifically, some examples are accounting and legal services, rent for the organization, insurance, taxes, board meeting expenses, and travel. Things that are not tied to a specific program, but are essential to run the program, are considered management and overhead expenses.

3. Verifying that no more than 35 percent of the total expenses goes toward the management and overhead. Before staff actually do this calculation, they review the classification of the organization's expenses in each category. Our rules provide for the definition of these expenses in each category. Management and overhead expenses would include rent, utilities, taxes, net losses from fund raising events, office supplies, insurance, accounting and legal services, and wages for support staff. The Commission could, by law, regulate the maximum limit on salaries and wages paid to people employed in connection with the activities of the nonprofit, and regulate and establish maximum limits for other expenses such as rents and leases. The Commission has selected this calculation, and other calculations in regards to the annual financial statement review, to monitor these expenses, which are less intrusive than what is allowed by the statute. In a 23-month period, a nonprofit licensee reported over \$11,000 in employee gift expense: \$6,000 went to a Disney resort trip for the administrative staff and the balance went to flowers, books, music, and electronics. They also spent over \$9,000 on daily lunches for the employees, and had over \$28,000 in overdraft charges that they classified as an expense going towards their stated purpose. Another licensee classified approximately \$16,000 in donations that went to another nonprofit organization. Those expenses were classified as management expenses rather than program expenses.

**Representative Alexander** asked, when observations like these are found that are potentially auditing violations, if staff turns them over to the State Auditor's office for further examination. **Assistant Director Griffin** replied no. **Representative Alexander** asked if the State Auditor's office would have any ability to audit these, since they are not necessarily governmental organizations, but they are receiving governmental funds. **Assistant Director Griffin** responded she did not know.

**Chair Ellis** pointed out the Commission has the responsibility and the authority to conduct these audits and to take appropriate action, including revocation of their license, after attempting to bring them into compliance. **Assistant Director Griffin** said she was not aware of any referrals to the State Auditor's office, but was aware of other state agencies that staff have come in contact with and done audits or records investigations that have been referred to other state agencies for further action. She knew that her unit had done that in the past.

**Assistant Director Griffin** reported that the following spent more than 35 percent of their total expenses on management and overhead:

- A licensee with overall expenditures of \$191,524 had management and overhead expenses of \$95,551, so their total expenses were 50 percent.
- Another licensee spent 49 percent of its total expenses on management and overhead expenses.
- One licensee reported total expenditures of \$440,225 in the first year. Of that, \$345,000 was spent on management and overhead expenses, which equated to 78.4 percent. That left only 21.6 percent, or just over \$95,000, to go to the program. The second year, they spent \$358,744 of which \$221,000 went to the management and overhead, which equated to 64.5 percent.

**Director Day** asked if the initial process of most of these types of violations occurred in-house, usually at headquarters. **Assistant Director Griffin** affirmed. Those licensees that have gross gambling receipts over \$3 million submit their financial statements 120 days after the end of their fiscal year. Based on their financial statements, this is the review that staff does in-house, as well as a report of their activities for the year, what programs they had, the number of volunteers, and that sort of thing. All of this review is done in-house based on information provided by the organizations. **Director Day** clarified it was done by special agents. **Assistant Director Griffin** affirmed they are done by special agents in the Financial Investigations Unit. **Director Day** indicated when the agents see violations, they pursue those administrative violations against a license. **Assistant Director Griffin** affirmed they do. All of the examples given have resulted in administrative action of some sort, depending on the varying degree of the organization's administrative history, the scope, and the culmination of the overall findings.

4. Verifying that the organization is not accumulating excess reserve funds that could be used for their current programs. Part of statutory requirement is to ensure that the licensee is still meeting the qualifications of a charitable/nonprofit organization

qualified to hold a gambling license and showing that they annually have made significant progress. Staff wants to make sure the money that is coming in from gambling is being spent on the program and not being accumulated. When staff does the calculation, they can exclude funds that are being set aside to start specific programs or expand specific programs. During their first year one nonprofit did not spend at least 60 percent of their net gambling income so they had excessive reserves of \$264,000 the first year and \$203,000 the second year. This is money that could have been used towards their program expenses. Another example is an organization that had \$240,000 in excessive reserves the first year and \$165,500 the second year.

Licenses are required to report quarterly information regarding their gambling activity; specifically, licenses summarize their bingo, pull-tab, snack bar, and hall rental activity that they would not have if they did not have the gambling. As part of their cash flow monitoring, staff verifies the licenses are reporting net income each quarter so they can contribute to the nonprofit's stated purpose. Another reason for this monitoring is to make sure the organization is not operating specifically for the purposes of gambling. Staff does not want the entity to be reporting continual losses from their gambling because that would be taking money that would be available for their stated purpose. Licenses cannot report net losses for two consecutive quarters without administrative action being taken. Last week, staff sent a warning letter, or a notification letter, to a license because it had reported a net loss for the second quarter of 2011. Last year, staff sent three of those warning, or notification letters, for licenses that reported a net loss for one quarter last year. All three were successfully able to report a net income the second consecutive quarter, so they were all able to continue.

Licenses must report a minimum annual cash flow from gambling operations based on their gross gambling income. The more an organization makes, the more it is required to provide toward their stated purpose. During the calendar year, one license reported \$3.7 million in gross gambling and pull-tab activity. By rule, they were required to have adjusted cash flow of \$82,000. They reported an actual adjusted cash flow from their bingo, pull-tab, amusement games, and retail activity of \$219,749. That is 6 percent of their gross gambling receipts. Since 2009, staff has seen a decline in the problems with licenses meeting the minimum annual adjusted cash flow requirements. The quarterly and annual minimum adjusted cash flow requirements are an important tool to ensure that gambling activity is providing the funds toward the stated purpose.

Since 1983, the Commission has made ten rule changes in the area of cash flow requirements. These changes were not to specific rules, but rather ten rule packages, which reduced the cash flow requirements for licenses. The changes made between 1990 and 2003 reduced the cash flow requirements for the largest licenses by 58 percent. Our enforcement program is designed around verifying that the license still meets the statutory requirements of a nonprofit organization and therefore can hold a gambling license. Our enforcement program is based on risk, which includes such factors as the license's administrative history, its gross receipts, and the organization's turnover. Staff relies on the information the licenses' report to the Commission for voluntary compliance. It used

to take staff 40 to 50 hours to complete the annual financial statement review, but the processes have been streamlined and now it only takes approximately 15 hours for each licensee. Every three years staff in our Financial Investigation Unit in conjunction with our field agents do a program review for licensees with gross gambling receipts over \$3 million. In the past, agents would spend about five days onsite reviewing program expenses, the categorization of the overhead and management expenses, and looking at the membership. Since this is now being done on an annual basis, the time spent onsite is three days at most. Also, when the agents are doing these nonprofit reviews during those three days, they are verifying such things as meeting minutes, looking at supporting documentation for the expenditures, looking at internal controls to protect the assets of the organization, documenting related parties, and the actual program delivery of the organization.

**Assistant Director Griffin** gave a few more examples from these nonprofit reviews that have been conducted over the years.

- Two board members were allowed to use their personal credit cards to pay for over \$29,000 in expenses for the organization but, when asked, the organization was not able to provide any documentation for the \$29,000. The board members were fully reimbursed for their charges.
- A motor home was an asset of an organization and was transferred to a related party of the organization, but the organization did not maintain the supporting documentation for that transfer, even though the asset was removed from the books of the organization. So for the next two years, the organization continued to pay insurance and maintenance for the motor home, even though it was not really an asset of the organization.
- A nonprofit was found to have misused over \$47,000 with little or no supporting documentation for \$15,000 of that. The \$47,000 was used to pay for meals, alcoholic beverages, baseball game, movie, boat cruise, and theater tickets for the board members. Two of the board members were in a relationship where they lived together and shared a bank account. They were allowed to approve 100 expenditures for the organization.

One of the process improvements for the adjusted cash flow program, as part of our 2011-2015 Strategic Plan is automating our reporting system. Staff hopes to have that online in 2012 so licensees can go into our system and report their bingo and pull-tab activities directly from their gambling establishment, which should reduce staff time.

**Chair Ellis** thanked AD Griffin and complimented her on the report, which was very informative.

**16. Staff Presentation: Overview of Field Operations Regulatory Program for Charitable/Nonprofit Organizations (PowerPoint Presentation)**

**Assistant Director Harris** reported the objective of the enforcement program, which is a risk based model, is primarily to protect the public and to ensure the organization is complying with WAC rules and RCWs. He provided examples of things the agents check:

- An organization that is not deleting prizes won off the pull-tab flare.
- A bingo caller manipulating the balls coming out of the blower so that a friend or family would win a prize.
- Organization is posting its gambling license.
- The organization is recording the required information on winning bingo prize receipts or winning pull-tabs.
- Record keeping is accurate and in compliance, which would include looking at and verifying check registers.
- Organization is maintaining supporting end documentation for those expenditures.
- The proceeds of the gambling activity are going towards the organization's stated purpose and not the benefit of an individual. An example of that was a bingo manager who was paying his wife for working when she was not actually working at the bingo hall.

The Commission has the powers and duties to collect sufficient fees to cover the costs of licensing and enforcement of the entire Gambling Act. This would include licensed and unlicensed activities. Charities and nonprofits are allowed to conduct some unlicensed gambling activities that private citizens and commercial businesses cannot, like social cards and dice games, raffles, bingo, and amusement games. Although our agents do not routinely conduct inspections of these activities, they handle a very large number of complaints and questions from the public. In the last two years, agents handled over 38 complaints related to unlicensed raffles. This would include not following operational rules, an operator selling tickets over the internet, and an organization not meeting the qualifications to hold the raffle because the organization was either not in existence for over a year or did not have a sufficient number of voting members. Additional statutory responsibility is to regulate and establish the type and scope of the gambling activities authorized. The Commission is operating under a statutory structure that has not changed, so it is difficult for staff to substantially reduce our regulatory program given the statutory constraints. This includes the Commission being required to investigate gambling and gambling-related crimes. Most local law enforcement agencies do not investigate these activities because they know it falls under the Commission's authority so they defer to us.

The public policy of the state is that the Commission keeps the criminal element out of gambling, promotes the social welfare of the people by limiting the scope and nature of activities through strict regulation and control, and closely controls all factors incident to the activities authorized and liberally construe the provisions of the Chapter. Staff controls and applies the requirements of the Chapter in the field by using a risk-based enforcement program to choose how to look at things. Agents only conduct program reviews every six years and only on the highest level organizations that are operating. Currently there are less than ten charitable/nonprofit organizations that fall under that category. Other statutory responsibilities ensure that none of the proceeds from the gambling activity go to the benefit of any person other than the organization. A good example of this was an investigation where a bingo manager was paying personal expenses out of the

organization's account that included dental work for him and skydiving lessons and plastic surgery for his girlfriend. Agents also find the less glamorous theft of funds by the bingo manager or club manager where they wrote checks to themselves for cash or did not deposit all the gambling proceeds into the account.

Agents do a lot of onsite visits because that gives the licensees an opportunity to ask questions. Spot inspections are limited-scope operational inspections used to determine if the activities are in compliance. It usually lasts a half hour to an hour, depending on what is found. The compliance modules are designed to look at very specific activities of the gambling activity, so there are set ones for bingo, for pull-tabs, for raffles, and so forth. Records inspections are a very comprehensive review of the entire gambling activity. So if the organization offers bingo and pull-tabs, agents usually do those inspections concurrently to not duplicate work. Internal control reviews are also done at that time to see if there is adequate segregation of duties or inadequate management control structure. There is a lot of turnover in board members so agents have to re-educate the new members on what they need to be looking at. Basically it is an educational tool, but when agents find the thefts and other similar activities, it is because there was not segregation of duties. They do not have enough people in the smaller organizations to differentiate the person who purchases from the person who inventories from the person who gets rid of the inventory. AD Harris said he was not going to go over the program reviews and financial inspections because AD Griffin went over those specifically in her presentation. Agents investigate 100 percent of the complaints received, and there are quite a few, including complaints about nonprofits failure to pay bingo prizes, failure to mark pull-tab prizes off flares, failure to follow the various specific activity requirements for operation and being on pull-tabs. One example was an organization conducting a raffle, or an amusement game, or a fund raising event without obtaining the required license first. Agents also assist licensees who call and ask questions; some can be handled over the phone and some require an onsite visit to go over the information and help answer the question or educate the licensee on a specific process.

**Director Day** asked if records were inspected every year. **Assistant Director Harris** replied no, records inspections for the organizations are usually done every three to four years and is based on activity. They are not done on the smaller A, B, and C licensees; it would be the larger organizations. Agents are looking at two areas: activity specific and general. Activity specific would be things like operational record keeping and retention requirements. Some operational ones include whether a licensee is selling the bingo paper for the same price and if prizes are being deleted off the flares. Agents determine whether the daily record keeping for bingo is being kept and if it is complete. They also look at retention requirements to determine if the dead or used pull-tab games are being retained for the required period of time. Agents look at whether the license is current and posted, problem gambling signs are posted, and check register and supporting documentation are reviewed. They are looking to see if the licensee is depositing the gambling proceeds in the required time period and into the correct account, if the proceeds are going towards the organization's stated purpose, and if they have supporting documentation showing what the expenditures were for.

High level bingo includes spot inspections and compliance inspections. Under the compliance inspections, there are modules for specific activities, which are only done if the bingo operates those activities. Agents look at the electronic bingo dauber components or entry guarantees and gift certificates. If the bingo hall does not offer those, agents will not look at those activities. Class D and E bingo are considered mid-sized. The number of inspections done are based on whether an agent does not find any major violations or thefts. If agents find any of those, then the time would be based on how much time was needed to look at and discover what was going on. Agents do one spot inspection a year on the Class A through C bingos and the modules are discretionary. Records inspections are only done for the largest raffles, which are Class F and above. There are no scheduled compliance inspections or records inspections for all the raffles, fund raising events, and amusement games. They are just done on an as needed basis or when staff receive a complaint in that area. There are unlicensed activities that also have to be regulated, but they do not have set inspection programs, but are usually following-up on a complaint from the public.

Since 2004, agents have investigated over 50 theft cases at charitable/nonprofits involving over \$450,000. The actual dollar amount stolen was probably larger, because most suspects do not admit to the full amount taken. Agents look until they find enough to prove a case, so they keep digging and find more, and more, and more. But they eventually get to a point where they say that is enough to prove what they need to know. One organization had four thefts totaling \$108,000 over a two-year period. Another organization had a bookkeeper that created a company called Computer City Consulting. The organization thought it was buying computers for the kids, but the money, over \$300,000, was actually going into the bookkeeper's account and he was either providing false documents for the executive to sign or forging the executive's signature on the checks. It was discovered by an agent doing a check register review who just happened to notice that a couple of signatures did not look quite right and that there was no supporting documentation for some of the expenditures. The most current case was an American Legion where the club manager stole over \$51,000 by writing checks to himself for cash, and sometimes forging signature or falsely obtaining signatures from other members. He would make the checks out to cash or to himself or he would not deposit proceeds from the gambling activity into the gambling account. Since 2003, there have been 225 complaints received regarding nonprofits for bingo, 84 for raffles, and 495 for nonprofit and for-profit punchboard/ pull-tabs. There were 39 punchboard/pull-tab complaints regarding nonprofits since 2009, which was when staff started breaking out the difference between nonprofit and for-profit pull-tab complaints.

Changes to the enforcement program include:

- Continue risk based enforcement program. For the risk-based enforcement program, agents start with a minimum number of inspections and if violations or other things are found, they can expand on that. The same is true for the inspections themselves; agents use sampling versus looking at every single transaction. In the area of pull-tabs, agents review the inventory records to make sure that everything looks okay before

determining if they need to do a barcode download. A barcode download is a very comprehensive process where all the games purchased for a period of time are scanned. It includes all the games in play, all the games reported, all the games removed from play, and all the games that are still in inventory to make sure every game put in play was put on the monthly income summary and has been retained, and the ones unused are still in inventory. It cuts down on a lot of time if the records are accurate, because then agents are not required to do the barcode download.

- Constantly review and update inspection programs to help streamline the process. Agents formally look at everything every three years, and informally as needed. They are currently looking informally at all the programs, which has not been done since 2008. In 2014, staff will be doing another formal review. As rules change and other things come about, staff informally looks at the programs and makes updates as needed.
- Perform joint program reviews with Financial Investigation Unit staff, which has helped reduce the inspection time and substantially cut down on duplication of work and reduce the costs to the Commission and to the licensees.

**Chair Ellis** asked if there were any questions; there were none. He thanked AD Harris for an excellent presentation. These presentations have given the Commissioners a lot of useful information that can be used, among other things, in moving on to the next item on the agenda, the petition from Mr. Bearden concerning reducing license and ID stamp fees.

**17. Petition From the Public: Robert Bearden – Charitable and Nonprofit Organizations Reducing License and ID Stamp Fees by Half or Charitable Licensees**

- a) Amending Section: **WAC 230-05-020** – Fees-Bona fide charitable and nonprofit organizations
- b) Amending Section: **WAC 230-05-030** – Fees for other businesses

**Ms. Hunter** reported this proposal would reduce the license fees and ID stamps for charitable and nonprofit organizations by 50 percent. That would be a reduction of license fees of about \$463,000 a year and \$50,000 a year for ID stamps, so annually it would total over \$500,000. Under the Commission's powers and duties in the state statute, the Commissioners are required to set fees that generate all of the funds that are necessary to cover the cost of licensing and enforcement, which also needs to cover unlicensed activities, not just licensed activities. In the last ten years, the Commission has increased license fees three times. There are no plans to increase fees until at least fiscal year 2014. Under Initiative 960, any fee increase would have to be approved by the Legislature. Staff anticipates a fee increase, and they also anticipate going to the Legislature and requesting that fee increase. The license fees are based on the gross gambling receipts for each type of gambling, so the idea is that as organizations gross receipts increase, their license fees will also increase. So the amount of license fees varies considerably based on their gross receipts. For bingo, it can be as low as \$58 and up to several thousands of dollars, depending on what the organization is grossing.

This proposal would also decrease the cost for ID stamps by 50 percent for charitable organizations. As discussed last month, those ID stamps are used for tracking different

games and different gambling products. The petitioner felt that the cost of the ID stamps was passed on to them, which is why they are asking that the fees be reduced. As explained last month, this seems like a very simple change, but it really is not because when a manufacturer is putting the stamp on, they do not know what type of an organization is ultimately going to be receiving that game. The manufacturer puts the stamp on the pull-tab game; they do not know if that game is ultimately going to be purchased by a commercial operator or by a charitable/nonprofit organization. Somehow in this mix, there would have to be different types of processes set in place if there were actually two different prices for the ID stamps. Because of that, staff does not know if a decrease in the ID stamps would ultimately translate into any type of a decrease for the charitable/nonprofit organizations if the manufacturers and distributors would have to figure out what stamp needs to go on what product.

Staff has concerns that if this rule were passed as currently presented, the Commission would not be able to meet the licensing enforcement mandates. The mandate is strict regulation and control. AD Griffin and AD Harris explained a great deal about our regulatory programs. Under policy considerations are listed seven statutes requiring the Commission to perform certain duties, making sure the organizations meet certain requirements, and preventing certain things from happening. All of those statutes require having legitimate organizations that are actually engaging in gambling, and then once they have that license, they are giving money back to the stated purposes, and not spending too much money in areas where they should not be spending money, so the money actually gets back to the stated purposes.

At the July meeting several people testified in support of the petition, including Senator Conway. Staff has received ten letters or e-mails in support of the petition and one against it. The one against the petition was opposed to any rule change based solely on hoping that something would happen, which Ms. Hunter thought went to the whole ID stamp question. Staff would recommend further discussion; they think this rule should be on the agenda probably until November because it is such an important policy matter, and to give staff time to present additional information, which staff hopes will be helpful to the Commission.

**Chair Ellis** Are there any questions; there were none. He asked if Mr. Bearden would like to speak on behalf of his petition.

**Mr. Bob Bearden**, AMVETS, said he did not realize there were crooks in the charity business in Washington State. That was an amazing presentation that AD Griffin and AD Harris gave on how many bad things are happening out there over the past ten years. Hopefully, for the legitimate charities that are really trying to do something good for their neighborhoods, their community, and their people, the negativism of the slide show does not defer against that type of scenario. They do try to give back to their people and give back to their communities. Mr. Bearden thought the presentations were meant to show the worst possible scenarios that could happen, or that have happened over a ten year span.

**Chair Ellis** explained he did not want to get into an extended discussion, but said that over the years, the Commissioners have heard from many, many charities that were doing their best to give back to the communities. They were running into hard times for one reason or another, such as the declining base for bingo operations and that kind of thing, and trying to meet their minimum cash flow requirements. It has been a struggle, so the Commission does not just look at the “evil” side of a few of the examples; there are a whole lot more out there, as Mr. Bearden knows quite well.

**Mr. Bearden** agreed, adding a comment on the discussion concerning agents versus regulatory inspections during the presentations. It was interesting to hear that term used for those who come out and check the bingo books for the Gambling Commission. It kind of changed the perception of who is out there. He asked if they need agents checking old ladies gambling, or just a regulatory inspector coming out. That was just something that was on the record, and he wanted to bring that up. As far as the increased fees, this has been a subject of contention for the last four months. Mr. Bearden keeps hearing the staff has not raised fees for charitable organizations, which is absolutely correct. However, they have raised fees in other areas, of which charities have to pay. They have increased fees on stamps and increased fees for distributors distributing information. All that is downhill costs that the end group, the charities, have to absorb. Although the license fees did not increase, the charities still have to pay more. So it may be it is just the definition of the way they were saying that license fees have not increased; no, but fees have increased that charities have had to pay for. The second thing has to do with the stamp fees. He said he was going to defer this to Donna Buck because she has more information on this. They realize that manufacturers would suffer if they had to try and figure out in advance to whom their product was going to be delivered, so he thought they could eliminate that in today’s discussion, and he appreciated the opportunity to do that. Mr. Bearden said Chair Ellis was correct that they are still at a point where bingo is suffering. There is competition out there that looks bigger and better and can accommodate more social aspects of gambling, such as smoking in their facilities or free lunches for mothers on Mother’s Day that Mr. Bearden cannot do. AD Harris actually hooked Mr. Bearden up with one of his inspectors from Spokane and they talked about this. And it is true; he can give away things under publicity and advertisement, as long as the word gambling does not tie into it anywhere. He can hang out a sign that says free food here, but he cannot say if the person gambles. He thought that is where the difference is; some of the Class IIIs can do that, but he cannot. So there is kind of an unfair competition out there, and the charitable organizations are trying to do the best they can to sustain charitable gambling in this state.

**Ms. Donna Buck**, clarified that on ID stamps it would be the Commission’s worst nightmare to try and reduce across the board. But, there is the roll call bingo that is exclusive to bingo halls, which is a pull-tab game; it can only be sold to bingo halls and is the only place where the Commission would want to put that. So it would need to be restricted. The stamps for the bingo daubers are \$12 or \$15, again only to a bingo hall. Ms. Buck suggested that, instead of saying ID stamps, the Commission could say ID stamps exclusive to a bingo hall, which would then eliminate the distributor being involved

and the manufacturer being involved. It comes down to exclusivity and would eliminate 90 percent of staff's work.

**Chair Ellis** asked if there were any questions.

**Director Day** clarified it was correct that staff is aware of it; they know the charitable/nonprofit organizations do a great number of good works and produce good programs as well. Charities and nonprofits need to be supported in this state, which is part of the reason for the enforcement program. The enforcement program is partially designed to identify those that are not in compliance and to remove them from the process so that it allows more opportunities for the good charities to succeed. Director Day hoped that was the direction of the enforcement program; to understand those problems are there, but to detect them and get them out so the rest of the industry proceeds ahead.

**Chair Ellis** agreed and thanked Director Day for adding that point.

**Ms. Hunter** commented that with regards to the ID stamps, those fees were raised at the same time that fees were raised, so the Commission has not raised any ID stamp fee separate from raising the normal license fees. Staff can work with Mr. Bearden on Ms. Buck's suggestion about changing the language on the ID stamps that are just exclusive to a bingo organization, if the Commission wants to be able to have an amendment to this petition. But it is their petition, so staff needs to word it however they want it, and then if the Commission wants to file that, staff can work on language between now and next month.

**Chair Ellis** said very good.

**Senator Prentice** asked how many bingo halls there were now. **Chair Ellis** replied the number that came to mind was 13. **Deputy Director Trujillo** responded that, as far as the large bingos, in Senator Prentice's time here, there have been top 40 and top 25; now it is top 13. As far as total number of bingo operators, maybe AD Griffin could respond. **Ms. Hunter** replied that in the rule summary it states there are still hundreds. **Senator Prentice** thought those were mostly smaller ones. **Deputy Director Trujillo** replied they are generally smaller operators. One other thing, staff efforts are risk based; they do not throw 100 percent of agency resources at 100 percent of the licensees. It does not make sense. Mr. Bearden referred to legitimate, honest operators versus others that are not. Our program is focused on risk. **Senator Prentice** commented, just looking through the notes of what she thought was probably her first meeting, that she likes to ask a lot of questions.

**Chair Ellis** called for public comment; there was none.

**Director Day** said Ms. Hunter found there are about 186 bingo licenses. **Commissioner Amos** asked how many of them are Class S. **Ms. Hunter** replied there are currently no licensees in Class S. **Commissioner Amos** noted the yearly fee for the license was \$29,000. **Chair Ellis** joked that was only for bingo halls in Selah. **Commissioner Amos**

mentioned he ran the bingo in Selah many years ago and no way did they ever come close to \$25,000. **Director Day** said, if he recalled correctly, the Legislature also expanded the operation of some of the larger classes of bingo to seven days. **Ms. Hunter** affirmed. **Director Day** added that, in that period, additional higher level classes were added in the event there were bingo licensees that got up in that area, but, as he recalled none did. **Senator Prentice** said she remembered that the Legislature also cut the bingo tax by 50 percent at that time, because the legislators knew the bingo halls were struggling. She was trying to determine if there was any real way to ask how much can be done. Obviously, they serve a purpose, but then you get to the point where maybe we should not keep encouraging it.

**Chair Ellis** asked if any of the Commissioners had concerns if staff continues to keep this petition on the agenda until at least the November meeting as Ms. Hunter proposed. **Vice-Chair Amos** said he had no concerns.

**18. Other Business/General Discussion/Comments From the Public**

**Chair Ellis** opened the meeting to other business, general discussion, and comments from the public. There was none. He thanked everyone for coming, adding he hoped to see most everyone at the next meeting of the Commission on September 8 and 9 at the Great Wolf Lodge in Grand Mound, Washington.

**Adjourn**

**Chair Ellis** adjourned the meeting at 11:50 a.m.

Minutes prepared by:

Gail Grate  
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