

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, FEBRUARY 10, 2011
APPROVED MINUTES**

Work Session

There was a government-to-government relations work session with the Quinault Indian Tribe from about 11:30 a.m. to about 1:15 p.m. Attendees of the work session included: Quinault Tribe President Fawn Sharp, Commission Chair John Ellis, Commissioner Mike Amos, Commissioner Rebecca Roe, Director Rick Day, Deputy Director David Trujillo, Assistant Director Mark Harris, and AAG Jerry Ackerman. Three members of the public observed the work session: Dolores Chiechi, Aubrey Seffernick, and Ernie Stebbins.

Regular Public Meeting

Chair Ellis called the Gambling Commission meeting to order at 1:35 p.m. at the State Investment Boardroom in Olympia and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commission Vice-Chair Keven Rojecki, Tacoma
 Commissioner Mike Amos, Selah
 Commissioner Rebecca Roe, Seattle

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: *Gail Grate, Executive Assistant, Recognition for 35 years state service*
Director Day and **Chair Ellis** presented Ms. Gail Grate with a certificate for 35 years of state service. **Director Day** commented that most knew Gail as being the brains of the operation. He summarized her career with the State, noting that she spent three years in Italy before coming to work for the Gambling Commission in 1981. Ms. Grate is absolutely essential to this Commission’s operation and to the agency and Director Day said he appreciated Gail’s work every day. He hoped Ms. Grate continued to enjoy her work with the Gambling Commission, as much as he has enjoyed working with her. **Chair Ellis** thanked Ms. Grate, adding that he thought Ms. Grate was absolutely invaluable. **Ms. Grate** thanked Chair Ellis and Director Day.

Commissioner Amos announced that a couple weeks ago a corrections officer, Jayme Biendl, was murdered at the Monroe Correctional Complex, and a couple weeks before that a Department of Transportation worker, Billy Rhynalds, who was ready to retire any time, was killed when a tree blew over and hit him while he was out of his truck to help direct traffic. Commissioner Amos requested a moment of silence for both.

1. Agenda Review / Director's Report

Director Day briefly reviewed the agenda, handouts, and material provided to the Commissioners. He explained the meeting this month would be one day, adding that the March meeting was also planned for one day. Staff has no recommended changes to the agenda.

a) Proposed Letter Regarding Federal Internet Gambling Bills

Director Day reported that staff had prepared a draft letter regarding proposed federal internet gambling bills for the Commission's changes and approval. The idea is not to go through each of the bills in detail, but focus on the two bills that were introduced by Senator Reid and by Representative Barney Frank. Even with all the controversy regarding the federal bills, this Commission, which is one of the most active internet enforcement groups in the country, has not said anything. Part of what staff was trying to accomplish with this letter was to avoid the perception that the Commission thinks everything in these bills is fine. The letter was designed to look at some common points that may be of concern as this issue continued to go forward, and to alert those that will have a role in the decision making that the Commission has concerns. The letter also pledges that the Commission will continue to let them know if something comes forward in the future. If the Commission approves this particular letter, the idea would be for staff to come back to the Commission with a more detailed letter if another bill came forward. The letter was designed with some bullets that staff thought were relatively common to both bills. The first bullet references how the states currently have the right to regulate and determine what gambling occurs within their borders. The proposals have gone away from that by putting it under the Department of Commerce or Treasury Department. Both proposals had requirements around whether or not the states or tribes could regulate but they had to be approved by the federal government entity. The tribes and the state could opt-in or opt-out, but were not dependent on each other. The bills would actually change the relationship under the Indian Gaming Regulatory Act. It is unclear, even if the state opted out, whether the state would have the ability to control illegal internet gambling that occurs within its borders. It appears in these proposals that the federal government would actually oversee things, so the state would not have any ability to impact the licensing of the operators, even if there was some kind of violation. In both proposals, it appeared the civil penalties that could be administered were minor, somewhere around a maximum of \$100,000, which may seem large but when talking about billion dollar operations that level of fine is really miniscule and would not have any deterrent effect. Then there is the question regarding if the state opted-in whether it would have enough ability to collect revenues to pay for its operations under the structure of the bill itself. The letter goes on to say the Commission has a number

of specific concerns about each bill but is not going through the process of listing those since they are not relevant at this point and the Commission is providing this information just for informational purposes. Director Day asked the Commission to consider the letter and, if they agree, to vote to allow staff to send the letter under the Chair's signature.

Commissioner Rojecki asked if this was consistent with the Commission and staff process when dealing with internet gambling. **Director Day** affirmed, adding it was also consistent with how the Commission dealt with federal legislation. The last time was relative to NIGC's attempt to gain class III authority. Staff scheduled that, debated it, and then moved the letter up to the Governor.

Commissioner Rojecki made a motion seconded by **Commissioner Roe** to approve the letter. *The vote was taken; the motion passed with four aye votes.*

Chair Ellis noted there was a very helpful summary by Melinda Froud of the highlights of the legislation that was included in the agenda packet. **Director Day** affirmed it was a summary of a very lengthy bill and Ms. Froud was producing a lot of summaries about the internet bill right up to the end of last year.

Director Day pointed out the 2011 legislative session began January 10 and ends April 24. He reviewed the process used to check in with the Commission to make sure staff is using a process that meets their approval and expectations. This year in the House, gambling bills will be moving to a new committee, which is the State Government and Tribal Affairs Committee under the Chairmanship of Sam Hunt. In the Senate, the Commerce, Labor, and Consumer Protection Committee will still handle the gambling bills under the Chairmanship of Senator Kohl-Welles. Both fiscal committees have new chairs: Representative Hunter and Senator Murray. There is actually authorization under RCW 9.46.090 about the Commission communicating and reporting to the Legislature. Practically speaking, many times staff, Committee personnel, or the Committee Chairs will contact the Commission about gambling bills as they are working their way through. Some Chairs have almost made it mandatory from their perspective of knowing what the Commission thinks about the impacts, and others have been more relaxed in their approach. Director Day plans to meet with Representative Sam Hunt this week to clarify what his expectations might be. Staff's process for the Commission is to track and review gambling or related proposals internally and then with the Commission. Ms. Hunter includes anything in her report that is related to gambling directly or has a significant impact, including information on the status of the bills. That information is brought before the Commission to discuss any positions or staff testimony. Staff tries to do that in advance, if at all possible. Since the Commission meets only once a month, at times staff ends up testifying on a bill, but that is done on a technical basis only, not a Commission position. Staff does not espouse the Commission's position without a vote and a position statement paper. If staff recommends a neutral position – and the Commission has already had a little experience around that – staff rely on the Commission. If the Commission does not express or somehow acknowledge they want to

take a specific position, or nodding in agreement with neutral, staff moves forward with neutral and does not look for a particular vote by the Commission on that proposal. Ms. Hunter will update the Commission each month and review any staff recommendations. She will look for either concurrence or opposition, however the Commission may want to come out. Any previous positions the Commission has taken on the same topic will be included in the agenda packet, and Ms. Hunter will refer to those during her report. It comes down to staff looking at the legislation, screening it, bringing in a list, discussing it with the Commission, and recommending a position if there is any. Staff does not testify in support until the Commission has voted one way or the other.

Chair Ellis asked if there were any questions, comments, or concerns with the process; there were none.

b) Legislative Update

Ms. Hunter provided an update on legislative bills, noting the first cutoff date is quickly approaching. The House established its own cutoff for bills to get out of the House Policy Committee, which is February 17. The cutoff for Senate bills is Monday, February 21.

- Senate Bill 5770, which deals with raffles, was introduced today. The bill changes the threshold for getting a raffle license from the Gambling Commission. Currently, a bona fide charitable organization with gross revenue of under \$5,000 a year, before prizes, does not need to get a license from the Gambling Commission. This bill would change the threshold to \$15,000, which would have impacts on the Commission. Staff is trying to figure out whether they also meant to amend another part of the RCW that deals with a combination license, which also has that \$5,000 threshold. Impacts to the Commission would be on lost license fees from \$60,000 to \$130,000 a year. Ms. Hunter has talked with the legislative aide for the prime sponsor about what led to this bill, so there is a chance that staff may be able to work with the organization or come up with a different threshold amount.
- Substitute Senate Bill 5232 and Substitute House Bill 1326 are companion bills and are called “Save to Win.” Their amendments are still the same and the Commission decided last month to be neutral on the bills. The “Save to Win” idea was designed to get people to open CDs. Based on the testimony, it is mainly hoping that people with low incomes will then invest so they would be entered into a drawing for a prize. The testimony on the bill has been pretty interesting with a lot of statistics about people and saving rates, kids whose parents save, and that few people in low income brackets have savings accounts, which is the group this bill is aimed towards. AAG Ackerman helped significantly with the language on the gambling amendment parts. Probably the most important part is that it prohibits the contest from being conducted over the internet. Part of this is under the Gambling Act because promotional contests of chance are under the Gambling Act. The Department of Financial Institutions proposed several amendments to the bill relating to the statutes they oversee. Their amendment had

nothing to do with the language staff had suggested. The bill went out of the Senate unanimously with a do pass recommendation, and out of the House with a do pass recommendation by a 7/4 vote.

- House Bill 1402 and the companion Senate Bill 5556 will assist a licensee in Kent who found itself caught up in an annexation that would no longer allow the card room licensee to operate. The City has a ban on card rooms, except for one house-banked card room that was allowed under a law passed in 2009 that said if there was a tax situation that would happen, the city would have to take that house-banked card room. The Kent card room is a Class D licensee, which means it is a licensee who pays about a \$58 licensee fee to the Commission every year. They do not have an actual card room, but they have to have a license from the Gambling Commission to possess cards in their tavern for customers who ask to play cards. Ex-officio member Senator Prentice is the prime sponsor of the Senate version of the bill. This bill is very narrowly drafted and should not impact any other licensees or any other cities or towns. The bill did have a hearing last week, but has not been scheduled for executive action yet in the House. Staff is recommending a neutral position on this bill.

Chair Ellis asked if any of the members of the Commission thought that staff should take a position other than a neutral position; no one did.

- House Bill 1287 had a hearing this morning. The bill establishes a government-to-government relationship between state government and Indian tribes. The bill codifies the Centennial Accord, which is the state's annual meeting with tribes. The 21st Centennial Accord was held this past summer, and the Gambling Commission has been involved in 16 of them. The bill would require agencies to designate a tribal liaison. Assistant Director Julie Lies is the tribal liaison for the Gambling Commission and is also the contact with the Governor's Office of Indian Affairs. The bill requires agencies to make an annual report to the Governor and to make reasonable efforts to collaborate with tribes when developing policies, which is something the Gambling Commission currently does. The bill also requires training of the tribal liaison and the agency director on effective communication and collaboration. The bill would not have a fiscal impact on the Commission because staff is already doing what the bill requires. Staff recommends the Commission support the bill.

Director Day pointed out that prior to actually taking a vote on a position, the Chair usually called for public comment on the legislative issues. If the Commissioners take a negative position, or a position opposed to legislation, staff notifies the sponsor of the bill to ensure the first time they hear about the Commission's position is not at a hearing.

Chair Ellis asked if any of the members of the Commission had any concerns, comments, or questions about those two procedures; no one did. He called for public comment on House Bill 1287; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Amos** to support House Bill 1287. The vote was taken; the motion passed with four aye votes.

- House Bill 1087 deals with the operating budget for the 2011-2013 biennium. The bill requires a 3 percent salary reduction effective July 1, 2011, through June 30, 2013. The bill would apply to everyone, except a limited group that includes the State Patrol and a few other agencies specifically listed in the bill. It exempts employees with salaries of less than \$2,500 per month, which would apply to three Gambling Commission staff. No other Gambling Commission staff are exempt from the salary reduction, which is set up as temporary salary reduction leave of up to 5.2 hours a month. Originally when House Bill 1086 was introduced, it had no direct impact on the Commission, but the Senate amended the bill to include a temporary 3 percent salary reduction for all non-represented state employees effective April 1, which would impact all of the Gambling Commission staff. This bill is back at the House for action because the Senate passed an amendment that was not identical to what the House passed. The Director of the Office of Financial Management sent a letter to the legislators outlining several concerns about the supplemental bill the Senate passed, including the impacts on employees who make less than \$2,500 a month because those employees are not exempt in the supplemental budget, and taking into account the temporary furlough days. They also included a note that they could not have all of this take effect by April 1. Staff is not suggesting a position by the Commission on this bill nor on the next several bills.

Chair Ellis asked if any of the members of the Commission felt that the Commission should take a position on these bills; no one did.

- House Bill 1150 extends the time in which a small business can correct a violation without a penalty. When House Bill 2603 passed last year, it gave small businesses two days to correct violations; this bill would extend that time to seven days. The bill is out of committee and is in the House Ways and Means. The cutoff date for that committee is Friday, February 25.
- House Bill 1156 is a moratorium on rule making. In November, the Governor put out a rules moratorium effective until the end of this year. This bill has several different exceptions, but in essence it suspends agency rule making until July 1, 2014, or until the economy improves. This bill does not impact the public petition process, so people who want to petition for rule changes would still be able to.

Chair Ellis asked if the bill contains the other exceptions that might have applied to Commission action consistent with the Governor's initial order. **Ms. Hunter** replied it appears to be narrower than the Governor's order which, based on the testimony from the prime sponsor, was intended. The testimony by the prime sponsor was that they felt there was at least one agency that was continuing to pass a number of rules, or were looking at a number of rules, even with the Governor's executive order. Ms. Hunter thought the intent was meant to tighten that down.

Commissioner Roe asked what exceptions there would be for the Commission. **Chair Ellis** thought that under the Governor's order, the Commission would have been exempt from the ban for a proposed staff petition that was necessary to protect public safety. **Ms. Hunter** affirmed. Section 2 of the bill states it is implementing a federal law; that the rule is needed to implement terms of a Governor declared state of emergency; by the Department of Health to respond to a public health emergency; to set the times for taking of wildlife, fish, or shellfish pursuant to their statute; or the legislation specifically directs that rule making be undertaken. Even in that situation, though, they must be approved by the Legislature. It does not prohibit an agency from repealing rules, so if an agency finds they do not need a rule, the Commission can repeal the rule. **Director Day** added that this was directed to all agencies, where the Commission had some independence under the Governor's Order where the Commissions were asked to voluntarily comply with the Order, but it was not required. **Chair Ellis** agreed, adding he thought the Commission formally or informally adopted a position that they would, in fact, comply with the Order. As a practical matter, Chair Ellis could not recall an instance where the Commission had a staff petition that was specifically designed to address a concern about public safety.

- Senate Bill 5327 deals with limiting the use of public assistance electronic benefit cards. A few months ago, there were some news stories about people using their electronic benefit cards in different casinos. This bill deals with that concern, and adds several other limitations on purchases that can be made, including tobacco. Recipients of public assistance are already prohibited from using their electronic benefit cards for activities under the Gambling Act, Lottery, and Horse Racing. This bill would also make DSHS require electronic benefit card vendors to disable the electronic benefit cards for purposes of ATM cash withdrawals and point-of-sale purchases at several different establishments. Gambling establishments licensed under RCW 9.46 are specifically listed. The bill makes it a gross misdemeanor to use the card for these purposes. The Senate Human Services and Corrections Committee heard the bill on February 3 but, as of yesterday, had not scheduled it for executive action.

Ms. Hunter reported that several other consolidation bills have been introduced. The most notable are two bills to consolidate the state information technology, which would require many things to be run through the Department of Information Services that do not currently have to be run through that organization for approval. Senate Bill 5503 and House Bill 1720 were introduced to reorganize and streamline the central service functions, powers, and duties of state government. It includes a consolidation of the Office of Financial Management, General Administration, the Department of Printing, and a piece of the Department of Personnel, under one agency called the Department of Enterprise Services. The technology bill is 55 pages long and the consolidation bills are about 200 pages each, plus there is another Boards and Commissions' bill this year. The consolidation bills do not impact the Gambling Commission.

Ms. Hunter returned to Senate Bill 5770 to decide whether the Commission wanted to take a position on the bill. Ms. Hunter did not think a hearing had been requested on the bill yet and was not even sure the bill would have a hearing since time is running rather short. The bill has until a week from Monday to have a hearing and get out of committee. Staff's inclination right now would be that if it is going to have more than a \$50,000 negative impact on the Commission's revenue, it is kind of hard to not take a position of at least concern against the bill.

Director Day said it would mean that people could have a \$15,000 raffle and there would be no record with the agency of who was conducting the raffle, where the raffle was being conducted, or any record keeping requirements. The Commission currently requires a license that shows who is operating the raffle and, at the same time, they are made aware of the record keeping requirements and how the tickets are supposed to be disbursed. **Deputy Director Trujillo** affirmed that was correct. Staff are in contact quite often with the charitable and nonprofit organizations, and brochures are available that staff mail out. This would be a significant change from that, and DD Trujillo did not know what the impact of that would be to the public.

Chair Ellis asked what the fee was for a \$15,000 or a \$14,900 raffle. **Ms. Hunter** thought the threshold breaks somewhere in between so it would probably be \$380 a year, but there is also a \$58 license. **Deputy Director Trujillo** clarified the \$58 license was for a class A license, which is up to \$5,000. The cost for a class B license, which is up to \$10,000, is \$185. A class C license, which is up to \$25,000, is \$380. So the \$15,000 is crossing the class B and class C licenses. **Chair Ellis** asked if that was per raffle. **Commissioner Amos** asked if it was per year. **Deputy Director Trujillo** confirmed it was per year. **Chair Ellis** asked if a licensee could conduct an unlimited number of raffles based on those fees. **Ms. Hunter** affirmed.

Commissioner Roe asked Ms. Hunter to fill the Commission in on what was behind this. **Ms. Hunter** replied there was a licensee – and this is pretty common with some of the organizations that have many different chapters – that would meet once a year for a large convention, which is what this particular group does. The organization has found that they exceed the \$5,000 in gross revenues, which is why they want to have the threshold increased. Staff does not know whether the organization realizes they could get a gambling license at a relatively small fee to hold the larger raffle. Ms. Hunter hopes to find out which group it was so staff could see if the organization has ever applied for a license. One thing that happens is these organizations, like a lot of charities, tend to change membership every year. So it may be that someone got the packet once and thought it was too much work or maybe they just do not want to have to pay any license fee for the raffle.

Commissioner Rojecki asked how much money the Commission would lose if this were enacted. **Ms. Hunter** responded that, if the bill was really meant to also amend RCW 9.46.0321 – another bingo/raffle/amusement game, no license required that has the \$5,000

threshold – it would be \$130,000 a year. It would be a hard reading of the two statutes together if both of those sections were not amended. If it really was intended to amend just the one, it would be about \$55,000 a year.

Chair Ellis asked if there were any other questions.

Commissioner Rojecki indicated he just wanted to speak against it.

Chair Ellis asked if there was anyone in the audience that would care to address the Commission on whether they should take a position concerning Senate Bill 5770; no one stepped forward. He asked if there was a motion.

Commissioner Rojecki said he did not necessarily believe the Commission needed a motion, because there are still some questions the Commission may have. He did not want to make a motion on something the Commission did not entirely know the ramifications of. The legislative process is very fast the last week of session, but up until that last week of session, it is a very slow process.

Director Day explained there was either going to be a companion, or it was going to have to go over to the House eventually, so staff would be able to see what could be done on the Senate side if this moved forward. Hopefully there would be time to bring it back to the Commission in March. **Ms. Hunter** agreed there was still time. **Commissioner Rojecki** indicated that was his point; there is at least one, and possibly two, more meetings before any decision is truly going to be made. **Director Day** noted it depends on what the Commission decides, but at this first hearing staff would most likely testify regarding the financial and regulatory impacts to the agency. It could be left as being under consideration for position by the Commission, but not enough time to actually do it. The entire package of licenses and fees, which is the Commission's responsibility to assess, in total should pay for the entire RCW 9.46 regulatory, enforcement, and licensing operation. A lot of times each one of these areas contributes, but it may seem to people paying a license that it is much larger than somebody who gets a huge amount of income statewide, which is not really relevant to the amount of a license.

Commissioner Roe added that she would be leaning against supporting the bill and would ask the Commission to take a negative position about this, more from the regulatory standpoint for her than from the financial impact. Both of them are a significant concern, especially if Ms. Hunter is right that it is supposed to apply more broadly, which would be a really big change.

Chair Ellis asked if Commissioner Amos had any comment.

Commissioner Amos thought the comment made was that raffle tickets could only be sold to, and winners determined only from, the regular members. **Commissioner Rojecki**

affirmed that was current language. **Commissioner Amos** did not think that the people selling raffle tickets were only going to go to their church if they wanted to make \$15,000 on a raffle, then to police it and the alcoholic beverages –Commissioner Amos thought he would speak against it.

Chair Ellis said that, unless one of the Commissioners would like to present a motion (no one did), this would be considered to be an item that is under the Commission’s observation and awaiting more information. It is understood that staff will describe the negative aspects of the legislation at a subsequent hearing, if needed. **Ms. Hunter** agreed that sounded fine.

Director Day said the next report was requested by the Commissioners. As staff finished the budget development and the Commission passed the biennium budget for the agency, the state was in a rather severe economic downturn and revenues were fluctuating, so staff were asked to bring back an update on the revenue and expenses at about mid-season.

c) Budget Update

Ms. Judy Pittelkau, Senior Budget and Accounting Analyst, provided an update on the status of the budget as of December 31, 2010. As a non-appropriated agency, the Commission is not required to have an appropriation from the Legislature for expenditures from the Gambling Revolving Fund, nor does the Commission receive any general fund dollars. The Commission is expected to cover all its costs through fees and other revenue sources. All expenses relative to Commission business are to be paid out of the Gambling Revolving Fund, and the disbursements are authorized by the Commission or a duly authorized representative. All expenditures paid with seizure funds are first paid out of the Gambling Revolving Fund and then reimbursed with the seizure funds. Fees are to be adequate to cover all the costs incurred by the Commission relative to licensing and enforcement of the provisions of RCW 9.46. The Commission also has the power to establish fees to offset the costs of other administrative programs, such as the electronic lab review costs and the ID stamps. In statute, the Commission has the authority to raise fees, but the Legislature is now required to ratify any fee adjustments. The Commission is still able to set reimbursement rates. Revenues are cyclical and the peak periods occur at the end of quarters, so revenue at the end of December was 99.96 percent of the estimates, which was \$3,000 below the estimate. These estimates take into account the decline in licensees.

Director Day pointed out that, on occasion, he has been known to question budget staff when the estimates are a long ways off, and he particularly had the pleasure of asking Mr. Cam Dightman why he missed it by \$3,000 this time. **Chair Ellis** noted it is a difficult market and economy. **Commissioner Amos** agreed.

Ms. Pittelkau reported that in February of each year, the Business Operations Division meets with agency staff, who are experts in areas that generate revenue for the agency, to review the historical and future trend information. They also receive input from the licensees on their future plans and whether they anticipate staying the same, upgrading,

downgrading, or discontinuing their operations. Based on this information, staff determines any changes that need to be made in the estimate of our license numbers. Ms. Pittelkau explained the various slides in her PowerPoint presentation.

- Expenditures at the end of December were below the estimate due to the freezes on hiring, contracting, equipment purchases, and out of state travel and training.
- During the next biennium, the FTE level will be about the same as in 1999.
- The estimated working capital balance is in line with OFM's recommendation of two months expenditures. The working capital balance was higher at the end of December than estimated due to the freezes mentioned earlier. It is important to remember there are ongoing risks that may affect our working capital balance. Staff uses the best information available to build the budget and also takes into consideration internal and external factors. The number of licensees is expected to continue to go down, and the working capital balance provides time to respond to any changes or decreases and make reductions in expenditures.
- The State has had to significantly increase the employer and the employee contribution rate during Fiscal Year 2011 to cover health care costs.
- Because costs are going up for everybody, the state service agencies, such as General Administration, Department of Personnel, and the Attorney General's office, pass the additional costs on to the agencies for the services they provide.
- Like most agencies, salaries and benefits are the highest expenditure item, and future increases have a significant impact on the working capital balance. An adequate working capital balance provides the ability to pay for these items without immediate fee increases, which now have to be ratified by the Legislature and could cause future fee increases to be delayed or denied, resulting in revenues that are less than necessary to maintain that adequate working capital balance.

Ms. Pittelkau asked if there were any questions; there were none.

Director Day summarized that the budget and revenue were on track with what was anticipated they would be at this point.

d) Correspondence

Director Day referred to a letter that was sent to the chairs and ranking members of the Ways and Means Committee concerning the early action bill. The only section applicable to the Commission was the compensation section where the Governor and budget staff have raised concerns about the action where it differs from what had been proposed in the supplemental proposals. Also included under correspondence was a memo showing some direct numbers in response to a question Commissioner Roe asked regarding how much rule making costs were relative to staff. Staff actually looked at those numbers in 2008 and had planned to revise them substantially, but since there have not been any raises since 2008

these numbers are going to be pretty close to the same. For rules that appear on the Commission agenda only once, staff time cost is \$2,610. If rules are on the agenda for two months, staff time cost is about \$3,915, and if rules are on the agenda three months, staff time cost is about \$4,765 hours. Three months is the normal time for rules to be on the agenda and costs go up significantly once they pass the original threshold.

Director Day reported the State Auditor's Audit Report of the Master License System was included in last month's agenda packet, so the report was not included again this month. Assistant Director Tina Griffin has prepared a short summary of that report. Staff has been in discussions with Master License Service for some time about the possibility of incorporating some of the gambling licenses in their system. In the State Auditor's report one page had the Commission's licenses listed as a possibility for expansion, but also noted that it was a very complex decision because of the licenses. The Commission does not have a one-time renewal charge for renewals; they are subject to many class variations. Staff anticipates the Master Licensing Services will be providing an assessment early this year about what it would take to actually move some of our licenses into their system.

c) Monthly Update Reports and News Articles

Director Day reported there was no federal action to discuss. He pointed out an interesting news article about some activity concerning money laundering that ended up being a drug investigation on the eastern side of the state.

Chair Ellis asked if there were any questions or comments on the Director's Report; there were none.

2. Approval of Minutes – Regular Meeting – January 13, 2011

Commissioner Amos made a motion seconded by Commissioner Rojecki to approve the minutes from the January 13, 2011, regular Commission meeting as submitted. Vote taken; the motion passed with four aye votes.

3. New Licenses and Class III Certifications

Deputy Director Trujillo pointed out a pre-licensing report for the Point After Casino, which had been withdrawn last month because the owner had closed the facility soon after it opened. Subsequent to that meeting, the restaurant and lounge opened and are fully operating. The owner has been working with staff on a business plan for slowly phasing in the operation of pull-tabs, poker, and player-supported jackpot card games. In an e-mail to the Commission, the owner thanked staff for their promptness and professionalism on working with him on this project, which included notifying him after the last Commission meeting that the Commission did not vote on his application. The owner wanted to specifically thank staff, including Keith Schuster, Dan Frey, Allen Esparza, Lynn Clevenger, and Jay Summers. A pre-licensing report for Dixie Meier, a nonprofit gambling manager, was also included in the agenda packet. Nonprofit gambling managers routinely appear on

the Commission Approval List. This application is unique in that Ms. Meier is already licensed and working at the Eagles in Burien and is asking for Commission approval to also be a nonprofit gambling manager in Seattle. Generally speaking, Commission laws and rules reflect a regulatory focus on charitable and nonprofit gambling to ensure gambling proceeds are received by the gambling entity. RCW 9.46.120 has been in place since 1973 and was modified in 1987 and 1997. Between the 1970s and the 1990s, the landscape of gambling in Washington State was much different from what is seen today:

- There were no house-banked card rooms or tribal casinos
- Canada and Oregon did not offer much in the way of legal and authorized gambling
- As late as the mid-1990s, Washington ranked number three in gambling receipts, only behind Nevada and New Jersey
- Punchboards, pull-tabs, and bingo were the main activities
- Charitable/nonprofit organizations were major players in the world of Washington gambling.

Staff reviewed Ms. Meier's application and did not find any regulatory concerns. Neither the Point After Casino nor the request from Ms. Meier need to be voted on separately, as they are included in the Commission Approval List. Staff recommends approval of all new licenses and class III certifications listed on pages 1 through 16.

Commissioner Rojecki made a motion seconded by **Commissioner Roe** to approve all new licenses and Class III certifications listed on pages 1 through 16. *Vote taken; the motion passed with four aye votes.*

RULE UP FOR FINAL ACTION

4. Staff Proposed Rule Change – Paper Rules Manual – No longer requiring licensees to maintain a rules manual at their licensed premises

- a) Repealed Section: WAC 230-06-060 – Maintain copy of Commission rules on business premises

Ms. Hunter reported this rule has been in place since 1974. Although staff did a lot of outreach with this rule, there has been very little discussion in the study session or during the Commission meetings. Ms. Hunter explained that, if the rule is repealed, an article would be published in the "Focus on Gambling" newsletter that is sent to all of the organizational licensees. The article will include an offer for those who still want a paper rules manual to let staff know either by phone call or by signing up on the website. As rules are passed, staff will continue to provide a summary of the rules in the newsletter, along with the actual text of the rule change. Staff recommends approval of the repeal with an effective date 31 days after filing.

Chair Ellis asked if there were any questions or public comment; there were none.

Commissioner Rojecki made a motion seconded by Commissioner Roe to repeal WAC 230-06-060, with an effective date 31 days after filing. *Vote taken; the motion passed with four aye votes.*

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

Chair Ellis called for public comment.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association (RGA), commented on the legislative report. The bill Ms. Hunter referred to relating to the electronic benefit cards, Senate Bill 5327, was heard. The issue, as mentioned, came up because of a King 5 news story in which they contacted the RGA and asked them to provide comment. President Chris Kealy went on the air and relayed that their industry had already made contact with their card vendors and asked them to disable the cards at those locations, which was a five-minute procedure. So they took immediate action and went ahead and made those cards inaccessible at their locations. They also testified in support of the bill, so they were encouraged that the Legislature was broadening the scope of the different facilities. They now include tattoo parlors, piercing places, and other places where the taxpayers did not intend for those cards to be used. Ms. Chiechi wanted to bring it to the Commission's attention that the RGA supported that, as well as another bill that relates to eliminating Boards and Commissions. House Bill 1371 deals with the Problem Advisory Committee, which is the committee that oversees, advises, and reviews some of the program activities at the state level with DSHS, the Department of Health and Recovery Services. As an industry representative, Ms. Chiechi is the Chair of the Problem Gambling Advisory Committee, but said she was not speaking in that capacity. She is trying to get that portion eliminated from the bill so the Advisory Committee could remain intact and advise the state program. It includes the Horse Racing Commission, Lottery Commission, and other folks that have been volunteers. There are no state budget monies that go to pay for that Committee's activities. All of the funds for the program come from the industry, donations from tribal entities, as well as horse racing, lottery, and commission licensees. Ms. Chiechi is hopeful the bill will remove that group from being eliminated. It is kind of a double negative, but she just wanted to bring that one to the Commission's attention as well. Hopefully they will be successful and the Committee will stay intact.

Chair Ellis asked if there was anyone else from the audience who would like to address any issue before the Commission; no one stepped forward. Chair Ellis called for a break at 2:45 p.m.

Commissioner Roe left during the break

Chair Ellis reconvened the meeting at 3:00 p.m. and announced that the Commission would start with the default hearing for Lily Real, who was in the audience. He asked if Ms. Real would like to step forward.

6. Defaults

e) *Lily Real, Card Room Employee, Revocation (This item was taken out of order)*

Ms. Hunter asked if the Commission would like her to go over the highlights of the default order for Lily Real. **Chair Ellis** affirmed. **Ms. Hunter** reported that staff is requesting Ms. Real's card room employee license be revoked based on her writing three checks totaling \$3,000 at the Macau Casino. Ms. Real had admitted that after she wrote those checks she stopped payment because she did not have money to cover the checks. Ms. Real entered into a payment plan with the casino to repay the money and paid back \$475 of the \$3,000. Ms. Real told the agent that she stopped making payments because she lost her job when Happy Days Casino in Lakewood closed on September 1. Her last payment to the casino was on July 28, about six weeks prior to that closure. Ms. Real is not currently employed as a card room employee or as a Class III employee. Charges were issued on December 30; the legal secretary made a courtesy call to Ms. Real and left a voice message that the deadline to request a hearing was January 7. Five days later, Ms. Real called the legal secretary and said she had mailed her request for hearing on January 10. On January 14, staff received Ms. Real's request for a hearing with a January 10 date on the signature line, which would be consistent with what Ms. Real told the legal secretary. The postmark was dated January 13. Ms. Real called again on January 18 and the legal secretary informed her that the request was late and explained it would be set for a default proceeding and that Ms. Real could come to the Commission meeting to explain. Ms. Hunter thought Ms. Real was the first person that has shown up for a default hearing. Staff recommends the license be revoked.

Chair Ellis said he gathered the basis for Ms. Real's default would remain that she failed to submit her request for an administrative hearing in a timely fashion, by January 7. **Ms. Hunter** affirmed that was correct. **Chair Ellis** explained to Ms. Real that the issue today should be her failure to submit a request for hearing by January 7, not to address whether her license is going to be revoked. The focus should simply be whether the Commission should enter a default order revoking her license because she failed to request the hearing by January 7 or, in the alternative, whether the Commission should deny the motion for a default. In that case, it would essentially leave Ms. Real with dealing with the Commission staff concerning the status of her license. He advised Ms. Real that she was free to address the Commission, but to focus on what she did or did not do to request the hearing by January 7 – why she was not able to submit her request for a hearing within the time required.

Ms. Real indicated she must not have read the right date; that she thought it was by the end of the month, so when she found out, she called and told the legal secretary that she put it in the mail. Ms. Real did not know it was after the hour the mail was picked up, so it was mailed the next day. Ms. Real said she really wanted to get this situated. That was the reason she came here – because she did not want to – she said she was not working right now and just did not want her license to be suspended or revoked because this is all she knows; dealing is her only experience. She has family and kids that she needs to support so she really needs her dealing license. Ms. Real said she was willing to do anything to get this

paid off, so if the Commission could give her a chance until she could try to make this payment, she would do anything to pay it off. That is all she could say.

Chair Ellis said he understood the Commission's legal secretary called Ms. Real to let her know that the deadline was January 7 –actually it was when Ms. Real had a conversation with the legal secretary on January 10 that she was told the deadline was January 7. The legal secretary left Ms. Real a voice message reminding her of the deadline for requesting a hearing. Chair Ellis asked if Ms. Real got that message. **Ms. Real** replied she did not.

Chair Ellis said it was right at the end of December. **Ms. Real** asked if he meant the letter. **Chair Ellis** replied, no, that on December 30, the legal secretary from the Commission made a courtesy call to Ms. Real letting her know that her deadline for requesting a hearing was coming up on January 7. The legal secretary did not reach Ms. Real but left a message on her voice mail. **Ms. Real** replied that her phone got disconnected, so she did not have voice mail so she never received the voice mail. But when she noticed that – she thought the due date was on the 30th – and then when she found out, when she looked at the letter, that was when she called right away, knowing that it was a couple days before – she thought it was a day or two before the deadline. That was when she called and tried to explain that she already did send the mail out. Ms. Real said she called that day and told the secretary that she already put it out the day before, but she guessed the mail had already been picked up that night so it was still there. It did not shift out until the next day. But Ms. Real said she did call the secretary; that she tried to do everything; like she tried to – when she found out that the date was due on the 10th that was when she tried to call and ask if there was anything she could do to try to avoid this. The secretary told her that the only way she could try to fix it was to come here and try to see what the Commission could do for her.

Chair Ellis asked if any of the other Commissioners had a question.

Commissioner Rojecki asked Ms. Hunter if there was any prosecution involved in this case for those checks. **Ms. Hunter** affirmed that her understanding was it was still pending.

Commissioner Rojecki asked what the process would be for the Commission to send this to an ALJ and go through that process. **AAG Ackerman** explained the Commission would have to make a decision on whether to grant the motion for default, because that is what is in front of the Commission today. If the Commission decides not to grant the motion for default, then normally that would be accompanied by instructions to refer the matter to an ALJ to start the hearing process that would have occurred, if there had been a request.

Commissioner Rojecki asked if that was what would normally have happened if Ms. Real had sent the letter three days prior – if that would have been the process; it would go through the ALJ. **AAG Ackerman** affirmed that was exactly what would have happened.

Commissioner Rojecki said he was just thinking that the Commission has been consistent to work with licensees during these processes.

Commissioner Amos agreed with Commissioner Rojecki. He asked Ms. Real if it was correct that the certified letter was mailed to her house on December 15, but she did not get

it back until the January 6. He asked if Ms. Real was living at her current address on December 15 but did not get the certified mail since the certified letter came back to the Commission because nobody signed for it. **Ms. Real** affirmed she did not – that she has four kids so she is in and out all day. She said she was not really home a lot, that she was doing a lot of driving. **Commissioner Amos** asked if she had not moved in the last six months. **Ms. Real** replied, no, she has been living at the same place.

Ms. Hunter explained this is the first time the Commission has had a default where someone has actually shown up. She thought it was certainly within the Commission's purview to say they were going to accept that the request was late and to just note it up for an administrative hearing. Ms. Real does have the criminal cases pending, which is still an unresolved issue, so maybe the Commission is a step behind where they were with the other cases where people just owed money. Ms. Real has pending criminal charges for one count of Second Degree Theft and three counts of Unlawful Issuance of Checks. It was Ms. Hunter's understanding that Ms. Real did not appear in court on February 3 as she was supposed to, so there is probably some follow-up from that which will occur.

Chair Ellis indicated that, presumably, if Ms. Real was convicted of the criminal charges, it would be taken into account in the licensing action, assuming the Commission were to deny the default. **Ms. Hunter** affirmed.

Commissioner Amos made a motion seconded by **Commissioner Rojecki** that, even though Ms. Real was three days late with her request for a hearing, the Commission deny the motion to revoke her license and to send it to the ALJ. **AAG Ackerman** clarified that the motion was to deny staff's motion for default in this matter and to set it for hearing before an administrative law judge on the merits. **Commissioner Amos** and **Commissioner Rojecki** affirmed that was the intent of the motion and second. *Vote taken; the motion passed with three aye votes (Commissioner Roe was not present).*

Chair Ellis explained to Ms. Real that she was back to the point where she received the statement of administrative charges. He asked Ms. Hunter what the next step would be. **Ms. Hunter** responded the next thing would be to send Ms. Real a notice of hearing, which will be sent to the address that is on file for Ms. Real so she will need to let staff know if she moves. Then there will be a hearing before an administrative law judge around the middle of April. Ms. Hunter provided Ms. Real with her business card in case she had any questions. **Ms. Real** thanked the Commission and staff.

Ms. Hunter reported there were seven more defaults; the first two are carry-overs from the January Commission meeting. Six of the defaults are for individuals and one is for a commercial pull-tab business. None of the individuals are currently working and, in all cases, the licensees were properly served their charges. Typically, the charges are sent by certified mail and regular mail. None of the letters that were sent by regular mail were returned. In two cases, the licensees were personally served the charges. In all cases, the

legal secretary tried to contact the licensee or employee to remind them of the deadline. The details of those calls are included in the agenda packets. In all cases, the licensees or class III employees have waived their rights to a hearing by not requesting a hearing. Therefore, under the Administrative Procedure Act, the Commission may enter an order in default. In all cases, staff is asking that the licenses and the class III certifications be revoked. Ms. Hunter pointed out that some of the dates in the default orders was listed as February 2010, but those have all been corrected to February 2011 in the final orders for the Commissioners signatures.

a) Esther M. Cardenas Estrella, Class III Employee, Revocation

Ms. Hunter reported Ms. Cardenas was a class III employee for the Chehalis Tribe. Staff recommends that her certification be revoked based on Ms. Cardenas' failure to disclose her complete criminal history. She failed to disclose two Assault Fourth Degree domestic violence convictions and a Malicious Mischief in the Third Degree domestic violence conviction. All of Ms. Cardenas' convictions occurred in the past few years – 2007, 2008, and 2009. Staff is requesting a default order be entered.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Esther Cardenas Estrella was present or anyone on her behalf; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission revoke Ms. Esther Estrella's class III certification. Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).

b) Phillip W. Jones, Class III Employee, Revocation

Ms. Hunter reported the Mr. Jones worked for the Muckleshoot Tribe with a conditional certification. Conditional certifications are only issued to enrolled members of a tribe when the tribe and the individual enter into a written agreement for certification that has extra conditions on it. In this case, Mr. Jones did not qualify for regular certification because of his criminal history and outstanding court fines and fees totaling over \$4,000. The recommendation for revocation is based on Mr. Jones' conviction of violating a no-contact order, which then violated the terms of his conditional certification agreement and his willful disregard for court orders. In this case, the certified mail was picked up, but staff is unable to tell from the signature who signed for it. Staff is requesting that Mr. Jones' certification be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Phillip Jones was present or anyone on his behalf; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission revoke Mr. Phillip Jones' class III certification. Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).

c) Nicole Jim, Class III Employee, Revocation

Ms. Hunter reported the recommendation for default was based on Ms. Jim's criminal history. She is a class III employee and has been charged with Vehicular Homicide. Ms. Jim is currently in the Yakima County jail awaiting trial, with no planned release date. Ms. Jim was personally served the order of summary suspension and did not respond, so staff recommends her certification be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Nicole Jim was present or anyone on her behalf; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Rojecki** that the Commission revoke Ms. Nicole Jim's class III certification. Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).

d) Sasha Longee, Class III Employee, Revocation

Ms. Hunter reported the recommendation for default was based on Ms. Longee's criminal history. She has a pending felony Vehicular Assault charge and is no longer employed with the Yakama Nation. Ms. Longee was personally served the summary suspension. She actually wrote back and said she did not want a stay hearing. Since she did not request a hearing, staff is recommending Ms. Longee's class III certification be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Sasha Longee was present or anyone on her behalf; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Rojecki** that the Commission revoke Ms. Sasha Longee's class III certification. Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).

f) Douglas A. Stuckert, Card Room Employee, Revocation

Ms. Hunter reported the recommendation for default was based on Mr. Stuckert working as a poker supervisor at the Palace Casino in Lakewood. A patron had left \$160 at the casino, which was being held for the patron under the cash drawer in the poker podium. Mr. Stuckert took that money and also took a \$10 overage from the poker cash drawer that day. He did not respond to the charges and staff is recommending that Mr. Stuckert's license be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Mr. Douglas Stuckert was present or anyone on his behalf; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission revoke Mr. Douglas Stuckert's card room employee license. Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).

g) Jessica Mosher, Card Room Employee, Revocation

Ms. Hunter reported Ms. Mosher was working as a cage cashier at the Buzz Inn Casino where she cashed an \$8,000 personal check for her sister's boyfriend. The check was from an account that had insufficient funds and Ms. Mosher cashed the check despite the fact that his name was listed on the card room's NSF returned check log. Ms. Mosher had also received decline codes from the check verification company that the card room used. She is not currently working, and did not respond to the charges, so staff recommends her license be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Jessica Mosher was present or anyone on her behalf; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission revoke Ms. Jessica Mosher's card room employee license. *Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).*

h) Willoughby's Restaurant & Lounge, Organization, Revocation

Ms. Hunter reported this was the only default that is against an organization; a commercial pull-tab licensee. The recommendation for default is based on the organization not submitting their activity report, which is required to be submitted twice a year and covers a two quarter period. The licensee was issued a Notice of Violation and Settlement (NOVAS). Typically, the organization would pay the fine, which Willoughby's Restaurant & Lounge did, then submit the report, which in this case they did not, so charges were issued. Whenever staff is recommending revocation of a business, an agent actually goes out and notifies the organization, which the agent attempted to do in this case. When the agent went to the licensee's business on January 28, the owners were not there and the agent was told to leave a note in a spiral notebook. The agent left a note that said "your license will be discussed at the next Commission meeting, public meeting in February. If you want to attend the meeting, you can find the date/time/location at our website." The note also gave the agency's website information. The employee said they would let the owners know about this, but staff never heard anything. Staff is requesting the pull-tab license be revoked.

Commissioner Rojecki asked if Willoughby's Restaurant & Lounge was still operating pull-tabs. **Ms. Hunter** affirmed they were, noting that when the agent went there they had about five pull-tab games and a sports board for the Super Bowl.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Diana Bloom was present or anyone on behalf of Willoughby's Restaurant & Lounge; no one stepped forward.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission revoke the pull-tab license of Willoughby's Restaurant & Lounge. *Vote was taken; the motion passed with three aye votes (Commissioner Roe was not present).*

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

Chair Ellis called for an Executive Session at 3:30 p.m. to discuss pending investigations, tribal negotiations, and litigation. At the end of the executive session, the public meeting will be resumed solely for the purposes of adjourning until the March 10 meeting at the Lacey Community Center.

Adjourn

Chair Ellis called the meeting back to order at 4:10 p.m. and immediately adjourned.

Minutes prepared by:

Gail Grate, Executive Assistant