

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, MARCH 8, 2012
APPROVED MINUTES**

Chair John Ellis called the Gambling Commission meeting to order at 1:05 p.m. at the Red Lion in Olympia and introduced the members present. Commissioner Rojecki arrived at 1:28 p.m.

MEMBERS PRESENT: **Commissioner Chair John Ellis**, Seattle
 Commissioner Vice-Chair Mike Amos, Selah
 Commissioner Keven Rojecki, Tacoma
 Commissioner Kelsey Gray, 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
 Michelle Rancour, Administrative Assistant

1. Agenda Review/Director’s Report

Director Rick Day briefly reviewed the agendas, pointing out some last minute inserts to the agenda packets, which included a series of new news articles, a retirement announcement, and the replacement pages for Commissioners rules manual. There are no staff requested changes in the agenda.

Director Day reported that Senator Margarita Prentice had a retirement celebration at the Legislature and had served over 23 years in the Legislature and held various public offices prior to that, and was a nurse before that. She is an ex-officio, and this is her last year in the Senate. Senator Prentice said she is looking forward to rejoining us hopefully in April.

Director Day reported the list of agency accomplishments for 2011. The list ranges from routine to challenging. Some of the work staff does every day for the Commission included the implementation of an online process, which came off the Commission’s Strategic Plan. In 2011 the Commission added automated clearinghouse – or online checks for licensees - nonprofit activity reporting, card room employee renewals, Class III employee additions and transfers, and the new agency route book process in the Gambling Information Management System. Assistant Director Mark Harris’s Field Operations staff conducted over 4,300 inspections of licensed organizations. These assure everything is being operated in accordance with the laws and rules of the state. Staff also completed 747 investigations involving about 164 criminal investigations, and ultimately about 60 of those cases went to prosecutors and over 500 went to

administrative action. One case that ended up being settled was an owner of three businesses that defrauded cities by understating pull-tab gross receipts by approximately \$355,000 over five years, and underpaying at least \$17,000 in taxes. The Commission ultimately revoked those licenses and the owner was charged with two counts of Felony Theft.

Licensing Operations processed over 3,500 licenses and renewed about 13,000. They conducted 22,000 criminal history record checks where they discovered disqualifying information and applications for about 330 people, which were either withdrawn or denied. With the emphasis on the continued streamlining of government, Licensing Operations was reorganized, which streamlined their operation without impacting service, and also reduced 2.5 positions. Staff had previously talked about the development with gambling commission agents that have been left out of the incremental increase process and the impact on their compensation. Staff reviewed 1,500 applications in 2011 attempting to fill some of those vacancies. Director Day reported it was quite a process, and he was pleased to report the agency came up with one candidate who has actually started the physical test, which is done after the initial screening of the applications. It is followed by a written test, interview, psych, and polygraph, which narrows the number of candidates down for the final selection of an agent.

Chair Ellis assumed that before the applicants submitted their applications they were aware of the pay structure and may be aware of the problem that the Commission currently has that they have tried to address with the Legislature, so it was not a matter of some of these 1,500 people being surprised by the pay that they were looking at.

Director Day replied he was not sure how well applicants were familiar with it at the beginning. But by the end of two different selection periods there were about four people who had declined the opportunity when it was presented to them because of the compensation issues and the potential for no increase in the future. **Chair Ellis** asked if those applicants were actually selected for a position. **Director Day** affirmed.

Staff visited close to 900 tribal casinos for on-site inspections, completed just under 600 electronic equipment submissions, and found 17 major non-compliant components or features in that equipment. One of our agents provided formal computer forensic training with the International Association of Computer Investigative Specialists and with the European Anti-Fraud Agency. In addition, staff provided investigative training in Washington State and Nebraska relative to internet investigations, and had the Internal Revenue Service, Department of Homeland Security, state agencies from Montana, Nebraska, Iowa, and Washington State Patrol Drug Task Force, Thurston County Sheriff's office, and Lacey Police Department in attendance. Another segment of the Commission's strategic plan was to bolster our forensic ability with computers, of which 22 forensic computer examinations were completed. Staff also assists Labor and Industries (L & I) with their investigations. **Chair Ellis** asked what type of forensic investigations, or examinations, are being done on computers and if it was all on the tribal side. **Director Day** replied it was primarily on the non-tribal side. Staff seizes equipment and reviews the hard drive and cell phones for any information that might be material to the investigation. **Chair Ellis** asked if Director Day could explain a little

further with regard to assists that staff provided to L & I on a search warrant and computer forensic examination relating to the 228 felony charges. **Director Day** replied that he did not have any specific information. **Assistant Director Mark Harris** responded that he did not have any additional information on the investigations, but he would be happy to get more information for the Commissioners.

Director Day stated our Business Operations Division staff that supports them had 10 consecutive years of audits with no findings. In the whole process, their staff handled over 25,000 pieces of mail and over 13,000 checks, which gives an idea of the bulk of information that comes into the agency every day. Agents worked with the FBI and Southern District of New York on a five year investigation which resulted in a number of indictments with three large internet poker operations. That case is still ongoing with a number of guilty pleas and settlements, and probably will be for some time. Staff also initiated tax lien investigations relative to qualifications of applicants, which was an idea that originated from the Commission. Commissioner Reichert has been particularly interested in exactly how someone could accumulate large tax debts while not honoring their tax payments and still hold a license. In that process, staff was able to identify a number of locations and begin processes to enforce those particular laws and question the qualification of the owners in those cases. Staff trained 52 tribal gaming agents in 2011, and the Commission received 55 new rule change proposals, and 15 rules packages. Under the rules moratorium, the staff requests went away entirely except for one, but the number of public petitions the Commissioners received has remained the same or pretty close. By implementing the one staff requested rule change regarding rules manuals, the agency saved from \$15,000 to \$20,000 because only 600 rules manuals were produced instead of over 6,000. The rules manuals are available on the internet. **Director Day** thought staff had accomplished quite a bit in this last year.

Chair Ellis affirmed it was a remarkable record. The entire Commission staff, as well as the management deserves a big credit for all of those accomplishments, particularly given the budget period and the reduced staffing as a result.

Director Day thanked Chair Ellis. He addressed the Code Reviser's response regarding WAC 230-15-685. At the last meeting, the Commissioners passed staff's amendment to WAC 230-15-685. Ultimately that particular rule was not subject to proper notice and the Code Reviser's office decided they could not file it. WAC 230-15-685 has a completely distinct rule number, and although staff had published the rules that went with it in our normal course of business, that rule ended up being a standalone proposal and, therefore, the Code Reviser's office said public notice had not been granted in the initial phase and they could not file it. Staff's recommendation is that if they find another spot that may fit as they move forward with related rules; they take it under consideration at that time. Staff would then make sure it was part of the notice. Or the agency could wait until the rules moratorium was lifted and move that forward at that time. The rule concerning connected progressive jackpots, which is a practice that has been allowed in the state for a number of years but is not specifically articulated in the rules, would then be brought up to date.

Chair Ellis replied it was fortunate the rule was simply codifying an ongoing practice that has been in place for some years.

Director Day stated that, along with 32 other agencies, staff participated in an employee survey this past October. Our agency had a 99 percent participation rate with an average score of 4.10 out of a possible 5 which ranked our agency third among the 32 agencies that participated in the survey. In our perspective, although our agency is among the best in the state as far as the value that staff placed on the work they were doing in the agency, management still greatly relies on staff's help to identify areas where the agency can continue to improve in performance. Management is working with those ratings and the staff to identify themes that might help with projects and information that ultimately comes back to the Commission in the way of steps staff can take to make additional improvements or additional projects. One of the projects currently moving forward is agent compensation. Agency leadership is working on appointing a team of agents and management to come up with a recommendation to make certain that, when the freeze goes off, management will be ready to take action that will correct that current deficiency in our compensation plan.

Director Day pointed out that HR 1162 was signed and enacted into public law on February 27, 2012. The bill would take certain lands of the Olympic National Park into trust for the Quileute Tribe, but the trust determination is for tsunami and flood protection and cannot be used for gaming purposes. In addition, HR 3797 was introduced that would allow a four-year period to enact statutes allowing wagering schemes involving professional and amateur sports. There is a federal law that specifically prohibits states from enacting additional forms of sports gambling that has been in place, he thought, since the 1990s. Director Day pointed out a news article relative to electronic benefit cards, which is the methodology of distributing public assistance. Congress is slightly behind the curve on that issue, but it currently has stricken a chord of popularity in Washington, D.C.

2. Legislative Update

Ms. Amy Hunter, Legislative Liaison, reviewed her legislative update memorandum, noting that the 60-day regular session is scheduled to adjourn today. She reported that the House passed its version of the budget on February 29 by a 53 to 45 vote and the Senate passed its version on March 3 by a 25 to 24 vote. Senate Bill 6046 allowing the Commission to issue licenses for up to 18 months instead of 12 months so the agency could consider using Business Licensing Services (BLS) passed both chambers by unanimous votes and the bill was delivered to the Governor on March 5. Commissioner Gray's confirmation hearing was on February 23 and the Committee passed it out with a do confirm recommendation; the appointment is currently in Senate Rules. Confirmations do not follow the normal cutoff dates that other bills do, so that could still be voted on up until the very end of session.

Even though the budget bills do not match, the good news is that they have very limited impact on the Commission. The House budget bill would reduce the Commission's funding for health insurance from \$850 a month to \$800. The Senate version has a

slightly different approach, reducing the funding by \$25, from \$850 to \$825. In practical terms, that means the employees will be paying more for their health coverage. The bill dealing with agency regulatory practices died. The House budget gives the Office of Regulatory Assistance \$23,000 to work on the concepts in the House Bill, which would include things like coordinating a small business liaison team to help small businesses with permitting and regulatory agencies, making recommendations for improvements to inspection and compliance practices, and working with regulatory agencies about their technical assistance visits and regulatory visits. Ms. Hunter believed it was a little less mandatory, but it is certainly of interest that it is in the House budget. The same language is not in the Senate budget, so it is very hard to tell whether that would make the cut as the merging continues, although it is only \$23,000.

Ms. Hunter went over a few new bills that had been introduced since the February meeting. There was a bill introduced in the House on February 17 and in the Senate on February 23 dealing with electronic scratch ticket machines for house-banked card rooms, but neither bill was scheduled for a hearing. The bills were very similar to bills that were introduced by different sponsors last year: House Bill 2044 and Senate Bill 5918. This year, the prime sponsors of the bills are Representative Gary Alexander and Senator Jerome Delvin. Both of the bills would allow a total of 7,875 machines in the state for house-banked card rooms that are operating at least five card game tables. No more than 200 machines per house-banked location would be allowed. The bill proposes a split of duties between the Gambling Commission and the Lottery Commission impacting how the money is distributed and who would regulate. Although House Bill 2784 appears to be dead, the bill would have required agencies that get money through administrative or judicial actions, or settlement of one of those actions, including seizure funds, would require that before an agency could use those funds they would need an appropriation from the Legislature. The Gambling Commission currently does not have to get an appropriation. There were about 14 funds that would have been impacted. The bill was introduced late on February 16 by Representative Ross Hunter who is the Chair of the Ways and Means Committee. However, there was no hearing and it is not in the House or Senate budget bills, and staff was not expecting to see anything new with that.

Chair Ellis asked, if the bill had been enacted, would it have applied to all of the Gambling Commission's federal and state seizure funds from task force seizures and actions of that type. **Ms. Hunter** replied that it appeared the bill would not apply to federal seizure funds, only the state seizure funds, because it talked specifically about actions brought by the state. It would also apply to fines the Commission collected over the year.

House Bill 2686 would consolidate the Gambling Commission, Horse Racing Commission, Lottery Commission, and Liquor Control Board. Senate Bill 6554 would consolidate the Liquor Control Board into the Gambling Commission. Neither of the consolidation bills passed. The Commission was asked to do a fiscal note on those bills. The figures staff used in the fiscal note were based almost solely on the figures received from the Liquor Control Board. Nothing new has occurred with House Bill 2670 regarding limited periodic incremental salary increases for special agents. A letter was

sent to Representative Hudgins, the prime sponsor of the bill, thanking him for his interest and support.

Representative Holmquist-Newbry introduced a “members only” raffle bill allowing a charitable/nonprofit organization to give liquor as a prize, which has passed both chambers unanimously and is on its way to the Governor. The organization would need to have a license if the revenues exceeded \$5,000. Staff worked with Representative Holmquist-Newbry over the interim on some language.

Senate Bill 6354 requiring state agencies to offer electronic filing for business forms passed almost unanimously in both chambers almost unanimously and is on its way to the Governor. Director Day would be allowed to exempt documents if there is a legal requirement for the materials to be completed in paper format or it is not feasible for materials to be submitted electronically. The Commission receives a lot of fingerprints, which cannot be done electronically, and those would continue to be done in person. Agencies must document how they plan to transition from paper to electronic forms.

Senate Bill 6175 is the government-to-government relationship bill dealing with the state and Indian tribes. The Commission voted to support that bill at the January Commission meeting. The bill passed the Senate 44 to 5 and the House 72 to 26 and has been delivered to the Governor.

Director Day recognized Ms. Hunter for her hard work again this legislative session as the Commission’s liaison. She was the reason Senate Bill 6046 got through with no opposing votes. He also recognized Assistant Director Tina Griffin, from the Licensing Operations Division, who assisted and did preparation and background work for the session. Director Day thanked them for their efforts.

Chair Ellis affirmed, adding that the Commissioners appreciated all of Ms. Hunter’s and Ms. Griffin’s hard work and the good results in a difficult environment to get legislation passed.

3. Approval of Minutes – Regular Meeting, February 9 and 10, 2012

Chair Ellis asked if there were any changes that should be made to the minutes; there were none.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to approve the minutes from the February 9-10, 2012, Commission meeting as submitted. *Vote taken; the* motion passed with four aye votes.

4. New Licenses and Class III Certifications

Deputy Director David Trujillo pointed out a manufacturer and a house-banked card room pre-licensing report. Staff recommends approval of all new licenses and Class III certifications listed on pages 1 through 18.

Commissioner Rojecki made a motion seconded by Commissioner Amos to approve the new licenses and Class III certifications listed on pages 1 through 18. Vote taken; the motion passed with four aye votes.

5. Defaults:

a) Marcos E. Hernandez Guerrero, Card Room Employee, Revocation

Ms. Hunter reported Marcos Hernandez Guerrero was working as a security guard at Goldie's Casino when he took an iPhone that had fallen out of a patron's pocket and put the phone in his own jacket pocket and left Goldie's with the phone in his possession. When first asked, Mr. Hernandez Guerrero denied taking the iPhone; although, he later admitted in a subsequent interview that he did take the phone. He forfeited his last paycheck to partly cover the cost of the phone. He was issued administrative charges by certified mail and regular mail and staff notified him that failure to respond would result in a default order revoking his license. Mr. Hernandez Guerrero did not respond and so he waived his right to a hearing. Staff recommends the Commission revoke his card room employee license.

Chair Ellis asked if there were any questions; there were none. He asked if Marcos Hernandez Guerrero or anyone on his behalf was present; no one stepped forward.

Commissioner Amos made a motion seconded by Commissioner Rojecki that the Commission revoke the card room employee license for Marcos Hernandez Guerrero. Vote taken; the motion passed with four aye votes.

b) Scott D. Pacheco, Class III Employee, Revocation

Ms. Hunter reported Scott D. Pacheco worked for the Tulalip Tribe as a tribal lottery system (TLS) technician. The Tribal Gaming Agency found that Mr. Pacheco committed a theft of at least \$50 by failing to return unused portions of the TLS tickets to the cage as required. Mr. Pacheco gave his son the tickets to cash out at one of the ticket exchange machines. The Tulalip Gaming Commission suspended his license initially, pending revocation. Mr. Pacheco did not file an appeal with them, so his license was ultimately revoked by the Tribal Gaming Commission. The Gambling Commission issued charges, which were sent by regular and certified mail. Mr. Pacheco did sign for the certified mail; however, he did not respond to the charges beyond that. Staff recommends the Commission revoke Mr. Pacheco's Class III certification.

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

Commissioner Gray made a motion seconded by Commissioner Rojecki that the Commission revoke the Class III certification for Scott D. Pacheco. Vote taken; the motion passed with four aye votes.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

6. **Petition From the Public: Brian Keller and Cory Thompson - Allowing on-duty card room employees to win player-supported jackpots**

Amendatory Section: WAC 230-15-410 – Owners, prize fund custodians, and card room employees participating in player-supported jackpots

Assistant Director Mark Harris reported that Cory Thompson and Brian Keller hold a fund raising event (FRE) equipment distributor license and a service supplier license. Currently card room employees are allowed to play poker on-duty; however, they cannot win the Player Supported Jackpots (PSJ). Any portion of the PSJ prize that they would have been entitled to is distributed amongst all the other players at the table. Card rooms sometimes require the employees to play poker on-duty; typically this is when there are not enough players to keep the game going. It is basically an employer/employee decision amongst them.

In 2006, one of the petitioners's submitted a petition for rule change that would allow the PSJ contributions made by the on-duty employees to be repaid to them or to allow them to win the PSJ. Staff did not support that at the time because of the difficulty of tracking the contributions to the card room employee, and that petition was denied by the Commission. A PSJ prize is a separate contest directly related to the play of the poker game but is not a separate game. These are conducted by the card room operators to promote the card game. Operators collect a small portion out of the pot, which is put into a separate bank account set aside for the players, and is considered player's money to support this prize. There are three types of PSJs:

- Monte Carlo where players wins a set dollar amount prize if they get a set hand, like four of a kind.
- Bad Beat Jackpot, which is the original, more traditional PSJ, where a specific hand is beaten, normally when beaten by another hand. An example would be similar to a full house with aces high beaten by four of a kind. Usually, the players that have those two hands would get the largest portion of the jackpot and the rest of the players get a smaller portion.
- High Hand of the Day, which has developed over the years, tracks who has the highest ranking hand over the day, or a week, and that person wins a set prize that comes out of the PSJ funds.

The original rules that were put into place in 2000 specifically set out that card room operators, the prize fund custodian person in charge of the money, and the on-duty employees could not win a portion of the PSJ prize, which would be distributed equally among the players at the table. In addition, the owners, the custodians, and on-duty employees were required to show their hand at the end of the game if it was based on the bad beat portion of the hand. Staff found out that owners would play the game, have a qualifying hand, and then instead of going forward, would fold it so they would not have to pay out the prize to keep it at a high level.

Arizona and California allow both on-duty and off-duty employees to play and to win. Nevada does not have a rule prohibiting it, but does not encourage it because it could look like the game was fixed. New Jersey does not have a rule prohibiting it so on-duty

employees could also play. Staff feels that on-duty employees are basically an agent of the employer, so allowing an on-duty employee to win the PSJ could be perceived by the player as something inappropriate or that the game was fixed. There have been numerous cases in Washington State where both on-duty and off-duty card room employees were colluding to win PSJs. Some examples include:

- Numerous on-duty employees and off-duty employees at a card room that was going out of business all colluded together so that they could win the PSJ and it would be awarded among them. The ones that were not entitled to it were paid an additional portion of the prize after the fact, outside of the game.
- Where an on-duty employee was colluding with an off-duty employee so they could win the jackpot.
- Where an on-duty employee set the deck so an off-duty employee could win, and also share in a portion of it.
- Where an on-duty employee was provided by two former employees a set deck to enter into the game so the two former employees would win the jackpot, and then the initiating employee would get a portion of the PSJ after the fact.
- Where employees were using code words among themselves to indicate when a set hand was coming up so they would all stay in the game and they could win the PSJ.

Staff may receive more complaints from the public that the game was fixed, or that the on-duty employees had some way of manipulating the cards so the employee would win. The Commission denied a similar petition in 2006, and staff recommends denying the petition based on the regulatory concerns and the policy considerations.

Commissioner Amos asked if, when there are nine guys sitting at a table playing and \$1 or \$2 are being drawn out of each hand for this PSJ, and then a tenth guy sits down, hits the high hand, but he has not put anything into the PSJ, would he win the hand.

Assistant Director Harris replied the tenth player would be entitled to win the jackpot. A portion of the pot in the hand the tenth person was betting into would be pulled out to contribute to the PSJ. But the people who had been playing before were paying more into it. It is a growing pot that has been accumulating over days, and days, and days. Each day, the card room takes the money collected and deposits it into the bank account. On most of these occasions players are playing for jackpots that are thousands of dollars that have accumulated over periods of time. Then the card rooms will say they have a certain amount in their PSJ account and they were going to put a portion of that amount up for a PSJ high hand of the day. It is usually a small portion of what the card room had actually collected.

Commissioner Gray asked if it would only be whatever the card room had decided to put in for that day. **Assistant Director Harris** responded that, if it was the high hand of the day, the player would be qualified to win whatever the high hand jackpot of the day was. **Commissioner Gray** asked if the card room did not use all the money. **Assistant Director Harris** replied no, usually the card room has a backup jackpot, so when the main jackpot is won, they can bring another one in that is enticing so people continue to play.

Director Day asked for clarification that the advertised jackpot, whatever that amount was, would then be awarded in full. **Assistant Director Harris** affirmed that the advertised amount would be paid out that day. The card room would have a backup jackpot, which had been deposited in the bank account, that they would post the next day and that one would be available to win. Then they will start another backup jackpot. If they collected \$500 that day for the PSJ, a percentage would go towards the primary jackpot and a percentage would go to the backup jackpot.

Chair Ellis asked if there were any other questions, there were none. He asked if Brian Keller or Cory Thompson were present, or anyone present to speak on behalf of this petition; no one stepped forward. He called for public comment; no one stepped forward.

Commissioner Amos stated he had some concerns with the petition regarding an on-duty card room employee being able to win.

Commissioner Amos made a motion that the Commission deny accepting the petition amending WAC 230-15-410 for filing for further discussion.

Commissioner Rojecki asked if it was necessary to have a motion. **Assistant Attorney General Jerry Ackerman** replied it was not necessary to have a motion; however, there was nothing wrong with having a motion, or having it seconded and voted on. The ultimate question was whether a majority of the quorum present wished to file the petition for further discussion. If a Commissioner does not make a motion, that will deny the filing. If a Commissioner makes a motion to reject the filing, it would have the same effect, assuming a majority voted for it. **Chair Ellis** added that, if the Commissioners deny filing the petition for further discussion, they would need to state a reason for the denial.

Commissioner Rojecki seconded the motion for similar reasons and for the regulatory concerns identified by staff. *Vote was taken; the motion passed with four aye votes.*

7. **Petition From the Public: Patrick Tompkins - Allowing a description or photograph of pull-tab merchandise prizes to be displayed by the flare, rather than the prize itself**

Amendatory Section: WAC 230-14-095 – Displaying prizes

Deputy Director Trujillo reported the petitioner is requesting to amend the current rule in order to promote business and prevent unnecessary losses due to theft or accidental damage. The proposal would allow licensed pull-tab operators the ability to post an accurate description or photograph of the merchandise near the game flare if they were concerned about security or damage. Staff has some regulatory concerns with this petition.

Staff understands that the merchandise to be offered as prizes are small electronic items such as iPods or iPads, but are concerned that operators accurately depict the prizes that

are to be awarded. In these days of electronics, a photograph or description may not accurately reflect the actual prize to be awarded. In his petition, Mr. Tompkins mirrored the language of subsection (c), but chose not to include the words “on the premises.” Staff believes this was done so that items could be stored off premises, which is contrary to RCW 9.46.110 that states “all merchandise prizes must be on display within the immediate area of the premises in which any such punchboard or pull-tab is located.” Staff recommends the petition be denied based on the regulatory concerns and the potential policy consideration, in addition to the conflict in the RCW with the petition proposal.

Commissioner Rojecki asked if the Commission had a process or understanding that thefts of the prizes to be awarded are tracked somehow and if they know this is a problem. **Deputy Director Trujillo** responded that he did not know if this was a problem or not. **Assistant Director Harris** said his recollection was the agency had not had any complaints or investigated any complaints of loss or theft of pull-tab merchandise. Normally, it was the theft of the pull-tabs themselves where someone just reaches in and grabs some right out of the bowl.

Commissioner Gray asked, if the Commissioners were to approve this, would that mean the WAC would have to be changed. **Deputy Director Trujillo** responded he thought first there would need to be a discussion among Commissioners on whether or not the language in the petition was in conflict with RCW 9.46.110. Another possibility might be whether or not the existing petition might be modified somewhat, which might be a discussion as well.

Chair Ellis asked if Mr. Pat Tompkins would like to address the Commission on the petition.

Mr. Patrick Tompkins, representing Dynamic Pull-Tabs, a licensed service provider in Washington State, explained his company provides high value merchandise products such as TVs, tablets, and cameras to licensed pull-tab establishments to be used as prizes for pull-tab games. His company submitted this request to amend WAC 230-14-095, which addresses displaying prizes for pull-tabs. The rule states that all prizes must be displayed in plain view and in the immediate vicinity of the pull-tab series. However, the rule currently has three exceptions:

- 1) prizes may be wrapped and offered as surprise prizes so players are unable to identify the prize until opened,
- 2) prizes may be stored elsewhere on the premises if size or space constraints do not allow it to be displayed in the immediate vicinity, as long as operators know the specific reference on the flare; and
- 3) an accurate description, with photograph, of the prize in plain view on or immediately adjacent to the flare if operators cannot display the prize merchandise on the premises.

Mr. Tompkins asked for a fourth exception that would allow businesses to use an accurate description or photograph of the prize in plain view on or immediately adjacent

to the flare if operators cannot display the prize merchandise due to security concerns such as theft or accidental damage. He felt the current requirement to display high value electronic merchandise in plain view, such as the Kindle Fire, creates an unnecessary security risk for theft. Mr. Tompkins said the intent was the merchandise would still be on the premises, and the player would be able to see the item on the flare, and there would be photographs of the electronic items on the flares. Since the items would be stored on the premises, the players could ask to see the physical item. In conclusion, Mr. Tompkins stated he was not trying to hide the product from the players, nor was he trying to cheat them. He was just asking that this amended rule change, which already has three other exceptions, be approved as a common sense approach to displaying high value merchandise on the premises to prevent theft and accidental damage. Mr. Tompkins asked if there were any questions.

Commissioner Amos asked how often there had been a theft of an item like a Kindle Fire, iPod, or iPad. **Mr. Tompkins** replied that since they are such small items, and they have been running them where they have them locked up in the back office and just using the flares, he did not know of any examples where items had been stolen. He thought the operators assumed it was a cost of doing business. But with smaller electronics and the higher value electronics, it was just an unnecessary risk to put them in plain view behind the bar where theft could happen. Mr. Tompkins felt that did not make any sense.

Chair Ellis asked if it was economically feasible for licensees to display prizes like that in a locked display cabinet by the pull-tab or punchboard. **Mr. Tompkins** replied that had actually been considered, but since they were dealing with multiple locations, it would be very impractical to build custom display cases for every location in a very fluid work environment where the pull-tabs, the beer taps, and the like are behind it. Also, the different sized prizes of the electronics would have to be taken into consideration. It would be very impractical and cost prohibitive on his part to do that. **Chair Ellis** what the expensive prizes were that were typically awarded within the industry in the past before entering the electronic age and prizes like these became obvious things to use in punchboards or pull-tabs. **Mr. Tompkins** replied this was fairly new in the pull-tab environment. He was sure that in the past some expensive prizes had been awarded, but with the advent of small electronics with high value dollar prizes, he could not honestly answer the question.

Chair Ellis asked Assistant Director Harris if, given his knowledge of the industry, he could give some examples of expensive prizes that had been commonly used in the past. **Assistant Director Harris** responded there were prizes like video games, TV sets, high end camping gear, and kayaks. Obviously the card room could not put a kayak behind the counter, which is where the exception of displayed elsewhere on the premises came into effect. A lot of the operators purchase articles at Costco and make their own prizes, like coin boards where they gave away old coins, silver coins, knives, and those types of items. But those were usually built into the board itself.

Commissioner Amos asked Mr. Tompkins, as the supplier for the pull-tab, when he offers one of those items like an iPad or an iPod as a prize, and sells the game to an

operator, if they pay more for that game because of the prizes. **Mr. Tompkins** replied that he was actually a service supplier and not a pull-tab distributor so his company cannot sell the game.

Commissioner Rojecki thought there may be some conflict with the RCW and asked if the Commission or petitioner could pull back and try to work on addressing some of the issues. One of the issues he thought about was that his children, as they were depositing money into a game at Circus Circus in Reno, thought they could win an iPod, but it was actually a fake iPod. Commissioner Rojecki was concerned about what the picture might look like and some definitions. There may be a way the Commission could actually creating clear definitions in WAC to address some of the concerns from both sides of it. He did not know if that was something the Commissioners could work on with staff or not.

Chair Ellis agreed with Commissioner Rojecki and was sympathetic with what Mr. Tompkins was trying to accomplish. But the initial question was whether this was something that needed to be done in the WAC, or whether the real problem was RCW 9.46.110(1)(d), which seemed to simply require that merchandise prizes be displayed within the immediate area of the premises in which the punchboard or pull-tab was located. It seemed to be a rather inflexible standard when trying to accomplish what Mr. Tompkins was trying to accomplish.

Deputy Director Trujillo explained that if it was Mr. Tompkins' intent to have the prizes available on site, his petition does not say that. If there is the potential to work towards that, as Commissioner Rojecki suggested, staff might be able to do something along those lines.

Chair Ellis wondered if Commissioner Rojecki was seeing more room to work with this than he was seeing; based on that language in the WAC that the merchandise prize must be on display in the immediate area of the premises.

Deputy Director Trujillo replied the immediate area of the premises was different than adjacent to the game, but that was something that staff could look at. The definition of gambling premises in 9.46, talks about the building space, the enclosure where gambling takes place. However, when it came to the large items, like televisions, they may not have been located next to the game, but there was a "pointer" on the flare that sent the players to a location where they could see the item offered. When it came to some of the larger items that could not be displayed on the premises, like a kayak or something that may or may not have fit in the premises itself, it certainly would have been available in storage. Sometimes there would be meat offered as prizes which might be in the kitchen; the kitchen is not generally for gambling, but that is where the meat would be. **DD Trujillo** did not know whether there was room, but if the intent was that it should be there, he would just offer that staff might be able to talk about that.

Director Day thought the normal process would be if the Commissioners wanted staff to work with the petitioner to see if they could come up with language that might comport

with the statute, the petition would still have to be filed. Then the Commissioners would direct staff to work with the petitioner to see if they could come up with a solution. That is the normal step, and the question about whether that solution comports with statute would still have to come back to the Commission for their determination of whether it does or not.

AAG Ackerman replied there were probably two options at this point if Mr. Tompkins wishes to proceed along the path of trying to further develop a proposal that might be acceptable to the Commissioners. One would be to file it, which then puts it within the six-month time frame to act on the petition. The other would be to not file it at this point and simply direct staff to work with the petitioner to develop a new proposal, which could then be filed, and the Commissioners would not be under a time clock to make a decision on the petition. Those seem to be the two options available to the Commissioners if they are interested in trying to develop an alternative proposal.

Commissioners Rojecki and **Amos** said they preferred the latter option. **Chair Ellis** agreed and stated it was the Commission's decision that they should take the approach to not accept the petition for filing at this point and direct staff to work with Mr. Tompkins to come up with an approach that would be economically feasible and meet the needs of the petitioner and the industry.

Chair Ellis asked if there were any other questions; there were none. He asked if there was anyone from the audience that would like to address this petition; no one stepped forward, so he closed the public hearing.

Commissioner Rojecki felt the Commission needed to tell Mr. Tompkins why they were denying the petition, which is because it is currently in conflict of RCW 9.46.110. **Chair Ellis** added that staff was to work with Mr. Tompkins to try to come up with an acceptable approach.

AAG Ackerman clarified for the record that what has taken place is that no motion has been offered to file this matter for further discussion for the reasons that Commissioner Rojecki and Chair Ellis have just indicated. That is the basis upon which the petition is, in effect, being denied for filing. **Chair Ellis** affirmed that was his understanding and asked if any of the Commissioners saw it differently. The other Commissioners were all in agreement. **Director Day** stated that he was also aware of the understanding and staff would work with the petitioner.

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

Chair Ellis opened the meeting to other business, general discussion, and comments from the public.

Mr. Dave Malone, Miller Malone and Tellefson, said he was there essentially to remind the Commission and the staff that this is National Problem Gambling Awareness Week as declared by the Governor. On behalf of the Evergreen Council on Problem Gambling, he

wanted to express their appreciation to the Commission and staff for their efforts to communicate the needs of this issue and to make everyone aware of it.

Chair Ellis thanked Mr. Malone and asked if there was anyone else who would like to address the Commission on any relevant topic; no one stepped forward.

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

AAG Ackerman offered a suggestion that, if it was the Commission's intent not to call the hearings before the scheduled time of 3:00 p.m., perhaps they could take a five minute recess and then go into the executive session.

Chair Ellis agreed, adding that the Commission could at least accomplish a substantial part of the executive session. He called for a break at 2:25 p.m. and then called for an executive session at 2:55 p.m. Chair Ellis called the public meeting back to order at 3:10 p.m.

10. Motion to Revoke Deferral and Amend Final Order Affirming License Revocation
(Taken out of order)

Austin L. Moses, Class III Certification Employee, Revocation

Assistant Attorney General Stephanie Happold was present for the State, as well as **Petitioner Austin Moses**, representing himself.

AAG Happold and Mr. Moses provided their arguments in the Motion to Revoke Deferral and Amend Final Order Affirming License Revocation. A recording and transcript of the hearing is available upon request.

At the conclusion of the arguments, **Chair Ellis** asked if there were any questions and called for an executive session at 3:30 p.m. to deliberate the matter; he recalled the public meeting at about 3:45 p.m.

Commissioner Rojecki made a motion seconded by **Commissioner Gray** that the Commission not revoke Austin Moses Class III certification and further direct staff to report to the Commissioners by May 15, 2012 on the progress and Mr. Moses' plan for payments of his debt. *Vote was taken; the motion passed with four aye votes.*

Commissioner Rojecki stressed that the Commission takes this issue very seriously, and they would hope that Mr. Moses have most, if not all, of this debt – or a substantial portion of this debt – paid off by May 15, 2012. The Commission realizes it may take a little bit more time, but the Commission will get reports from staff on the payments. The Commission also expects to see some change from Mr. Moses' behavior to actually pay this debt because he has entered into an agreement to pay it off. Commissioner Rojecki asked if the instructions were clear. **Mr. Moses** affirmed he would do the most he could by May 15 and would hopefully have it all paid off or most of it. **Commissioner**

Rojecki asked if Mr. Moses understood the repercussions, which are revocation of his license. **Mr. Moses** affirmed he did.

Chair Ellis reminded Mr. Moses that he also needed to finally execute that agreement with YCCS on the Toppenish fines. **Mr. Moses** replied he should be able to make an agreement this week; on Monday for sure.

Assistant Attorney General Jerry Ackerman explained for the benefit of Mr. Moses and for counsel that he would draft an order stating the Commission is not going to revoke Mr. Moses' license today and is going to let him keep his certification so he can continue his employment. Within that order, staff will be directed to file a report with the Commission on May 15, 2012, informing them whether or not Mr. Moses was keeping up with his current payment plan and also whether or not Mr. Moses has entered into and continuing to make payments on his other outstanding debts. The Commission will know by May 15 whether Mr. Moses has been doing what he said he would do and making progress on paying the debts off. If not, he would be subject to appearing before the Commission again, which may or may not go very well for him. May 15 just became an important date for Mr. Moses because staff will be providing the Commission with a progress report. **Mr. Moses** affirmed he understood.

Chair Ellis thanked AAG Ackerman for his elaboration.

9. **Stipulation and Final Order on Petition for Review** *(Taken out of order)*

Alexander Williams, Class III Certification Employee, Revocation

Assistant Attorney General Happold explained that Mr. Williams was not present in regard to case number CR 2011-00817. Mr. Williams is a Class III employee for the Muckleshoot Tribal Casino. Previously during a routine criminal records check, the Gambling Commission staff learned that Mr. Williams had nine cases in which he failed to appear and pay his court ordered fines and fees, which totaled about \$5,480. Because of Mr. Williams' failure to pay, the fines were forwarded to collections. Administrative charges were issued July 15, 2011, and a hearing was held on September 22, 2011, before the administrative law judge (ALJ). Mr. Williams failed to appear and the judge entered an Order of Default revoking Mr. Williams' Class III certification. On November 9, 2011, there was a Corrected Initial Order of Dismissal Based on Default correcting a scrivener's error. On November 4, 2011, Mr. Williams timely filed his Petition for Review. AAG Happold filed staff's reply on December 5, 2011. After the initial hearing date, Mr. Williams paid off all of his outstanding fines and fees and currently has no collection balance that Commission staff was aware of. Therefore, staff and Mr. Williams have entered into a Stipulation and request the Commission enter a Final Order on Petition for Review modifying the Corrected Initial Order of the ALJ for the dismissal on default. The Stipulation provides that Mr. Williams would serve a seven-day suspension to resolve this matter, which is consistent with the Commission's resolution for several other cases that came before the Commission. AAG Happold pointed out an error in the copy of the Stipulation and Final Order for Petition for Review before the

Commissioners where it says, “should the Commission fail to adopt the following Final Order at its February 9, 2012, hearing.” It should actually indicate today’s date.

AAG Ackerman asked if AAG Happold knew where the original of the order was. **AAG Happold** replied she had not presented it to the board. **Chair Ellis** asked if they wanted to change the date. He assumed Mr. Williams had agreed to the stipulation, which he has actually signed. **AAG Happold** affirmed.

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

Commissioner Amos made a motion seconded by **Commissioner Rojecki** that the Commission approve the Stipulation and Final Order on the Petition for Review for Alexander Williams’ Class III certification. *Vote was taken; the motion passed with four aye votes.*

AAG Ackerman indicated the change to the date should be initialed when the Commissioners sign the Stipulation Order.

Adjourn

Chair Ellis asked if there were any further comments or other business; no one stepped forward and the meeting was adjourned at 3:57 p.m.

Minutes prepared by:

Michelle Rancour
Administrative Assistant