COMMISSION MEETING
THURSDAY, APRIL 14, 2005
DRAFT MINUTES

Chair Niemi called the meeting to order at 1:30 p.m. at the Red Lion Inn at the Quay located in Vancouver. She introduced the following members and staff.

MEMBERS PRESENT:	**COMMISSIONER JANICE NIEMI, Chair;** **COMMISSIONER ALAN PARKER, Vice Chair;** **COMMISSIONER CURTIS LUDWIG, Kennewick;** **COMMISSIONER GEORGE ORR, Spokane;**
STAFF PRESENT:	**RICK DAY, Director;** **NEAL NUNAMAKER, Deputy Director;** **CALLY CASS, Assistant Director-Field Operations;** **AMY HUNTER, Administrator-Legal Division;** **DAVE TRUJILLO, Acting Administrator-Licensing;** **JERRY ACKERMAN, Assistant Attorney General;** **SHIRLEY CORBETT, Executive Assistant**

1. **Review of Agenda and Director's Report:**
   Director Day reviewed the agenda for Thursday and Friday, noting that a House-Banked Card Room Report for Westside Lanes was added to Thursday's agenda for Commission consideration. On Friday, the licensee for the Top Hat Pub & Grill Petition for Review requested a continuance until May, and the Petition for Rule Change to allow mini baccarat in card rooms was withdrawn. The petitioner advised that they will most likely re-file the petition at a different time. **Chair Niemi** concurred with the agenda changes as proposed.

   Director Day drew attention to the Director's E-link message relating to Civil Service Reform and how it affects this agency, in an attempt to make sure that agency staff are aware of the changes.

   Legislative Issues:
   House Bill 2297 and Senate Bill 6090 – Budget:
   Director Day addressed House Bill 2297 and Senate Bill 6090. He noted that Governor Gregoire's budget proposal effectively eliminated 1,000 middle management positions in state government. **Director Day** reiterated that the Commission has an approved budget, and

already made a number of personnel reductions. He referenced graphs in the agenda packets depicting the 21 to 33 percent reductions from executive management through first line supervision range positions, which occurred without any coaxing from the Legislature or the Governor. He noted that agency budget staff identified 12 middle management positions, and in order to implement the assigned management reduction, essentially it would require a 50 percent reduction of the agency's middle management staff, which would be difficult for an agency the size of the Commission. **Commissioner Orr** commented that "beating up on mid-management" isn't very smart because while it may be politically correct to go after those positions, functionally, it doesn't work and isn't always good public policy. **Chair Niemi** concurred noting she believed it was extraordinarily bad policy. She expressed confidence that Director Day would handle this situation as well as he could, and she stressed that the Commissioners were behind any method he wished to handle the situation.

Director Day appreciated the support. He noted there was a lot of good news about the Commission's budget. He addressed the Senate passed version of Governor Gregoire's budget as proposed and the differences with the Commission's budget. He recalled that the Commission had a significant difference with the Office of Financial Management at one time that resulted in a 10.7 FTE difference and approximately $2.6 million less in the carry forward balance. A meeting was initiated with the Governor and subsequent follow up discussions with the Office of Financial Management resolved those issues. Current balances from the Commission's budget, the Office of Financial Management, and Governor Gregoire's budget are all the same. Addressing the Maintenance Level, Director Day noted that the Governor's budget conveys the 166.9 FTE's and the $28 million there that are effectively the Commission's approved budget numbers for 2005-07. There are some small adjustments in the dollar figures for administrative issues; however, that further documents that the Governor's Office and the Commission are on the same page regarding the Commission's approved level. In reference to the middle management reduction, Director Day noted this version of the budget proposal did not include that reduction with the exception of an assigned number of 1.4 FTE's over the biennium. He explained that is a prorated number which ends up being greater in actual practice at the end, than it is in the beginning. Director Day noted that both budgets include the Commission's new Gambling Information Management System, which provides recognition that that project needs to move forward. He stated that the only difference between the Senate and the Governor's budget related to the middle-management positions. He also noted that neither the Senate, Governor, nor House budget versions carried any revolving fund transfer.

Commissioner Parker commented that it was obvious that Senator Prentice, in the position of Chair of the Senate Ways and Means Committee and as an active participant in the Commission, was able to bring her informed perspective to the budget making decision work of the committee. **Director Day** affirmed that Senator Prentices' hand was clearly visible in the budget documents.

Director Day referred to the House version of the budget, noting that it started at a different place than the Governor's proposed budget. Staff believes this was simply an error—the House version may have started with Governor Locke's budget, rather than the Gregoire

budget, and staff will continue communicating with the House budget staff. Another difference is that the House budget also carried the mid-management reduction.

Director Day clarified that there was no line in the appropriation bill itself that mandated all agencies to reduce mid-management positions; rather, it was something in each individual agency FTE level. Director Day expressed confidence that the Senate version would prevail.

Director Day pointed out that provided the legislation passes, the problem gambling treatment account would be created. Additionally, as depicted on page 150, line 26, the budget proposal identifies a 3.2 percent salary increase in 2005, and on page 151, line 4, a 1.6 percent salary increase in 2006. He recalled that the Commission in budget deliberations identified that the Commission's working capital balance would have to be able to withstand the impact of state employee raises if they were forthcoming. Referring to the bottom of page 35 of the Senate budget, Director Day referenced the Public Benefit Account, as funded by Senate Bill 5287. It was originally introduced as a 10 percent tax on card rooms—and is designed to be a specific benefit account for listed services. Director Day noted that as of March 9, there was no further movement on budget legislation.

SGA 9153 and SGA 9241 – Commissioner Ellis and Commissioner Parker Confirmations:
Director Day informed the Commission that Commissioner Parker and Commissioner Ellis are on the confirmation calendar of the Senate. Director Day called upon Amy Hunter to proceed with other legislative activities/updates.

Substitute Senate Bill 5994 – Freezing the Number of House-Banked Card Rooms:
Ms. Hunter reported that Substitute Senate Bill 5994 is the bill that would restrict the number of house-banked card rooms to those locations that were licensed as of a certain date, or they had their application in as of a certain date. It would also prevent an increase in the number of tables. She noted there has been a change made from February 1 until March 10, 2005, for the deadline date. Ms. Hunter reported the agency has nine new applications that are in the process, and that a couple came in after March 10. The deadline change will be more significant for applicants who have requested an increase their number of tables. Ms. Hunter reported there was also some language added relating to local jurisdictions in an attempt to make it clear that a city does not have to pass a new ordinance to prohibit card rooms if they already have one on their books. As of March 9, the bill was still in rules.

HB 1031 / SB 5037 - Problem Gambling:
Ms. Hunter advised that Substitute House Bill 1031 was the Problem Gambling Funding Bill. At the last meeting the bill was still in the House, it passed out of the House by a vote of 57/39. She reported there had been a lot of discussion about where the Lottery's contribution should come from, and the version that passed out of the House has the money coming out of a debt service for the Mariners. The Senate Bill also passed with amendments. The money will now come out of the Lottery's shared gain. There was also an exemption made for Emerald Downs to make sure that they weren't being taxed on top of money that is already going towards other causes. Two significant amendments were made; one by Senator Prentice to make sure that any program that was developed also addressed the needs of people who have licenses or contracts from one of the three Commissions. The second

amendment exempted businesses with fewer than $50,000 in gross income (defined as being after prizes). It would exempt out approximately 2/3 of the businesses that would have had to pay this tax for a total impact of approximately $40,000 dollars a year.

HB 1944 – Allowing State Agencies to Conduct Raffles:
Ms. Hunter informed the Commission this bill had almost no changes until recently. An amendment was made to add an intent section to the bill saying something to the effect that state employees have raised funds for charitable purposes in the past and that raffles is a successful way to raise such funds. The bill allowing state agencies to do raffles passed the Senate by a 43/4 vote. However, because the additional language has been added, the House will have to concur.

House Bill 1000 – Special Meetings:
Ms. Hunter explained that House Bill 1000 passed the Senate and the House and is ready for the Governor's signature. This bill allows notification of special meetings by e-mail as opposed to notification by U.S. mail.

Engrossed Substitute Senate Bill 5730 – Small Business Regulation:
Ms. Hunter reported that Engrossed Substitute Senate Bill 5730 died. The bill required an agency do a small business economic impact statement when a rule is passed that affects a small business.

Substitute House Bill 1648 – Executive Sessions:
Ms. Hunter advised that Substitute House Bill 1648 died in Committee with no hearing. The bill would make it a felony to record an Executive Session.

Correspondence:
Director Day drew attention to correspondence from Lieutenant Governor Owen, confirming the appointment of Senator Jerome Delvin (Richland) to the Gambling Commission as an Ex Officio Member. Director Day met with Senator Delvin on March 12, to welcome him to the Commission.

Director Day affirmed that follow-up correspondence to the RGA on pending legislation, and the response to Representative Curtis on the smoking ban from Chair Niemi were included in the agenda packet for reference. A response letter to Director Kaufman's questions was provided by Dave Trujillo. Lastly a response letter was sent to Mary O'Neil providing clarification in reference to conducting recreational poker games. With no further comments, **Chair Niemi** called for public comments on the Director's Report.

Mr. Keely, Iron Horse Casino questioned how the Commission would balance the required eleven staff reductions from SB 5287. **Director Day** responded that he believed Mr. Keely was commenting on the fiscal note relative to 5287 and an estimation on what may happen if businesses are closed. He advised that if in fact that materializes, the Commission would have to make staff reductions; however, the first question is whether the bill will pass. The second question relates to the impact should that materialize. He reiterated the Commission is a "pay as you go agency" – and if the funds are not available to pay for the staff, the

Commission would have to phase in the reductions as necessary—if the Commission doesn't have the work, staff would be reduced accordingly. **Chair Niemi** acknowledged this wasn't an easy thing to project, and the Commission is not sure what is going to happen.

Charitable Nonprofit Study Follow-up – Alternative Compliance Methods:
Chair Niemi called for public comments on the March Charitable Nonprofit Report, and there were none.

Special Agent Terry Westhoff advised that the discussion this month related to the methods other states use in measuring charitable non-profit organizations conducting gambling activities, and whether the money was going for their stated purpose. He noted the comparable states were the states that Ms. Perkins referred to in the charitable study. He explained there would be different methods for different states, ranging from the control of expenses to looking at the bottom line much like Washington does—to looking at specific items instead of the total picture. The presentation would also review the advantages and disadvantages of the methods used. The staff's objective was to provide the Commission with alternative methods of determining if Bingo activities are making money for their stated purpose, and to provide a comparison between what the Commission does and what other organizations do.

Mr. Westhoff briefly reviewed the adjusted cash flow process. He explained the Commission measures net income; however, depreciation which is not actually a cash outlay of the organization is added back in. He referenced a sample organization with $3.5 million in gross income after expenses. The business achieved $240,000 in net income and $40,000 depreciation was added back, for an adjusted cash flow total of $280,000. That amount is compared to the required cash flow. The more gross income a business makes, the higher percentage they are supposed to retain for their required cash flow. In this case the organization was required to maintain $70,000—and they were in compliance by $210,000. The staff then looks at significant progress to ensure that the money is being spent on program services. Staff takes the net income of $240,000 and multiplies that by 60 percent to achieve $144,000. Of that amount, no more than 35 percent may be spent on supporting services (expenses that relate to providing programs but don't directly involve the program services). Staff also looks at the excessive reserves to ensure that the organization isn't accruing fund assets that could be used for providing programs.

Mr. Westhoff noted that Washington is the only state that measures the amount of money that is spent on programs and the excessive reserve accumulation. He affirmed that Washington's methods have an economy of scale which recognizes that the larger operations should be able to maintain a higher percentage of their gross income than smaller organizations would be able to maintain. Additionally, Washington measures all Bingo activities (the retail activities, snack bar, etc., to get an overall measure of how the Bingo operation is doing), not just the gambling activities. Mr. Westhoff emphasized the adjusted cash flow ensures the Bingo operations make money, and, the significant progress process makes sure that money goes to the organization and is being spent on programs. Washington also measures the efficiency of the program services along with the excessive reserves.

Mr. Westhoff highlighted some of the disadvantages of Washington's method, noting it is more complicated than an across the board percentage. Many states have a straight percentage point that all the organizations must maintain. He emphasized that Washington's adjusted cash flow and significant progress rules don't specifically control expenses, and it focus on the bottom line; which is how much the organization is making for it's stated purpose. Washington regulates a lot of things other states do not; however, he affirmed that while some regulatory agencies respect Washington's program, others believe that Washington over regulates, or, there is unnecessary regulation within the program.

Chair Niemi commented that it was her understanding that some states have a ceiling on the amount that can be paid to the manager of the gambling operation. **Mr. Westhoff** affirmed, noting several states have different measures for staff and some states require all volunteer staff. Some states limit management wages at $15 an hour. Chair Niemi inquired if the Commission had such a cap, would it make any difference in the amount of money that would go to the nonprofit part of the organization. **Mr. Westhoff** responded that in terms of exact amounts, he wasn't sure. He affirmed it would reduce expenses quite a bit; however, there were pros and cons. He suggested that if an organization with a $10 million dollar Bingo limited management wages, it would be very difficult to find someone with the knowledge and competency to run that kind of an operation. He noted that the Bingo places that do have wage limitations are also struggling. **Director Day** commented that while some of the states may regulate the expenses or specific salaries, they don't follow up to determine where the money actually went. He suggested that if the bottom line requirement is at a certain level, the regulator isn't necessarily dictating the expenses, but is essentially controlling them, because in order to meet the requirements of the bottom line the organization can't let the expenses exceed the 35 percent threshold. It's the double test that reinforces that philosophy.

Mr. Westhoff highlighted Oregon's process—which he identified as a percentage of gross income method. All charitable non-profit organizations with gross receipts of $250,000 or more must deposit an amount equal to five percent of their gross income to the organization's general operating fund or other designated fund. Using the sample business with a gross income of $3.5 million, the five percent measurement equals $175,000. With the sample net income of $240,000 the Oregon business would be in compliance as long as $175,000 of that amount was deposited into the organization's account. Oregon also has specific expense limitations—they cap non-management wages at 200 percent of the federal minimum wage of $5.15, and management wages at 300 percent; which comes out to approximately $15.15 for managers.

Commissioner Parker addressed the Oregon State Lottery, noting the state sponsored games are much more expansive than in Washington State. In terms of the total market, he estimated Oregon's Lottery share of the market at 58 percent as compared to Washington's 12 percent. **Director Day** affirmed, noting that was largely due to Oregon's control over the ability to access/operate video machines, which generates the majority of their revenue. Commissioner Parker indicated that created a whole different environment, and he indicated it would be interesting to have a breakdown of the Oregon non-profit organizations and a comparison of their gross receipts level compared to the organizations in Washington.

Mr. Westhoff continued by noting that Oregon also measures gambling rate expenses, which is defined as those expenses directly related to operating the gambling activities. That includes Bingo worker's salaries and the cost of Bingo paper. However, they may not exceed 18 percent of net receipts (gross income after prizes). Referring to a sample company with $800,000—that amount is multiplied by 18 percent, for a total of $144,000. For example purposes, an assumption was made that the salaries are all gambling related, and the cost of goods sold were all gambling related, for a total of $250,000. Mr. Westhoff noted the organization would be out of compliance for that particular calculation.

Mr. Westhoff commented that one of the things Oregon found was that the organizations were having trouble meeting the five and/or 18 percent requirements. They subsequently installed a one year probation for any organization that didn't meet the requirements, no matter how far they were out of compliance. Thereafter, the organization may or may not have action taken against them. Mr. Westhoff drew a comparison with Washington, which has a very clear regulation if an organization does not come into compliance, as well as limitations as to when an organization would be able to qualify for a waiver. He affirmed that although the measurement seems stricter, the organizations continue to experience hard times and Oregon has responded again by giving the organizations a break with regard to compliance.

Mr. Westhoff addressed the advantages of Oregon's program, noting it was simple to understand and is calculated straight across the board at five percent and 18 percent for everyone. It specifically controls gambling expenses with the 18 percent requirement and the wages. It shows that the Bingo activity makes money and the money is deposited into the account; however, there are no economies of scale. An organization that makes $250,000 has to meet the same amount as an organization that makes $10 or $20 million. Mr. Westhoff commented that he wasn't sure whether an organization that makes several million dollars could find a qualified manager to run the operation at a $15.45/hour wage. He noted the expense limits do not allow managers flexibility in running the operation—if they decide to raise gambling rate expenses because they feel that would help the organization's bottom line, they are limited to that; however, collateral expenses (everything besides the gambling related expenses) may be spent on whatever they want, as long as they meet the five percent requirement. There is no requirement for the money to be spent on program services and no program service efficiency measurement.

Mr. Westhoff addressed the Minnesota example, commenting this state does not look at the bottom line—they look at total expenses, which cannot exceed 70 percent of net receipts (gross income after prizes paid). The sample organization has $800,000 which is multiplied by 70 percent for a total of $562,000—which is the limit on expenses. The sample total expenses were $550,000—therefore, the organization was in compliance. There is no requirement for that money to go to the charitable non-profit, or to be spent on programs. Minnesota also caps prizes at 85 percent of gross, which is a very high percentage. Mr. Westhoff commented that most of the Washington licensees don't come close to that figure. Out of Washington's top 40 organizations, one was over 85 percent at 85.2, and they were not in compliance with the adjusted cash flow requirement. Minnesota also caps rent

expense, which can not exceed $650 per session, and three sessions per week are allowed. Mr. Westhoff also noted a unique feature; that organizations may carry the amount they are in compliance to future years to assist with future compliance requirements.

Mr. Westhoff stated that the Minnesota system is simple to understand with a 70 percent straight across the board requirement. Calculations are simple, and it specifically controls rent and prize expenses, although the caps on prize examples are very high. Some of the disadvantages relate to the fact that no money has to go to the organization, no percentage has to be maintained by the activity, and because of the carry forward amount, organizations may make little or no money for their stated purpose. Minnesota had an internal audit last year that recommended that they stop looking at expenses and start looking at the bottom line much like Washington. There is no measurement on program efficiency. The expenses can limit the flexibility of managers to run their operation to make more money for their organization, and the carry forward amount would be difficult to regulate in the sense that it requires keeping track of past years and putting that amount into a compliance modules.

Mr. Westhoff referenced Texas, which uses an adjusted gross income method. Adjusted gross income is like Washington's net receipt process; however, they also include the cost of goods sold such as Bingo paper, and pull-tabs. The organization must deposit the amount equal to or exceeding 35 percent of that adjusted gross income (AGI) amount into the charitable non-profit organization. For purposes of the example, $700,000 is multiplied by 35 percent for a total of $245,000. At first glance the organization appears to be out of compliance because their net income is only $245,000. However, Texas allows a credit of up to six percent of the organization's gross income to be carried forward against that amount for the AGI. In this case, six percent of $3.5 million totals $210,000, which is subtracted from $245,000 for a total of $35,000 to be distributed to the organization.

Mr. Westhoff affirmed that in Texas, just like many other states, Bingo is struggling while the state is still maintaining their requirement that the charitable nonprofit Bingos make money for their stated purpose. They have a limit of allowable Bingo expenses—there are 12 different expense items. The $35,000 may be spent for any lawful purpose; it does not have to be spent on programs.

Mr. Westhoff highlighted the system's advantages, addressing Texas' 35 percent amount, and recalling the Better Business Bureau industry standard of no more than 35 cents to raise a dollar. With Texas, the 35 percent requirement reflects that industry standard specifically. Some of the disadvantages—the credit allowance complicates the regulation which is otherwise a clean and simple regulation. The credit may allow Bingo to operate without making money. Texas reported that currently, over 20 percent of their Bingo operations are not required to make any money, and they are looking at the six percent credit and ways they could change that to make sure the organizations are making money for their stated purpose.

Mr. Westhoff reported that Ohio and Michigan have a very similar process— they both control specific expenses, which include wages and rent. Ohio doesn't allow any wages—it is an all volunteer workforce. Michigan caps wages at $30 per session for floor workers and $50 per session for Bingo managers. Sessions are three to four hour in length; therefore,

Bingo managers would earn between $15 to just under $17 per hour. The sample organization would be out of compliance in Ohio because they actually do have salaries, and, like Oregon, each individual wage would have to be reviewed to determine what position they were in and their corresponding wage per hour. Both states require that the Bingo must make money, but there is no minimum amount required. Michigan requires the net income amount to be deposited in a charitable nonprofit account.

The advantage of the Ohio/Michigan system is that it is simple to understand and calculate. It has some expense controls, and although they don't have a percentage requirement, it does require positive income to be made, and in Michigan it requires deposits into the account. However, like other states, there are no requirements to make a particular net income percentage. Ohio and Michigan don't have to spend the money on programs. There is no economy scale, and the expense threshold does not consider regions—small towns versus the metropolitan cities. Additionally, wage restrictions may reduce competency. Ohio indicated that with the volunteer staff, it was difficult to get enough people to run the operation and difficult to get management staff with experience in gambling and general management skills to make sure there are internal controls in place and that the organization operates as efficiently as possible.

Mr. Westhoff highlighted what the Commission does with regard to expense controls. Commission rules specifically require licensees to control expenses. The gambling statute and rules say that compensation must not be excessive with regard to the local prevailing wage scale local; and rent should essentially be compared to buildings in that same area to ensure rent is not excessive. Prizes, among other expenses, must be necessary and not excessive. He noted the underlying authority is RCW 9.46.070, which gives the Commission the power and duties to control all expenses of the charitable non-profit gambling activity; and 9.46.0209 states that if an organization over compensates employees, the organization would not be considered a bonafide charitable non-profit organization. The generality of the rule allows expenditures to be based on local area and organizational factors. It places the owners and the licensees in the position to justify large expenditures. It's up to the licensees to prove to and show the Commission that expenditures are not excessive. It allows the Commission flexibility—what may be excessive today may not be excessive tomorrow. The Commission focuses the attention on the organization meeting the bottom line. In Minnesota, and some of the other states, they focus on expenses and they are looking at ways they can make sure the organization is making money. Mr. Westhoff explained it was similar to the IRS laws on charitable and non-profit expenses—there is language that states expenses for the charitable nonprofits shall not be excessive, and the IRS looks at the circumstances of each organization to determine if they are excessive. Mr. Westhoff acknowledged that from that stand point, there is consistency between the state and federal expectations in Washington.

Addressing disadvantages, **Mr. Westhoff** stated that the generality in Washington's rules make it difficult to regulate and judicate compliance; whereas, something like Minnesota with 70 percent, makes it clear when an organization is out of compliance. He affirmed that Washington's process requires a lot more work and investigation.

Chair Niemi complimented Special Agent Westhoff on all of his presentations over the past few months. She indicated the next thing would be for the Commission to consider and decide if there were any changes the Commission should make to the charitable non-profit rules. Chair Niemi commented that based on the information provided, it appeared that Washington does more in regulating charitable non-profits than any of the comparable states. **Mr. Westhoff** affirmed. Chair Niemi inquired if Washington had more FTE's. Mr. Westhoff responded the staff in Texas and Minnesota were similar to Washington in size, while Ohio and Oregon were fairly small.

Commissioner Parker also praised Mr. Westhoff's organized presentation. After looking at the comparisons, Commissioner Parker believed the information suggests there is not something out there elsewhere that the Commission should be considering in terms of major changes. He questioned whether or not there were potential changes in the industry for future consideration—like being able to offer different kinds of games or activities that would draw more customers in or make the licensees a little more competitive. **Director Day** responded that he was not aware of anything. He reiterated Sally Perkins' point that this Commission has been proactive in trying to provide opportunities for charitable non-profit gambling within the context of the law. Director Day affirmed there may be things coming forward that may indirectly impact the rules through the rules simplification process. One of the biggest issues in the past has been electronic gambling and how that pertains to charitable nonprofits in Washington. Director Day affirmed the activities available to charitable nonprofits in Washington are different than in some other states. Minnesota for instance does not allow pull-tabs to be available commercially; they are only available for charitable nonprofits. In North Dakota, Black Jack is available, but it is only available as an activity to raise money for charitable nonprofits.

Commissioner Parker questioned if that activity generated more money for the charities and **Director Day** and **Mr. Westhoff** affirmed. Director Day reported that in Washington, the pull-tab net is approximately $186-$189 million, and the majority of the income is commercial. **Chair Niemi** questioned how commercial operators would feel about potentially losing pull-tabs. Director Day affirmed they would be concerned, and he acknowledged there would be balancing factors in any kind of discussion that might be initiated some time in the future.

Commissioner Ludwig concurred with Commissioner Parker and Chair Niemi regarding Mr. Westhoff's outstanding presentation. He commented that when looking at the advantages and disadvantages listed for each of the geographical locations, he believed that Washington does the best job. Commissioner Ludwig readdressed the issue of future programs, and recalled the card room involved in a law suit, in reference to combining the charitable and card room facilities next door or adjacent—and he believed that since the Legislature didn't act otherwise, this would still be an opportunity available for some nonprofit or charitable organizations in the future.

Commissioner Parker stated that from his point of view, the Commission should have some incentive to look for ways to support the nonprofit sector, and to be willing to open up new types of gaming activities, including an ownership of a commercial license. In other words

from a policy point of view, he questioned why the Commission should do something if it is just going to make them more competitive without having more of a benefit flow to the constituencies they were created to serve. He suggested the charitable purpose is the trade off that needed to be brought to the Commission if new activities were going to be considered for approval. It's the nature of the industry that they are shrinking and if the Commission does nothing, they will continue to shrink, and ultimately many will become nonviable. Commissioner Parker suggested there would probably be a handful that could survive the type of shrinkage or the type of constraints they will face in the future. He commented that when one looks at the gaming marketplace and what is making the market continue to grow, it is that the casinos are offering things besides simply the opportunity to gamble. They are making their facilities much more attractive for customers to go to while they are there to gamble. Commissioner Parker said the same couldn't be said for the charitable nonprofits—they are still offering the same "bread and butter" that they have been offering, and as a result they may not be competitive in the future, unless something changes. He reiterated that it comes back to what is the incentive for the Commission to look at changes unless it's proposed that those changes are going to have some beneficial public purpose.

Chair Niemi responded that gambling began in 1972 primarily for the charitable nonprofits because there were a lot of organizations that needed assistance and the state budget wasn't able to pay for the services. She commented that all that has changed, and while she was not saying that the state is now helping all these people; the state was doing a great deal of the work that initially the Legislature hoped the nonprofits would do.

Commissioner Ludwig inquired about marketing practices, games, or gimmicks that other Bingo operators in other jurisdictions are permitted to do that Washington is not—short of Bingo machines, which this Commission has supported every time a bill was before the legislature. **Mr. Westhoff** advised that in this particular example, staff didn't look at all the games that were associated with Bingo; the staff basically focused on the Bingo activity and what the Bingo activity was operating verses all the other activities that the charitable nonprofits may operate. Commissioner Ludwig suspected that the nonprofit and charitable operators have informed themselves of what is permitted in other states. There were no further comments or questions. Director Day proceeded with his report.

Monthly Updates:
Director Day drew attention to the administrative case and seizure update, noting the Commission's agents and legal staff were quite busy. He also reported that the Senate passed a resolution honoring former Commissioner Liz McLaughlin and drew attention to the associated news article.

Chair Niemi called for public comments.

Don Kaufman, President of the WCCGA thanked Mr. Westhoff for another fine presentation. He addressed the issue of rent at $450 or $600 a session, noting that stems from the owner operator way of operating in those states. He explained the person, a private citizen, usually owns a facility and rents it out to a charity on a per session basis, and, quite

often that is the person making all the money in the Bingo operation—the person who holds the rent on the facility. Mr. Kaufman commented that when the wages get too low, the Bingo worker tended to get paid one way or the other. He acknowledged that Washington's system was much better and much cleaner.

2. House-Banked Card Room Review:

Ponderay Café & Lounge, Bremerton:

Mr. Trujillo reported that the Ponderay Café and Lounge is located in Bremerton, and is currently licensed to conduct punchboard pull-tab activities at the Class I level. Ponderay Café and Lounge is seeking approval to operate up to eight house-banked card room tables. The ownership structure for Ponderay Café consists of two people; both were present and available to answer questions. Mr. Trujillo reported the license application for Ponderay Café and Lounge was subjected to an intensive financial investigation and criminal investigation. Staff conducted a preoperational review and evaluation of the facility, and based upon the results of the review and the pre-licensing investigation, staff recommended that Ponderay Café and Lounge be licensed to conduct house-banked card room activities with up to eight tables in accordance with the wagering limits set forth in WAC 230-40-120.

George Comeau introduced his wife Denise and his son David Cole. He reported they are currently employing about 75 to 80 employees and they were looking forward to opening the house-banked card room.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to license Ponderay Café & Lounge as a house-banked card room authorized to operate up to eight tables with wagering limits in accordance with WAC 230-40-120 as recommended by the staff. *Vote taken; the motion passed with four aye votes.*

Westside Lanes Restaurant & Lounge, Olympia:

Mr. Trujillo reported that Westside Lanes is located in Olympia, and is presently licensed to conduct punchboard pull-tab gambling activities and commercial amusement games. Westside Lanes is seeking approval to operate six house-banked card room tables. The ownership structure for Westside Lanes consists of one owner who could not be present. Westside Lanes was subject to an intensive pre-licensing investigation as well as a pre-operational review and evaluation. Based upon the results of the investigations, staff recommends that Westside Lanes be licensed to conduct house-banked card games in accordance to the wagering limits set forth in WAC 230-40-120.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to license Westside Lanes Restaurant & Lounge as a house-banked card room authorized to operate up to six tables with wagering limits in accordance with WAC 230-40-120 as recommended by the staff. *Vote taken; the motion passed with four aye votes.*

Commissioner Ludwig noted that neither applicant has asked for the full 15 tables, and asked if with the possibility of Senate Bill 5994 passing, why licensees would settle for less

than 15 tables. **Dave Trujillo** responded that Westside Lanes had space limitations and they applied for what would fit. He concurred that over time they hoped to grow into more tables.

Mr. Trujillo reported that with the approval of the two house-banked licensees there were a total number 94 house-banked card rooms operating. There are currently ten pending applications, and the total number of card room employees associated with those operating licensees is approximately 8,813.

Mr. Trujillo reviewed the audited information submitted by house-banked card rooms and posted on the Commission's website. He noted the information is pulled directly from the audited financial statements and breaks out revenues and expenses, as well as net income or net loss. Mr. Trujillo affirmed that as the new rule comes into effect, and as more card rooms will be required to submit audited financial statements, more complete information will become available from a wider base of licensees.

Chair Niemi commented that the local Vancouver paper reported that the LaCenter casinos pay over $3 million in taxes and questioned where that would appear on the report. **Deputy Director Neal Nunamaker** drew attention to the footnote in column #4, indicating the total may include gambling taxes.

4. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by **Commissioner Parker** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 25 on the approval list. *Vote taken; the motion passed with four aye votes.*

5. Defaults:

Sandra Froehlich, Card Room Employee:

Chair Niemi inquired if Ms. Froehlich was present and it was determined she was not.

Amy Hunter, Administrator, Communications & Legal Division reported that staff was requesting that Ms. Froehlich's card room employee license be revoked based on her taking $100 from the poker podium cash drawer at the Crazy Moose Casino in Mount Lake Terrace. At that time she was employed as a supervisor; however, she is no longer employed at that business. She was charged in Snohomish County District Court with theft in the 3rd degree and was convicted, paid a fine, and restitution, and was sentenced to one-year probation. Ms. Froehlich failed to notify Commission staff of the criminal charge and the disposition, both are required per Commission rules. Charges were brought against Ms. Froehlich and sent by regular mail. The staff attorney made a courtesy call reminding Ms. Froehlich of the deadline to request a hearing. Ms. Froehlich said she did not want a hearing, and by failing to respond she has waved her right to a hearing. Staff is requesting a default order be entered revoking Ms. Froehlich's card room employee license.

Commissioner Orr made a motion seconded by **Commissioner Parker** to revoke Sandra Froehlich's license to conduct gambling activities. *Vote taken; the motion passed with four aye votes.*

5. <u>Other Business/General Discussion/Comments from the Public:</u>
Chair Niemi called for public comments.

Kris Keely, Iron Horse Casino, referring to the previous question on gambling tax information, stated that taxes don't appear on the audit as a break out item; however, it appears on the quarterly reports. He noted that in the future, the Commission would be looking at the audited financial information, the reviewed financial information and the compiled financial information—any of those three or all of three categories because with the new rule, the information would be available. He liked the goal of making the data public knowledge—the total information of the industry, rather than just one facet.

<u>Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/ Adjournment:</u>
With no further comments or questions, **Chair Niemi** called for an executive session at 3:20 p.m. At 4:00 p.m. she recalled the public meeting and adjourned the meeting.

Minutes submitted by,

Shirley Corbett
Executive Assistant

COMMISSION MEETING
FRIDAY, APRIL 15, 2005
DRAFT MINUTES

Chair Niemi called the meeting to order at 9:30 a.m. at the Red Lion Inn at the Quay located in Vancouver. The following members and staff were present:

MEMBERS PRESENT:	**COMMISSIONER JANICE NIEMI, Chair;** **COMMISSIONER CURTIS LUDWIG, Kennewick;** **COMMISSIONER GEORGE ORR, Spokane;**
STAFF PRESENT:	**RICK DAY, Director;** **NEAL NUNAMAKER, Deputy Director;** **CALLY CASS-HEALY, Ast. Director-Field Operations;** **AMY HUNTER, Administrator-Legal Division;** **DAVE TRUJILLO, Acting Administrator-Licensing;** **JERRY ACKERMAN, Assistant Attorney General;** **SHIRLEY CORBETT, Executive Assistant**

6. Approval of Minutes – March 10-11, 2005:

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the minutes of the March 10-11, 2005, regular meeting as submitted. *Vote taken; the motion passed with three aye votes.*

7. Petitions for Review:

Alataua, Alataua, Tukwila – Card Room Employee:
Sara Olson, Assistant Attorney General, and **Mr. Alataua Alataua**, Petitioner, presented their cases. A copy of the hearing transcript is available upon request.

Sara Olson advised that Commission staff has filed a motion to dismiss this petition for review based on its untimely filing with the Commission. The petition for review was due at the Commission on February 6, and it was not filed with the Commission until February 11—it was five days late. Therefore, staff made a motion that the petition be dismissed.

Chair Niemi elected to defer consideration of dismissing the hearing until after the Petitioner had an opportunity to present his testimony. At the conclusion of testimony from the Petitioner and Assistant Attorney General Olson, Chair Niemi recessed the meeting at

9:45 a.m. for an Executive Session to deliberate the case, and recalled the public meeting at 9:55 a.m.

Commissioner Niemi announced that in reference to the initial motion to dismiss because of the lateness of the order, the Commission denies the state's motion to dismiss based on the Commission's concern that the Post Office might have made a mistake.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to affirm the ALJ's order and enter a Final Order revoking Mr. Alataua's card room employee license based on the underlying facts in the case. *Vote taken; the motion passed with three aye votes.*

Little Nickel Mac's, LLC, d/b/a Top Hat Pub & Grill, Spokane:
Correspondence was received from **Catherine Lewis** requesting a continuance until May 12, 2005. The Commission concurred.

8. Presentation - IGT Tribal Lottery System:

Director Day advised it has been six years since a new system for approval and play in the Tribal casinos in this state has been submitted. He noted the Commission has usually considered and granted an approval of those systems. The process has been a particular Tribe has sponsored each system as it has come forward both to the private laboratory and then to the Commission's laboratory for testing and analysis. In this case, the system is sponsored by the Tulalip Tribe. He then introduced **Dallas Burnett**, Administrator of the Electronic Gambling Lab (EGL), who explained the EGL is the unit where agency staff tests and verifies compliance of electronic gambling devices. He advised that the Electronic Gambling Lab was approximately 95 percent complete with the testing of the IGT system, and agrees that the system appears to be compliant.

Mr. Burnett advised this system is a central determinate system dispensing predetermined outcomes to players using entertaining effects. Appendix X, which is signed by the state and by the Tribes, allows the Tribal casinos to operate Class III games utilizing electronic scratch ticket systems. These systems must be operated using cashless systems, which prohibits the insertion of cash and coins into the device in order to purchase a lottery scratch ticket. The electronic tickets are stacked in subsets of 5,000 tickets—there is a predetermined amount of tickets—they all have 75 percent payout—the purchase price cannot exceed the $5.00 limit, and each ticket has an outcome and a prize level associated with the ticket. The tickets are created and shuffled and stacked into the central computer. Player terminals request tickets from the central terminal which dispenses them to the player terminal where they are revealed for the outcome.

The security of the device is maintained with encrypted communications between the components. There are passwords, security levels, and an extensive number of internal controls that are being processed by the Tulalip Tribe and the agency's Tribal Gaming Unit in order to operate this system. Back up routines and redundant storages are used for the system to verify if the game is stopped, or errors occurred to the system, that it is completely auditable. Standard reports of such are required by Appendix X.

Mr. Burnett demonstrated the play of the device, noting a cashless voucher is obtained from the cashier—it is inserted into a player terminal through a bill acceptor, the player then selects lines and bets levels, which applies credits to the player terminal and reveals the outcome of the particular ticket that was dispensed. Mr. Burnett reported this system is unique and a little different from other systems that have been approved. There are two different types of systems involved in the player terminal. There is a voucher redemption system and the gaming system. While this is good for the system security levels, if offers a significant challenge in drafting internal controls in order to control the activity.

Mr. Burnett reported that the Electronic Gaming Lab recommends approval of the system contingent on two conditions: successful testing of the central computer component from both the GLI and EGL, and a successful completion of the cashless testing strip by EGL. He invited several representatives forward for introduction.

Ali Safari, Senior Vice President of IGT, introduced John Chamberlain - Director of Field Engineering for IGT, Pat Mennex - Director of Sales for the western region, Connie Stafford - Manager of Compliance and Regulations, Jamil Esamm - Manager of Field Engineering, and Paul Hogan - Manager of Compliance for System Components. Mr. Safari reported that he has been in the industry over 18 years, dealing with many regulations and many restrictions. He expressed IGT's gratitude for the "fantastic service" they received from the Commission's EGL staff and their level of the technical knowledge. He emphasize that IGT was heavily interested in Washington's market, and wanted to make sure Washington's market was leading edge by showcasing IGT's vast product line and by bringing the latest and greatest in an expeditious manner. He emphasized that Washington would not be a second market to any other state. He reiterated IGT's gratitude for the service, gratitude for the hospitality, and if there was anything IGT could do to advance bringing new technology to the state, IGT was here to serve.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve the IGT TLS system as authorized under the provision of Appendix X of the Tribal/State Compact contingent upon successful completion of the items as recommend by the staff. *Vote taken; the motion passed with three votes.*

9. Temporary Licenses:

Deputy Director Nunamaker reported that WAC 230-04-255 has been in effect since 1974 with a number of small amendments over time. The rule currently allows for the Director to issue temporary licenses to cover the gap between when an investigation is completed and when the Commission has the opportunity to meet and make a final ruling. He reported there are two exceptions to that rule. The first being manufacturers, and the second being house-banked card rooms. Staff is suggesting that the rule be amended to allow the Director the ability to issue temporary licenses to manufacturers and house-banked card rooms, because particularly during the months when the Commission does not meet, it puts a burden on staff and licensees when the Commission is not able to issue licenses in a timely basis.

Commissioner Ludwig advised that he has long been in favor of this particular type of rule and he looked forward to next month's final action.

10. <u>Non-Sufficient Funds (NSF) Check Processing Charge:</u>
WAC 230-04-270:
Administrator Trujillo reported that WAC 230-04-270 was presented for discussion last month. He recalled that Commissioner Orr had asked a question as to whether or not it was possible for the Commission to build a cost of living increase into the rule itself. Mr. Trujillo advised that staff conducted some research and found that the rule governing non-sufficient processing charges would not allow for adequate notice to the public regarding raising fees. He noted the rule has been in effect since 1990, and the Gambling Commission currently charges $15 for NSF checks. Staff is proposing to raise that amount to $30.

Chair Niemi called for public comments on Rule Item 9 and Item 10. There were no comments and she advised the rules will be presented again in May.

11. <u>Card Room Employees – Change in Employment:</u>
WAC 230-04-142:
Mr. Trujillo advised that 230-04-142 is the notification to the Commission upon beginning, terminating or changing employment for public card room employees. The rule was presented last month and there was some confusion regarding the language which has now been clarified under the amendatory section.

Director Day clarified that if a card room employee goes to work in another place, or another location the fee is paid at the time the employee makes application, as opposed to collectively when it is renewed.

Chair Niemi called for questions and public comments. There were none.

12. <u>Quarterly Activity Reporting (QAR):</u>
WAC 230-08-130, WAC 230-08-140, WAC 230-08-150, WAC 230-08-160, WAC 230-08-165, WAC 230-12-305, WAC 230-12-310:
Ms. Hunter reported that Item number 12 was filed at the last Commission meeting. The first five rules deal with the activity reports. Currently, the Commission receives QARs once a quarter and staff is proposing to change that requirement to twice a year. The rule changes are in response to the half million dollar transfer from the Commission's revolving fund account last year. The unit that processes the quarterly activity reports has been reduced from four people to three people, and in another year it will be reduced down to two people. Ms. Hunter explained it would be difficult for the Commission to receive and process the reports four times a year with the reduced staff. Staff also believes the Commission will get enough information by receiving the reports twice a year. She explained Item 12 (a) affects the pull-tab operators, the commercial pull-tab operators and most of the charitable non-profit pull-tab operators. Item12 (b) makes the change for distributors, Item12(c) for manufacturers, 12(d) for card rooms, and, Item12(e) for the Bingo prize providers.

Item12(f) deals with organizational changes; the proposal requires the licensee to submit those documents within 60 days following the date of the transaction rather than on a quarterly basis. Item 12(g) deals with licensees who have had some type of criminal/administrative action amended; the rule would require those be submitted within 30 days instead of with the next quarterly activity report. Staff recommends further discussion.

Chair Niemi called for public comments and there were none.

13. <u>Recreational Gaming Activities:</u>
WAC 230-02-505:
Amy Hunter reported that Item 13 deals with recreational gaming activities (RGA). This rule is up for discussion and possible filing. RGAs are not gambling activities, they are fun raisers—as opposed to fund raisers. They are commonly held as a part of holiday parties—each participant is given a certain number of chips, they don't have any value, they play with them, and at the end of the night the player may take their fake money and buy certain prizes. The only reason the Gambling Commission is involved with any regulation of an RGA is if professional gambling equipment is used. If such equipments is used the sponsors must get that equipment from a licensed distributor. The Commission issues about 30 permits every year for RGAs. Under the current rules, an organization may only sponsor two a year and the organization must have been in existence for six months before they may host an RGA. This issue has been raised because of the popularity of poker; however, poker is not a game that is allowed at RGAs in large part because the recreational gaming activities were patterned after a fund raising event.

Ms. Hunter explained the Commission doesn't usually hear about charitable and nonprofit fundraising events. They occurred more frequently in the past before there were tribal casinos or house-banked card rooms. They were sometimes called Reno nights or Casino nights and players could actually play with real money. Poker was never allowed at fund raising events, only house-banked games.

The Commission received a petition from Wild Bill's Casino, a licensed fund raising equipment provider, and they asked that four changes be made, they want: 1) Poker to be available, 2) the ability for organizations to sponsor more that two RGAs a year, 3) to no longer require sponsoring organizations to be in existence at least six months; and 4) to allow anyone to play the games, not just the sponsoring organization's members and guests. Ms. Hunter reported that staff supports the first three recommendations. Staff doesn't support allowing anyone to play because these events are meant to be limited and don't need to be opened up to the public. The petitioner withdrew his petition with the understanding that staff would bring this rule forward. Ms. Hunter noted the agenda packet included two e-mails from other fund raising providers who were also asking that poker be allowed. She noted the only action needed to make the three changes staff supports is a change to the definition of a recreational gaming activity. Staff recommends filing the rule for further discussion.

Chair Niemi called for questions or comments, and there were none.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to file WAC 230-02-505 for further discussion.

Rick Walker, Wild Bill Casino's Events, reported he filed the original petition and withdrew it with the hope it would move forward. He made a pitch for change #4, which had to do with allowing people other than members and guests to attend these events and play the games. He emphasized it is all for fun, no money is changing hands and most of the events are for company parties where it is the employees and their guests who attend. He advised his company sponsors a number of conference or trade show events in Oregon where the public participates and the casino style games are featured as entertainment. Mr. Walker advised he would be concerned that under the definition of guests, participants wouldn't be considered guests if they were attending something such as a trade show, or be involved in some other type of an event and not be a guest of that organization, such as shopping center/mall activities.

Assistant Attorney General Ackerman clarified that the Commission would be ruling on the amended rule proposal as submitted by staff, not the changes that Mr. Walker has offered. If the Commission wanted to change language to pick up an item that the commissioners feel needs to be there, a redraft of the language should be submitted by Mr. Walker for consideration at the next meeting. Subsequent hearing is scheduled to consider the matter again next month.

Vote taken; the motion passed unanimously.

14. Petition for Rule Change to Allow Mini Baccarat in Card Rooms:
WAC 230-40-010:
Petition withdrawn at the request of Attorney Bob Tull.

17. Other Business/General Discussion/Comments from the Public:
Chair Niemi called for public comments, there were none and the meeting adjourned at 10:25 a.m. The next meeting will be held May 12-13, in Spokane.

Minutes submitted by:

Shirley Corbett
Executive Assistant