

Proposed Rule Change:
 Amendatory Section: WAC 230-07-051 Accumulating excessive reserves.



November 2015 – Final Action
October 2015 – Study Session
September 2015 – Study Session
August 2015 – Up for Discussion and Possible Filing
July 2015 – Study Session

<p>ITEM 5 (a): November 2015 Commission Meeting Agenda. Statutory authority: RCW 9.46.070 (1),(10), (16) and RCW 9.46.0209(1)(b)(iii)</p>
<p>Who proposed the rule change?</p>
<p>Staff.</p>
<p>Proposed Change</p>
<p>Commission staff regularly evaluates our regulatory processes to ensure they add value and that we do not place unnecessary burdens on licensed organizations. This is in line with one of our agency goals of “anticipating and responding to the evolving gambling industry.”</p> <p>As part of our regulatory reform process, staff is proposing two changes that will save nonprofit licensees money and time by no longer requiring them to set up an endowment or a restricted trust fund when they want to accumulate excessive reserves to use for future capital projects or start new programs (such as a new HVAC system or soccer field). With the rule change:</p> <ul style="list-style-type: none"> • Licensees could accumulate these funds with the approval of a majority of the organization’s membership rather than setting up an endowment or restricted trust fund; and • The threshold amount was increased from \$2 million to \$4 million. As part of our stakeholder outreach, a licensee suggested increasing the threshold. <p>Each year staff verifies that the charitable and nonprofit licensees who have combined annual gross gambling receipts in excess of \$3 million are not accumulating excessive reserves but spending the monies made from their gambling activities on their programs to further their stated purpose.</p> <p>All other restrictions on accumulating excessive reserves remain in effect, such as making sure the funds are saved according to a plan approved by the organization’s officers or board of directors. The plan must include the amount to be reserved, the purpose for which the funds are being reserved, and the estimated time the reserves will be used. Commission staff approves the plan, which would exclude these restricted funds from the excessive reserves calculation.</p> <p>Attachments:</p> <ul style="list-style-type: none"> • WAC 230-07-05 Defining “excessive reserves.” • Stakeholder notification letter dated July 13, 2015, sent to charitable and nonprofit bingo, raffle, and punch board/pull-tab licensees • Two e-mails from stakeholders.
<p>History of Rule</p>
<p>The excessive reserves requirement was put into place in 1989.</p> <p>In 1994, after a nine-month process between staff and industry, language was added to the rule, which:</p> <ul style="list-style-type: none"> • Provided a formula for calculating excessive reserves; and • Allowed funds transferred to an endowment or specifically restricted trust fund for the purpose of funding new programs or capital projects and did not exceed \$2 million to be exempt if approved by us.

In 1996, the rule was updated and streamlined to specifically define certain allowable expenses and to reduce reporting requirements to certain classes of nonprofit licensees. The new rule took out the complicated formula for excessive reserves and added that the funds would be calculated using financial data filed with the Commission.
Impact of the Proposed Change
Setting up an endowment or trust fund can be costly, approximately \$1,000 or more, and takes monies away from the charitable or nonprofit organizations' programs.
The industry has changed significantly since the rule was first introduced. Between 1996 and 2013: <ul style="list-style-type: none"> • Bingo licensees have declined 56% (473 licensees to 206); and • Non-profit punch board/pull-tab licensees have declined 43% (403 licensees to 230). We have received three requests in the past three years.
Between 2003 and 2008, there were 18 administrative cases on licensees who violated this rule; of those, seven resulted in suspensions and four licensees surrendered their license. Since 2008, there have not been any violations but we have licensees asking to set monies aside for new programs or capital projects. In order to do so and not be in violation of the rule, they must set an endowment or trust fund.
A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on any licensees.
Regulatory Concerns
Staff does not have regulatory concerns with this rule change.
Resource Impacts
This rule change will save staff time. Currently, staff spends time working with the charitable and nonprofit officers explaining to them that the monies have to be moved to an endowment or trust fund. Then, staff works with their accountants and attorneys to make sure the endowment or trust fund is set up in accordance with the rule requirements.
Policy Consideration
None.
Statements About the Proposed Rule Change
Rotary Club of Columbia Center (see attached email). Sister Rebecca Berghoff Foundation (see attached email).
Licensees/Stakeholders Directly Impacted By the Change
This change will only affect nonprofit licensees with annual gross receipts over \$3,000,000. Currently, nine of our licensee's fall into this category. Each of the licensees were contacted via email on July 13, 2015, and given the opportunity to share their thoughts on the proposed change.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
31 days from filing the adopted rule.

Amendatory Section:

WAC 230-07-051 Accumulating excessive reserves.

A charitable or nonprofit organization must not accumulate excessive reserves. Organizations accumulating excessive reserves may be deemed as organized primarily for purposes of gambling. Reserves must be computed by using the financial data most recently filed with us. We will not treat funds transferred to an endowment or specifically restricted trust fund will not be treated as excessive reserves if the following restrictions are met:

(1) A majority of the organization's membership~~The endowment or dedicated trust fund is either legally irrevocable or restricted in a manner that approval~~ the accumulation of excessive reserves is required by a majority of the membership prior to use or transfer of the endowment or dedicated trust principal; and

(2) The funds are expressly dedicated for funding new programs, capital projects, or to endow service-providing activities; and

(3) The funds are saved according to a plan that includes the amount to be reserved, the purpose for which the funds are being reserved, and the estimated time the reserves will be used; and

(4) The organization's officers or board of director's approves the plan~~is approved by the organization's officers or board of directors and documentation for the endowment or trust fund is submitted to us for review and approval;~~ and

(5) The organization submits the plan to us for review and approval; and

(5) (6) The total amount of net gambling income that is transferred to endowment or trust funds~~the excessive reserves~~ may exceed ~~two~~ four million dollars only if the organization petitions the director to exceed this limitation and the director approves the petition. The director may disapprove with written comments or approve a modified level based on facts presented. The director's decision may be appealed to the commission. Appeal of this decision will be heard at a regular public meeting of the commission. The commission's decision shall be final. Petitions for relief must include:

(a) The reason for the request, including whether the increased reserves are for charitable or nonprofit purposes and planned timelines for use; and

(b) The total amount of reserves requested; and

(c) The impact on programs if the petition is denied; and

(d) Alternative sources of funding available.

WAC 230-07-050

Defining "excessive reserves."

(1) "Excessive reserves" means the total amount of the licensee's cash, cash equivalents, and other assets that would not normally be associated with providing programs or fund-raising activities is greater than the sum of:

(a) The licensee's current liabilities, which means debts due within one year; plus

(b) Total functional expenses during the most recently completed fiscal year; plus

(c) The average net income or loss from combined gambling and retail sales conducted in conjunction with gambling activities for a three-month period. This average is calculated by dividing annual net gambling and retail sales income or loss by four.

(2) However, we may approve the exclusion of funds reserved to start or expand specific programs from the computation of excessive reserves.

[Statutory Authority: RCW [9.46.070](#). WSR 07-10-032 (Order 609), § 230-07-050, filed 4/24/07, effective 1/1/08.]