

# Lawful (Charitable) Gambling in Minnesota

## Issues Facing the Industry

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# Introduction

In light of the decrease in gross sales activity for lawful (charitable) gambling over the last few years, the 2008 Legislature directed the Gambling Control Board to conduct a study on the issues facing the licensed non-profit organizations. Specifically, the law provided for the following:

*The Gambling Control Board shall review operational and regulatory procedures, accounting functions, tax structure, and recent trends in lawful purpose contributions and allowable expenses incurred by licensed charitable organizations relating to lawful gambling activities. The board must seek public input including comment from licensees and professionals working in the lawful gambling industry. The board must provide a report with recommendations and proposed legislation, if any, to the chairs of the legislative standing committees with jurisdiction over lawful gambling by January 15, 2009.*

The Gambling Control Board solicited input from lawful gambling licensees and other stake holders on issues facing the industry and consulted with other regulatory agencies.

Based on the issues as presented by the industry, the report narrows the focus to five categories:

- Taxes
- Expenses
- Declining receipts/activity
- Increased demand for contributions
- Miscellaneous Issues

The report provides recommendations for change or consideration to address or resolve issues as presented in the report and applicable references for statute modification.

# Background

The Gambling Control Board's mission as provided in Minnesota Statutes 349.11 is,

*“To regulate lawful gambling to prevent its commercialization, to insure integrity of operations, and to provide for the use of net profits only for lawful purposes.”*

The Gambling Control Board consists of a seven member citizen board with assistance provided by 31 staff. The Board is funded directly through regulatory and license fees and receives a biennial appropriation for operations from the Legislature.

Minnesota ranks #1 in the U.S. in charitable gaming receipts. For fiscal year 2008, gross receipts from lawful gambling were \$1,141,443,000. As of October 2008, there were 1,291 licensed non-profit organizations conducting lawful gambling activities at 2,934 sites in Minnesota. Additionally, over 3,400 exempt permits (small raffle activity) were issued during FY08.

Since FY2004, gross receipts from lawful gambling have declined by over 20%. A number of factors have contributed to the decrease in activity but the ability of the industry to adjust to the decrease in revenue is the basis for this study and report. Unfortunately, the decrease in receipts comes at a time when the industry has also experienced an increase in demand for the charitable donations.

During the last five years the industry has paid an average of \$50 million in state gambling taxes each year. Lawful purpose expenditures (charitable donations) for the same period amounted to an average of \$64 million per year. For FY2008, the industry reported its biggest drop in state gambling taxes paid – a 12.8% decrease from the previous year due to the drop in gross receipts. State gambling taxes paid in FY08 were \$43 million. Lawful purpose expenditures decreased at a higher rate – a 19% decrease from the previous year, with a reported \$49.6 million in total expenditures.

The largest group of licensed non-profit organizations represents veterans (American Legion/VFW) and accounts for 29% of the total. Other licensees include youth athletics, fire relief associations, fraternal, religious, and numerous outdoor and local civic groups.

## Issues

Based on feedback from the industry and information provided by Gambling Control Board staff, the major issues facing the industry are categorized as follows:

- Taxes
- Expenses
- Declining receipts/activity
- Increased demands for charitable donations
- Miscellaneous Items

# Taxes

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The tax paid by licensed charitable organizations to conduct lawful gambling in Minnesota was the #1 issue based on the feedback from the industry. Based on the current method for assessing taxes, the perception is the lawful gambling taxes paid by the licensed charitable organizations is a tax on the charity - not on the product they are selling. Additionally the comment most often expressed by charitable organizations is that taxes paid from lawful gambling proceeds are “complicated and disproportionate”. The following points lend support to this factor:

- There are five forms of lawful gambling (Pull-tabs, tipboards, bingo, raffles and paddlewheels) and four different state tax computations based on games played and gross receipts reported. Specifically:
  - 1.7% distributor tax paid on ideal gross receipts from pull-tabs and tipboards.
  - 8.5% tax paid on net receipts from bingo, raffles, and paddlewheels.
  - A Combined Receipts tax paid on gross receipts from pull-tabs & tipboards.
  - 0% tax paid on exempt-type raffles conducted by non-licensed organizations.
- When state taxes paid by an organization are compared to their net receipts (gross receipts less prizes paid), the Board found that some organizations pay as little as 1% of their net receipts on taxes while other organizations pay as much as 52%. The main reason for this disproportionate rate is due to the “combined receipts tax” that is assessed in a progressive manner based on actual gross receipts from pull-tabs, tipboards and interest.

The study also highlights other factors related to taxes as expressed by the industry:

- The distributor tax (the primary gambling tax paid for each pull-tab and tipboard game) is paid by charitable organizations before any ticket is sold.
- Since the distributor tax is based on the “ideal gross” for each game (ideal gross assumes each game will sell-out), the charitable organizations pay the tax up front to the distributor. Organizations file monthly reports with the Department of Revenue showing all sales history including the value of “unsold tickets” but the tax refund/credit for unsold tickets is processed only once each year by Revenue.
- The tax on raffle receipts is inconsistent. Some licensed charities pay 8.5% tax on net receipts while “exempt” charities pay nothing. For FY2008, the gross receipts from exempt raffles were approximately \$34 million. For FY2008, the gross receipts from non-exempt raffles were \$6.7 million.
- For FY2008 activity:
  - When total taxes paid to the state are compared to total net receipts (gross sales less prizes paid), the effective rate is 20.5%.

- When total taxes paid to the state are compared to the total gross receipts, the effective rate is 3.7%.

The last two bullet points are significant. There is some belief by industry representatives that charitable organizations should not be taxed. The Board is neutral on this particular point but offers the following for consideration and discussion.

The very reason for allowing lawful (charitable) gambling is for proceeds to be used for charitable purposes. Presumably any funds not paid in taxes would go directly towards charitable purposes. So the logical question to ask is:

**Should the non-profit organizations be taxed based on the lawful gambling (sales) activity?**

Looking back into some of the history, a report titled “Gambling in Minnesota (1990) and issued by the then Department of Gaming, stated in part that, “*In 1984 the state took control of charitable gambling from local units of government. Oversight was adopted to ensure uniform enforcement of the laws around the state and to improve collection of the taxes on gambling receipts.*” So it is the Board’s position that taxes were meant to be a part of the equation, but the question for today is:

**How and at what rate should lawful gambling taxes be assessed?**

The Board does take the position that the method or formula for determining the tax on gambling receipts should be simplified. As referenced above, the rate of taxation varies based on the game played and the charitable organization conducting the games.

**Who pays the tax?**

Additionally, the focus on “Who actually pays the tax?” needs to be clarified. Based on current practice, the licensed charity pays the distributor tax up front -- before any ticket is sold -- and therefore the perception is that the tax is paid “out of the charity’s pocket”. This is a key point in the perception that the charitable organizations are being unfairly taxed or that any flat tax will hurt small charitable organizations

**New Model?**

If a new model for taxation was based on actual sales of the lawful gambling games, the focus of who pays the tax would shift from the charitable organization to the player and the charity would not be required to pay the tax upfront.

Based on the current lawful gambling reports for FY2008, when all taxes collected from lawful (charitable) gambling are compared to the gross receipts, the effective rate is 3.7%. This rate appears to be “equitable” but based on current structure, not all licensed organizations pay the same rate.

Using the same gambling reports for FY2008, when all taxes collected from lawful (charitable) gambling are compared to the net receipts (gross sales less prizes paid), the effective rate is 20.5%.

### **Exempt raffles not taxed**

In regards to raffles, the majority of sales activity comes from “exempt raffles”. Exempt raffles are usually small, one-time charitable events held by organizations that do not have a “full” gambling license but instead receive an exempt permit from the Board. When the value of all those small, one-time tax exempt events are combined, the total gross receipts for FY2008 were approximately \$34 million. By contrast, the gross receipts of the taxable raffles conducted by fully licensed charitable organizations were \$6.7 million and the net tax paid to the state for taxable raffles was \$270,000. The focus on this issue is that the tax on raffles is inconsistent.

### **Flat tax rate**

As previously noted, the current percentage of lawful gambling taxes paid by licensed charitable organizations varies greatly. The legislative platform for the 2009 session as originally proposed by Allied Charities of Minnesota (group representing the licensed charitable organizations) seeks a “flat tax” based on *net* receipts. A flat tax based on net receipts would certainly bring all licensed organizations closer in terms of percentage of taxes paid but there would still be noted differences in situations where an organization offers games with a higher prize payout and therefore would pay a lower tax. A flat tax based on gross receipts would treat every licensed organization the same.

### **License and regulatory fees**

In addition to taxes, licensed organizations pay fees to the Gambling Control Board for licensing and regulatory services. These fees, similar to taxes paid, are treated as lawful purpose expenditures. If the value of the licensing and regulatory fees which amounts to only .3% (.003) of gross receipts were factored into the tax base, the payment of licensing and regulatory fees could essentially be paid by the players and at no cost to the licensed organization. If this were allowed, the Board could change to a perpetual licensing system. Licensees would only be required to submit periodic changes to original license application affecting officers, premise permit locations and other pertinent information. This would save both the Board and licensed organization in terms of time and costs in processing license renewals and payment of fees.

## **Recommendations (related to Taxes)**

1. The legislature should simplify the tax rate(s).
2. The legislature should eliminate the “up front” distributor tax (which also eliminates the processing of unsold ticket tax refunds by the Department of Revenue).
3. Legislature should consider an equitable flat tax rate based on gross or net receipts for pull-tabs, tipboards, bingo and paddlewheels.
4. Legislature should determine if all raffles should be tax exempt.
5. Legislature should dedicate a portion of the taxes collected from lawful gambling for the appropriation and funding of the Gambling Control Board.
6. If funding for the Gambling Control Board is based on a dedicated portion of taxes collected from lawful gambling, the Legislature should allow the Board to issue perpetual licenses.

# Expenses

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Declining revenues in lawful gaming receipts have significantly affected the licensed charitable organization's ability to maintain the expense calculation limits set by law. "Expense calculation limit" is the maximum percentage of net receipts that may be spent on allowed operating costs. Since FY2004, gross receipts from lawful gambling have decreased by 20% but expenses have not decreased at the same rate due to some fixed costs.

Currently, if a licensed organization cannot maintain their expenses within the limits established by law, the organization must reimburse the "negative expense" and is subject to civil penalties for exceeding the expense allowance. If the licensed organization cannot reimburse for negative expenses, they must terminate their lawful gambling license.

The focus on expenses covers the following points:

1. Fixed Expenses:
2. Expense calculation method VS. a rating of "profitability"
3. Lack of automation and electronic reporting.

## **1. FIXED EXPENSES**

Four of the biggest fixed expenses for lawful gambling are:

- Salaries (Gambling managers and sellers of the games)
- Rent (paid to bar owners for providing space or selling tickets)
- Annual Audit/fiscal review (required by law)
- Games/Gambling equipment

### **Salaries**

The days of finding "volunteers" to manage the lawful gambling operations are ... for the most part ... gone. But given the responsibilities and time commitment especially for licensed gambling managers, the Board recognizes the need to provide for fair compensation. But fair compensation varies from one licensed charity to another. The volume of games sold, the number of sites permitted under a gambling license and assistance provided by other members of a charitable organization are all factors to be taken into account when determining fair compensation.

Suggestions from the industry in regards to the salary compensation issue was to have the Board publicly post the salary ranges for licensed gambling managers so that other organizations could compare the level of compensation. As noted above, given the fact that not all organizations are managed the same way and the fact that some organizations have multiple sites, it is the Board's position to continue to allow each organization to determine an equitable and fair rate of compensation for their employees. It should be noted that some organizations have reduced the wages paid to gambling employees given the recent decrease in gross receipts.

An additional note of importance: Some charitable organizations have terminated their gambling license due to the fact they could not find anyone “interested” in taking responsibility for reporting and accounting for the games. In response to this issue, representatives from the industry have requested that the Board consider allowing non-members of licensed organizations to be gambling managers. Regardless of compensation, the Board strongly takes the position that an organization must have in place a competent individual, who is a member of the organization and will be responsible for overseeing and managing the gambling operation. If an organization cannot find a member willing to accept this responsibility, the organization should not be involved in lawful gambling. It is also noted that under current rules, an organization can employ a non-member to be an assistant gambling manager.

### **Rent**

In regards to rent paid to bar owners, the Board believes that the current rates as provided in law (10% of net receipts for booth operation; 20% of net receipts for bar operation) remain fair to both the licensed organizations and the bar owners. The only noted exception would involve the maximum rent allowance for a bar operation, currently capped at \$2,500 per month (bar operation is where an employee of the lessor (bar owner) sells the games on behalf of the licensed organization). Representatives from the industry have expressed an interest to remove the cap for a bar operation.

### **Annual (independent) audit**

One of the most noted issues related to expenses is the cost of an annual (independent) financial audit (or “financial review” for organizations with smaller gross receipts) required by the Department of Revenue. The Board believes that an independent audit for any organization is an important element in maintaining the integrity of operations and security of assets. The Board is mindful of the cost incurred by the various charitable organizations and the scope by which an independent audit is performed. Adding to the concerns expressed by the industry is the frequency or timing of formal compliance reviews by Board staff or tax audits by Department of Revenue in addition to the independent audit. (Note: During the last few years, the Board has worked closely with our counterparts at Revenue to minimize any duplication or overlap when conducting a compliance review or tax audit. But some similarities of effort do exist when focusing on a compliance review, a tax audit and an independent annual audit – such as the verification of inventory.)

Under the rules established by the Department of Revenue, the independent annual audit covers a wide range of procedural checks and asset verification. Some of these tasks are performed during a compliance review by Gambling Control Board staff or by Revenue staff during an audit of tax reports. The standards for an independent annual audit as currently written require the services to be performed by an independent accountant licensed by the state. Similar standards are set for a “financial review” but on a smaller scale based on gross sales.

Feedback from the industry reveals that the cost of annual audits has gone up significantly given the change in audit procedures and reporting based on CPA audit standards (Sarbanes Oxley Act). However, the standards established in Department of Revenue’s rules for the independent audit of lawful gambling operations have not changed significantly to account for higher audit fees imposed on licensed organizations.

The Board also found that charitable organizations for the most part use the same accountant/accounting firm each year. Having the same accountant review the financial records each year saves some processing time, but the opportunity to solicit competitive bids is ignored and a potential cost savings is missed.

An option to increase the frequency of compliance reviews by Board staff as an alternative to the annual independent audit was considered but after consultation with representatives from Revenue and based on existing rules established by Revenue it was determined that the scope of the independent annual audit must continue to be performed by an independent accountant licensed by the state. The Board remains confident with the efforts of compliance staff in their review of operations and guidance and advice to licensed organizations. The Board will continue to review other opportunities for cost effectiveness.

### **Games/Gambling Equipment**

While this is a fixed cost, for the most part the games are provided to the licensed organizations at a relatively competitive rate. There have been some notable situations where some licensed organization appears to be paying a higher cost when compared to other organizations but this could be remedied with the organizations doing more competitive bids from distributors.

## **2. EXPENSE CALCULATION VS PROFITABILITY**

Given the significant decrease in gross receipts, an increasing number of licensed organizations are having difficulty in meeting the expense calculation limits. A temporary increase of an additional 5% in the expense limit was passed during the 2008 legislative session. The current expense limits require that no more than 75% of gross profit (gross sales less prizes paid) from bingo activity and no more than 65% of gross profit from all other forms of lawful gambling may be used for allowable expenses.

Since 1986, the expense calculation limits have periodically been raised:

Year	Bingo expense limits	non-bingo expense limit
1986	50%	40%
1987	55%	45%
1992	60%	50%
1997	65%	55%
2001	70%	55%
2006	70%	60%
2008	75%*	65%*

\* Temporary

Another issue of contention raised by the licensed organizations involves the reduction of the “expense calculation balance”.

Background: Beginning in 1986, a law was passed that set a maximum limit on the amount of money that licensed organizations could spend on allowed expenses. This was to ensure an organization would have money for the purpose of charitable gambling – providing funds for charitable purposes. The actual amount of money spent on expenses was compared every month to this expense limit and if actual expenses were

less than the maximum limit, the value (not cash) was carried forward as a cumulative balance (the expense calculation balance). Any time an organization spent more than allowed, the overage was deducted from expense calculation balance. The expense calculation balance was reviewed annually and any organization with a negative balance was required to reimburse that amount from non-gambling funds.

Recent trends in reporting of gambling activity found that an increasing number of licensed organizations were exceeding the expense limits and thereby using up the value of their expense calculation balance until none was left and the organizations were forced to cease their gambling operations if they could not afford to reimburse the negative expense.

A program evaluation by the Office of the Legislative Auditor in 2005 brought focus to the issue of the expense calculation balances and recommended that the allowance be eliminated since over time approval was given to continually raise the limits for expenses.

As a result of the legislative audit finding, the remaining value of expense calculation balance was reduced to zero for all licensed organizations but later was restored to a value of 15% of the existing balance. Currently licensed organizations are allowed to continue to use the value of the remaining expense calculation balance if expenses exceed the limits but are not allowed to “build” the value for any additional expense calculation balances.

Going forward, the Board recognizes the challenges faced by the licensed non-profit organizations in meeting the expense calculation limits and the impact of fines and sanctions for exceeding the limits. But the importance of providing funds for charitable purposes is paramount. So the issue of maximizing use of proceeds for charitable purposes and reducing expenses is critical.

Based on input from the industry and feedback from Board staff, the focus of monitoring compliance with expense limits could shift to “rate of profitability”. Monitoring expenses would still be a focus of compliance reviews but licensed organizations could be evaluated and placed on a “profit scale” similar to a 5 star rating scale. The focus would be on the percentage of annual net receipts used for charitable purposes.

Example:

1. An organization that expends more than 50% on charitable donations gets a 5 star rating.
2. An organization that expends more than 40% on charitable donations gets a 4 star rating.
3. An organization that expends more than 30% on charitable donations gets a 3 star rating.
4. An organization that expends more than 20% on charitable donations gets a 2 star rating.
5. An organization that expends less than 20% on charitable donations gets a 1 star and year probation to improve.

(Note: For purpose of this study, we are focusing on charitable donations (also known as Lawful Purpose Expenditures) but it will be determined later whether taxes paid to the state should be counted as “charitable” if this proposed concept is approved.)

The membership of each organization could quickly gauge their effectiveness in terms of meeting measurable results. Additionally, organizations with less than a 3 star rating would get added scrutiny from compliance specialists. Emphasis for compliance reviews would focus on the percent of charitable donations and less on the expense payments. This would allow compliance specialists to conduct more frequent reviews and site visits too.

The use of fines or citations would continue to focus on issues affecting the integrity of the conduct of games and fraudulent reporting.

### **3. LACK OF AUTOMATION AND ELECTRONIC REPORTING**

For the most part, all reporting of lawful gambling activity is done manually. The Board has recently provided for “fill-in” forms but is not capable of accepting electronically filed reports. The same holds true for the Department of Revenue and the lawful gambling tax forms. In this respect, cost efficiencies are lost due to the manual reporting, filing, and data entry at all levels.

The Board is continuing to refine and simplify the reporting requirements and plans to refresh the strategic plan to incorporate a cooperative effort involving the Department of Revenue and industry representatives.

In regards to automation of gambling equipment for purposes of reporting inventory status and game reconciliation, the Board has been in discussion with representatives from the manufacturers to continue to explore opportunities for automation such as bar coding of games and tickets. Bar coding of games and tickets will assist the licensed organizations in terms of cost-effective game audits and minimize inventory errors. Not all manufacturers have the same idea or willingness to participate when it comes to automation but the Board plans to take a more proactive approach to encourage participation.

A clarification in law could help all licensees and regulatory authorities to be aware of the need to automate the conduct of the games and a timeframe to complete the task.

## **Recommendations (related to Expenses)**

1. Licensed organizations should continue to determine an equitable rate of compensation for paid employees.
2. The Board should maintain standards for Gambling Manager to be a member of the licensed organization.
3. The legislature should consider allowing the maximum rent cap for bar operations to be increased if the result will increase sales.
4. Licensed organizations should solicit competitive bids for audit services.
5. Department of Revenue should review the current rules to ensure that the scope of independent annual audits and financial reviews produce the most cost effective method for ascertaining that sound accounting practices are followed by licensed organizations.
6. The Department of Revenue should review the level(s) and frequency for which a financial audit versus a financial review is required and adjust if necessary.
7. The Executive Director of the Gambling Control Board should meet with key representatives from the Department of Revenue, the State Board of Accountancy, and representatives from the charitable organizations to review the audit standards and explore other cost saving opportunities related to the conduct of an independent annual audit.
8. Licensed organizations should solicit competitive pricing for gambling equipment.
9. The Legislature should consider the elimination of the allowable expense limits and replace with a scale of profitability to determine the rate of charitable donations (lawful purpose expenditures) from lawful gambling proceeds.

10. The Board should continue to develop automated forms and continue its efforts towards electronic filing of records by licensed organizations.
11. The Board should develop new standards for manufacturing of gambling equipment (games) to include automation and electronic reporting for inventory and game reconciliation and recommend changes to Legislature.

# Declining Receipts

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During the past 4 years, revenue from lawful gambling activities has decreased. As previously discussed under the expense implication, a number of factors have contributed to the decline in receipts. The focus of issues in this category will be on factors contributing to the decline in receipts and opportunities for consideration of new game formats or allowances for existing forms of lawful gambling to be conducted more frequently.

A number of factors appear to have contributed to the decrease in sales activity:

1. Impact from smoking ban.
2. Competition from gambling sites without a smoking ban
3. Competition from other gambling entities.
4. Economy
5. .08 alcohol limit.
6. Closed sites
7. “Maturing” player & “Same old games”...

The Board does not anticipate the smoking ban in Minnesota will be repealed or modified but does note the public comments received in response to the study and recognizes that the statewide ban affects only those jurisdictions under the State’s authority.

## **Other gaming opportunities**

At this point, one of the biggest factors affecting the charitable gaming industry is competition from other gambling venues. Some of the issues expressed by the industry include:

- Tribal gaming offers a multitude of electronic games in addition to pull-tab games but with significantly higher prize payouts than allowed under charitable gaming limits.
- In addition to the regular scratch tickets and big lottery jackpot games, the Minnesota State Lottery is offering a million dollar “raffle”. The game is actually an on-line instant ticket game but is promoted as a raffle.
- Internet gambling is growing in popularity and attracting the younger players but still relatively illegal.
- Illegal sports boards... (A form of a tipboard but prohibited by federal law.)

## **Additional notes of interest**

A recent study by the Gambling Control Board attributed the effects of the economy as a contributing factor in the decreased sales activity for lawful (charitable) gaming but also noted is the fact that the Minnesota State Lottery had a record year in FY2008 with a 9.2% increase in sales. According to Clint Harris, the Director of the Minnesota State Lottery, it was not the big Powerball jackpots but rather the instant (scratch) tickets that increased. In 2008, the Lottery introduced the first \$20 scratch ticket and it became one of their best sellers.

Conversely, according to Associate Director of the Minnesota Licensed Beverage Association, Tony Chesak, approximately 300 bar/restaurant establishments have closed in Minnesota since the smoking ban was enacted statewide.

### **Technology**

Technology or the lack of electronic games is another factor expressed by the industry in terms of attracting new and younger players. Very little has changed over the years in terms of game enhancements or features. With the exception of the recent allowance of electronic bingo devices to monitor bingo cards and the linked bingo game, all other forms of lawful gambling remain similar to the original format when charitable gaming laws were passed in 1984. According to one individual responding to the study, “In the age of iPhones and video games, it is difficult to get new players interested in our paper games.”

The Gambling Control Board is aware of some new electronic features to existing lawful gambling games in other jurisdictions, such as a “video verifier” used in conjunction with pull-tab and tipboard games and more modern pull-tab dispensers featuring animated videos that promote the various lawful gambling games. (Note: The electronic features do not control the actual conduct of the existing games but provide animated graphics to help the player with winning ticket verification or identify the games for sale. Additional information on this issue is included under the “Declining receipts” category.)

Industry feedback has been positive in terms of the increased interest and play involving the electronic bingo devices and linked bingo game. Licensed organizations that are offering the linked bingo game would like to see the frequency of the game increased. Currently the game can be played only twice during an occasion.

### **Commercialization**

Provided in law, and included as part of the purpose of the Gambling Control Board, is the mandate to prevent the “commercialization” of lawful gambling. The Board has exercised its authority in this respect when it comes to the production and marketing of lawful gambling games and promotions but also understands that since the mandate was first created, the regulated industry has grown and still reports over a billion dollars annually in gross receipts. Recently the industry has raised the issue that this mandate restricts their ability to be more creative in minimizing expenses related to the operation of games and activities. Specifically the industry is looking for sponsorship-type support where applicable to help defray some of the costs.

Example 1: A cola vendor wants to promote their product on a pull-tab and is willing to pass the “sponsor” value onto the charity via a reduced cost of the game. The charity is not obligated to purchase the game but if they do, instead of the normal cost of \$40, the game is offered at \$30.

Currently the Board can not deny or reject a game simply because it bears a resemblance to a commercial product but there is no allowance for recognizing sponsor/commercial participation in regards to a reduction in product cost.

Example 2: Prior to running the actual linked bingo game on the video monitor viewed by the patrons/players, a brief “commercial” is run promoting a newly released movie. The revenue realized from allowing the commercial to run could be passed along to the participating charity in the form of a reduced administrative cost from the linked bingo game provider.

Again, current interpretation of “commercialization” by the Board would not permit this scenario.

Some organizations have expressed an interest in using local vendors in their communities to help promote their charitable gaming events but the Board has restricted this based on the commercialization issue as well.

### **Statute and Rule Restrictions**

Additionally, statute and rules restrict some creative play of the games as proposed by the industry. Occasionally a licensed organization will propose a new or different element in regards to the conduct of a game. If the proposed game change or new idea can be regulated and easily monitored for compliance with existing laws and rules, the Board has been receptive to approving the game changes. Based on new comments and suggestions received during the public comment for the study, the Board proposes to review these concepts and where applicable, propose changes to existing law/rule in support of the creative suggestions proposed by the charitable gaming industry.

## **Recommendations (Declining Receipts/Activity)**

1. The Legislature should consider allowing the Gambling Control Board to approve or deny proposed electronic features that help facilitate winner verification and promote games for sale. (The electronic features could not have any impact on the actual conduct of the games but merely serve as a graphic method of public verification of the winning ticket(s) or the promotion of games for sale.)
2. The Legislature should consider allowing the licensed organizations to have more linked bingo games during an occasion (currently limited to two games).
3. The Legislature should reevaluate the mission of the Board and consider the impact of requiring that the Board “prevent commercialization” of lawful gambling.
4. The Board should review existing laws/rules pertaining to the conduct of games and allow for consideration of alternative game formats and prize determination.

# Increased Demand for Charities

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Given the economic forecast and other issues affecting local communities in terms of grants and aid, the need for charitable organizations to help is greater than ever. Based on this, the Board is anticipating the following:

- New charitable organizations will request to participate in lawful gambling opportunities.
- Local units of government will become more dependent on assistance and support (via local ordinances) for funding local projects and services.
- New (electronic) formats to existing games will be proposed (ie. Electronic tabletop bingo devices).

## **Recommendations:**

None at this time.

# Miscellaneous Issues & Recommendations

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## 1. CAPITAL IMPROVEMENTS

Currently the Board considers hundreds of capital improvement requests for licensed organizations that own their own building. The process is very labor intensive in terms of documentation provided by the organization and review and approval/denial by the Board. For the most part, the requests have been for energy efficient improvements, handicap accessible accommodations, or to replace old equipment.

**Recommendation:** The legislature should consider allowing a licensed organization that owns their own building to spend up to 5% annually of net receipts from lawful gambling for the repair and maintenance of their building. For capital improvements that would exceed the 5% allowance an organization would be allowed to escrow the value of the annual allowance.

## 2. LICENSING QUALIFICATIONS

Currently the Board issues licenses to manufacturers and linked bingo providers based on minimum qualifications and clearance of background checks. In situations where there is limited potential for vendor applications, such as the linked bingo provider license, the incentive to offer competitive pricing to licensed organizations is marginalized.

**Recommendation:** The legislature should consider amending the law pertaining to the licensing of manufacturers and linked bingo providers to include competitive pricing of gambling equipment as a condition of license approval.

## 3. DISTRIBUTOR INCENTIVES

Currently licensed manufacturers offer rebate incentives to licensed distributors in Minnesota for their gambling equipment. The value of incentives offered in this respect varies when compared to other states due to a variety of issues.

**Recommendation:** The Board should consider the allowance of incentives offered to licensed distributors from the manufacturers and determine if changes or restrictions in pricing is needed.

## 4. CAPITAL ASSETS

Based on the current method of accounting, licensed organizations are not allowed to use a depreciation schedule with the purchase of a capital asset. In some instances, this limitation would cause a licensed organization to exceed the allowable expense limits established in law.

**Recommendation:** The legislature should amend the law to allow licensed organizations the opportunity to use a depreciation schedule involving the purchase cost of a capital asset.

## **5. CIVIL PENALTIES**

The current maximum allowance for a civil penalty issued by the Gambling Control Board is \$500 per violation. Beyond that limit, the licensee is required to appear before the Compliance Review Group (CRG), a subcommittee of the Board. Costs associated with a CRG appearance impact the licensee and the Board. If the limit was raised to \$1,000 per violation, similar to allowances in other regulatory agencies, more cases involving noncompliance could be addressed through the citation process. As currently provided, licensees would still be able to appeal any proposed fine issued by the Director to the CRG.

**Recommendation:** Legislature should increase the maximum allowance for a civil penalty to \$1,000 per violation.

## **6. EXEMPT PERMIT APPLICATION**

The Gambling Control Board issues approximately 3,500 exempt or excluded permits per year. Exempt/excluded permits usually involve relatively small raffles or activities. Current law requires requests for permits to be submitted within 30 days of the event and includes a fee of \$50. While Board staff makes every attempt to review and approve permit requests that are received within less than 30 days, short of denying the request, there is no provision or incentive to ensure the requests are submitted in a sufficient timeframe.

**Recommendation:** The legislature include a provision in law that exempt or excluded permits submitted to the Board with less than the 30 day minimum be assessed a fee of \$100.

## **7. EXEMPT PERMITS – LOCAL APPROVAL**

Currently local (city) approval is required before the Gambling Control Board will consider any gambling permit, including exempt permits. After an exempt permit has been issued, there have been times where the event (raffle drawing) needs to be changed due to weather emergencies or insufficient sales. In those instances, it is problematic to require the licensee to get local approval for the change in event dates. Current law does allow the Director of the Board to approve or deny the date change for an exempt permit but does not address local approval for the change.

**Recommendation:** Legislature should clarify in law that local approval of an exempt permit is not required in situations where the approval was previously granted but due to unforeseen situations, the date of the event needed to be changed.

Proposed amendments to law:

(To be determined...)