

**REPORT OF THE OFFICE OF THE
STATE INSPECTOR GENERAL**

**Regulatory Structure Review
of Charitable Gaming in
Virginia (2021 Appropriation
Act, Item 105.D.1.)**

TO THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 9

**COMMONWEALTH OF VIRGINIA
RICHMOND
2022**

OFFICE OF THE STATE INSPECTOR GENERAL

**Regulatory Structure Review of Charitable
Gaming in Virginia**

Special Review
September 29, 2021



Michael C. Westfall, CPA
State Inspector General
Report No. 2022-PA-001



COMMONWEALTH OF VIRGINIA
Office of the State Inspector General

Michael C. Westfall, CPA
State Inspector General

P.O. Box 1151
Richmond, VA 23218

Telephone 804-625-3255
Fax 804-786-2341
www.osig.virginia.gov

September 29, 2021

The Honorable Ralph Northam
Governor of Virginia
P.O. Box 1475
Richmond, VA 23219

Dear Governor Northam,

The Office of the State Inspector General completed its review of the Virginia Department of Agriculture and Consumer Services' Charitable Gaming Program as required in accordance with HB1800 Line Item 105D1. The final report is attached.

OSIG would like to thank Office of Charitable and Regulatory Programs Program Manager Michael Menefee and his staff for their cooperation and assistance during this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Westfall".

Michael C. Westfall, CPA
State Inspector General

cc: The Honorable Clark Mercer, Chief of Staff to Governor Northam
The Honorable Bettina Ring, Secretary of Agriculture and Forestry
The Honorable Paul Krizek, Chair of the Joint Subcommittee Percentage of Charitable Gaming Receipts to be Used for Required Purposes
The Honorable John Bell, Vice Chair of the Joint Subcommittee Percentage of Charitable Gaming Receipts to be Used for Required Purposes
The Honorable John Chapman Petersen, Senate Chair of Agriculture, Conservation and Natural Resources
The Honorable Kenneth Plum, House Chair of Agriculture, Conservation and Natural Resources
The Honorable Luke Torian, House Chair of Appropriations
The Honorable Janet Howell, Senate Chair of Finance and Appropriations

The Honorable David Bulova, House Chair of General Laws
The Honorable George Barker, Senate Chair of General Laws and Technology
The Honorable Eileen Filler-Corn, House Chair of Rules
The Honorable Mamie Locke, Senate Chair of Rules
Brad Copenhaver, Commissioner of Agriculture and Consumer Services
Kevin Hall, Executive Director of Virginia Lottery
Larry Nichols, Director, Division of Consumer Protections
Michael Menefee, Program Manager, Office of Charitable and Regulatory Programs
Randi Clifford, VDACS Internal Audit Director
Elizabeth Smith, Virginia Lottery Director of Audit & Security
Charles Lessin, Chairman Charitable Gaming Board
Ashley Binns, Attorney, Virginia Division of Legislative Services
Connor Garstka, Attorney, Virginia Division of Legislative Services
Staci Henshaw, Auditor of Public Accounts

Regulatory Structure Review of Charitable Gaming in Virginia

What OSIG Found

Regulatory Structure of the Board to Prevent Conflicts of Interest

In order for the General Assembly to prevent conflicts of interests within the Charitable Gaming Board, it would need to require that board members and their families have no direct or indirect financial interest in charitable gaming activities. This matches with *Code of Virginia* requirements for the Virginia Lottery Board (§ 58.1-4004) and the Virginia Racing Commission (§ 59.1-368). Virginia Lottery and the Virginia Racing Commission are the two other Commonwealth agencies responsible for the oversight of gambling activities.

Adequacy of Charitable Gaming Oversight and Enforcement

VDACS does not have oversight and enforcement authority of over 70% of charitable gaming gross receipts in the Commonwealth. Currently, VDACS program has several vacant positions, including two new inspector and two new audit positions in addition to a vacant inspector supervisor, and staff auditor position to meet the current workload. Changes to the program, including OSIG recommended oversight of all charitable gaming funds and the implementation of Texas Hold'em poker tournaments, will affect staffing needs to meet proper oversight and enforcement.

Should the Charitable Gaming Program Move to Lottery

OSIG recommends that charitable gaming remain with the Virginia Department of Agriculture and Consumer Services. The General Assembly should consider changing the Charitable Gaming Board from a policy board to an advisory board. In doing so, the General Assembly should also transfer authority for regulating charitable gaming from the Board to the Office of Charitable and Regulatory Programs under VDACS.

A summary of OSIG recommendations and VDACS observations can be found at Appendix IV.

September 2021

HIGHLIGHTS

Why OSIG Conducted this Review

The General Assembly requested that OSIG, with the assistance of the Office of Charitable and Regulatory Programs, review the regulatory structure of charitable gaming in the Commonwealth.

What OSIG Recommends

- Update the *Code* to ensure proper oversight of all charitable gaming gross receipts.
- Update the *Code* to address conflicts of interest and provide needed consistency between types of charitable gaming activities.
- Update the *Code* to provide VDACS the authority to deny, suspend or revoke permits.
- Update the *Code* to regulate the owner, lessor or lessee role within charitable gaming.
- Have VDACS reevaluate staffing levels after the impacts to the changes to the *Code* and regulations have been implemented to ensure proper oversight and enforcement statewide.
- Have VDACS establish a time frame for releasing charitable gaming applications after regulations have been promulgated.



Contact OSIG at www.osig.virginia.gov or 804-625-3255 for more information.

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BACKGROUND

The 2021 General Assembly Special Session HB 1800 Line Item 105 D1 directed that “the Office of the State Inspector General shall, with the assistance of the Office of Charitable and Regulatory Programs, review the regulatory structure of charitable gaming in Virginia, to include, at a minimum: (i) current permitting requirements and exemptions; (ii) net revenue dedicated to charitable activities and which types of gaming revenue is excluded from this calculation; (iii) charitable gaming occurring in remote locations not located in the same jurisdiction as the registered address of the charitable organization; (iv) enforcement of the “social quarters” and “members and guests” limitation; (v) the structure of the Charitable Gaming Board including any changes needed to prevent conflicts of interest; (vi) the adequacy of enforcement and resources dedicated to oversight activities of the Office of Charitable and Regulatory Programs; and (vii) whether regulation of charitable gaming would be more appropriately vested with the Virginia Lottery. The Office of the State Inspector General shall report on their findings to the General Assembly no later than October 1, 2021.”

Code of Virginia § 18.2-340.15 outlines state control of charitable gaming. Per the *Code*, “A. Charitable gaming as authorized herein shall be permitted in the Commonwealth as a means of funding qualified organizations but shall be conducted only in strict compliance with the provisions of this article. The Department of Agriculture and Consumer Services is vested with control of all charitable gaming in the Commonwealth. The Charitable Gaming Board shall have the power to prescribe regulations and conditions under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted. B. The conduct of any charitable gaming is a privilege that may be granted or denied by the Department of Agriculture and Consumer Services or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.”

In 1973, the General Assembly first authorized charitable gaming as a legitimate source of fundraising for qualified organizations. However, local governments had the regulation and enforcement of charitable gaming.

In 1995, the General Assembly created the Charitable Gaming Commission, moving the oversight of bingo and other legal forms of charitable gaming from local government oversight to state government oversight. Effective July 1, 1996, the Charitable Gaming Commission assumed statewide control over gaming activities conducted by qualified charitable organizations.

The 2003 General Assembly enacted legislation creating the Department of Charitable Gaming and abolishing the former Charitable Gaming Commission. This legislation created the Charitable Gaming Board as a policy board with nine members appointed by the Governor. In

2015, the membership of the Board was expanded to 11 members; six appointed by the Governor, three appointed by the Speaker of the House of Delegates and two appointed by the Senate Rules Committee.

In 2008, the Department of Charitable Gaming merged with the Virginia Department of Agriculture and Consumer Services and initially became the Division of Charitable Gaming. Subsequently, the Division of Charitable Gaming was changed to the Office of Charitable Gaming and moved within the Division of Consumer Protection.

The Office of Charitable and Regulatory Programs within the VDACS Division of Consumer Protection has the oversight of gaming activities. It follows prescribed regulations that look to ensure the integrity of charitable gaming and maintain a high quality environment to eliminate fraud, as well as provide assurance to qualified organizations to enhance their charitable fund raising activities.

In accordance with § 18.2-340.15, the conduct of charitable gaming is a privilege that may be granted or denied by the department. Except as provided in § 18.2-340.23 of the *Code*, every eligible organization, volunteer fire department and rescue squad with anticipated gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the *Code* in any 12-month period shall obtain a permit from the department prior to the commencement of charitable gaming activities. To be eligible for a permit, an organization must meet all of the requirements of *Code* § 18.2-340.24

Code § 18.2-340.16 defines gross receipts as “the total amount of money generated by an organization from charitable gaming before the deduction of expenses, including prizes.”

Per *Code* § 18.2-340.19, “Require, as a condition of receiving a permit, that the applicant use a predetermined percentage of its gross receipts for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.” This predetermined percentage of its gross receipts is referred to as use of proceeds. The regulations have set this predetermined minimum percentage of gross receipts from charitable gaming at 10%.

Regulation 11VAC15-40-20E states, “If an organization fails to meet the minimum use of proceeds requirement, its permit may be suspended or revoked. However, the department shall not suspend or revoke the permit of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a remedial business plan.” Regulation 11VAC15-40-20G states, “An organization

whose permit is revoked for failure to comply shall be eligible to reapply for a permit at the end of one year from the date of revocation. VDACS may issue the permit if it is satisfied that the organization has made substantial efforts towards meeting its remedial business plan.”

SCOPE

The scope of this review was limited to the areas identified in HB 1800 Line Item 105D1 brought forth by the General Assembly from January 2019 through July 2021.

OBJECTIVES

The objective of this review was to evaluate the areas identified as follows:

- i. Current permitting requirements and exemptions.
- ii. Net revenue dedicated to charitable activities and the type of gaming revenue excluded from this calculation.
- iii. Charitable gaming occurring in remote locations not located in the same jurisdiction as the registered address of the charitable organization.
- iv. Enforcement of the “social quarters” and “members and guests” limitation.
- v. Structure of the Charitable Gaming Board, including any changes needed to prevent conflicts of interest.
- vi. Adequacy of enforcement and resources dedicated to oversight activities of the Office of Charitable and Regulatory Programs.
- vii. Whether regulation of charitable gaming would be more appropriately vested with the Virginia Lottery.

METHODOLOGY

OSIG conducted this review in accordance with the Principles and Standards for Offices of Inspector General. Additionally, OSIG applied various methodologies during the review process to gather and analyze information pertinent to the project scope and to assist with developing and testing the project objectives. The methodologies included the following:

- Reviewed the applicable *Code of Virginia* sections.
- Reviewed the applicable regulations in the Virginia Administrative *Code* sections.
- Interviewed staff and reviewed applicable policies and procedures related to permitting, oversight and enforcement activities.
- Submitted questionnaire to current Board members.
- Reviewed the November 2019 Joint Legislative Audit and Review Commission’s Gaming in the Commonwealth report.
- Reviewed the 2019 Regulatory Management Counselors, P.C. report – Comparative Governance and Regulatory Structures of Gaming Regulation Related to Expanded Legalized Gaming Activities in the Commonwealth of Virginia.
- Observed on-site inspections of a sample of charitable organizations.

- Sampled permits issued.
- Sampled audits conducted by VDACS.
- Reviewed Board minutes.
- Compared the Virginia Alcoholic Beverage Control Authority's process for revoking a permit to VDACS' process for revoking a permit.

REPORT OBJECTIVES

i. CURRENT PERMITTING REQUIREMENTS AND EXEMPTIONS

According to VDACS' website, "The Office of Charitable and Regulatory Programs (OCRP) promotes the integrity of charitable gaming activities in the Commonwealth." Charities that elect to participate in charitable gaming in order to raise funds for their charitable activities must first secure a permit from the Office of Charitable and Regulatory Programs within VDACS.

VDACS' licensing will receive all incoming permit applications after having been date stamped and, if applicable, fees paid. VDACS has 45 days from the filing of the permit application to process the permit. All permits, when issued, are valid for the period specified in the permit unless it is sooner suspended or revoked. No permit is valid for longer than two years and the application is a matter of public record.

Code § 18.2-340.25 states, "All permits shall be subject to regulation by the Department to ensure the public safety and welfare in the operation of charitable games. The permit shall only be granted after a reasonable investigation has been conducted by the Department. The Department may require any prospective employee, permit holder or applicant to submit to fingerprinting and to provide personal descriptive information to be forwarded along with employees, licensee's or applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purposes of obtaining criminal history record information regarding such prospective employee, permit holder or applicant. The Central Criminal Records Exchange upon receipt of a prospective employee, licensee or applicant record or notification that no record exists, shall forward the report to the Commissioner of the Department or his designee, who shall belong to a governmental entity. However, nothing in this subsection shall be construed to require the routine fingerprinting of volunteer bingo workers."

In applying for a charitable gaming permit, new applicants must complete a Charitable Gaming Permit Application issued by VDACS. The permit application requires evidence of the organization's IRS tax-exempt status, including status type and charitable gaming activities, as follows:

Organization Information

- Organization's taxpayer identification number, mailing address, physical location, contact name and number, and jurisdiction where the organization regularly meets (this includes validation that the organization has been in existence and met on a regular basis in the listed jurisdiction for at least three years).
- Number of members and number of Virginia residents (organization must provide a complete list of officers, directors and game manager who are involved in the

management and operation of charitable gaming activities, including name, address and membership date).

- Copy of the organization’s most recent articles of incorporation, by-laws, charter, constitution and any other organizing documents that include the month, day and year the organization was formed.
- Type of organization (volunteer fire department, athletic association, war veteran or auxiliary units of a fraternal association or corporation operating under the lodge system, church or religious organization, etc.).
- Copy of IRS Tax Determination Letter (tax exempt status), most recent filed tax returns for verification of IRS tax filing compliance (IRS Form 990, 990EZ etc.)
- Validation of good standing (if part of a national or state organization, a good-standing letter from the national or state organization; if corporation or limited liability company – verification through State Corporation Commission registration).
- Validation that the organization is registered with VDACS to solicit charitable contributions in the Commonwealth of Virginia.
- Criminal background information of any officer, director and bingo and game manager who participates in the management or operation of any charitable gaming activity.
- Relationship disclosure of whether any officer, director, game manager or any member who is involved in the conduct, operation or management of charitable gaming activities is related to a licensed manufacturer/supplier, manufacturer’s/supplier’s agent, employee, member of the manufacturer’s/supplier’s immediate family or person residing in the same household who offers, provides or sells gaming products to the organization.

Charitable Gaming Activities

- Details of the charitable gaming activities:
 - Location, day, dates and times the activities will be held.
 - Any house rules that have been adopted.
 - Games the organization wants to conduct – bingo, raffles, pull tabs, etc.
- Details of the charitable gaming activities within social quarters:
 - Whether the organization wants to sell electronic and/or paper instant bingo, seal cards and/or pull tabs.
- Financial reporting information:
 - Who will be responsible for filing financial reports.
 - Where the financial records will be stored.
 - Details of any payments or anticipated payments to any called or bingo manager.
 - Details of how funds derived from the charitable gaming activities will be disbursed.
 - Whether the organization entered into any contract or agreement with a third party to organize, coordinate, manage, operate or conduct any of the charitable gaming activities it wishes to conduct, which is prohibited under *Code* § 18.2- 340.33.

A sample permit is included at Appendix I. The permit contains details of the charitable organization name, mailing address and permit dates. It also lists the charitable activities to be conducted by the organization (bingo, raffle, pull tab in social quarters, etc.) and the location and schedule for those activities.

If an organization fails to provide all relevant information to the OCRP within the application process, and the OCRP does not have enough information to make a licensing decision, the organization will be notified in writing that the application will be closed due to insufficient information. This means that VDACS will take no further action on the application and will close the file.

If VDACS recommends the application be denied, VDACS is obligated to initiate the Administrative Process Act. An alternative to initiating the APA process would be for the denied organization to submit a written request to withdrawing their application from further consideration by the OCRP. Below is a table detailing the number of permits the OCRP has processed from 2013-2021.

Charitable Gaming (FY)	Organization Permits	Supplier Permits Issued	Electronic Pull Tab Manufacturer Permits Issued	Total
2013	375	16	6	397
2014	365	17	6	388
2015	359	18	7	384
2016	361	15	7	383
2017	347	22	7	376
2018	313	17	6	336
2019	294	17	5	316
2020	301	17	5	323
2021	233	19	4	256

While OCRP staff are responsible for the permit review and approval process, all other decisions (such as denial, suspension and revocation) are required to go before the Charitable Gaming Board in accordance with section *Code* § 18.2-340.20. Specifically the *Code* states:

“A. The Department may deny, suspend or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Board only after the proposed action by the Department has been reviewed and approved by the Board. The action of the Department in denying, suspending or revoking any permit shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.).

B. Except as provided in § 18.2-340.25, § 18.2-340.30 and § 18.2-340.36, no permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for the hearing. At the discretion of the Department,

hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court. After a hearing on the issues, the Department may refuse to issue or may suspend or revoke any such permit if it determines that the organization has not complied with the provisions of this article or the regulations of the Board.

C. Any person aggrieved by a refusal of the Department to issue any permit, the suspension or revocation of a permit, or any other action of the Department may seek review of such action in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.”

OCRCP staff make denial recommendations to the Board and they are not final until the Board takes action. The Board is not required to take the recommendation of staff and may approve a permit recommended for denial. For at least the past eight years, VDACS has not recommended a permit be denied.

ii. NET REVENUE DEDICATED TO CHARITABLE ACTIVITIES AND WHICH TYPE OF GAMING REVENUE IS EXCLUDED FROM THIS CALCULATION

Code of Virginia §18.2-340.16 defines gross receipts as the total amount of money generated by an organization from charitable gaming before the deduction of expenses, including prizes. Further, *§18.2-340.30* establishes the following requirements for organizations in reporting gross receipts and disbursements:

- Each qualified organization shall keep a complete record of all inventory of charitable gaming supplies purchased, all receipts from its charitable gaming operation and all disbursements related to such operation.
- Except as provided in *§18.2-340.23*, each qualified organization shall file at least annually, on a form prescribed by the Department, a report of all such receipts and disbursements, the amount of money on hand attributable to charitable gaming as of the end of the period covered by the report and any other information related to its charitable gaming operation that the Department may require.
- In addition, the Board, by regulation, may require any qualified organization whose net receipts exceed a specified amount during any three-month period to file a report of its receipts and disbursements for each period.

Permitted organizations are required to report gross receipts to VDACS on an annual basis. However, receipts from electronic pull tabs that were generated within the organization's private social quarters are not required to be reported to VDACS, pursuant to *Code §18.2-340.26:1* and are not listed or included in the gross receipts table. The following is a breakdown of gross gaming receipts reported to VDACS over the past eight years (reported on a calendar year basis in millions):

Calendar Year	Gross Receipts with Accounting and Oversight of VDACS	Use of Proceeds by Charitable Organizations
2013	\$261.7	\$27.8
2014	\$258	\$27.6
2015	\$267.1	\$27.9
2016	\$266.5	\$29.3
2017	\$264.1	\$28.4
2018	\$260.4	\$27.7
2019	\$251.1	\$26.2
2020	\$134.9	\$16.5

In addition to reporting requirements, all reports filed by charitable organizations are subject to audit. *Code of Virginia §18.2-340.31* dictates the following:

- “A. All reports filed pursuant to §18.2-340.30 shall be subject to audit by the Department in accordance with Board regulations. The Department may engage the services of independent certified public accountants to perform any audits deemed necessary to fulfill the Department's responsibilities under this article.
- B. The Department shall prescribe a reasonable audit and administration fee to be paid by any organization conducting charitable gaming under a permit issued by the Department unless the organization is exempt from such fee pursuant to §18.2-340.23. Such fee shall not exceed one and one-quarter percent of the gross receipts which an organization reports pursuant to § 18.2-340.30. The audit and administration fee shall accompany each report for each calendar quarter.”

Permitted organizations that have gaming receipts in any quarter are required to submit quarterly and annual reports to VDACS that are subject to audit by the Audit and Financial Review Team of the VDACS Office of Charitable and Regulatory Programs. The following is a breakdown of gross receipts (cash coming in) and fees and expenses (disbursements) that the Audit and Financial Review Team reviews to ensure the accuracy of submitted financial information:

Gross Receipts	Allowed Charitable Organization Fees	Allowed Charitable Organization Expenses
Bingo paper sales	Audit and administration fee	Cash payments from funds at bingo sessions (prize payouts)
Electronic bingo device sales	Late filing penalty	Cash shortage or overage
Bingo session instant bingo, seal cards, and coin board sales	Payments already made with quarterly reports	Payments to registered suppliers
Bingo session treasure chests and raffle sales		Rent paid for electronic bingo devices
Bingo session miscellaneous sales (daubers, tapes, etc.)		Bingo hall lease payments
<i>Reduced by any discounts given</i>		Payments to the OCRP
Raffle and other gaming sales		Other gaming expenses
		Use of proceeds facility disbursements, charitable donations, and transfers to restricted accounts*
		Business expenses

* Restricted account required for use of proceeds to be used for lawful religious, charitable, community or educational purposes for which the organization is chartered. The Board set this amount to 10%.

iii. CHARITABLE GAMING OCCURRING IN REMOTE LOCATIONS NOT LOCATED IN THE SAME JURISDICTION AS THE REGISTERED ADDRESS OF THE CHARITABLE ORGANIZATION

With the establishment of the Charitable Gaming Commission, effective July 1, 1996, charitable organizations were restricted in the location they were permitted to conduct charitable gaming. Per § 18.2-340.24 of the original *Code* language, in order for a charitable organization to be eligible for a permit, they must “have been in existence and met on a regular basis in the county, city or town or in a county, city or town adjacent to the county, city or town wherein the organization proposes to conduct charitable gaming for a period of at least three years immediately prior to applying for a permit.”

In 2006, the *Code of Virginia* was updated to only restrict charitable gaming locations for bingo by removing the *Code* language from § 18.2-340.24 and providing VDACS with the authority to approve exceptions under § 18.2-340.27. Per § 18.2-340.27, “Any organization may conduct bingo games only in the county, city or town or in any adjoining county, city or town in which they regularly have been in existence or met. The Department may approve exceptions to this requirement where there is a special circumstance or documented need.”

In 2020, *Code* § 18.2-340.27 was updated to remove the regional jurisdiction requirement and charitable organizations were not restricted from conducting charitable gaming in the county, city or town or adjoining county, city or town.

In 2021, § 18.2-340.26:1 was updated to restrict the location for the sale of instant bingo, pull tabs or seal cards within the organization’s social quarters, with the exception of associations of war veterans or auxiliary units thereof organized in the United States or a fraternal association or corporation operating under the lodge system. Per § 18.2-340.26:1, “No organization, except for an association of war veterans or auxiliary units thereof organized in the United States or a fraternal association or corporation operating under the lodge system, may sell instant bingo, pull tabs, or seal cards (a) at a location outside of the county, city, or town in which the organization's principal office, as registered with the State Corporation Commission, is located or in an adjoining county, city, or town or (b) at an establishment that has been granted a license pursuant to Chapter 2 (§ 4.1-200 et seq.) of Title 4.1 unless such license is held by the organization.”

Further, *Code* § 18.2-340.27 was updated to apply the same requirements for the conduct of bingo games. In accordance with the *Code of Virginia*, if the charitable organization was already conducting charitable gaming at a location “That, notwithstanding §§ 18.2-340.26:1, 18.2-340.27, 18.2-340.28, and 18.2-340.28:1 of the Code of Virginia, as amended by this act, any organization that conducted bingo, network bingo, instant bingo, pull tabs, or seal cards at a location outside of the county, city, or town in which its principal office, as registered with the State Corporation Commission, is located or an adjoining county, city, or town on or before February 1, 2021, may continue to conduct bingo, network bingo, instant bingo, pull tabs, or seal cards at such locations until June 30, 2022.”

iv. ENFORCEMENT OF THE SOCIAL QUARTERS AND MEMBERS AND GUESTS LIMITATION

Code § 18.2-340.16 defines a qualified organization as “any organization to which a valid permit has been issued by the Department to conduct charitable gaming or any organization which is exempt pursuant to § 18.2-340.23.”

In 2001, the *Code of Virginia* was amended by adding section § 18.2-340.26:1 as follows:

“A. Pull tabs or seal cards used as part of a raffle as defined in § 18.2-340.16 may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull tabs or seal cards are sold is open only to members and their guests.

B. The proceeds from pull tabs or seal cards used as a part of a raffle shall not be included in determining the gross receipts for a qualified organization provided the gaming (i) is limited exclusively to members of the organization and their guests, (ii) is not open to the general public, and (iii) there is no public solicitation or advertisement made regarding such gaming.”

In 2001, *Code* § 18.2-340.23 stated that , “No organization that reasonably expects, based on prior charitable gaming annual results or any other quantifiable method, to realize gross receipts of \$25,000 or less in any twelve-month period shall be required to (i) notify the Commission of its intention to conduct charitable gaming, (ii) file a resolution of its board of directors as required by subsection B, or (iii) comply with Commission regulations. If any organization's actual gross receipts for the twelve-month period exceed \$25,000, the Commission may require the organization to file by a specified date the report required by § 18.2-340.30.”

When combined, *Code* § 18.2-340.26:1 and § 18.2-340.23 removed regulatory oversight of charitable gaming in an organization’s private social quarters, due to the fact that they no longer needed to report gross receipts for games occurring in social quarters, nor request a permit. This includes permitting, financial reporting, inspections, and auditing requirements.

The key section of the *Code of Virginia* related to social quarters is § 18.2-340.26:1, which defined a charitable organization’s social quarters as “(i) is limited exclusively to members of the organization and their guests, (ii) is not open to the general public, and (iii) there is no public solicitation or advertisement made regarding such gaming.”

In 2006, *Code* § 18.2-340.26:1 was updated to remove the requirement that social quarters charitable gaming be conducted as part of a raffle and allowed instant bingo in addition to pull tabs and seal cards to be offered.

In 2020, *Code* § 18.2-340.26:1 was updated to restrict electronic pull tab devices in social quarters as follows, “No more than 18 devices that facilitate the play of electronic versions of

instant bingo, pull tabs or seal cards, commonly referred to as electronic pull tabs, may be used upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the instant bingo, pull tabs or seal cards are sold is open only to members and their guests. The Board may approve exceptions to this requirement where there is a special or documented need.” This section increased electronic pull tab devices in social quarters, from the regulated nine to 18.

In 2021, *Code* § 18.2-340.23 was updated to require the permitting of charitable gaming by only providing a permit exclusion for charitable organizations that earn \$40,000 or less annually on raffles, but all other charitable gaming would be required as follows: “No organization that reasonably expects, based on prior charitable gaming annual results or any other quantifiable method, to realize gross receipts of \$40,000 or less in any 12-month period from raffles conducted in accordance with the provisions of this article shall be required to (i) notify the Department of its intention to conduct raffles or (ii) comply with Board regulations governing raffles. If any organization's actual gross receipts from raffles for the 12-month period exceed \$40,000, the Department shall require the organization to file by a specified date the report required by § 18.2-340.30.”

On July 1, 2021, VDACS began issuing permits for charitable gaming occurring in social quarters. It also can inspect social quarters. VDACS also developed a social quarters’ game observation program that VDACS inspectors use when conducting on-site inspections of an organization’s social quarters.

Due to the language in *Code* § 18.2-340.26:1, financial reporting of gross receipts for charitable gaming occurring in social quarters remains exempt. VDACS does not have oversight or enforcement authority to ensure that charitable gaming funds are being managed and tracked as required, and that funds intended for charitable activities are properly collected and spent as mandated by the *Code* and corresponding regulations.

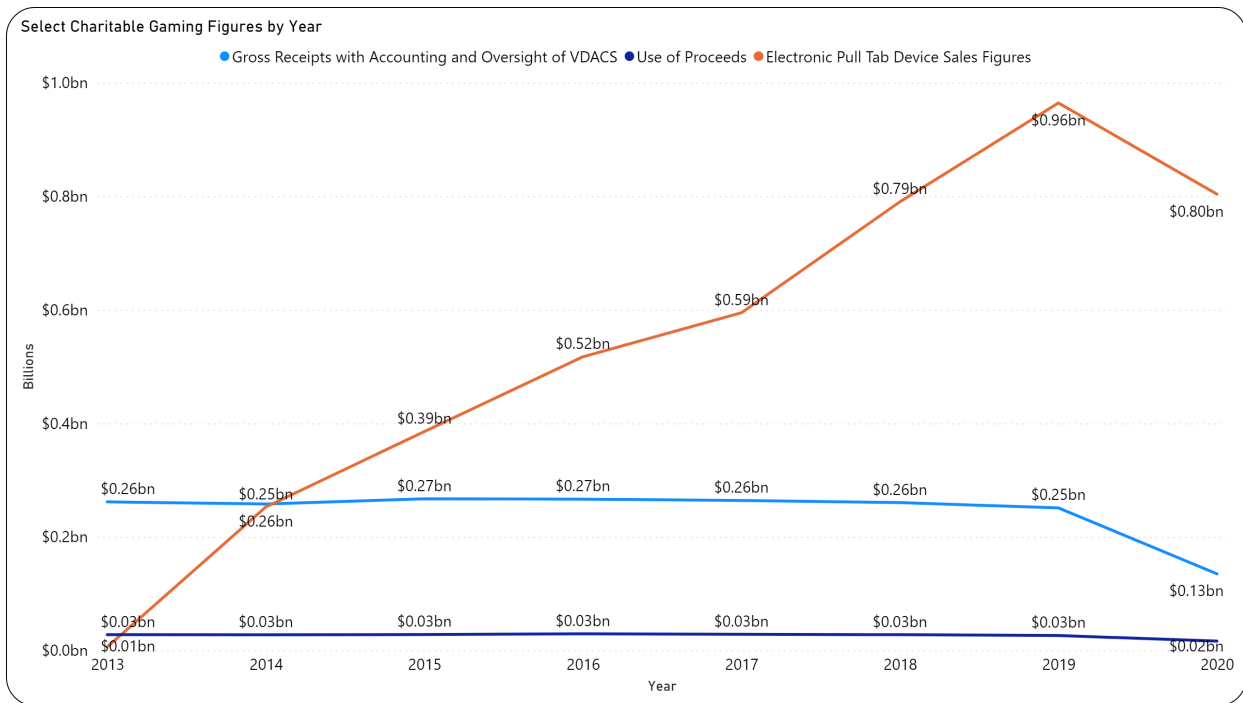
The electronic pull tab devices comprise the majority of charitable gaming sales. Based on data provided by VDACS, the below chart and table shows the sales of electronic pull tab devices compared with total gross receipts subject to accounting and oversight by VDACS. The gross receipts subject to accounting and oversight by VDACS include the 8% of electronic pull tab devices located outside of social quarters, and the electronic pull tab device sales figures include both the 8% of devices outside of social quarters and the 92% of devices in social quarters.

The chart below lists gross receipts subject to oversight by VDACS versus total gross receipts collected statewide for electronic pull tab devices.

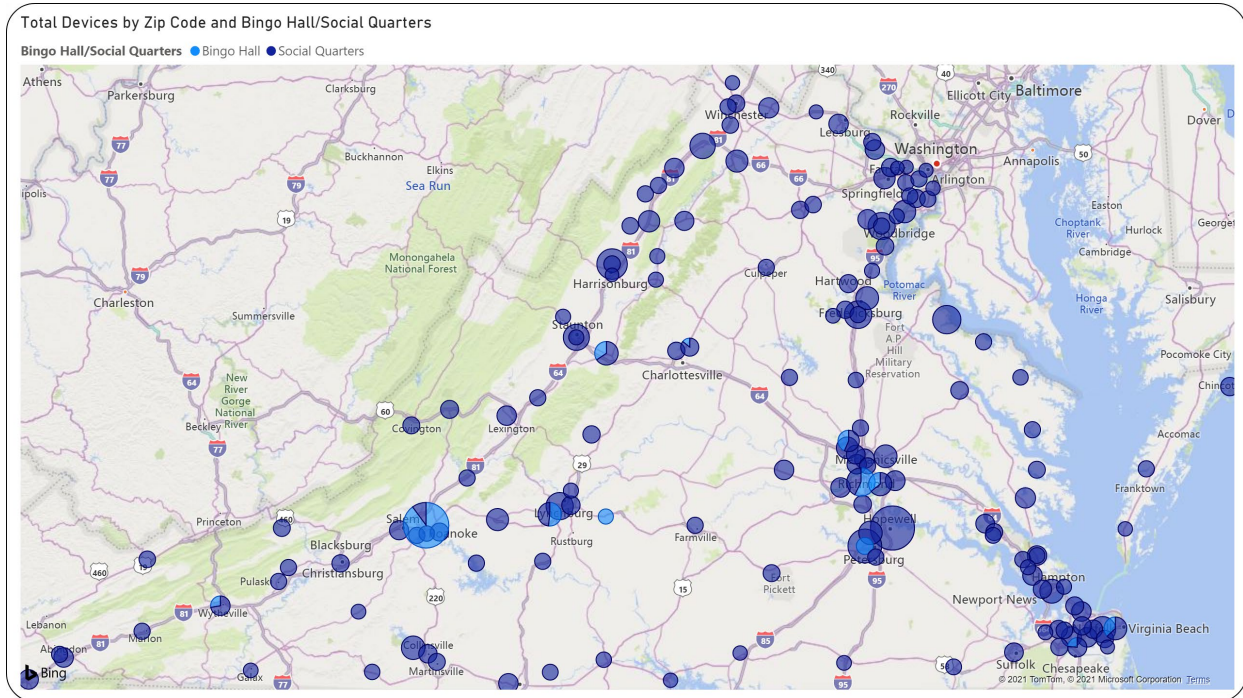
The graph below provides a trend of the total gross receipts collected statewide for electronic pull tab devices from 2013 through 2020.

Calendar Year	Gross Receipts Subject to Accounting and Oversight of VDACS*	Use of Proceeds*	Licensed Organizations	Total Charitable Gaming Electronic Pull Tab Device Sales Figures Statewide*
2013	\$261.7	\$27.8	365	\$106.9
2014	\$258	\$27.6	359	\$252.7
2015	\$267.1	\$27.9	361	\$385.7
2016	\$266.5	\$29.3	347	\$517.8
2017	\$264.1	\$28.4	313	\$594.8
2018	\$260.4	\$27.7	294	\$790.3
2019	\$251.1	\$26.2	301	\$964.4
2020	\$134.9	\$16.5	273	\$803.8

*Financial figures are in millions. VDACS provided the numbers.



The map below provides a perspective of the location of electronic pull tab machines, authorized and permitted by VDACS throughout the Commonwealth.



The General Assembly has expressed concerns about potential abuses of social quarters to insert electronic pull tab machines in locations where the Commonwealth did not intend. At OSIG’s request, VDACS provided the following observations for the General Assembly to consider in addressing its concerns related to potential abuse of social quarters:

- The terms "members" and "guests" are undefined when related to a particular organization and the activities performed under *Code §18.2-340.26:1*. The IRS defines members of 501(c)(8) extensively; furthermore, it defines guests of the organization on page 17 of the “IRC 501(c)(8) Fraternal Beneficiary Societies and IRC 501(c)(10) Domestic Fraternal Societies” publication when it comes to their participation in the organization's gambling activities. This publication is located on the IRS webpage for charities and nonprofits.
- The type of organization allowed to perform activities under *Code § 18.2-340.26:1* does not align with IRS guidelines. Under IRS guidelines, 501(c)(8) organizations and 501(c)(19) organizations typically have "private social quarters" where it is uncommon for 501(c)(3) organizations or 501(c)(4) organizations to have private social quarters.
- Private social quarters are not required to engage in other social recreational or fraternal activities in conjunction with charitable gaming activities. This may not align with IRS guidelines.
- Private social quarters are not required to operate in a facility where the organization regularly conducts business related to its federal tax-exempt purpose.
- Organizations engaging in activities performed under *Code § 18.2-340.26:1* are not subject to the reporting and auditing requirements under § 18.2-340.31.

v. THE STRUCTURE OF THE CHARITABLE GAMING BOARD INCLUDING ANY CHANGES NEEDED TO PREVENT CONFLICTS OF INTEREST

Chapter 837 (Senate Bill 1020) of the Virginia Acts of Assembly, effective July 1, 1995, created the Board. The original Board was a seven-member supervisory board for the newly established Charitable Gaming Commission under the Secretary of Administration. The intent of the creation of the Charitable Gaming Commission and corresponding board was to vest the agency with control of all charitable gaming in the Commonwealth. The Governor appointed Board members and the General Assembly confirmed them.

The Board makeup was to:

- Consist of residents of the Commonwealth for a period of at least three years next preceding his/her appointment with continued residency during his/her tenure in office.
- Consist of individuals from different geographic regions of the Commonwealth to the extent practicable.

Effective July 1, 2003, Chapter 884 (Senate Bill 1278) of the Virginia Acts of Assembly created the Department of Charitable Gaming. The Governor appointed and the General Assembly confirmed Board members. The Board makeup was changed to incorporate individuals with industry experience in charitable gaming as follows:

- One member who is a member of a charitable organization in good standing.
- One member who is a charitable gaming supplier registered and in good standing.
- One member who is an owner, lessor or lessee of premises where charitable gaming is conducted.
- At least one member who is or has been a law enforcement officer in Virginia but not affiliated with nor have an interest in a charitable gaming supplier, a member of a charitable organization or owner, lessor or lessee of premises where charitable gaming was conducted.
- Five citizens who are not affiliated with a charitable organization, charitable gaming supplier or owner, lessor, or lessee of premises where charitable gaming is conducted.

Board members with potential conflicts, based on their interest in the charitable gaming industry, represented only three of the nine board member positions.

Effective July 1, 2008, the Department of Charitable Gaming became a part of the Virginia Department of Agriculture and Consumer Services. There were no changes to the Board makeup.

In 2015, Chapter 755 (Senate Bill 1309) updated the Board to 11 members.

As dictated by *Code* § 2.2-2455, the Charitable Gaming Board is established as a policy board in the executive branch of state government. The purpose of the Board is to advise the Department of Agriculture and Consumer Services on all aspects of the conduct of charitable gaming in Virginia.

Code § 2.2-2455 states, “B. The Board shall consist of eleven members who shall be appointed in the following manner:

- 1. Six nonlegislative citizen members appointed by the Governor subject to confirmation by the General Assembly as follows: one member who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department; one member who is a charitable gaming supplier registered and in good standing with the Department; one member who is an owner, lessor, or lessee of premises where charitable gaming is conducted; one member who is or has been a law-enforcement officer in Virginia but who (i) is not a charitable gaming supplier registered with the Department, (ii) is not a lessor of premises where charitable gaming is conducted, (iii) is not a member of a charitable organization, or (iv) does not have an interest in or is not affiliated with such supplier or charitable organization or owner, lessor, or lessee of premises where charitable gaming is conducted; and two members who do not have an interest in or are not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted.
- 2. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates as follows: two members who are members of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one member who does not have an interest in or is not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted.
- 3. Two nonlegislative citizen members appointed by the Senate Committee on Rules as follows: one member who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one member who does not have an interest in or is not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted”

Code § 2.2-2455 further states, “C. The Board shall elect from among its members a chairman who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. The Board shall elect a vice-chairman from among its members.

D. A quorum shall consist of five members. The decision of a majority of those members present and voting shall constitute a decision of the Board. For each day or part thereof spent in the

performance of his duties, each member of the Board shall receive such compensation and reimbursement for his reasonable expenses as provided in § 2.2-2104.

F. The Board shall adopt rules and procedures for the conduct of its business, including a provision that Board members shall abstain or otherwise recuse themselves from voting on any matter in which they or a member of their immediate family have a personal interest in a transaction as defined in § 2.2-3101. The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon a written request to the chairman by any two members. Except for emergency meetings and meetings governed by § 2.2-3708.2 requiring a longer notice, all members shall be duly notified of the time and place of any regular or other meeting at least 10 days in advance of such meeting.

G. Staff to the Board shall be provided by the Department of Agriculture and Consumer Services.”

Board members with potential conflicts based on their interest in the charitable gaming industry, represent six of the 11 positions on the Board. That is a majority of the overall Board and one more than the five required for quorum. A quorum of five represents less than half of the 11 Board members.

To address conflicts of interest, the *Code* requires a Board member to abstain or otherwise recuse him or herself from voting on any matter in which they or members of their immediate family have a personal interest in a transaction.

Per *Code* § 2.2-3101 a personal interest in a transaction “means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.”

Article V of the bylaws adopted by the Charitable Gaming Board states, “Board members shall abstain or otherwise recuse themselves from voting on any matter in which they or a member of their immediate family have a personal or other interest in a transaction as defined in § 2.2-3101 of the *Code of Virginia*. Following such abstention and/or recusal, the Board member shall abstain from both decision-making and voting on such matter. When a member abstains from voting due to a matter of personal interest before the Board, the minutes shall both reflect the abstention and if the member so desires, the reason for the abstention.”

In 2020, the General Assembly passed Senate Bill 199 to provide the ability for charitable organizations to receive a permit to conduct Texas Hold'em poker tournaments to raise funds for those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized. The changes to the *Code*, allowing for the development of regulations for Texas Hold'em poker tournaments in order to allow VDACS to issue permits, went into effect July 1, 2020.

Included within the *Code* was the requirement "That the Charitable Gaming Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Charitable Gaming Board shall provide an opportunity for public comment on the regulations prior to adoption."

Regulations for Texas Hold'em were promulgated by the Board and scheduled to go into effect on March 23, 2021, allowing charitable organizations to obtain a permit to conduct Texas Hold'em poker tournaments. This did not occur with the passage of HB1800, which stated, "All regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021, shall remain in force and no additional regulations shall be promulgated or additional physical devices authorized for either charitable or fantasy contests regulated by the Office of Charitable and Regulatory Programs prior to June 31, 2022."

FINDINGS:

Finding #1 – Texas Hold'em regulations create conflicts and consistency issues that damage the integrity of the charitable gaming program.

Charitable gaming was extended to include Texas Hold'em poker tournaments with the passage of Senate Bill 936, Chapter 982. The Charitable Gaming Board was responsible for promulgating the regulations that allow charitable organizations to hold Texas Hold'em tournaments. Before the regulations became effective, the General Assembly removed the ability to update charitable gaming regulations that had not been fully promulgated as of March 1, 2021, through June 30, 2022.

In their current form, the regulations have these potential issues:

- Transferring management of Texas Hold'em from charitable organizations to third parties.
- Specifically allowing conflicts of interest.
- Creating an undue burden on VDACS oversight and enforcement by the lack of consistency between bingo game and Texas Hold'em operations.

OSIG provides a summary of the issues below. See Appendix II for a detailed version of this finding and related recommendations.

Regulations sections that transfer management of Texas Hold'em from charitable organizations to third parties: 11VAC15-50-60C2a, 11VAC15-5060C2e, 11VAC15-50-60C2h, 11VAC15-50-90E and 11VAC15-50-100D. These regulations directly transfer the management of the Texas Hold'em poker tournament program to third party management, specifically the landlord and the operator. VDACS has no authority to oversee the landlord's role in the program and only registration authority over the operator. Allowing the operator to collect the cash and deposit it, especially since the charitable organization is not required to be on-site during the entire program, will limit VDACS ability to verify the amount of funds collected. This will be especially true if the intent is to collect the funds and only transfer the charity's portion to the charity. This gives the appearance of allowing the creation of poker halls in Virginia where a poker tournament only needs a charitable organization as a sponsor of the tournament. VDACS will not be able to know that funds collected tie to the funds received by the charitable organization in these instances, specifically with the low level of involvement required by the charity.

Regulations sections with specific wording that allow conflicts of interest: 11VAC15-50-30E9, 11VAC15-50-60C1, 11VAC15-50-90C, 11VAC15-50-90D, 11VAC15-50-90E, 11VAC-15-50-90F and 11VAC15-50-90G. These regulations specifically allow for conflicts of interest between the landlord, the operator and members of the organizations, which, combined with the above, create additional cause for concern.

There are additional regulations that may not be consistent with the expectations of the *Code* or are missing in the Texas Hold'em regulations, but provide safeguards for the charitable organization. There are regulation requirements in 11VAC15-40-50 that are not in the Texas Hold'em regulations that should be included to provide safeguards and ensure consistency with the charitable gaming program. In addition, one regulation may not be consistent with the *Code*. That regulation is 11VAC15-50-70B, which is related to using electronic and mechanical devices for Texas Hold'em poker tournaments.

In addition to creating conflicts of interest, the Texas Hold'em regulations would create two sets of rules for oversight and enforcement of the charitable gaming program. The disclosure requirements built into the regulations do not provide proper oversight, as the regulations did not provide methods for VDACS to manage and evaluate their appropriateness, specifically as the actions would be allowed by the regulations. These conflicts allowed in the regulations could create opportunities that damage the credibility of charitable gaming in the state. Additionally,

11VAC15-50-70B and 11VAC15-40-50 require updating to ensure consistency with the *Code* and charitable gaming requirements in accordance with 11VAC15-40.

OSIG discussed these draft regulatory issues with VDACS management and they agreed with OSIG's findings. VDACS is responsible for carrying out the requirements of the *Code* and the regulations, but does not have the authority to participate in the development of the regulations. VDACS can only make suggestions to the Board, which it did in the above instances. In addition, the landlord can play a significant role in charitable gaming, but is not licensed or regulated. See Appendix II for a detailed walkthrough of each of the regulations listed above.

Recommendations:

The General Assembly should consider updating the *Code* as follows, with additional detail provided at Appendix II:

1. Ensure that the management, operation, conduct and administration of charitable gaming is the responsibility of permitted charitable organizations.
2. Establish requirements that protect charitable gaming from conflicts of interests, improve oversight and enforcement, and provide consistency in charitable gaming requirements between bingo and Texas Hold'em poker tournaments.
3. Make changes to establish limitations in expenses and remuneration that will also provide consistency across the charitable gaming program.
4. Require licensing and regulation of the landlord, specifically landlords that provide a leased location for two or more charitable organizations conducting charitable gaming on the landlord's premises.

Finding #2 – A Board member did not recuse themselves in accordance with *Code* requirements.

A Board member did not properly recuse themselves when their personal interest affected their responsibilities on the Board, including the promulgation of regulations. Per the *Code of Virginia* § 2.2-2455, “The Board shall adopt rules and procedures for the conduct of its business, including a provision that Board members shall abstain or otherwise recuse themselves from voting on any matter in which they or a member of their immediate family have a personal interest in a transaction as defined in § 2.2-3101.” The bylaws, as adopted by the Board, further state, “Board members shall abstain or otherwise recuse themselves from voting on any matter in which they or a member of their immediate family have a personal or other interest in a transaction as defined in § 2.2-3101 of the *Code of Virginia*. Following such abstention and/or recusal, the Board member shall abstain from both decision-making and voting on such matter. When a member abstains from voting due to a matter of personal interest before the Board, the minutes shall both reflect the abstention and if the member so desires, the reason for the abstention.”

Code language and corresponding bylaws specific to the Charitable Gaming Board require that any Board member with a personal interest in a transaction should recuse themselves from participating in any discussion, promulgation of regulations and voting on an area affected by that interest.

On September 16, 2020, a member announced to the Board and the public that they had a potential personal interest in the transaction as a principal in an entity intended to conduct charitable poker operations. They said that they were considering entering into the Texas Hold'em poker operations market and anticipated that they will be one of many Texas Hold'em poker operators throughout the state. They announced that their disclosure was in accordance with § 2.2-3112.B.1 and § 2.2-3114.F of the *Code of Virginia*. Further, they announced that they were able to participate in the transaction fairly, objectively and in the public interest.

Although the Board member disclosed the potential personal interest, a Board member that could host and conduct Texas Hold'em poker tournaments and fail to recuse themselves from participating in discussions, promulgation of regulations and voting related to that interest could create the potential for, or appearance of, conflicts of interests that should be avoided.

The Board member was actively involved in the promulgation of the Texas Hold'em poker tournament regulations that contained conflict of interest issues that benefit the operator and the landlord. The Board member in question is the President of a charitable organization that has leased or currently leases their premises to at least five other charitable organizations. The charity for which the Board member has requested to conduct Texas Hold'em poker tournaments, they are one of only two voting members. The other voting member, identified by the charity, matches the name of an individual identified as one of their immediate family members. Per their organization's website, the Board member is involved in the hosting and conducting of Texas Hold'em poker tournaments. This is occurring at the same address where they conduct other charitable gaming activities.

Although the potential personal interest was disclosed, that Board member did not and has not recused themselves from participating in discussion, promulgation of regulations or voting related to their current interest.

The Commonwealth benefits from having experienced Board members that have knowledge of the charitable gaming industry statewide. Board members not properly recusing themselves in accordance to both the *Code* and their approved bylaws damages the integrity of the Board and the overall Commonwealth's charitable gaming oversight.

Recommendation:

5. The General Assembly should change the Charitable Gaming Board to an advisory board to protect the integrity of the Commonwealth's charitable gaming oversight program. An advisory board would continue to benefit the Commonwealth's knowledge of the charitable gaming industry, especially as the impact to the industry through the implementation of casinos in the Commonwealth is not fully known.

Finding #3 – VDACS made applications for Texas Hold'em poker available prior to public posting of regulations.

Charitable gaming was extended to include the allowance for charitable organizations to offer Texas Hold'em poker tournaments with the passage of Senate Bill 936, Chapter 982. The Charitable Gaming Board worked to promulgate the Texas Hold'em poker tournament regulations in FY 2021.

Prior to the final promulgation of the Texas Hold'em poker tournament regulations, Chapter 552 of the Acts of Assembly required that, "All regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021, shall remain in force and no additional regulations shall be promulgated or additional physical devices authorized for either charitable or fantasy contests regulated by the Office of Charitable and Regulatory Programs prior to June 31[sic], 2022." VDACS and the Board anticipated that the Texas Hold'em regulations would be fully promulgated as of March 23, 2021, so VDACS developed and made available the application for charities to request a permit to conduct Texas Hold'em. This resulted in VDACS receiving permit requests for Texas Hold'em poker tournaments even though the regulations had not been promulgated to allow permitting.

In accordance with the *Code* § 18.2-340.20, VDACS can deny charitable gaming permits, but only with Board approval. "The Department may deny, suspend or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Board only after the proposed action by the Department has been reviewed and approved by the Board." This created a problem for VDACS. It could not issue a permit without promulgated regulations and could not deny the permit under the *Code*.

Since VDACS was unable to grant a permit for Texas Hold'em poker tournaments, a charitable organization sued VDACS for not granting the organization's permit request. VDACS only has 45 days to process permits once a completed application has been received, in accordance with the *Code* § 18.2-340.25. One of the Board members represents the charitable organization and this creates a conflict with the requirements for denying permits.

VDACS said it made the applications available prior to complete promulgation of the regulations because of pressure to allow charitable organizations to submit permit requests and obtain

permits as soon as the regulations were promulgated and made available to the public through Virginia Regulatory Town Hall. There is no regulatory requirement, internal policy or procedure that required VDACS to issue the permit applications prior to complete promulgation of the regulations.

Not issuing permit applications until a specified timeframe after the regulations have been promulgated provides charitable organizations equal opportunity to review the regulations when posted publicly. This will give charitable organizations an opportunity to consider the benefits, administrative requirements and potential drawbacks of new charitable games prior to requesting a permit application.

Recommendations:

6. VDACS should not make applications for new charitable games or regulatory changes that require permit updates until a specified period after regulations have been promulgated. This will protect VDACS from being unable to process the application within the *Code* mandated 45 day time frame, where it can neither approve nor deny the permit.

The period should provide charitable organizations proper time to review and understand the regulations in order to make a knowledgeable decision regarding completing a permit application.

7. The General Assembly should consider updating the authority of VDACS to have responsibility for the requirements, qualifications and grounds for issuance of all types of licenses and/or permits required for charitable gaming, including authority to deny, suspend and revoke.
8. In the event recommendation #7 is not implemented, the General Assembly should consider updating the authority of VDACS to deny, suspend or revoke permits in situations where a Board member or their immediate family member is associated with the charitable organization.

Finding #4 – VDACS lacks the statutory authority to regulate landlords.

The Virginia Department Agriculture and Consumer Services lacks the statutory authority to regulate property owners that lease to organizations who conduct charitable gaming. The *Code of Virginia* recognizes that lessors' play a significant role in the charitable gaming program because the *Code* requires one of the Board members to be an owner, lessor or lessee of premises where charitable gaming occurs. The *Code of Virginia* places certain expectations on property owners in § 18.2-340.33.6, but gives VDACS no authority or resources to oversee and enforce these expectations. The General Assembly has not amended the *Code of Virginia* to give VDACS authority to permit and regulate property owners who specifically rent to organizations that lease

space to charities engaged in charitable gaming activities. The agency can only audit permitted organizations, so the review of the transactions is limited.

The only area of the *Code of Virginia* that mentions property owner is § 18.2-340.33.6, “No landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for consideration any bingo supplies, including, but not limited to, bingo cards, instant bingo cards, or other game pieces; or (iii) require as a condition of the lease or by contract that a particular manufacturer, distributor or supplier of bingo supplies or equipment be used by the organization.”

Additionally, benchmarking performed by OSIG identified that other states (Colorado and Texas) recognize the greater potential for fraud and abuse in the lessor to lessee relationship in this area in comparison to other regulated gaming activities and the need to regulate the property owner component of charitable gaming as a result. These states regulate the actions of property owners who actively lease to organizations engaged in charitable gaming activities.

Colorado statute 24-21-602 defines a bingo raffle licensee as any qualified organization to which a bingo raffle license has been issued by the licensing authority. In Colorado, only licensed landlords can rent to bingo raffle licensees to conduct games of chance. Landlord licensee cannot assist with the conduct, management or operation of any game of chance unless the landlord licensee is also a bingo raffle licensee and is doing so as its bingo raffle license allows.

In Texas, a commercial lessor license is required by any person (sole owner, partnership, corporation, limited liability company, association or other entity, including an organization licensed to conduct charitable bingo) that intends to lease or otherwise make available a hall or other premises to an organization licensed to conduct charitable bingo in Texas.

Not having any regulations in place significantly hinders the enforcement abilities of VDACS and allows charitable organizations to fall prey to potential predatory leasing practices such as non-compete agreements based on location (e.g. 60 miles). Enacting a licensing requirement for lessors will provide the agency with administrative oversight of the lessor as well as an additional tool to enforce these expectations. Additionally, the administrative oversight will provide the agency with the authority to review the financial transactions between the charitable gaming organization and the lessor to ensure that all transactions between these two entities are compliant with the *Code of Virginia*.

Recommendation:

9. The General Assembly may want to consider the licensing of owner, lessor, or lessee of premises where charitable gaming occurs, to include:

- Owner, lessor or lessee cannot require licensees to use or purchase equipment from particular suppliers.
- Building owners must have a license to lease bingo premises even if they intend to charge no rent.
- Rent charged to licensees shall cover all expenses and items reasonably necessary for the use of the commercial bingo facility for a bingo occasion including, but not limited to, insurance and maintenance for such facility, adequate and secure storage space, restrooms, janitorial services and utilities.
- Owner, lessor or lessee (as a licensee) shall not assist with the conduct, management or operation of any game of chance.
- A person who extends credit, loans money, pays or provides for the payment of license fees for an authorized organization is ineligible to receive a license.
- A distributor or manufacturer of bingo goods is ineligible to receive a license.
- A person married or related by kinship or affinity to a person who has more than 10% propriety, equitable or credit interest or in which one of those persons is active or employed is ineligible to receive a license.
- Prohibition of the owner, lessor or lessee of premises where charitable gaming occurs from serving in any capacity (i.e. officer, director, etc.) with any charity that is leasing from them, in lieu of limiting it to only certain actions involving certain charitable gaming activities.

CHANGES NEEDED TO PREVENT CONFLICTS OF INTEREST WITHIN THE CHARITABLE GAMING BOARD:

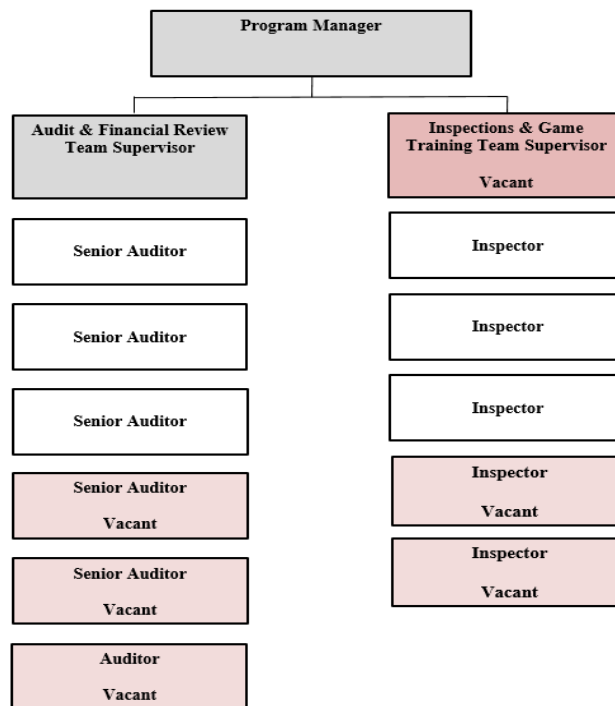
In order for the General Assembly to prevent conflicts of interests within the Charitable Gaming Board, it would need to require that Board members and their families have no direct or indirect financial interest in charitable gaming activities. This matches with the *Code* requirements for the Lottery Board (§ 58.1-4004) and the Virginia Racing Commission (§ 59.1-368). Virginia Lottery and the Virginia Racing Commission are the two other Commonwealth agencies responsible for the oversight of gambling activities.

Though it will not prevent conflicts of interest within the Board, establishing the Board as an advisory board may be an option the General Assembly should consider. OSIG recognizes that charitable gaming potentially benefits from the industry knowledge of the Board, but the powers of the Board do not align with a board with established conflicts. OSIG recommends that the General Assembly consider establishing the Charitable Gaming Board as an advisory board and giving VDACS the authority to regulate charitable gaming. The makeup of the Board matches the definition of an advisory board in accordance with *Code* § 2.2-2100. This will reduce the impact of the conflicts of interest inherent within the Board makeup.

vi. THE ADEQUACY OF ENFORCEMENT AND RESOURCES DEDICATED TO OVERSIGHT ACTIVITIES OF THE OFFICE OF CHARITABLE AND REGULATORY PROGRAMS

Code of Virginia § 18.2-340.18 provides VDACS with jurisdiction and supervision over all charitable gaming in the Commonwealth and requires it to ensure that charitable gaming is conducted in conformity with the *Code of Virginia* and regulations of the Board.

VDACS monitors charitable gaming through enforcement activities administered by the Audit and Financial Review and Inspection teams of the OCRP. The following organizational chart depicts the OCRP’s positions specific to charitable gaming as of September 15, 2021:



Each team is responsible for ensuring that charitable gaming conducted in the Commonwealth is done in accordance with statutory and regulatory requirements. Teams perform the following monitoring and enforcement activities:

Audit Financial Review Team:

- Conducts the audit process within guidelines and time limits, including establishing test criteria, analyses, forming conclusions and writing reports according to applicable guidelines and policies.
- Assists charitable gaming organizations with operations questions and clarifies regulatory issues during the audit process.

- Promotes resolution through communication with the charitable organizations that provide clear understanding concerning laws, regulations, procedures and policies.
- Conducts follow-up of significant findings where applicable.

Inspections & Game Training Team:

- Performs site visits of all organizations involved in charitable gaming activity throughout the fiscal year.
- Completes a Game Observation Program for each site visit to verify charitable gaming activities are being conducted in compliance with the charitable gaming statute and regulations.
- Discusses any discrepancies found during the inspection with the organization's game manager and assists in implementing corrective action plans.
- Investigates complaints received through the Office of Charitable and Regulatory Programs Complaint Hotline or through site visits.
- Systematically analyzes inspection findings to identify non-compliance and trends in order to target site visits and compliance reviews with organizations that have problem areas or non-compliance issues.
- Conducts training for all new organizations and provides training as needed to active organizations to address issues identified during an inspection or audit.

As part of the oversight and enforcement process, VDACS identifies instances where a charitable organization is in violation of the regulations. Once VDACS considers an organization in violation, VDACS issues a letter of caution and a letter of violation, and offers a consent agreement prior to recommending revocation and taking the issue to the Board.

VDACS issues the letter of caution to the organization with a 120-day compliance requirement. During that time, VDACS continues to work with the organization to bring it into compliance. If the organization remains non-compliant after those 120 days and does not attempt to correct the violation, VDACS will issue a letter of violation to the organization with an additional 120-day compliance requirement. During that time, if the organization attempts to make good faith efforts, VDACS will work with the organization to bring it into compliance.

At any point during the preceding 240-day period, the organization can request a consent agreement that outlines the steps necessary to come back in to compliance. At the end of the 240-day period, if the organization has not already requested it, VDACS will issue the consent agreement. The organization is free to refuse the agreement. Should it refuse or is unable to abide by the terms of the agreement, VDACS will make a recommendation the Board to revoke the organization's gaming permit. Violations involving the use of proceeds from charitable gaming have a longer period for each stage.

As requested on August 24, 2021, by the Joint Subcommittee to Study the Percentage of Charitable Gaming Receipts to be Used for Required Purposes, OSIG compared VDACS’ permit process to that of the Virginia Alcoholic Beverage Control Authority.

For ABC, there is a criminal side and an administrative side of processing violations. The type of offense and significance of the violation affects the timing of ABC’s process. When ABC discovers an infraction from a compliance check or from a complaint, the agent enters it into ABC’s system where the agent’s supervisor review and approves it. From there, it goes through several stages - an expedited consent order, negotiations and initial hearing and an appeal. The process can end at any time with the licensee negotiating an agreement with ABC. Agreements may result in the licensee having its license suspended or paying a civil fine.

OSIG created the tables below from data provided by VDACS and ABC that shows the time it takes to work through each agency’s process. The revocation process for each agency is different. The purpose of the tables is to compare the time it takes for each key step in the process, so this is not a direct comparison. The numbers provided by ABC are the average number of days from the date of violation through the disposition of cases resolved in that column’s phase of the process. Numbers for VDACS’ process are the total amount of time that each point in the process can take.

ABC’s Timeline

	Expedited Consent Order (ECO)	Negotiations	Initial Decision	Appeal
Avg. Number of Days from the Date of Violation	59	104	210	301
Number of Violations Used in Calculating Average	277	214	83	29

VDACS’ Timeline

	Letter of Caution	Notice of Violation	Consent Order	Recommendation to Revoke	Total
Maximum Days for Use of Proceeds	365	365	365	60	1,155
Maximum Days for All Other Violations	120	120	365	60	665

Based on the comparison, VDACS' enforcement process is lengthy and can take years to work through depending on the violation. VDACS also does not have authority to revoke a license without Board approval, regardless of the reason for suspending or revoking a permit. This increases administrative burden on VDACS as it works with the organization to return to compliance without the ability to revoke or suspend. This differs from ABC, which involves a legal process to revoke a license unless the licensee surrenders it.

FINDINGS:

Finding #5 – VDACS does not have sufficient staffing to meet its oversight and enforcement requirements.

VDACS does not have the staffing necessary to meet its oversight and enforcement requirements. *Code of Virginia* § 18.2-340.18 empowers VDACS to control all charitable gaming in the Commonwealth that includes enforcement and oversight activities. The OCRP Inspections and Audit & Financial Review teams are tasked with the following:

- Conducting inspections to ensure compliance with charitable gaming statutes and regulations, along with providing training to promote best management practices or correct deficiencies identified during the inspection process to organizations involved in charitable gaming.
- Performing audits and reviewing financial reports of organizations conducting charitable gaming within the Commonwealth to ensure that all gaming is conducted in accordance with statutory and regulatory requirements.

OSIG's review noted the following issues within VDACS related to staffing:

- In prior years, VDACS included accountants, investigators, gaming coaches and more inspector positions that were eliminated due to budget constraints. These duties in part have shifted to the Audit & Financial Review Team, which has led to increased workloads.
- The Audit & Financial Review Team has accumulated a backlog of audits and financial reviews. The Audit & Financial Review Team has a goal to audit each gaming entity every three years and address all significant audit findings in subsequent audits.
- The Program Manager has been tasked with performing the duties of multiple positions within VDACS because of vacancies.
- As of July 1, 2021, there have been changes to charitable gaming regulations that will expand the scope of on-site inspections to include reviewing private social quarters. The Inspections Team anticipates more charitable organizations will require an inspection and estimates the inspection process will take more time to complete. With current staffing levels, Inspections has communicated to OSIG that these are areas of concern.

The following chart shows the number of audits performed each fiscal year along with the related amount of total under-reported gross receipts resulting from the audits. There are more than 300 gaming entities within the Commonwealth; the Audit & Financial Review Team aims to complete about 100 audits each fiscal year:

Fiscal Year	Number of Audits	Under-reported Revenues (\$)
2019	67	605,334
2020	71	1,093,028
2021	72	1,148,531

Management has said that turnover and vacant positions on both teams have limited the OCRP’s ability to conduct these activities. VDACS said as of September 15, 2021, six of the 14 positions dedicated to charitable gaming are vacant. The six vacant positions include two senior auditors, one staff auditor, two inspectors and one Inspections and Game Training Team Supervisor. Recruitment efforts are ongoing for both vacant and new auditor and inspector positions, but VDACS staff have communicated that adding one or two new auditors and inspectors may be sufficient for current workloads, but insufficient for additional workloads.

The audit, financial review and inspection processes are key to ensuring that VDACS conducts appropriately charitable gaming activities and that they comply with applicable regulations. Without sufficient resources dedicated to oversight and enforcement activities, there is an increased risk for fraud, operational inefficiencies and overall negative impacts to the credibility of charitable gaming within the Commonwealth.

Recommendations:

10. Management should continue recruitment efforts to fill vacant positions. OSIG anticipates that these efforts may result in changes to VDACS’ enforcement and oversight responsibilities. Management should perform an assessment of VDACS’ charitable gaming staffing resources to determine the gap between the number of authorized positions and the number and types of positions needed to fulfill statutory and regulatory missions.
11. VDACS’ charitable gaming must have the resources to complete the assigned oversight and enforcement responsibilities and to follow up on outstanding items. VDACS needs the resources to revisit charitable organizations that continue to remain noncompliant with regulations, and to escalate and improve the revocation process timeline.

Finding #6 – VDACS does not have oversight of more than 70% of charitable gaming gross receipts.

Per VDACS data, there were 2,421 electronic pull tab devices in August 2021 as follows:

- Eight percent (187) located outside of social quarters where gross receipts are included in reporting and VDACS has oversight and accounting of these receipts.
- Ninety-two percent (2,234) located within social quarters where gross receipts are not included in reporting and VDACS has no oversight and accounting of these receipts.

One electronic pull tab device manufacturer was able to provide sales data split between its machines located in bingo halls and its machines located in social quarters for the past three years. Based on VDACS provided data as of August 2021, this manufacturer had 133 machines located in bingo halls and 813 located in social quarters. Below is the value of electronic pull tab machine tickets purchased, split between the bingo halls and social quarters for the last three years.

Calendar Year	Bingo Electronic Pull Tab Machine Ticket Sales	Social Quarter Electronic Pull Tab Machine Ticket Sales
2018	\$20,725,276.55	\$285,740,736.60
2019	\$17,320,909.35	\$338,838,391.40
2020	\$6,852,525.15	\$329,749,550.44

The electronic pull tab devices comprise the majority of charitable gaming sales. Based on VDACS provided data, the table above shows the sales of electronic pull tab devices compared with total gross receipts subject to accounting and oversight of VDACS. The gross receipts subject to accounting and oversight of VDACS include the 8% of electronic pull tab devices located outside of social quarters, and the electronic pull tab device sales figures include both the 8% of devices outside of social quarters and the 92% of devices in social quarters.

VDACS cannot easily separate the gross receipts attributable to electronic pull tab devices located in bingo halls from those devices located in social quarters. Because of this, OSIG used the following formula to arrive at a percentage of charitable gaming gross receipts for which the OCRP has oversight. This formula treats all gross receipts as though they are from the bingo hall electronic pull tab machines for which the OCRP has oversight when in fact, the gross receipts number also includes gross receipts from paper bingo, paper pull tabs, electronic bingo and raffles. As such, the actual percentage of charitable gaming gross receipts in the Commonwealth for which the OCRP has oversight is lower than this formula reveals.

1 –
$$\frac{\text{Total Charitable Gaming Electronic Pull Tab Device Sales} - \text{Gross Receipts Subject to Accounting and Oversight}}{\text{Total Charitable Gaming Electronic Pull Tab Device Sales}}$$

Due to the ticket sales from electronic pull tab machines located in social quarters, OSIG used the above formula to identify the OCRP as having oversight and enforcement of less than 27% of charitable gaming gross receipts occurring in the Commonwealth in 2019 and less than 17% in 2020.

Recommendation

12. OSIG recommends that the General Assembly update the *Code of Virginia* to include gross receipts from electronic pull tab machines under the OCRP's authority and oversight as intended by the General Assembly when establishing the program and vesting the agency with control of all charitable gaming in the Commonwealth. OSIG also recommends that the OCRP be given the resources necessary to effectively implement its authority and perform oversight of charitable gaming in the Commonwealth.

Finding #7 – Lengthy revocation process for charitable gaming permits.

Code of Virginia §18.2-340.20(A) states that the Department may deny, suspend or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Board only after the proposed action by the Department has been reviewed and approved by the Board. The action of the Department in denying, suspending or revoking any permit shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.) In 11VAC15-40-20, VDACS is also prevented from suspending or revoking permits solely because of an organization's failure to meet use of proceeds without providing the organization an opportunity to implement a remedial business plan.

This leaves the final decision for revoking a permit up to the Board after a lengthy process that can take years to complete depending on the type of violation. The process ending with the Board leaves the revocation open to actual or the appearance of conflicts of interest of board members, allowing permit holders to continue to operate for years in known violation of charitable gaming regulations.

Recommendation

13. OSIG recommends the *Code of Virginia* be updated to give the OCRP the authority to suspend or revoke permits instead of the Board. This is in line with OSIG's other recommendations to change the Board from a policy to an advisory board. OSIG also recommends that management work to shorten the length of time that suspending or revoking permits take in response to any *Code* changes.

OVERALL ADEQUACY OF ENFORCEMENT AND RESOURCES DEDICATED TO OVERSIGHT ACTIVITIES

VDACS does not have oversight and enforcement authority for more than 70% of charitable gaming gross receipts in the Commonwealth. This percentage is significantly higher, but OSIG took a conservative approach to provide a quantifiable estimate to provide to the General Assembly. This does not align with the intent of having state oversight of charitable gaming in the Commonwealth.

Six of VDACS 14 positions dedicated to charitable gaming are vacant. Changes to the program, including OSIG's recommended oversight of all charitable gaming funds and the implementation of Texas Hold'em poker tournaments, will affect staffing needs to meet proper oversight and enforcement requirements.

vii. WHETHER REGULATION OF CHARITABLE GAMING WOULD BE MORE APPROPRIATELY VESTED WITH THE VIRGINIA LOTTERY

The General Assembly asked OSIG to determine whether charitable gaming would be more appropriately regulated under the Virginia Lottery. OSIG determined this by interviewing Lottery and VDACS staff, reviewing Lottery and VDACS documents, researching how other states regulate charitable gaming and comparing a selection of state boards and commissions.

The Virginia Lottery is an independent agency of the Commonwealth, exclusive of the legislative, executive or judicial branches of government. The Lottery Director establishes regulations that the Lottery Board then promulgates. The Lottery Board has the power to advise and recommend, but does not have the power to veto or modify administrative decisions of the Director except for the Lottery's revenue projections. Lottery is also in the process of standing up significant, new regulatory responsibilities of sports betting and land-based casinos.

OSIG compared charitable gaming in Virginia with nine states. OSIG chose Delaware, Kansas, Massachusetts, Michigan, Ohio and West Virginia as peer states for gaming based on JLARC's 2019 report on Gaming in the Commonwealth. VDACS identified Louisiana, Minnesota and North Dakota as having charitable gaming structures worth consideration.

Of these nine states:

- Massachusetts and Michigan regulate charitable gaming through their state lottery.
- Louisiana, Kansas and West Virginia regulate charitable gaming through their department of revenue.
- North Dakota and Ohio regulate their charitable gaming through their attorneys general.
- Delaware regulates its charitable gaming through a division of professional regulation.
- Minnesota regulates its charitable gaming through a gambling control board.

Several states regulate different aspects of charitable gaming through different state entities. An example of this is how Massachusetts regulates bingo through its lottery and certain types of raffles through its Attorney General.

States have differing requirements concerning the amount of funds from charitable gaming that go to charities. For example, Minnesota ranks each licensed organization based on the percentage of its annual gross profits spent on lawful purpose expenditures and requires a minimum of 30% of an organization's annual gross profit to be spent on LPE or automatically places it on a one-year probation. Michigan requires all proceeds for licensed gaming to be used for the organization's lawful purpose. Ohio requires different percentages based on different organization types. Minnesota's LPE include charitable donations as well as select taxes and expenses. See Appendix III for more details.

Only Delaware, Louisiana, Minnesota and North Dakota have boards involved in charitable gaming. The boards have five, nine, seven and five members, respectively. All four states have stricter requirements on board member involvement with gaming than Virginia's requirement

that board members recuse themselves if they or an immediate family member has a personal interest. Other states requirements include:

- Delaware – The same conflicts of interest provisions for state employees apply to all board members. They may not participate on behalf of the state or in any matter before the state where they have a personal or private interest.
- Louisiana - No board member can engage in gaming activities. An operator or any licensee or permittee cannot employ an immediate family member of a board member. No board member can have any direct or indirect pecuniary interest in a gaming establishment, licensee or permittee during the term of employment.
- Minnesota - Board members may not have an interest in any corporation, association, limited liability company or partnership that is licensed by the board as a distributor, manufacturer or linked bingo game provider. Board members may not accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with an organization that conducts lawful gambling, a distributor, a linked bingo game provider or a manufacturer while employed with or a member of the board or within one year after terminating employment with or leaving the board.
- North Dakota - A person who has a financial interest in gaming or is an employee or a member of the gaming committee of a licensed organization or distributor cannot be a member of the commission.

Including the Charitable Gaming Board, OSIG studied 25 Commonwealth boards. The first three boards OSIG studied were boards involved in gambling in the Commonwealth, i.e., the Charitable Gaming Board, the Virginia Lottery Board and the Virginia Racing Commission. When comparing these boards, OSIG found that the Charitable Gaming Board is the only one of the three involved with gambling that does not prohibit its members from being financially involved with the operations the board oversees. *Code of Virginia § 59.1-368* prohibits members of the Racing Commission and their immediate family members from having any direct or indirect financial interest in racing activities. *Code § 58.1-4004* prohibits any member of the Lottery Board from having any financial, ownership or management interest in any gaming activities, including any casino gaming operation, charitable gaming, pari-mutuel wagering or lottery. It also prohibits receiving or sharing in, directly or indirectly, the receipts or proceeds of any gaming activities, including any casino gaming operation, charitable gaming, pari-mutuel wagering, or lottery. It also prohibits having an interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity or the provision of independent consulting services in connection with any gaming establishment or gaming activity.

OSIG also looked at two boards under VDACS. OSIG chose the Milk Commission and the Board of Agriculture and Consumer Services because of their status as VDACS non-commodity policy boards. OSIG noted that the Milk Commission has a non-voting position on its board, and

only three of the seven voting members are allowed to have any connection financially or otherwise with the industry the Milk Commission regulates. The Milk Commission also reports directly to the VDACS Commissioner. The Board of Agriculture and Consumer Services requires that eight of its 15 members be practicing farmers. However, OSIG identified that this type of involvement with the industry is different from that of the members of the Charitable Gaming Board because of the indirect nature of the Board of Agriculture and Consumer Services' regulations on the industry it regulates compared to the direct nature of the Charitable Gaming Board's regulations on the industry it regulates. An example of this is the Board of Agriculture and Consumer Services' regulating pesticide use as opposed to the Charitable Gaming Board regulating the minimum use of proceeds. OSIG also found that the Board of Agriculture and Consumer Services has two ex officio members with voting privileges.

OSIG randomly selected the remaining 20 boards from a list provided by the Secretary of the Commonwealth's office. OSIG intended to make this selection from policy boards, but instead selected from regulatory boards because no boards were identified as policy boards from the Secretary of the Commonwealth's office. In the process of identifying this sample of boards for comparison, OSIG, the Secretary of the Commonwealth's office and VDACS noted that the *Code of Virginia* does not always identify the type of board when establishing a board. The General Assembly should consider identifying the type of board in statute for any existing and newly created boards.

In reviewing these 20 boards, OSIG found that:

- Two of the 20 have nonvoting members.
- One was an advisory board, six were policy boards, three were supervisory boards and 10 were regulatory boards.
- The number of board members ranged from five to 21.
- The reporting structure for boards is unclear in the *Code*.

LOTTERY COMPONENT

The General Assembly asked OSIG to opine on whether regulation of charitable gaming would be more appropriately vested under the Virginia Lottery. It is OSIG's opinion that charitable gaming would not be more appropriately vested under the Virginia Lottery and that the cons of moving regulation of charitable gaming under Lottery outweigh the pros. In reaching this opinion, OSIG identified various pros and cons of moving regulation of charitable gaming under Lottery, but in OSIG's opinion, charitable gaming would not be more appropriately vested under the Virginia Lottery.

Reasons to move regulation of charitable gaming under Lottery:

- Lottery is familiar with conducting on-site reviews of locations and already has this type of function established. With the knowledge of existing OCRP staff, Lottery may be able to assume more easily the responsibility of conducting on-site reviews for charitable gaming because of its already established on-site review process.
- There would be fewer agencies regulating the gaming industry. This would allow for potentially increased efficiency in establishing gaming regulations in the Commonwealth.
- Lottery is an independent agency, allowing for greater flexibility in agency operations and resources than the OCRP has. Additionally, Lottery does not have the same constraints in conducting procurement and filling positions that charitable gaming has.

Reasons not to move regulation of charitable gaming under Lottery:

- Charitable gaming is already established under the OCRP within VDACS. Moving regulation of charitable gaming to Lottery could create confusion and be problematic for the industry as a whole, the charities involved with the industry, agency staff and the overall regulating of the industry.
- For an industry that Lottery is unfamiliar with, Lottery would have to resolve any existing inefficiencies with charitable gaming.
- Lottery is standing up significant, new regulatory responsibilities with sports betting and land-based casinos and does not have an existing knowledge base to take over charitable gaming. Incorporating a new line of gaming under Lottery's responsibilities would be difficult and potentially disruptive to the standing up of sports betting and casinos in the Commonwealth. This could also create confusion and difficulties with charitable gaming, as Lottery would need to dedicate resources to charitable gaming, learn an industry with which it is unfamiliar and continue to meet the deadlines established for sports betting and land-based casinos.
- OSIG identified that only two of the nine states in the sample regulate charitable gaming under their lottery. It is also not unprecedented for states to split the regulating of the gaming industry among several state agencies. An example is Massachusetts' Lottery regulating bingo and its Attorney General regulating certain types of raffles. There is

much variety in the ways states regulate charitable gaming, and no two states regulate the industry in the same way.

- The General Assembly and/or Lottery would need to resolve the existence of both the Lottery Board and Charitable Gaming Board. The Lottery Board already has multiple new members new to the gaming industry, and adding more members or another board could negatively impact the operations of the Lottery Board for both charitable gaming as well as the other operations with which the Lottery and its Board are involved.

RECOMMENDATION

Based on the results of all work performed, OSIG developed three options for the General Assembly to consider in response to whether regulation of charitable gaming would be more appropriately vested under Lottery. The first two recommendations are changes that the General Assembly could make to charitable gaming while it is still under VDACS, and the third involves shifting regulation of charitable gaming to the Lottery. OSIG believes the first recommendation to be the best and simplest option for resolving noted deficiencies with charitable gaming.

1. *Change the Charitable Gaming Board from a policy board to an advisory board and give VDACS authority over regulating charitable gaming.*

The General Assembly may want to consider changing the Charitable Gaming Board from a policy board to an advisory board. In doing so, the General Assembly should consider transferring authority for regulating charitable gaming from the Board to the Office of Charitable and Regulatory Programs under VDACS. The *Code of Virginia* requires a number of Board members that have conflicts of interest. Moving the regulatory authority from the Board to the OCRP would also remove the potential for Board members with conflicts of interest from having the final approval authority on charitable gaming regulations while still allowing the Board's industry knowledge and experience to continue providing insight to the charitable gaming industry's regulations. This would align the Charitable Gaming Board with the Lottery Board in so far as the Board would have the power to advise and recommend, but would not have the power to veto or modify decisions of the OCRP. Additionally, the General Assembly should consider requiring OCRP staff not to participate in charitable gaming similar to Lottery staff.

2. *Adjust the composition of the Charitable Gaming Board without moving regulation of charitable gaming under Lottery.*

The General Assembly may want to consider:

- Changing the Charitable Gaming Board so that the six members involved with the charitable gaming industry function on the Board in a nonvoting role. The goal of this would be to remove those members affiliated with the charitable gaming industry from holding a majority vote over the Board without removing the industry knowledge of these members.

- Adding ex officio members to the Board such as the VDACS Director of Consumer Protection, or the Program Manager of the Office of Charitable and Regulatory Programs. VDACS is responsible for carrying out the regulations, but currently has no vote on the development of the regulations. This could lead to an administrative hardship for the agency and staff.
- Requiring the Chairman of the Board not to be one of six members affiliated with the industry to avoid the potential for conflicts of interest.
- Requiring a VDACS representative at all Board meetings to ensure VDACS is aware of Board activity and able to assist in Board operations.
- Requiring no representation overlap between the *Code* mandated positions that Board members fill would mitigate Board members from serving multiple parties while on the Board and allow them to focus on the intent of the position to which they have been appointed. For example, requiring that the four members affiliated with a charity cannot also be a landlord or game supplier would limit the members affiliated with the charity from representing both the charity side and landlord side of charitable gaming.

3. *Move regulation of charitable gaming to the Virginia Lottery.*

The General Assembly may want to consider moving regulation of charitable gaming from VDACS to the Virginia Lottery. It is OSIG's opinion that charitable gaming would not be more appropriately vested under the Virginia Lottery, and that the disadvantages of doing so outweigh the advantages. It is OSIG's opinion that there are viable options for improving regulation of charitable gaming without moving it to Lottery. In reaching this opinion, OSIG considered the following pros and cons:

Reasons to move regulation of charitable gaming under Lottery:

- Lottery is familiar with conducting on-site reviews of locations and already has this type of function established. With the knowledge of existing OCRP staff, Lottery may be able to assume more easily the responsibility of conducting on-site reviews for charitable gaming because of its already established on-site review process.
- There would be fewer agencies regulating the gaming industry. This would allow for potentially increased efficiency in establishing gaming regulations in the Commonwealth.
- Lottery is an independent agency, allowing for greater flexibility in agency operations and resources than the OCRP has. Additionally, Lottery does not have the same constraints in conducting procurement and filling positions that charitable gaming needs.

Reasons not to move regulation of charitable gaming under Lottery:

- Charitable gaming is already established under the OCRP within VDACS. Moving regulation of charitable gaming to Lottery could create confusion and be problematic for the industry as a whole, the charities involved with the industry, agency staff and the overall regulating of the industry.
- Lottery is unfamiliar with the industry, so Lottery would have to resolve any existing inefficiencies with charitable gaming.
- Lottery is standing up significant new regulatory responsibilities with sports betting and land-based casinos and does not have an existing knowledge base to take over charitable gaming. Incorporating a new line of gaming under Lottery's responsibilities would be difficult and potentially disruptive to the standing up of sports betting and casinos in the Commonwealth. This could also create confusion and difficulties with charitable gaming, as Lottery would need to dedicate resources to charitable gaming, learn an industry it is unfamiliar with and continue to meet the deadlines established for sports betting and land-based casinos.
- OSIG identified only two of the nine states in the sample that regulate charitable gaming under their lottery. It is also not unprecedented for states to split the regulation of the gaming industry among several state agencies. An example is Massachusetts' Lottery regulating bingo and its Attorney General regulating certain types of raffles. There is much variety in the way states regulate charitable gaming, and no two states regulate the industry in the same way.
- The General Assembly and/or Lottery would need to resolve the existence of both the Lottery Board and Charitable Gaming Board. The Lottery Board already has multiple, new members new to the gaming industry, and adding more members or another board could negatively impact the operations of the Lottery Board for both charitable gaming as well as the other operations with which the Lottery and its Board is involved.

WHETHER CHARITABLE GAMING PROGRAM SHOULD MOVE TO LOTTERY

OSIG recommends that Charitable Gaming remain with the Virginia Department of Agriculture and Consumer Services. The General Assembly should change the Charitable Gaming Board from a policy board to an advisory board, similar to Virginia Lottery. In doing so, the General Assembly should also transfer authority for regulating charitable gaming from the Board to the Office of Charitable and Regulatory Programs under VDACS.

APPENDIX I - PERMIT

OCR# 00001



Permit# G-22-00001-057897

COMMONWEALTH OF VIRGINIA
Department of Agriculture and Consumer Services
Division of Consumer Protection — Office of Charitable & Regulatory Programs
P.O. Box 1163, Richmond VA 23219 • (804) 786-1343, Option 2

<i>Charitable Gaming Permit</i>	
Organization	Charity One
Mailing Address	12345 Street Name Richmond, VA 23220
Permit Dates	July 1, 2021 through June 30, 2022

Activity	Location and Schedule
Bingo	Charity One Facility 12345 Street Name • Richmond, VA 23220 Each Week 11:00 am to 02:00 pm — Sundays [Except 9/12/21]
Raffle	Charity One Facility 12345 Street Name • Richmond, VA 23220 Each Week 11:00 am to 02:00 pm — Drawing: Saturday, 10/16/21
Pull Tab Sq	Charity One Facility 12345 Street Name • Richmond, VA 23220 Each Week 11:00 am to 02:00 pm — Saturdays

The above organization is hereby authorized to conduct the specified events pursuant to §18.2-340.15 et seq. Code of Virginia. Issuance of this Permit does not constitute an endorsement by the Commonwealth of Virginia, any of its department, officers, or employees in the purpose of the organization involved in these events.

Commissioner (or designee)

**THIS PERMIT SHALL BE PROMINENTLY DISPLAYED ON THE PREMISES AT ALL TIMES
SUCH BINGO GAME, PULL-TABS OR RAFFLE IS IN OPERATION**

APPENDIX II - UPDATE TEXAS HOLD'EM REGULATIONS TO IMPROVE THE INTEGRITY AND CONSISTENCY WITHIN THE CHARITABLE GAMING PROGRAM

Charitable gaming was extended to include the allowance for charitable organizations to offer Texas Hold'em poker tournaments with the passage of Senate Bill 936, Chapter 982. This allows charitable organizations to raise funds intended to support their charitable work. Under the *Code of Virginia*, the Charitable Gaming Board was responsible for promulgating the regulations to allow charitable organizations to hold Texas Hold'em poker tournaments. This included prescribing the conditions under which a qualified organization may manage, operate or contract with operators of or conduct Texas Hold'em poker tournaments. Before the regulations became effective and posted to the Virginia Regulatory Town Hall, the General Assembly removed the ability to update charitable gaming regulations that had not been fully promulgated as of March 1, 2021. The language will remain in effect through June 30, 2022.

There are issues identified within the version of the regulations that will go into effect if unchanged prior to June 30, 2022. These issues include the potential to transfer management of charitable gaming to third parties for Texas Hold'em poker, allow specific conflicts of interest and create a lack of consistency between bingo game operations and Texas Hold'em operations that will place an undue burden on VDACS oversight and enforcement.

There are weaknesses in the regulations that would allow for the transfer of the management of charitable gaming from charitable organizations to third parties, as follows:

1. 11VAC15-50-60 C 2 a states, "If an operator is administering the poker tournament, then the operator's tournament manager must be physically present during the entire duration of the poker tournament and the charitable host representative must be present for a portion of the poker tournament and be physically or remotely available for all times a tournament is in play."
2. 11VAC15-50-60 C 2 e states, "During the poker tournament, a qualified organization or operator may award players participating in the poker tournament prizes of value, the value of which may be determined by the game manager or the operator's tournament manager...".
3. 11VAC15-50-60 C 2 h states, "If the charitable host representative is involved in any portion of the cash handling during a poker tournament administered by an operator, then the charitable host representative shall adhere to the operator's internal control policies and procedures that were submitted to the department by the operator pursuant to 11VAC15-50-40 E."

4. 11VAC15-50-90 E states, "Subject to a qualified organization's conflict of interest policies and related IRS regulations, a landlord, its agent, its employees, their immediate family members, or persons residing in their household may, at a poker tournament operated, conducted, or administered on the landlord's premises:
 1. Participate in the management, operation, conduct, or administration of any poker tournament;
 2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces, provided that such person is a charitable gaming supplier permitted pursuant to §18.2-340.34 of the Code of Virginia;
 3. Require as a condition of the lease that a particular supplier of charitable gaming supplies or operator is used by the qualified organization; or
 4. Provide, advise, or direct the qualified organization or operator to use any particular person for the purposes of the management, operation, conduct, or administration of a poker tournament that is to be held in the landlord's facility."

5. 11VAC15-50-100 D states, "All receipts from the poker tournament shall be deposited by the second business day following the tournament at which they were received. However, receipts received by an operator for administering a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties."

The above regulations directly transfer the management of the Texas Hold'em poker tournament program to third party management, specifically the landlord and the operator. VDACS has no authority to oversee the landlord's role in the program, only registration authority over the operator. Allowing the operator to collect the cash and deposit it, especially since the charitable organization is not required to be there during the entire program, limits VDACS' ability to verify the amount of funds collected. This is especially true if the intent is to collect the funds and only transfer the charity's portion to the charity. This appears to provide for the creation of poker halls in Virginia. Under the regulations, poker tournaments only need a charitable organization as a sponsor. VDACS will not know that funds collected tie to the funds received by the charitable organization in these instances, specifically with the low level of involvement required by the charity.

The regulations also specifically allow for conflicts of interest among the landlord, the operator and members of the organizations, which, combined with the above create additional cause for concern as follows:

1. 11VAC15-50-30 E 9 states, "Written disclosure statement as to whether (i) the president or chief executive officer, treasurer or chief financial officer, an officer, a game manager, or charitable host representative; (ii) an immediate family member of an individual listed in clause (i) of this subdivision; or (iii) persons residing in the same household as an individual listed in clause (i) of this subdivision has directly or indirectly any interest or ownership in an operator..."
2. 11VAC15-50-60 C 1 e states, "An operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, agents, their immediate family members, or persons residing in their household shall be permitted to participate or otherwise play in a poker tournament only as permitted in the applicable house rules."
3. 11VAC15-50-90 C states, "Subject to a qualified organization's conflict of interest policies and related IRS regulations, a landlord, its agents, its employees, their immediate family members, or persons residing in their household may directly or indirectly make any loan to any qualified organization, operator, or supplier of poker gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household."
4. 11VAC15-50-90 D states, "Subject to a qualified organization's conflict of interest policies and related IRS regulations, a landlord, its agents, its employees, their immediate family members, or persons residing in their household may directly or indirectly make any payment to any qualified organization, operator, supplier of poker gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household."
5. 11VAC15-50-90 E states, "Subject to a qualified organization's conflict of interest policies and related IRS regulations, a landlord, its agent, its employees, their immediate family members, or persons residing in their household may, at a poker tournament operated, conducted, or administered on the landlord's premises:
 1. Participate in the management, operation, conduct, or administration of any poker tournament;
 2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces, provided that such person is a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia;
 3. Require as a condition of the lease that a particular supplier of charitable gaming supplies or operator is used by the qualified organization; or
 4. Provide, advise, or direct the qualified organization or operator to use any particular person for the purposes of the management, operation, conduct, or administration of a poker tournament that is to be held in the landlord's facility."

6. 11VAC15-50-90 F states, "Subject to a qualified organization's conflict of interest policies and related IRS regulations, a member of a qualified organization involved in the management, operation, or conduct of a poker tournament may provide services to a landlord or be remunerated in any manner by the landlord of the facility that a qualified organization is using to operate and conduct its poker tournament."
7. 11VAC15-50-90 G states, "A qualified organization or an operator shall disclose to the department any payment or loan made, directly or indirectly, to one of its members or any person affiliated or associated with the qualified organization or operator, their immediate family member, or a person residing in their household by a landlord with whom the qualified organization has entered into a written contract pursuant to subsection A of this section."

Regulations 11VAC15-50-90 C, 11VAC15-50-90 D, 11VAC15-50-90 E and 11VAC15-50-90 F are already prohibited for other charitable game operations under 11VAC15-40-110. In addition to creating conflicts of interest, they would create two sets of rules for oversight and enforcement of the charitable gaming program. The disclosure requirements do not provide proper oversight. The regulations did not provide methods for VDACS to manage and evaluate their appropriateness, specifically as the actions would be allowed by the regulations. These conflicts allowed in the regulations could create opportunities that damage the credibility of charitable gaming in the state.

In addition, there are sections of the regulations that require updating to ensure consistency with the *Code* and charitable gaming requirements in accordance with 11VAC15-40, as follows:

1. 11VAC15-50-70 B states, "Electronic and mechanical devices, including electronic poker tables, may be used to conduct poker games or tournaments, provided that such electronic or mechanical equipment or device is preapproved by the department in accordance with and subject to this section and such technical standards adopted by the department." While §18.2-340.16 specifically allows for electronic bingo devices, a bill in General Assembly to allow electronic and mechanical poker tournament devices failed in the 2021 session.
2. Restrictions in the items in 11VAC15-40-50 that are not included in the Texas Hold'em regulations and may require changes to the *Code* as follows:
 - “A bingo session game worker may receive complimentary food and nonalcoholic beverages provided on premises, as long as the retail value of such food and beverages does not exceed \$15 for each session.” While §18.2-340.19 A6 sets requirements for bingo the code was not updated for Texas Hold'em poker tournaments.

- a. “Except as allowed pursuant to §18.2-340.34:1 of the Code of Virginia, no free packs, free electronic bingo devices, free network bingo cards, discounts, or remuneration in any other form shall be provided directly or indirectly to game workers, members of their family, or individuals residing in their household. The reduction of tuition, dues, or any fees or payments due as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.”
- b. “Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies or network bingo cards or with rentals of electronic bingo devices or electronic pull-tab devices.”

Setting limitations on the expenses charged back to the charitable organization for volunteers and game workers will protect the charitable organization expenses during game play. Operators will provide remuneration to their employees and contractors, which *Code* should limit to cash or check payment for services rendered.

OSIG discussed the issues with the regulations with VDACS management and they agreed with OSIG’s issues as documented. VDACS is responsible for carrying out the requirements of the *Code* and the regulations, but do not have the authority to participate in the development of the regulations and can only make suggestions to the Board, which they did in the above instances. In addition, as noted in the above issues, the landlord can play a significant role in charitable gaming, but is not licensed or regulated.

Recommendations:

The General Assembly should consider updating the *Code* as follows:

1. Ensure that the management, operation, conduct and administration of charitable gaming is the responsibility of the permitted charitable organizations to include:
 - a. Requirements that all games and prizes offered are managed by the permitted charitable organizations and not transferrable.
 - b. Requirements that the charitable organization manage internal controls, including the handling of cash, and that it deposits all proceeds in the charitable organization’s account.
2. Establish requirements that protect charitable gaming from conflicts of interests, improve oversight and enforcement, and provide consistency in charitable gaming requirements between bingo and Texas Hold’em poker tournaments to include:
 - a. Requirements that members of charitable organizations, their family, their employees or members of their household do not have any interest or ownership of an operator contracted by the charity to conduct Texas Hold’em poker tournaments on behalf of the charity.

- b. Requirements that Texas Hold'em poker tournament operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, agents, their immediate family members or persons residing in their household are not permitted to:
 - i. Participate or otherwise play in a Texas Hold'em poker tournament conducted by a charitable organization with whom the operator has a contract.
 - ii. Make any loan to any qualified organization, operator or supplier of poker gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members or persons residing in their household.
 - iii. Make any direct or indirect payment to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming conducted by the operator in Virginia unless the contract authorizes the payment and is in accordance with the law.
- c. Requirements that a landlord, its agents, its employees, their immediate family members or persons residing in their household are not permitted to:
 - i. Participate in the management, operation, conduct or administration of any poker tournament within the landlord's facility. This should include the inability to provide advice or direct the qualified organization or operator to use any particular person for the purposes of the management, operation, conduct or administration of charitable gaming that is to be held in the landlord's facility.
 - ii. Directly or indirectly, make any loan to any qualified organization, operator or supplier of poker gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members or persons residing in their household.
 - iii. Make any direct or indirect payment to any officer, director, game manager, operator or entity involved in the management, operation or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the lease agreement authorizes the payment and is in accordance with the law.
 - iv. Require that a particular supplier of charitable gaming supplies or operator be used by the qualified organization as part of their lease agreement.
 - v. Sell, lease or otherwise provide any charitable gaming supplies including, but not limited to, bingo cards, pull tab cards, electronic pull tabs, network bingo cards, poker chips, poker cards or other game pieces.
- 3. Make changes to establish limitations in expenses and remuneration that will also provide consistency across the charitable gaming program as follows:

- a. Whether or not the *Code* allows for electronic and mechanical devices, including electronic poker tables, may be used to conduct poker games or tournaments, if such electronic or mechanical equipment or device is preapproved by the Department in accordance with and subject to this section and such technical standards adopted by the Department.
 - b. Update §18.2-340.19 A6 to include Texas Hold'em poker tournaments regarding complimentary food and nonalcoholic beverage for volunteers and game workers with limitations charged back to the charity.
 - c. Except as allowed pursuant to *Code* §18.2-340.34:1 to not permit free packs, free electronic bingo devices, free network bingo cards, free poker chips, discounts or remuneration in any other form to be provided directly or indirectly to game workers, members of their family or individuals residing in their household. The reduction of tuition, dues or any fees or payments due because of a member or shareholder, or anyone in their household, working bingo games, Texas Hold'em poker tournaments should also be included.
 - d. To not permit individuals providing security for an organization's charitable gaming activity to participate in the charitable gaming activity and to not be compensated with charitable gaming supplies, poker chips or network bingo cards or with rentals of electronic bingo devices or electronic pull tab devices.
4. Require licensing and regulation of the landlord, specifically a landlord that provides a leased location for two or more charitable organizations conducting charitable gaming on the landlord's premises.

APPENDIX III - MINNESOTA ALLOWABLE EXPENSE CHART

Chapter 13

LAWFUL PURPOSE EXPENDITURES

Lawful Purpose Expenditures Code Summary		
This one-page chart lists the lawful purpose expenditures that are allowed, and the codes to use when reporting these expenditures. Refer to the code information for restrictions not noted in this chart.		
CODE	CODE	CODE
1 To and by 501(c)(3) organizations or 501(c)(4) festival organizations.	11 To and by a nonprofit organization which is a church or a body of communicants.	18 Fees paid to the state for organization license, premises permits, and gambling manager license.
2 Relieving the effects of poverty, homelessness, or disability.	12 Water quality testing for public waters, provided that the MPCA has approved the project.	19 Recognizing humanitarian service demonstrated through volunteerism or philanthropy.
3 Program for education, prevention, or treatment of problem gambling.	13 - Wildlife management project that benefits the public-at-large, provided that the DNR has approved the project. - Costs related to grooming and maintaining snowmobile or all-terrain vehicle trails that are grant-in-aid trails, or other trails open to public use, provided that DNR has approved the project. - Supplies and materials for safety training and education programs coordinated by the DNR.	20 Contribution to another licensed organization, with Board approval.
4 Funding a public or private nonprofit education institution registered with or accredited by Minnesota or any other state.		21 Contribution to a parent organization that has received prior Board approval.
5 Scholarships.		Real Property/Capital Assets
6 - Recognition of military service (open to the public). - Active military personnel in need.		22 Repair, maintenance, or improvement of owned real property and capital assets, or replacement of owned capital asset that is no longer repairable, subject to annual limit.
7 Activities and facilities benefiting youth under age 21.	14 Conducting nutritional programs, food shelves, and congregate dining programs primarily for persons who are age 62 or older or disabled.	23 Acquisition or improvement of capital assets (excluding real property) used exclusively for lawful purpose, with a cost greater than \$2,000, with Board approval.
8 Payment of local, state, and federal taxes on receipts from lawful gambling.	15 To community arts organizations or expenditures to fund arts programs in the community.	
9 Real estate taxes and assessments on gambling premises: - owned by a licensed organization (includes veterans organizations), or - wholly leased by a licensed 501(c)(19) veterans organization.	16 Utility costs (fuel for heating, water, electricity, and sewer costs) for building wholly owned or wholly leased by licensed veteran or fraternal organizations and used as their primary headquarters (if portion leased out, percentage for primary headquarters allowed with Gambling Control Board director approval).	24 Acquisition, erection, improvement, or expansion of real property used exclusively for lawful purpose, with Board approval.
		25 Erection or acquisition of comparable building to replace building destroyed or made uninhabitable due to fire or catastrophe, or taken or sold under eminent domain proceeding, with Board approval.
10 - Contributions to the United States, state of Minnesota, or any of its subdivisions or agencies or instrumentalities (except a direct contribution to a law enforcement or prosecutorial agency). - A fund administered and regulated by a city or county (for lawful purposes).	17 Meals and other membership events of licensed veterans organizations, limited to members and spouses only, held in recognition of military service (limit \$5,000 per year for all organizations at post home).	26 Contribution to non-licensed 501(c)(19) organization that is not affiliated with contributing organization and whose owned or leased property is not a permitted premises.

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APPENDIX IV - OSIG RECOMMENDATIONS AND VDACS OBSERVATIONS SUMMARY PAGE

OSIG's Recommendations:

RECOMMENDATION 1 – (Objective v.)

The General Assembly should consider updating the *Code of Virginia* to ensure that the management, operation, conduct and administration of charitable gaming is the responsibility of the permitted charitable organizations. See page 21.

RECOMMENDATION 2 – (Objective v.)

The General Assembly should consider updating the *Code of Virginia* to establish requirements that protect charitable gaming from conflicts of interests, improve oversight and enforcement, and provide consistency in charitable gaming requirements between bingo and Texas Hold'em poker tournaments. See page 21.

RECOMMENDATION 3 – (Objective v.)

The General Assembly should consider updating the *Code of Virginia* to establish limitations in expenses and remuneration that will also provide consistency across the charitable gaming program. See page 21.

RECOMMENDATION 4 – (Objective v.)

The General Assembly should consider updating the *Code of Virginia* to require licensing and regulation of the landlord, specifically a landlord that provides a leased location for two or more charitable organizations conducting charitable gaming on the landlord's premises. See page 21.

RECOMMENDATION 5 – (Objective v.)

The General Assembly should change the Charitable Gaming Board to an advisory board to protect the integrity of the Commonwealth's charitable gaming oversight program. An advisory Board would continue to benefit the Commonwealth's current knowledge of the charitable gaming industry, especially as the impact to the industry through the implementation of casinos in the Commonwealth is not fully known. See page 23.

RECOMMENDATION 6 – (Objective v.)

VDACS should not make applications for new charitable games or regulatory changes that require permit updates until a specified time frame after regulations have been promulgated. This will protect VDACS from being unable to process the application within the *Code* mandated 45-day time frame, where they can neither approve nor deny the permit. See page 24.

RECOMMENDATION 7 – (Objective v.)

The General Assembly should consider updating the authority of VDACS to have responsibility for the requirements, qualifications and grounds for issuance of all types of licenses/permits required for charitable gaming, including authority to deny, suspend and revoke. See page 24.

RECOMMENDATION 8 – (Objective v.)

In the event recommendation #7 is not implemented, the General Assembly should consider updating the authority of VDACS to deny, suspend or revoke permits in situations where a Board member or their immediate family member is associated with the charitable organization. See page 24.

RECOMMENDATION 9 – (Objective v.)

The General Assembly should consider updating the *Code of Virginia* to require the licensing of the owner, lessor or lessee of premises where charitable gaming occurs. See pages 25 and 26.

RECOMMENDATION 10 – (Objective vi.)

VDACS should perform an assessment of charitable gaming staffing resources to determine the gap between the number of authorized positions and the number and types of positions needed to fulfill statutory and regulatory missions, and VDACS should recruit accordingly. See page 32.

RECOMMENDATION 11 – (Objective vi.)

VDACS charitable gaming needs to have the resources available to not only complete the assigned oversight and enforcement responsibilities, but the resources available to follow up on outstanding items and revisit charitable organizations that continue to not comply with regulations, and escalate and improve the revocation process timeline. See page 32.

RECOMMENDATION 12 – (Objective vi.)

The General Assembly should consider updating the *Code of Virginia* to include gross receipts from electronic pull tab machines under VDACS's authority and oversight as intended by the General Assembly when establishing the program and vesting the agency with control of all charitable gaming in the Commonwealth. OSIG also recommends that VDACS identify the resources necessary to effectively implement its authority and perform oversight of charitable gaming in the Commonwealth. See page 34.

RECOMMENDATION 13 – (Objective vi)

The *Code of Virginia* should be updated to give VDACS the authority to suspend or revoke permits instead of the Board. This is in line with OSIG's other recommendations to change the Board from a policy to an advisory board. OSIG also recommends that VDACS management work to shorten the length of time that suspending or revoking permits take in response to any *Code* changes. See page 34.

Regulating Authority for Charitable Gaming:

OSIG recommends that charitable gaming remain with the Virginia Department of Agriculture and Consumer Services. The General Assembly should change the Charitable Gaming Board from a policy board to an advisory board. In doing so, the General Assembly should also transfer authority for regulating charitable gaming from the Board to the Office of Charitable and Regulatory Programs under VDACS. See page 42.

VDACS Observations for Social Quarters:

At OSIG's request, VDACS provided the following observations for the General Assembly to consider in addressing concerns related to potential abuse of social quarters:

OBSERVATION 1 – (Objective iv.)

The terms "members" and "guests" are undefined when related to a particular organization and the activities performed under *Code* §18.2-340.26:1. See page 15.

OBSERVATION 2 – (Objective iv.)

The type of organization allowed to perform activities under *Code* § 18.2-340.26:1 does not align with IRS guidelines. See page 15.

OBSERVATION 3 – (Objective iv.)

Private social quarters are not required to engage in other social recreational or fraternal activities in conjunction with charitable gaming activities. See page 15.

OBSERVATION 4 – (Objective iv.)

Private social quarters are not required to operate in a facility where the organization regularly conducts business related to its federal tax-exempt purpose. See page 15.

OBSERVATION 5 – (Objective iv.)

Organizations engaging in activities performed under *Code* § 18.2-340.26:1 are not subject to the reporting and auditing requirements under § 18.2-340.31. See page 15.

