



## Chipping Away At Tradition Constitutional Offices Past and Present

*When Wisconsin became a state in 1848, the new constitution created six positions to be elected statewide: governor, lieutenant governor, secretary of state, attorney general, treasurer, and the superintendent of public instruction. As time passed, the duties and responsibilities of these offices have evolved and, in some cases, eroded. Some question whether or not all these offices need to be elected.*

“**E**lect me, and I’ll eliminate my job.”

It’s an unusual campaign slogan but one that has been gaining popularity among partisan candidates for several statewide offices in Wisconsin, most notably state treasurer.

Since statehood, Wisconsin has had six constitutional officers, all elected on statewide ballots. That is hardly surprising since the 1848 constitutional convention was dominated by Jacksonian Democrats who believed in limiting government by empowering people to elect a wide variety of public officials to short terms.

Allowing voters to choose a number of constitutional officers here and in other states that joined

the Union in the 1800s stands in sharp contrast to the federal approach of the late 1700s. Framers of the U.S. Constitution gave the president authority to appoint judges and senior executive branch officials, such as the attorney general, secretary of state, and other cabinet positions.

The irony is that, while Wisconsin’s governor and attorney general have gained authority in recent decades, the legislature has chipped away at the power of the other four constitutional officers—lieutenant governor, treasurer, and secretaries of state and public instruction—shifting duties and responsibilities from elected officials to unelected state agency personnel. In some

cases, duties performed by the officers at the time of statehood have been, with improved technology, rendered obsolete.

With many, including current and past office holders, arguing to eliminate some of these offices, a closer look at the development—and erosion—of elected statewide offices in Wisconsin is timely.

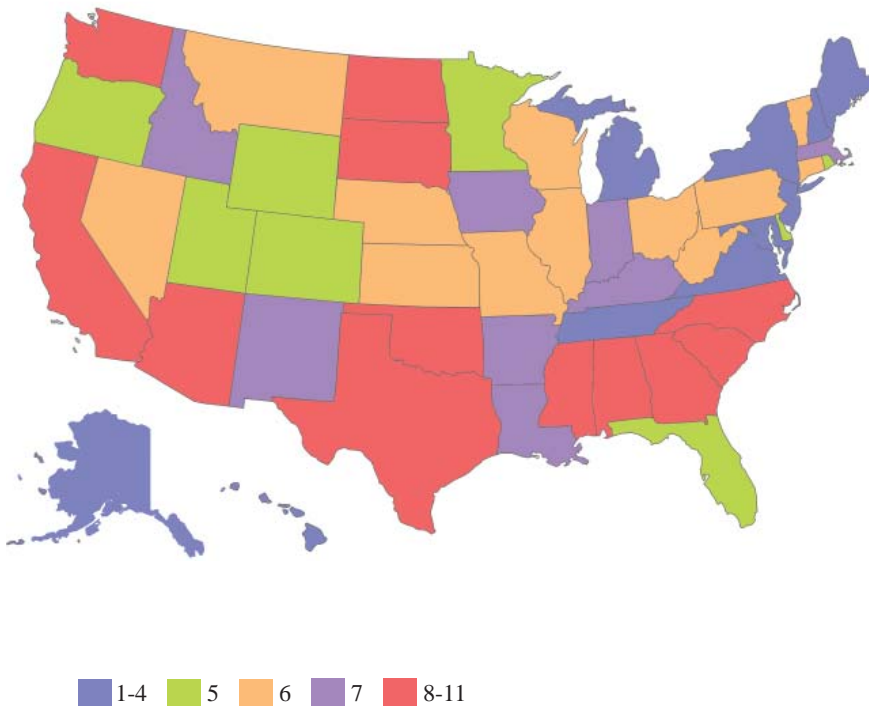
### **CONSTITUTIONAL OFFICES**

Most states have five to seven statewide elected executive offices,

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**Figure 1:  
Number of Elected Offices Vary By State**



though some have as many as eleven (see Figure 1). Often, states elect constitutional officers that parallel appointed positions in the federal executive branch, including secretary of state, treasurer, attorney general, and secretary of education. Some have additional constitutional officers. Many elect commissioners of agriculture, labor, and insurance. Others, such as Colorado and Michigan, elect university regents. Texas elects a land commissioner, who oversees use of state-controlled land, and South Carolina is the only state to elect the state adjutant general, the state's chief military officer.

### Wisconsin Offices

When Wisconsin became a state in 1848, the constitution created six positions to be elected statewide: governor, lieutenant governor, attorney general, secretary of state, treasurer, and the superintendent of public instruction. Each official was elected on a partisan ballot for a two-year term. This changed in 1970, when all terms were extended to four years. Officials here are still elected on a fall partisan ballot in non-presidential, even-numbered years, except for the superintendent who is elected on a nonpartisan ballot in the spring.

## GOVERNOR

The governor serves as chief executive in all 50 states, although the duties of the office vary from state to state. With the power to veto bills passed by the legislature, governors often have significant sway over legislation and state finances.

### Wisconsin's Governor

In Wisconsin, the governor is selected in the November general election. In the event that the governor dies or resigns, the lieutenant governor becomes governor until the next election.

Wisconsin's governor has many powers, but the powers to propose an executive budget and veto legislation are among the most significant. For any bill passed by the legislature to become law, the governor must sign it. Rather than accepting or rejecting an appropriation bill in entirety, the Wisconsin governor may use the partial (line-item) veto to "delete" words, sentences, paragraphs, and numbers from the bill before it is enacted.

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Limitations on the line-item veto do exist, however. A constitutional amendment ratified by voters in 1990 prohibits the governor from creating “a new word by striking individual letters in the words of the enrolled bill.”

A similar amendment, approved in 2008, prevents the governor from using the item veto to “create a new sentence by combining parts of two or more sentences of the enrolled bill.” The legislature can, with a two-thirds vote in both houses, override any veto.

**Here vs. Elsewhere**

Wisconsin’s gubernatorial veto is arguably the strongest in the country. Governors in 45 of the 50 states have the ability to veto appropriation items, but few can selectively delete words and digits within individual items.

*Succession.* Each state has some constitutionally prescribed method for filling vacancies in the governor’s office. The lieutenant governor succeeds the governor in 44 of the 45 states with the office. In Arkansas, the senate president is next in line rather than the lieutenant governor. Of the five states with no lieutenant governor, the senate president succeeds the governor in Maine and New Hampshire, and the secretary of state does so in Arizona, Oregon, and Wyoming.

**LIEUTENANT GOVERNOR**

Wisconsin is one of the states where the lieutenant governor succeeds the governor if the incumbent dies, resigns, or is removed from office. At least symbolically, then, the lieutenant governor is Wisconsin’s second-ranking executive officer.

**Wisconsin’s Lieutenant Governor**

Wisconsin’s lieutenant governor’s main responsibility is to serve as acting governor at the request of the governor or when the governor is temporarily unable to perform the duties of the office due to impeachment, incapacitation, or absence from the

state. In these circumstances, the lieutenant governor assumes the governor’s role on any statutory board, commission, or committee on which the governor is entitled to serve.

The lieutenant governor’s role changed over the years (see Table 1). In 1848, he or she was also president of the senate (similar to the vice president), with the power to assign bills and to cast a deciding vote in the event of a tie. That changed in 1981 after a 1979 constitutional amendment allowed the senate to choose its president from among its members. At the time, the change had partisan overtones because the lieutenant governor was Republican and the legislature Democratic.

**Here vs. Elsewhere**

As seen, the vast majority of states have a lieutenant governor, but the position has more power and responsibility in some states than in others. In 31 states, the lieutenant governor serves in place of the governor any time the chief executive is out of state. Wisconsin’s lieutenant governor serves in the governor’s stead only when such physical absence renders him or her unable to perform official duties.

The lieutenant governor presides over the senate in a number of states (27) and breaks roll-call ties in roughly half (24). Less commonly, the lieutenant governor is responsible for appointing committees (9) and assigning bills (8).

Lieutenant governors elsewhere generally have more responsibilities than in Wisconsin. Ohio is the only other state in which the office’s responsibilities are similar to those here, although other lieutenant governors have a narrow set of duties. In many states, lieutenant governors have few of the typical duties outlined above but perform other duties specific to the state. In Kansas, the lieutenant governor functions as a member of the governor’s cabinet and as an advisor, with no other official duties. In Utah, the lieutenant governor is a member of the governor’s cabinet, but

**Table 1:**  
**Duties of the Lieutenant Governor Eroding**  
Wisconsin\*, 1979 vs. 2014; Total No. of States, 2014

	Presides Over Senate	Appoints Committees	Breaks Roll-Call Ties	Assigns Bills	Assigned duties	Cabinet Member	Acting Gov. When Gov. Out of State	Other Official Duties
Wis. 1979	+	-	+	+	+	-	+	-
Wis. 2014	-	-	-	-	+	-	+	-
<b>Total No. of States</b>	27	9	24	8	22	21	31	23

\*+=Official Authority

also serves as chief election officer and chair of the lieutenant governor's commission on volunteers. The Rhode Island lieutenant governor has none of the typical responsibilities, but chairs several committees.

South Carolina's lieutenant governor is arguably the most powerful. In addition to serving in the governor's cabinet and standing in when the chief executive is out-of-state, he or she presides over the senate, assigns bills, appoints committees, and breaks roll-call ties. Furthermore, the lieutenant governor there heads the State Office on Aging, and chairs and appoints members of the South Carolina Affordable Housing Commission.

The Texas lieutenant governor is also powerful. As senate president, the lieutenant governor establishes all special and standing committees, appoints all chairpersons and members, and assigns all senate legislation to a committee of choice. The lieutenant governor is also an *ex officio* member of several statutory bodies, the most important of which is the Legislative Budget Board.

### **Election**

Originally, Wisconsin's governor and lieutenant governor were elected on a separate ballot for a two-year term. Since 1970, the governor and lieutenant governor have run together. The two are nominated individually in party primaries, but they run on the same partisan ticket in November.

Wisconsin's approach is unusual. The lieutenant governor and governor are elected jointly in 25 states, but they are subject to separate primaries in only eight of those states. In 13 states, the governor chooses a running mate. In the remaining four with joint ballots, the lieutenant governors are nominated at party conventions following the primaries.

In 18 states, the lieutenant governor runs independent of the governor. Of the remaining seven states, five do not have a lieutenant governor and two automatically assign the position to the member-elected senate president.

### **ATTORNEY GENERAL**

Every state has an attorney general who is the chief state legal advisor and chief law enforcement officer.

#### **Wisconsin's Attorney General**

In Wisconsin, the attorney general (AG) heads the Department of Justice, the agency that provides legal counsel and representation for the state. The

department is also heavily involved in prosecution, consumer protection, subpoenas, and antitrust efforts. It also provides various legal services for state agencies.

The Wisconsin attorney general is one of the few constitutional offices to have gained duties since statehood.

#### **Here vs. Elsewhere**

*Legal Counsel.* The primary function of the AG is to serve as the state's legal counsel. Like all others, Wisconsin's AG defends state law when challenged on federal constitutional grounds, and defends the state in federal or in other states' courts. In all but three states (Oregon, Pennsylvania and Montana), the AG can prosecute other states in the U.S. Supreme Court. In 41 states, including Wisconsin, the AG appears on behalf of the state in criminal appeals.

*Services to State Agencies.* The Wisconsin AG performs various duties on behalf of state administrative agencies, including issuing official advice, interpreting regulations and statutes, and conducting litigation on behalf of the agency.

AGs in other states have similar duties. In all 50, the AG conducts litigation on behalf of state agencies. What is less well known is that in 32 states, the AG can also prosecute state agencies when lawsuits are brought against them by citizens. Attorneys general also prepare or review legal documents (49), represent the public before agencies (26), participate in making rules for the agency (36), and review those rules for legality (37). The Wisconsin AG performs these tasks only in certain limited cases.

*Consumer Protection.* A large part of an AG's responsibility is often consumer protection. In Wisconsin and in most states, the AG has the power to begin civil (50) and criminal proceedings (34), represent the state before regulatory agencies (43), administer consumer protection programs (45), and handle consumer complaints (47). The AG also has limited subpoena powers.

*Antitrust.* Attorneys general are also responsible for enforcing federal and state antitrust laws. In certain circumstances, the Wisconsin AG has the power to bring suits or represent citizens in state court actions. The AG here also represents the public and government entities in recovering civil damages under federal antitrust laws.



**Table 2:**  
**Secretaries of State Have Many More Roles Elsewhere**  
 Selected Responsibilities\*, Wisconsin, 1979 vs. 2014, Total No. of States

	Election				Custodial			Registration		
	Determines ballot Chief election officer	eligibility of political parties	Files cert. of nom. or election	Conducts voter education programs	Files state agency rules and regulations	Administers uniform commercial code provisions	Files other corporate documents	Registers corps.	Processes notaries public	Registers trade names/marks
<b>Wis. 1979</b>	-	-	-	-	+	+	+	-	+	+
<b>Wis. 2014</b>	-	-	-	-	-	-	-	-	+	+
<b>Total No. of States</b>	39	39	41	38	35	39	37	43	44	45

\*+=Official Authority

Most AGs have similar responsibilities. In many, the AG also represents cities and counties in recovering civil damages.

*Prosecution.* State attorneys general are also responsible for prosecuting government entities in a variety of circumstances; however, the degree of authority they hold in local prosecutions varies widely. The attorney general can initiate local prosecutions in 45 states, and intervene in them in 41. The AG can assist local prosecutors in 45 states, and supersede them in 35. Restrictions on when such authority applies vary by state, as well.

The Wisconsin AG can initiate local prosecutions only if requested by the governor, legislature, or local prosecutor, or under certain statutes for specific crimes. He or she can intervene in local prosecutions only at the request of the governor, legislature, or local prosecutor; assist the local prosecutor at his request; and supersede the local prosecutor only at the request of the governor.

*Advisory.* As in most states, Wisconsin’s AG has the power to issue advisory opinions to state executive officials (50), legislators (45) and local prosecutors (43), as well as issue opinions on the constitutionality of bills and ordinances (32).

*Review Legislation.* The AG has the power to formally review legislation prior to passage in 18 states, and prior to signing in 16. Wisconsin’s AG has no formal power to do so but informally reviews bills upon request.

## SECRETARY OF STATE

Because state governments are minimally involved in foreign affairs, secretaries of state have responsibilities that differ from the U.S. secretary of

state. Generally speaking, duties involve record-keeping, registration for various businesses and statewide elections, as well as publishing and archiving state documents and legislation. Again, responsibilities vary widely by state.

## Wisconsin’s Secretary of State

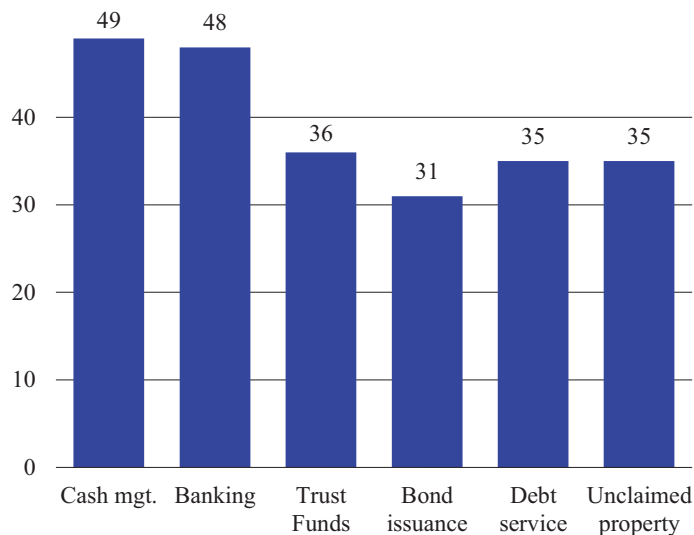
The Wisconsin constitution requires the secretary to “keep a fair record of the official acts of the legislature and executive department of the state.” Other duties are outlined in the Wisconsin statutes, including affixing the state seal to and registering all of the governor’s commissions, as well as registering trademarks and processing notaries public. The secretary is also the custodian of books, records, enrolled laws, and other important state documents, furnishing copies upon request.

Originally, the Wisconsin secretary of state performed a number of duties now delegated to other agencies. In addition to “keeping the state’s records and conducting its official correspondence,” the Wisconsin secretary of state also served as the state auditor, and administered vehicle registrations, titles, and licenses. The secretary administered corporate law, chartering domestic corporations and licensing foreign ones. The secretary was the “central election officer of the state,” had a broader range of custodial duties, and was more involved in state publications.

## Secretaries Elsewhere

Compared to other states, the duties of Wisconsin’s secretary are now few. Particularly regarding elections, custodial duties, and registration, the lack of responsibility here is rather unique. Most secretaries of state are involved in publishing state documents, and many are somewhat involved in the legislative process.

**Figure 2:**  
**Wisconsin Treasurer Has None of the Office's Typical Duties**  
 Treasurer Duties, Total No. of States, 2014



*Elections.* Wisconsin is one of six states in which the secretary has no official role in the election process. In 39 states, the secretary is the chief election officer and determines the ballot eligibility of political parties (see Table 2 on page 5). In 41 states, secretaries file certificates of nomination or election, and in 38 they conduct voter education programs.

*Custodial.* The extent of the Wisconsin secretary's custodial duties is to archive state records and regulations. Secretaries in more than two-thirds of other states also administer uniform commercial code provisions (39) and file other corporate documents (37). Wisconsin's secretary of state used to be responsible for these duties but is no longer.

*Registration.* Unlike in Wisconsin, secretaries in other states register corporations (43), charities (28), and securities (12), in addition to trademarks.

*Publications.* Wisconsin's secretary is one of only eight without publication duties. Elsewhere, secretaries are responsible for publishing the state manual or directory (24), legislative session laws (19), the state constitution (26), statutes (10), or administrative rules and regulations (28). Wisconsin's secretary of state used to be responsible for session laws and the state constitution.

*Legislation.* Secretaries generally have few legislative responsibilities, though, unlike Wisconsin's, most are somewhat involved. In 12 states, the secretary is responsible for opening the legislative session in either the lower house (10), the senate (1), or both

(1). In other states, secretaries are also responsible for enrolling bills (9), retaining copies of them (37), and registering lobbyists (21).

## TREASURER

Every state has a treasurer who provides financial management and accountability for a variety of public funds. Some treasurers also manage college saving plans, unclaimed property, and debt management programs.

### Wisconsin's Treasurer

The Wisconsin treasurer's role is much reduced from earlier years. In 1930, the treasurer had "custody of all state funds, received "all moneys paid into the treasury," and issued "checks in payment of all claims." At the time, this required directly collecting various taxes, personally depositing checks and withdrawing funds from the treasury. Time and technology have rendered such direct involvement unnecessary. Management of state funds and collection of taxes have been relegated to other state agencies.

Other than serving on several boards, most notably the Board of Commissioners of Public Lands, the Wisconsin state treasurer today has few official duties. The Board of Commissioners of Public Lands manages the state's School Trust Funds, which were established over 100 years ago when the state sold land granted it by the federal government. The trust funds continue to grow with revenue from unclaimed property, proceeds of civil and criminal fees, fines and forfeitures, and timber production on the sold lands. Revenues are used for the "benefit of public school libraries, the University of Wisconsin, and the state's citizens."

Until the 2013-15 state budget, the treasurer was responsible for the "receipt, custody, oversight, and disbursement of unclaimed property." Now the state Department of Revenue (DOR) handles unclaimed property, and state law only requires that the state treasurer help promote the unclaimed property program in consultation with the DOR Secretary.

### Here vs. Elsewhere

Treasurers in other states are much more active (see Figure 2). Wisconsin is one of only two states where the treasurer is not responsible for banking services, and the only state in which the treasurer is not responsible for cash management.

In many states, the treasurer is also responsible for overseeing trust fund investments (36), bond issuance (31), debt service (35), arbitrage (25), and college savings plans (26). Less often, the treasurer also handles bonded debt (24), collateral programs (21), investment of retirement funds (18), deferred compensation (8), and archiving for disbursement of documents (3).

### **Similar Financial Offices**

In many states, duties traditionally associated with the treasurer's office are performed by or shared with a controller (called "comptrollers" elsewhere) or an auditor. In Wisconsin, the state auditor and controller are not elected, but they do aid in financial management and accountability.

The audit function in Wisconsin resides in the Legislative Audit Bureau, a nonpartisan agency governed by a joint committee. The Wisconsin state auditor has the power to audit all state agencies (as in 45 states), obtain information (50), issue subpoenas (35), investigate fraud, waste, and abuse (49), and operate a hot line (27).

Like many other states, Wisconsin also has a state controller. Although state controllers are elected in many states, the Wisconsin controller is a non-appointed position attached to the Executive Budget Office. The state controller manages disbursements, payroll, pre-audit and post-audit functions, operates the financial management system, does financial reporting, oversees internal control, transparency, quality assurances, and oversees the enterprise resource planning system.

Some states, such as Illinois, have tried to consolidate the offices of treasurer and controller. Closer to home, several of those who have run for state treasurer, including the current state treasurer, have vowed to eliminate the position altogether. Efforts to date have failed.

### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

Wisconsin's superintendent is the only state executive office elected on a nonpartisan basis. The superintendent heads the state Department of Public Instruction (DPI), which supervises, directs, and provides technical assistance for public elementary and secondary education in Wisconsin.

In addition to general supervision, under the auspices of the superintendent, DPI is responsible

for the licensing of teachers and the disbursement of state and federal aid. The department also develops educational assessment standards to measure school performance.

The office of the superintendent has changed little since its creation with one exception: licensing teachers. Wisconsin did not license teachers until 1861, and then it was handled by local districts and county superintendents until 1939, when the legislature gave the power exclusively to DPI.

Wisconsin is one of only 14 states in which the education official is elected. However, all states have an executive administrative official in charge of public education. Most often (in 23 states), he is appointed by the state board of education. In 15 states, including Iowa and Minnesota, the governor appoints the head education official.

### **COUNTY ELECTED OFFICIALS**

In addition to state constitutional officials, the constitution also requires counties to elect several executive offices to four-year terms in fall partisan elections.

These include the county sheriff, district attorney, clerk, treasurer, coroner, register of deeds, and clerk of circuit courts. Many counties appoint a county medical examiner in lieu of electing a coroner. Counties with populations over 500,000 must also elect a county executive, though Milwaukee County is the only county affected. However, other counties choose to elect a county executive to administer county government.

Wisconsin counties are governed by an elected board of supervisors, the number of which vary by county. The Dane County board of supervisors for example has 37 members. Board members are elected in spring nonpartisan elections to two year terms.

### **CONCLUSION**

Regardless of whether or not Wisconsin's traditional constitutional offices live on, by tracing the development of elected officials in Wisconsin, it is apparent that some of these offices that were vital at the time of statehood have scant influence today. □

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#### **DATA SOURCES:**

The Council of State Governments; Wisconsin Blue Book; Wisconsin Legislative Reference Bureau; Wisconsin Statutes.



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**WISTAX NOTES**

■ **UW System Graduates Score Above Average.**

University of Wisconsin graduates performed above national averages on nursing licensure (92% vs. 90%) and MCAT (26.8 vs. 25.2) exams in 2014. The average UW system graduate also outperformed on both sections of the GRE (Verbal: 483 vs. 472; Quantitative: 609 vs. 599), according to the UW System’s Annual Accountability Report. The GRE is for graduate school applicants, while the MCAT is taken by Medical School applicants.

■ **Business Tax Climate Index.** Organizations use a variety of approaches to estimate state business climates. The Tax Foundation focuses on business taxes. On its 2015 Business Tax Climate Index, Wisconsin ranks 43rd, lower than all surrounding states save Minnesota (47). The index tends to favor states that do without one or more of the major taxes. For example, Wyoming, South Dakota, and Nevada do not have corporate or individual income taxes and ranked highest. States ranked lower tend to have complex tax systems with high rates. New Jersey, which has one of the highest property tax burdens in the country, ranks 50th.

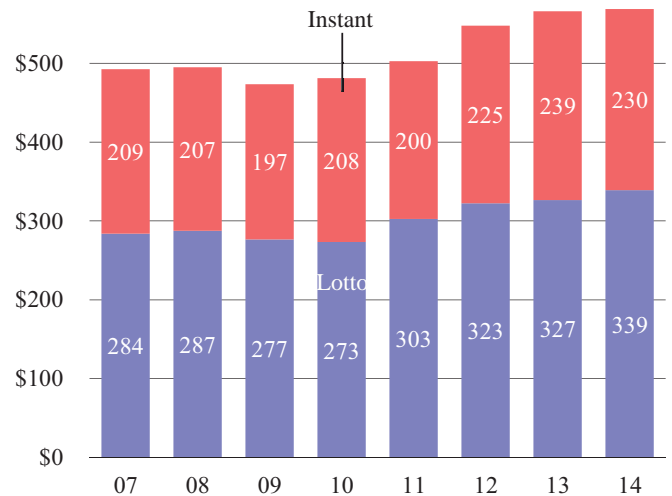
Wisconsin’s individual income tax (43) and corporate tax (33) rank lowest, while its sales tax (14) ranks higher than all surrounding states, except Michigan (7). However, while Wisconsin’s overall rank did not change this year, its property tax ranking rose from 36th to 31st after it repealed its inventory tax on rental property.

■ **STEM Occupations.** According to the most recent data (2012) from the U.S. Census Bureau, 11.6% of college graduates living in Wisconsin work in STEM fields, compared to 12.4% nationally. STEM workers are those employed in science, technology, engineering, and mathematics. Wisconsin’s percentage placed it 26th among the 50 states. Including STEM-related occupations (architects, and health care practitioners, managers and technicians) pushes the Wisconsin per-

centage to 24.8% (17th nationally). Maryland ranks highest, with 29.3% of graduates working in STEM or STEM-related occupations. Wyoming ranks lowest at 19.2%.

■ **Wisconsin Lottery Hits Record Sales.** The Wisconsin state lottery had record sales for the third year in a row in 2014. Operating revenue from lottery ticket sales increased 0.5% from \$566.1 million in 2013 to \$568.8 million in 2014. Lotto ticket sales fell 4.0%, or \$9.5 million. Instant ticket sales increased by \$12.2 million, or 3.7% according to figures from the Legislative Audit Bureau and Department of Revenue. □

**Wisconsin Lottery Sales Record High**  
Lotto and Instant Game Sales, \$ Millions, 2007-14



**In FOCUS . . . recently in our biweekly newsletter**

- The 2015-17 state budget (I): Getting to now (#4-15)
- The 2015-17 state budget (II): Basic nuts and bolts (#5-15)

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