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# state lottery and charitable gaming

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# State Lottery and Charitable Gaming

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# State Lottery and Charitable Gaming

## Introduction

Prior to 1965, Article IV, Section 24 of the Wisconsin Constitution stipulated that "the legislature shall never authorize any lottery." This provision was broadly interpreted to exclude all forms of gambling in Wisconsin.

Five separate amendments modified this strict gambling prohibition. The first, in 1965, allowed the Legislature to permit residents to participate in promotional contests. In 1973 and 1977, amendments authorized the Legislature to allow charitable bingo games and raffles, respectively. Finally, in 1987, two amendments authorized the creation of a state-operated lottery, with proceeds to be used for property tax relief, and privately-operated pari-mutuel on-track betting. The fifth amendment limited gambling to those forms permitted in April, 1993, and clarified that all forms of gambling are prohibited except bingo, raffles, the state lottery, and pari-mutuel on-track betting. While racing and pari-mutuel wagering are allowable, no such activities currently operate in the state.

As a result of federal court rulings and legal changes in the 1980's and 1990's, Native American tribes were authorized to negotiate compacts allowing for tribal gaming. For more information, see the Legislative Fiscal Bureau's informational paper entitled, "Tribal Gaming in Wisconsin."

The Lottery Division in the Department of Revenue (DOR) operates the state lottery and has oversight responsibilities relating to lottery administration. The Division of Gaming in the Department of Administration (DOA) regulates activities and promulgates rules relating to charitable gaming (bingo and raffles). The Division of Gaming also coordinates the state's regulatory activities under the state-tribal gaming compacts relating to tribal gaming.

This paper discusses legal gambling in the state, including: (a) state gaming administration; (b) the history and administration of the lottery; and (c) the history and regulation of charitable bingo and raffles.

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## The Structure of State Gaming Administration

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### The Lottery Division under the Department of Revenue

Operation of the state lottery is the responsibility of the Lottery Division within the Department of Revenue. The state lottery is the one form of legal gambling in Wisconsin that is operated by the state, utilizing both state employees and contracted services, including private sector retailer outlets for lottery ticket sales.

Funding for the Lottery Division is primarily provided from the segregated (SEG) lottery fund. Additionally, 2019 Act 9 provided \$71.7 million GPR in 2019-20 and \$73.1 million GPR in 2020-21 for retailer compensation, vendor fees, and administration (excluding costs associated with positions salaries and production information). The Division's funding in 2020-21 totals, \$85,674,000, including \$19,867,300 for general operations, \$47,980,700 for retailer compensation, and \$17,826,000 for vendor fees.

The Lottery Division is authorized 69.7 full-time equivalent (FTE) SEG positions in 2020-21, including one unclassified division administrator. Currently, 29.8 positions are allocated for retailer relations and sales, 16.0 positions for product development and marketing, and the remaining 23.9 positions for other administrative and operational

functions. All lottery employees are subject to background investigations and criminal record restrictions.

### **The Department of Administration**

The Department of Administration, through the Division of Gaming, regulates activities and promulgates rules relating to charitable gaming (bingo and raffles) and tribal gaming.

Funding for the Division of Gaming is \$2,683,600 PR and 22.5 FTE positions in 2020-21, provided from program revenue (PR) associated with each type of gaming. Employees are subject to background investigations and criminal record restrictions. The Department is authorized to audit gaming operations, investigate suspected violations of gaming law, and report suspected criminal activity to the Department of Justice (DOJ).

The Division's Office of Indian Gaming coordinates state regulation of tribal gaming and is authorized \$2,042,200 PR and 16.4 positions in 2020-21. The Division's Office of Charitable Gaming regulates bingo and raffles and is authorized 6.1 positions and \$641,300 PR in 2020-21.

### **The Department of Justice**

The Special Operations Bureau in DOJ's Division of Criminal Investigation provides law enforcement oversight of gaming in Wisconsin. In 2020-21, the Bureau is provided 4.0 positions and \$532,600 (\$361,900 SEG from the lottery fund and \$170,700 PR from Indian gaming revenue). Of these positions, 1.25 are responsible for cases involved with gaming on tribal lands and 2.75 are responsible for other gaming investigations.

The Department's primary responsibilities related to gaming are as follows:

**Lottery.** The Department of Justice may investigate activities of Lottery Division employees in

the Department of Revenue and lottery vendors that affect the administration or operation of the state lottery or multi-jurisdictional lotteries. In addition, DOJ is required to perform the background investigations relating to major procurement contract vendors. The Department must report suspected violations of state or federal law to the appropriate prosecuting authority. As part of its investigation, the Department may issue a subpoena to compel the production of evidence. The Department and district attorneys have concurrent jurisdiction to prosecute violations of state lottery statutes. The Department also investigates crimes that are committed against the Lottery. These crimes generally involve attempts to defraud the Lottery.

**Tribal Gaming.** Under the state-tribal compacts, the Department is authorized to: (a) monitor each tribe's casino gaming to ensure compliance; (b) investigate the activities of tribal officers, employees, contractors, or participants that may affect the operation of tribal gaming; and (c) prosecute violations of any applicable state civil or criminal law or provision of a compact.

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## **The Wisconsin State Lottery**

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### **Constitutional Provision**

Authorization of the Wisconsin lottery required the adoption of a constitutional amendment creating an exception to the gambling prohibition in effect at that time. This amendment received voter approval on April 7, 1987, by a vote of 739,181 (65%) to 391,942 (35%).

This amendment allowed the Legislature to create a state lottery, the net proceeds of which must be used for property tax relief. The amendment prohibits the expenditure of any public funds or lottery proceeds for promotional advertising of the lottery and stipulates that "any advertising of the state lottery shall indicate the odds of a specific

ticket to be selected as the winning ticket for each prize amount offered." This language appears to allow the state to engage in advertising only to inform potential participants of the lottery's existence, but precludes the state from conducting advertising that is promotional in nature. Advertising by private businesses acting as lottery ticket retailers or suppliers must also disclose a ticket's odds of winning; however, the prohibition of promotional advertising does not apply to these businesses.

### Lottery Definitions in State Law

A "lottery" is defined under s. 945.01(5)(a) of the Wisconsin Statutes as "...an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill." This definition contains three elements which are essential in any lottery:

1. **Consideration.** Either the promoters must receive some commercial or financial advantage or the participants must be disadvantaged in some way. An example of a consideration is the price paid for a lottery ticket.

2. **Chance.** The determination of prize winners must be through some random selection process.

3. **Prize.** Selected participants must be awarded some sort of prize. In a lottery, prizes may range from \$1 to large cash amounts.

Chapter 945 of the statutes, which prohibits anyone from conducting or participating in a "lottery," also specifies that a lottery does not include bingo and raffles, pari-mutuel wagering or the state lottery or any multijurisdictional lottery conducted under Wisconsin law. (A "multijurisdictional" lottery pertains to games in which Wisconsin participates in conjunction with another state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico or

any territory or possession of the United States of America or the government of Canada or any Canadian province.)

In the fall of 2020, the Powerball Group, which administers the Powerball game, announced that it was considering an expansion of Powerball to additional countries. Such a change would prevent Wisconsin's continued participation in Powerball draws given the limited list of countries included in the state's current law definition of a multijurisdictional lottery. State Lottery officials have indicated that state law would need to be amended in 2021 in order for the state to continue participating in Powerball draws if the Powerball expansion is approved.

The types of games that may be offered to players of the state lottery are restricted under s. 565.01(6m) of the statutes. The state lottery is defined as an enterprise, including a multijurisdictional lottery in which the state participates, where the player, by purchasing a ticket, is entitled to participate in a game of chance in which any of the following applies:

1. The winning tickets are randomly predetermined and the player reveals preprinted numbers or symbols from which it can be immediately determined whether the ticket is a winning ticket entitling the player to win a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game.

2. The ticket is evidence of the numbers or symbols selected by the player or, at the player's option, selected by a computer, and the player becomes entitled to a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game. The player wins if some or all of the player's symbols or numbers are selected in a chance drawing or game, if the player's ticket is randomly selected by the computer at the time of purchase or if the ticket is selected in a chance drawing.

This definition is consistent with the types of lottery games that have been conducted by the Wisconsin state lottery since its inception. The state lottery cannot include any of the following games or games simulating any of the following games:

1. Any game in which winners are selected based on the results of a race or sporting event.
2. Any banking card game, including blackjack, baccarat or chemin de fer.
3. Poker, roulette, craps or other dice games, keno, bingo 21, bingo jack, bingolet or bingo craps.
4. Any game of chance played on a slot machine or any mechanical, electromechanical or electronic device that is generally available at a gambling casino.
5. Any game or device that is commonly known as a video game of chance, a video gaming machine or a video gambling machine, except a video device authorized by the Department to permit the sale of tickets for an authorized game if the device does not determine or indicate whether the player has won a prize.
6. Any game that is similar to a game identified above.
7. Any other game that is commonly considered to be a form of gambling and is not substantially similar to a game that the Department has the authority to conduct under state law.

Finally, state law specifies that the definition of the state lottery does not affect the provisions of any Indian gaming compact entered into by the state before January 1, 1993.

### **Wisconsin Lottery Games**

The state lottery began selling tickets

September 14, 1988. The state lottery currently offers two types of instant games: "scratch" ticket games and pull-tab games. In the scratch games, participants purchase a card with a latex covering, which is scratched off to reveal the prize, if any, that is won. Depending on the game, tickets cost \$1, \$2, \$3, \$5, \$10, \$15, \$20, or \$30. In 2019-20, scratch game sales amounted to \$513.0 million and accounted for 70.7% of total lottery sales.

Pull-tab games are played with "break-open" tickets that are made of laminated paper partially perforated to permit strips to be torn from one side to reveal the underlying play symbols, from which it can be immediately determined whether the ticket is a winner. Pull-tab tickets may only be redeemed at the place the ticket is purchased. In 2019-20, pull-tab game sales amounted to \$0.76 million and accounted for 0.1% of total lottery sales.

The state lottery also offers on-line games, commonly referred to as "lotto" games. In these games, tickets are distributed from terminals linked to the state lottery's central office computer (in October, 2020, some 3,626 retailers had lotto ticket terminals). Participants select a combination of numbers (or have a computer randomly select the numbers) from a larger field. Periodic drawings are held to determine the winning combinations. There are two basic types of lotto games. In most daily draw games, prizes are awarded to winners with no carryover to subsequent drawings. In "jackpot" games, the odds against selecting the correct combination of numbers are higher, so there may be no winner among the participants in a given drawing. When this occurs, the prize money is added to the amounts from subsequent drawings until a winner emerges.

The state currently offers five daily draw games (SuperCash, Daily Pick 3, Daily Pick 4, Badger 5, and 5 Card Cash) and three jackpot games (Powerball, MegaMillions, and Wisconsin's Megabucks). The Powerball and MegaMillions games are multi-state games, while the



others are Wisconsin-only games. The minimum price to play ranges between \$0.50 (Daily Pick 3 and 4) and \$2.00 (5 Card Cash, MegaMillions, and Powerball). Raffle-style lotto games, which are offered less frequently, may have higher minimum ticket prices. In 2019-20, lotto game sales amounted to \$211.7 million and accounted for 29.2% of total lottery sales.

Instant, lotto, and total lottery ticket sales since 2009-10 are summarized in Table 1.

**Table 1: Wisconsin Lottery Ticket Sales**

Fiscal Year	Instant Games	Lotto Games	Total
2010-11	\$302,523,800	\$200,130,700	\$502,654,500
2011-12	322,482,000	225,158,700	547,640,700
2012-13	326,725,700	239,377,000	566,102,700
2013-14	338,960,800	229,876,600	568,837,400
2014-15	357,463,500	217,167,900	574,631,400
2015-16	379,931,000	247,234,000	627,165,000
2016-17	385,866,600	216,906,200	602,772,800
2017-18	420,434,800	246,957,600	667,392,400
2018-19	451,343,300	261,789,500	713,132,800
2019-20	513,741,700	211,698,000	725,439,700

### Statutory Provisions and Current Operations

Although the constitutional amendment authorized a lottery, legislation was needed to create the lottery and specify the details of its operation. The following sections briefly outline the major provisions of the current state lottery statutes and describe lottery operations.

**Administration by the Department of Revenue.** The Department of Revenue has the responsibility for operating the state lottery and has certain oversight responsibilities under current law. The Department, prior to appointing an unclassified administrator of the lottery division, is required to conduct a nationwide search to find the most qualified appointee. The search must consider the business management experience, marketing experience, computer experience and lottery management experience of the applicants. No person may serve as the administrator who has

been convicted of, or entered a plea of guilty or no contest to, any of the following: (a) a felony during the immediately preceding 10 years (unless the person has been pardoned); (b) a gambling-related offense; (c) fraud or any type of misrepresentation; or (d) a violation of lottery law or administrative rules.

The Department has broad authority to promulgate rules relating to implementing the lottery statutes. The Department is required to adopt rules governing specific aspects of the lottery's management and operations, including rules for: (a) establishing a plan of organizational structure for lottery division employees; (b) selecting retailers; (c) establishing requirements for information to be submitted with a bid or proposal by a person proposing to contract with the state lottery; (d) determining the types of lottery games to be offered; (e) defining the terms "advertising" and "lottery shares;" (f) establishing the circumstances and procedures under which a retailer may not be reimbursed if he or she accepts and directly pays a prize on an altered or forged lottery ticket or lottery share; (g) providing for terms of lottery retailer contracts for periods that are shorter than three years; and (h) establishing goals to increase the total amount of expenditures for advertising, public relations and other procurements that are directed to minority businesses, the number of retailers that are minority businesses and the number of employees of the lottery division who are minority group members. Additional rules relating to the operation of the state lottery may be promulgated by DOR, including rules regarding the establishment of a retailer performance program.

The Department is also authorized to: (a) approve whether lottery functions are to be performed by DOR employees or provided under contract; (b) approve a major procurement contract, if the Department of Administration delegates responsibility for the procurement process to DOR; (c) approve the features and procedures for each lottery game; and (d) conduct hearings and render final decisions relating to the

suspension or termination of a lottery retailer contract.

**Lottery Procurements.** Subject to approval by the Secretary of DOR, the lottery division administrator may determine whether lottery functions will be performed by DOR employees or be provided under contract with private businesses or individuals. However, no contract may provide for the entire management or operation of the lottery by any private person.

Major procurements for the lottery are made by DOA, unless DOA delegates this authority to DOR. "Major procurements" are defined as materials, supplies, equipment or services which are unique to the operation of the lottery and not common to the ordinary operations of other state agencies. Other goods and services used by the state lottery are subject to s. 565.25 of the statutes and normal state purchasing procedures.

The Department of Administration must solicit separate bids or proposals for management consultation services. Major procurement contracts must be awarded using a formula based on: (a) cost; (b) the proposed vendor's technical capability and expertise; (c) the integrity, reliability and expertise of the proposed vendor; (d) security considerations; and (e) the vendor's financial stability.

Like lottery employees, major procurement vendors are subject to background investigations and criminal record restrictions. Major procurement vendors are also required to establish an office in Wisconsin.

Conflict of interest provisions prohibit a vendor selected to provide management consultation services from submitting a bid or proposal to provide other supplies, goods or services under a major procurement contract or to have an ownership interest in any vendor under such a contract or submitting a bid for such items. In addition, conflict of interest provisions apply to the employees in the lottery division in DOR, the

Department's Secretary, Deputy Secretary, and Assistant Deputy Secretary, as well as former division employees for two years following service, with regard to having a direct or indirect interest in, being employed by, or accepting money or other things of value from any vendor or retailer while serving as an employee in that capacity.

However, a former division employee may be employed by a vendor at any time following the termination of employment with the division if DOR has entered into a contract with the vendor to perform services previously performed by the division. Discussions of future employment with a vendor, while negotiating a major procurement contract with DOR relating to the lottery, are allowed only with prior written consent of the Administrator. This exception does not apply to the Administrator, Deputy Administrator, or any Bureau Director in the division.

**Lottery Retailers.** Under state lottery administrative rules, retailers enter into contracts with the state lottery for the sale of lottery tickets to the public. These rules authorize an initial retailer application fee and an additional fee for a three-year certificate of authority. Currently, the initial contract application fee is \$75. The certificate of authority fee of \$25 per sales location is imposed when a contract is awarded or renewed. Retailer contracts typically run for three years, although other time periods can be used to stagger contract expiration dates.

Retailer selection must provide for the convenient availability of lottery tickets to prospective buyers. Rules relating to retailer selection must be based on objective criteria and may not limit the number of retailers in a municipality solely based on its population. The rules must also establish requirements for: (a) financial responsibility; (b) security; (c) accessibility; (d) the sufficiency of existing retailers to serve the public; (e) expected sales volume; (f) ensuring that there will not be an undue concentration of retailers in any geographic area of the state; and (g) additional qualifications

(determined by rule).

No retailer contract may be entered into with a person who is less than 18 years of age or is finally adjudged to be delinquent in the payment of state taxes, unemployment compensation, or certain other required state payments; also, criminal record restrictions apply. There is also a prohibition against entering into a retailer contract with a person engaged in business exclusively as a lottery retailer, unless the contract is on a temporary basis or is with a person with a disability, a group of individuals with disabilities or a nonprofit organization providing services to such persons.

The state lottery may operate retail sales outlets or enter into retailer contracts with state and local governmental agencies. However, under these circumstances, the lottery division administrator must minimize the competitive effect of such sales on sales by private retailers. Retailer contracts with private persons operating activities on state or local government property are also allowed but, in awarding these contracts, the state lottery must give preference to individuals with disabilities and nonprofit organizations providing services to such persons.

A retailer contract may be terminated or suspended if a retailer has done any of the following: (a) violated lottery statutes or rules; (b) failed to meet retailer qualifications; (c) endangered lottery security; (d) engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the lottery; (e) failed to accurately account for lottery tickets, revenues or prizes; (f) is delinquent in making payment of lottery ticket revenues; or (g) violated contractual provisions in a manner that constitutes grounds for termination or suspension. In addition, the lottery administrator can suspend or terminate a contract, without prior notice or hearing, if he or she determines that such action is necessary to protect the public interest or the security, integrity or fiscal responsibility of the state lottery. In this circumstance, the

retailer can have such a suspension or termination reconsidered by the lottery administrator and, if necessary, reviewed by DOR through a hearing process.

Table 2 indicates, by region of the state, the number of for-profit retailers and nonprofit organizations. Virtually all for-profit retailers have lotto ticket terminals, although historically a small number of retailers have sold pull-tab tickets only. Nonprofit organizations are permitted to only sell pull-tab tickets.

**Table 2: Lottery Retailers by Region (2019-20)  
(as of October, 2020)**

Region	For-Profit Retailers	Pull-Tab Only Nonprofit Organizations
Eau Claire	620	63
Green Bay	644	16
Madison	727	56
Milwaukee	1,380	82
Rhineland	<u>255</u>	<u>19</u>
Total	3,626	236

**Retailer Compensation.** Basic retailer compensation is established by statute at 5.5% of the retail price of lotto lottery tickets and 6.25% of the retail price of instant tickets sold by the retailer. A higher rate of basic compensation, which varies by game, is permitted to nonprofit organizations selling pull-tab lottery tickets at special events. In 2019-20, the overall rate of compensation for nonprofit retailers was 27.3% of the retail price of tickets.

**Retailer Performance Program.** The Department of Revenue may establish a program to pay additional compensation to retailers who meet certain performance goals identified by the Department. The additional compensation paid to retailers under the program may not exceed 1% of gross lottery sales revenue in a fiscal year.

The retailer performance program is composed of three components: (a) a winning ticket bonus component; (b) a sales goal incentive component; and (c) a short-term incentive component. The

winning ticket and sales goal components are viewed by DOR as the major components of the program, while the short-term incentives are characterized as a lesser component of the program designed to support certain lottery products or to strengthen sales during certain periods of the year.

The rules for the program require the lottery administrator to document and report, within 90 days of the completion of a fiscal year, the total payments made to retailers under the program. The report must detail the incentives paid under the winning ticket incentive, the sales goal incentive, and the short-term incentive.

*Winning Ticket Component.* The winning ticket component provides a payment to the retailer selling a winning ticket equal to 2% of the winning ticket value, if the winning ticket value is at least \$600. The maximum payment authorized under the winning ticket incentive component is \$100,000 per winning ticket. [In the event that retailers would collectively earn more than \$300,000 from any one prize level in any one drawing, then the lottery is required under rule to divide \$300,000 equally among all retailers who earned an incentive from that prize level.] Under the winning ticket component of the program, retailers received \$1,230,100 in 2019-20.

*Sales Goal Incentive Component.* The sales goal incentive component pays bonuses of 10% of sales increases (unless adjusted to a lower payment percentage by the lottery administrator) in three categories of lottery products: (a) instant ticket games; (b) non-jackpot lotto games; and (c) jackpot lotto games. Each lottery product category is treated separately. The flexibility to adjust the sales goals incentive payments to less than 10% of sales increases is designed to ensure that total payments will not exceed the 1% of total sales funding limit in a fiscal year. Any adjustment must consider historical sales and incentive information and must be applied equally to all retailers receiving payment. Sales goal incentive payments

to retailers totaled \$5,329,500 in 2019-20.

*Short-Term Incentive Component.* The short-term incentive component of the program provides bonus payments to retailers who satisfy a specific, short-term performance expectation. The intent of providing short-term incentives is to support certain lottery products or strengthen sales during certain periods of the year through a flexible incentive mechanism that has a limited life cycle. For example, short-term incentives may be used to help reduce the ticket inventory for certain games or to support seasonal lottery products.

Under rules governing the program, the lottery administrator may offer multiple short-term incentives in a fiscal year. A short-term incentive may not continue from one fiscal year to the next. Each short-term incentive is limited to a maximum of \$300,000 in total incentive payments. In 2019-20 six short-term incentive programs resulted in payments of \$441,600.

**Lottery Games and Prizes.** The Department must promulgate rules governing the types of games offered by the state lottery. Subject to these rules and the approval of the Secretary of DOR, the lottery administrator must determine the particular features of and procedures for each lottery game offered. The criteria must be in writing, accessible to the public and must include: (a) the theme and name of the game; (b) the price of the lottery tickets; (c) the prize structure, including the number and value of prizes; (d) the frequency of drawings or other winner selections; (e) the method of selecting winners; and (f) the method of making payment to winners.

Lottery tickets cannot be sold to anyone under 18 years of age. However, an adult may give a ticket to a minor. In addition, no employee in the Lottery Division or the Secretary, Deputy Secretary, or Assistant Deputy Secretary of Revenue and no member of such a person's immediate family may purchase a lottery ticket.

By statute, total annual lottery prizes must equal at least 50% of gross sales. In 2019-20, prizes totaled approximately 62.5% of gross sales (66.5% for scratch, 62.7% for pull-tab, and 50.3% for lotto games). Prizes under \$600 may be redeemed by lottery retailers. Larger prizes must be paid by the state lottery. Lottery winners have 180 days from the date of the drawing in which to claim prizes. For instant scratch or pull-tab games, winners have 180 days from the end date of the game to claim prizes.

Annually, no later than March 1, DOR must submit a report to the Joint Committee on Finance that estimates all of the following for the current and subsequent fiscal years: (a) gross revenue from lottery ticket sales; (b) the total amount to be paid as prizes; (c) the prize payout ratio for each type of lottery game offered; and (d) an evaluation of the effect prize payout ratios have on lottery sales, lottery operating costs and on maximizing the revenue available for the lottery property tax credit. If, within 14 days of the receipt of the report, the Co-chairs of the Committee notify DOR that a meeting of the Committee has been scheduled to review the proposed prize payouts, DOR may proceed with the payout plans for the next fiscal year only upon approval by the Committee. If no meeting is scheduled within 14 days, the payout plans for the following year are considered approved by the Committee.

**Additional Options for Prizewinners.** Under current law, additional options for prizewinners are provided which allow lottery prizes to be used as security for a loan or assigned to another person.

With regard to using lottery prizes as security for a loan, a lottery prize winner may use a lottery prize or part of a lottery prize as security if authorized by a court order. Any prize winner who intends to use part or all of a lottery prize as security for a loan must petition the circuit court of the county in which the prize winner resides or the circuit court of Dane County for a court order confirming the use of a

lottery prize as security for a loan.

The court is required to issue an order confirming the use of a lottery prize as security for a loan if certain conditions are met. For example, the prize winner must be represented by independent legal counsel. Further, a copy of the contract that provides for using any part of the lottery prize as security for the loan must be attached to the petition and the contract executed by the prize winner must provide that the prize winner has the right to cancel the contract until midnight of the third business day after the date on which the prize winner entered into the contract. Additional conditions relate to ensuring the payment of claims to, or judgments, liens, security interests, garnishments, assignments or attachments against, all or any part of the lottery prize payments. Finally, requirements are also specified for the contents of the court order, the organization making the loan and the administrator of the lottery.

A second option is that a lottery prize winner, acting as an "assignor," may make a voluntary assignment of a lottery prize or part of a lottery prize if authorized by a court order. Larger lottery prizes associated with the lotto games of Powerball, Megabucks and MegaMillions, may be paid out in annual installments, usually over a 30-year period, or as a smaller, one-time payment, depending on the option chosen by the purchaser. Assignment authorizes the transfer to another of any property, in whole or in part, and may be executed for a variety of reasons. Assignment, in the context of lottery prizes, involves the ability of a prize winner to "sell" or assign his or her right to collect all or part of future lottery prize payments to a third party in exchange for a more immediate payment or other return made by the third party to the prize winner. Examples of such third parties could include investors, banks or loan companies. Any assignor who intends to voluntarily assign part or all of a lottery prize to any individual or organization is required to petition the circuit court of the county in which the assignor resides or the circuit court of Dane County for a court order confirming

the assignment.

As with using a lottery prize as security for a loan, the court is required to issue an order confirming the assignment if a variety of conditions are met. Again, the assignor must be represented by independent legal counsel and the assignor has the right to cancel the contract until midnight of the third business day after the date on which the assignor entered into the contract. Additional requirements are also specified for obtaining the court order, the contents of the court order, the individual or organization to whom the lottery prize is assigned and the administrator of the lottery.

**Advertising.** The Wisconsin Constitution prohibits spending public funds or lottery revenues to engage in promotional advertising of the lottery. Article IV, Section 24(6)(a) of the Constitution states, "The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited." Statutory provisions repeat this prohibition and define promotional advertising as "advertising which is for the purpose of inducing persons to purchase lottery tickets or lottery shares." This prohibition does not include advertising designed to provide the public with the following information: (a) the fact that the state has a lottery or participates in a multijurisdictional lottery; (b) the locations where lottery tickets are sold; (c) the price of lottery tickets; (d) the prizes or prize structure of the lottery; (e) the type of lottery game and an explanation of how it works; (f) the time, date, and place of conducting the lottery; (g) the winning tickets or ticket numbers or the identity of winners and the amounts won; and (h) how the lottery is operated or how the net proceeds of the lottery are to be used.

Retailers and vendors can engage in promotional advertising of the state lottery; however, such promotional advertising must indicate that it is paid for by the retailer or vendor.

The Wisconsin Constitution also specifies that, "Any advertising of the state lottery shall indicate the odds of a specific lottery ticket being selected as a winning ticket for each prize amount offered." By statute, any lottery advertising describing a specific game must include: (a) for games in which the prizes and odds of winning are predetermined, the prize structure, prize amounts and the odds of a specific ticket being selected as a winner; and (b) for games in which the prizes and odds of winning are determined by the number of participants in the game, an explanation that the prize amounts and odds of winning are determined by the number of participants in the game, an explanation of the prize structure and estimates of prize amounts and the odds of winning each prize amount. This information must also be disclosed on lottery tickets. Finally, any lottery informational material must state whether prize amounts are paid in installments and the number of years over which such payments will be made. In 2019-20, advertising expenditures totaled \$8,443,200.

**Taxes and Other Withholdings.** Lottery ticket sales are exempt from state and county sales taxes; however, lottery winnings may be taxable as income at both the state and federal levels. The lottery is statutorily required to withhold state income taxes from lottery prizes of \$2,000 or more. Currently, the Lottery deducts 7.65% of any winnings of \$2,000 or more for state income tax withholding and 25% of any winnings of more than \$5,000 for federal tax withholding purposes. Statutory provisions also provide for withholding from certain lottery winnings delinquent state taxes, child support, spousal support, maintenance, family support or other debts owed the state, and DOR's administrative expenses associated with withholding and remitting a debt to a state agency.

**Lottery Fund.** The lottery fund is a segregated fund, the net proceeds of which are constitutionally required to be used for property tax relief. Under current law, property tax relief is

provided through a lottery and gaming credit distributed to owners of primary residences.

Revenues accruing to the lottery fund include: (a) lottery ticket sales and other miscellaneous lottery revenue; (b) the net state revenue relating to charitable bingo; and (c) the interest earnings of the fund. Lottery fund appropriations are made for the following purposes: (a) prize payments; (b) retailer compensation; (c) vendor payments for major lottery equipment and data processing; (d) general program operations of the lottery; (e) gaming law enforcement costs of the Department of Justice; (f) lottery credit administration costs of the Department of Revenue; and (g) property tax relief, including appropriations for the lottery and gaming credits and payments for late credit applications. Further, a lottery fund reserve is statutorily required. The Legislature may not enact any bill directly or indirectly affecting the lottery fund if the bill would cause the estimated lottery fund balance on June 30, of any fiscal year to be less than 2% of the estimated gross lottery revenues for that year. This 2% reserve provides some cushion to ensure that adequate funds are available for property tax relief in the event that lottery sales decline from anticipated levels.

**Limit on Administrative Expenditures.** The amount paid annually for state lottery administrative expenses (including general program operations and vendor payments for equipment and data processing) may not exceed 10% of yearly gross lottery revenues, unless additional expenditures are approved by the Joint Committee on Finance. Capital expenditures may be amortized over an extended period for purposes of complying with the 10% annual limit. Retailer compensation, and monies appropriated from the lottery fund to the Department of Justice (for criminal enforcement) are not included as lottery expenses under the limitation.

Before January 1 of every even-numbered year, DOR is required to submit a report to the Legislature on the effects on the operation of the

lottery of the 10% expense limitation. Administrative expenses, as reported in the Legislative Audit Bureau's April, 2020 report, totaled 5.5% of gross revenues in 2017-18 and 5.6% in 2018-19.

**Miscellaneous Provisions.** State statutes also include provisions relating to the enforcement authority and subpoena power of the Department of Justice, criminal penalties for violation of lottery laws and rules, required financial audits by the Legislative Audit Bureau and other required audits and financial reports regarding the lottery.

### **Property Tax Relief**

The Wisconsin Constitution requires that "the net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by law." A particular method to accomplish this directive is not specified. Since the creation of the lottery, the Legislature has appropriated lottery funds for four property tax relief programs. In addition, a gubernatorial veto resulted in the transfer of lottery funds to the general fund in 1991-92. One program, the lottery property tax credit, was restructured under 1997 Wisconsin Act 27 to address a state Supreme Court ruling described below. The credit was restructured again in the 1999 legislative session to address an April, 1999, constitutional amendment, also discussed below. These uses of lottery proceeds from 1988-89 through 2020-21 are shown in Table 3.

**Lottery and Gaming Credit.** Although there have been other uses of lottery proceeds, this credit has been the most significant use of these funds. By October 1 of each year, current law requires DOA to provide the Joint Committee on Finance with an estimate of total funds available for distribution under the lottery and gaming credit for property taxes levied in that calendar year and paid in the following year. If the Committee chooses to accept the DOA estimate, no Committee action is required. If the Committee chooses to revise the DOA estimate, it must do so

**Table 3: Lottery Property Tax Relief Payments**

Fiscal Year	General Equalization School Aids	Farmland Tax Relief Credit	District Attorney Salaries	Transfer to General Fund	Lottery Property Tax Credit	School Levy Tax Credit	Totals
1988-89	\$69,358,500	\$0	\$0	\$0	\$0	\$0	\$69,358,500
1989-90	66,748,300	17,997,600	3,156,900	0	0	0	87,902,800
1990-91	0	14,745,300	10,276,200	0	0	0	25,021,500
1991-92	0	14,717,800	0	54,054,800	167,890,500	0	236,663,100
1992-93	0	15,410,300	0	0	185,021,400	0	200,431,700
1993-94	0	15,865,900	0	0	153,916,600	0	169,782,500
1994-95	0	15,547,600	0	0	136,881,800	0	152,429,400
1995-96	0	15,141,300	0	0	156,778,000	0	171,919,300
1996-97*	0	12,939,200	0	0	975,700	0	13,914,900
1997-98	0	11,118,700	0	0	205,777,200	0	216,895,900
1998-99	0	11,218,200	0	0	142,682,300	0	153,900,500
1999-00	0	0	0	0	216,255,200	0	216,255,200
2000-01	0	11,748,000	0	0	90,009,300	0	101,757,300
2001-02	0	13,744,600	0	0	105,248,700	0	118,993,300
2002-03	0	23,516,900	0	0	106,048,100	0	129,565,000
2003-04	0	13,252,400	0	0	118,351,000	0	131,603,400
2004-05	0	11,694,600	0	0	131,703,000	0	143,397,600
2005-06	0	13,469,000	0	0	119,827,100	0	133,296,100
2006-07	0	15,391,000	0	0	144,591,700	0	159,982,700
2007-08	0	16,900,000	0	0	129,601,600	0	146,501,600
2008-09	0	14,570,800	0	0	117,796,900	0	132,367,700
2009-10	0	14,330,700	0	0	112,785,800	0	127,116,500
2010-11	0	885,400	0	0	129,129,600	14,850,000	144,865,000
2011-12	0	89,900	0	0	135,009,400	14,850,000	149,949,300
2012-13	0	28,600	0	0	141,021,700	14,850,000	155,900,300
2013-14	0	6,700	0	0	168,365,800	0	168,372,500
2014-15	0	0	0	0	166,433,300	0	166,433,300
2015-16	0	900	0	0	158,086,800	0	158,087,700
2016-17	0	1,500	0	0	183,350,200	0	183,351,700
2017-18	0	0	0	0	170,255,100	0	170,255,100
2018-19	0	0	0	0	236,762,300	0	236,762,300
2019-20	0	0	0	0	270,010,800	0	270,010,800
2020-21	0	0	0	0	237,442,100	0	237,442,100
Totals	\$136,106,800	\$294,332,900	\$13,433,100	\$54,054,800	\$4,538,009,000	\$44,550,000	\$5,080,486,600

\*The credit was not applied to 1996(97) property tax bills. Proceeds of \$125.2 million plus reserves remained in the Lottery fund and available for 1997(98) property tax bills. Expenditures shown for 1996-97 were for prior year adjustments and credit administrative costs.

at a meeting that takes place prior to October 16. The Department of Revenue must be notified of the total amount available for distribution under the lottery and gaming credit by October 16 of each year. This estimate provides DOR with the basis for calculating the fair market value, termed the credit base, necessary to distribute the lottery

and gaming credit.

#### **History of the Lottery and Gaming Credit.**

For the years 1991-92 through 1995-96, the lottery credit provided direct property tax relief in the form of a state credit on property tax bills for primary home owners. However, on October 29,



1996, a Dane County Circuit Court ruled (*Wisconsin Out-of-State Landowners Association, Inc., et al. v. Wisconsin Department of Revenue, et al.*) that the state's lottery tax credit provisions were unconstitutional because they violated the uniformity clause of the state Constitution, which requires that all classes of property be taxed in a uniform manner. The lottery tax credit benefited only the owners of principal residential dwellings. (The credit was determined by multiplying the local school tax rate by the estimated fair market value, but not exceeding a credit base established under law, of every parcel of taxable property on which a principal dwelling was located and for which a claim for the credit was made by its owner.)

In 1997, a new lottery credit distribution mechanism was provided that extended lottery credits to all taxable properties (by multiplying the local school tax rate by the estimated fair market value of the property, but not exceeding a credit base established under law).

On April 6, 1999, state voters approved (648,903 to 105,976) an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment required that state revenues from the lottery, pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of these gambling activities. The amendment also specified that the distribution of monies for property tax relief may not be based on the recipient's age or income and is not subject to the rules of uniform taxation required under Article VIII, Section 1, of the Wisconsin Constitution.

Subsequently, 1999 Act 5 established a number of provisions relating to the administration and use of gambling revenues, including provisions relating to the lottery property tax credit in order to reflect these new Constitutional requirements. The lottery credit was renamed the lottery and

gaming credit and now applies only to property used as the owner's principal dwelling. Also, the appropriation structure was amended to reflect the new constitutional requirements for state gaming revenue to be used for property tax relief. These provisions direct that available pari-mutuel- and bingo-related revenue, including interest earnings, be transferred to the lottery fund.

The lottery and gaming credit is affected by many factors, including lottery sales trends and the opening balance. Also, on occasion GPR funding is provided to pay certain lottery expenses in order to increase the amount of lottery and gaming revenues available for the credit. The 1999-01 biennial budget appropriated general fund revenue for various lottery operating expenses and for the farmland tax relief credit in order to increase the distribution under the lottery and gaming credit for that biennium. Also, in each of the past two biennia, GPR funding has been used again to pay lottery operation retailer compensation and vendor fee expenses in order to fund a higher credit. Base level GPR funding for these lottery expenses for the 2021-23 biennium totals \$71.3 million.

The amount distributed for the lottery and gaming credit in 2019-20 totaled \$269.7 million, which provided an average credit of \$184. In October, 2020, the Joint Committee on Finance approved the distribution of \$237.4 million in 2020-21 for the lottery and gaming credit, which would provide an estimated average credit of \$160. The expected reduction in the average credit is due to lower lottery revenues, resulting from decreased sales and expected changes to the structure of the Powerball game.

**Farmland Tax Relief Credit.** The farmland tax relief credit was created in the 1989-91 budget and was ended under 2009 Wisconsin Act 28, effective with tax year 2010. Expenditures continued to occur through 2016-17 due to amended prior tax year claims.

**School Levy Tax Credit.** Under 2009 Act 28,

beginning in 2010-11, with the repeal of the farmland tax relief credit, the \$14,850,000 for that credit was instead used to pay a small portion of school levy tax credit payments. This was the first time Lottery fund revenues were used to fund this credit, which is paid to all local property owners. The state's Constitution limits the use of net lottery and gaming funds to property tax relief for state residents. However, since school levy credits were paid to all property taxpayers, including nonresidents, Act 28 required DOR to promulgate administrative rules to make certain that payments from the lottery and gaming fund appropriation would be used exclusively for school levy tax credits granted to state residents.

Under 2013 Act 20, the statutory provision providing lottery funding for the school levy tax credit was eliminated. The \$940 million school levy tax credit is once again entirely funded with GPR.

[For additional information, including a discussion of the calculation of the lottery and gaming credit, as well as information on other property tax credits, see the Legislative Fiscal Bureau's informational paper entitled "State Property Tax Credits."]

## **Current Fund Condition**

Table 4 shows the lottery fund condition for the years 2019-20 (actual) and 2020-21 (estimated), including revenues, expenditures and the appropriations from the lottery fund for property tax relief. For 2019-20, gross revenues totaled \$725.7 million and expenditures totaled \$472.6 million. For 2020-21, it is estimated that gross revenues will total \$674.4 million while expenditures will total \$439.4 million. Under 2019 Act 9, a biennial total of \$144.8 million in general purpose revenue (GPR) was allocated to the Lottery Division for retailer compensation (\$71.7 million in 2021-20 and \$73.1 million in 2020-21). This GPR funding results in a similar amount of additional lottery

revenue being available for the lottery and gaming credit in each year of the biennium.

For 2019-20, \$269.7 million was available for the lottery and gaming credit. For 2020-21, the Joint Finance Committee certified that \$237.4 million would be available for the lottery and gaming credit. The 2020-21 amount available for the credit assumes that Wisconsin will no longer be able to participate in Powerball draws, following the expansion of the game to countries beyond those included in the state's current state law definition of a multijurisdictional lottery. As a result, the 2020-21 fund condition assumes there will be no lottery revenues from Powerball draws after April 1, 2020, due to this expansion. If participation in the Powerball game is expanded as planned, and state law is amended in a timely fashion so as to allow for the state's continued participation in the game, additional lottery fund revenues would accrue in 2020-21 beyond the amounts shown in Table 4. Similarly, if there is a delay in the planned Powerball expansion, there would be additional revenues to the fund beyond the amount shown in Table 4. Because the 2020(21) lottery and gaming credit amount has been certified and the credit's base has been established, any additional 2020-21 revenues associated with the Powerball, above those currently estimated, would be available for distribution as part of the 2021(22) credit.

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## **Charitable Gaming**

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### **Background**

In 1973 and 1977, constitutional amendments authorized the Legislature to provide for the conduct of charitable bingo and raffles, respectively. The state currently administers charitable gaming through the Office of Charitable Gaming under DOA's Division of Gaming. The Office's

**Table 4: Lottery Fund Condition**

	<u>2019-20</u>	<u>2020-21</u>
Fiscal Year Opening Balance	\$32,169,800	\$16,480,200
<b>Operating Revenues</b>		
Total Ticket Sales	\$725,439,700	\$674,287,600
Retailer Fees and Miscellaneous	<u>217,900</u>	<u>142,300</u>
Gross Revenues	\$725,657,600	\$674,429,900
<b>Net SEG Expenditures*</b>		
Prizes	\$453,523,000	\$423,961,200
Retailer Compensation (SEG)	50,899,600	47,510,300
Retailer Compensation (GPR)	(47,980,700)	(47,510,300)
Vendor Fees (SEG)	19,278,300	19,781,400
Vendor Fees (GPR)	(17,826,000)	(17,826,000)
General Program Operations (SEG)	19,024,100	19,867,300
General Program Operations (GPR)	(4,994,500)	(7,276,700)
Gaming Law Enforcement	433,600	434,100
Lottery Credit Administration	200,200	281,900
Program Reserves	0	153,200
Miscellaneous Expenditures	<u>1,900</u>	<u>700</u>
Total Expenditures	\$472,559,500	\$439,377,100
Net SEG Proceeds	\$253,098,100	\$235,052,800
Interest Earnings	\$1,614,400	\$63,300
Gaming-Related Revenue	\$0	\$0
Total Available for Tax Relief **	\$286,882,300	\$251,596,300
<b>Appropriations For Tax Relief</b>		
Lottery and Gaming Credit	\$269,726,100	\$237,442,100
Late Lottery and Gaming Credit Applications	<u>676,000</u>	<u>665,600</u>
Total Appropriations for Tax Relief	\$270,402,100	\$238,107,700
Gross Closing Balance	\$16,480,200	\$13,488,600
Reserve (2% of Gross Revenues)	\$14,513,200	\$13,488,600
Net Closing Balance	\$1,967,000	\$0

\*Actual SEG expenditures equal SEG amount listed, less GPR funding for same purpose

\*\*Opening balance, net SEG proceeds, interest earnings, and gaming-related revenue

responsibilities include: (a) rule-making related to the conduct of bingo and raffles; (b) licensing of bingo and raffle organizations and persons distributing supplies or equipment to a licensed bingo organization; (c) administering proceedings related to the suspension and revocation of licenses; and (d) receiving required reports from licensees.

The Office of Charitable Gaming is provided

\$341,300 and 3.2 positions for bingo regulation and \$284,000 and 2.9 positions for raffle regulation in 2020-21.

### **Charitable Bingo and Raffle Regulation**

Bingo and raffle licenses may be granted to any local religious, charitable, service, fraternal, or veteran's organization, and to any organization to

which contributions are deductible for income tax purposes. Fees are deposited in appropriations for bingo and raffle regulation.

*Bingo.* The Wisconsin Constitution requires that state revenues from charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for the regulation and enforcement of charitable bingo activities. In 2019-20, no bingo revenue was transferred to the lottery fund.

In 2019-20, there were 340 bingo licenses issued and bingo license fees generated \$88,600. A \$10 fee is required for each bingo session and a \$5 annual fee is required to register the person responsible for receipts. All supplies must come from a licensed supplier or organization. A bingo suppliers license fee is \$25. Further, a suppliers fee is charged on a sliding scale basis, ranging from \$10 to \$1,000, depending upon sales.

In addition, an occupational tax is imposed on the gross receipts of licensed bingo organizations. The tax rate is 1% on the first \$30,000 in gross receipts and 2% on gross receipts in excess of \$30,000. In 2019-20, the bingo gross receipts tax totaled \$167,100.

State law also allows for progressive jackpot bingo, a series of bingo games in which the prize is carried over to the succeeding game if no player

wins within a specified number of calls. The starting prize must be either 50% of the card sales for the first game or an amount specified before the start of play, not to exceed \$500. For each succeeding game, the prize must be 50% of the card sales for that game plus the prize amount from the preceding game.

For regular (non-progressive) bingo, the maximum prize in a single bingo game is \$500 and the maximum aggregate value of prizes for any bingo occasion is \$2,500.

*Raffles.* In 2019-20, there were 11,457 raffle licenses issued to organizations and raffle license fees generated \$291,600, used by the Office of Charitable Gaming for the regulation of raffles. To qualify for a raffle license, an organization must have been in existence for one year preceding its application or show that it is chartered by a national organization that has existed for at least three years. The annual raffle license fee is \$25, which allows an organization to conduct a maximum of 365 raffles and one calendar raffle annually. (A calendar raffle involves drawing and awarding a prize on each date specified in a calendar.) Two license types are available, a Class A raffle license for raffles in which some tickets are sold on days other than the day of the drawing, and a Class B raffle license for raffles in which all tickets are sold the same day as the drawing.