Regulation



Reducing regulatory burdens and improving Wisconsin's business climate

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Reducing regulatory burdens and improving Wisconsin's business climate

Wisconsin can strengthen its economic competitiveness by reducing unnecessary regulation, improving oversight of the regulatory process and making its legal environment more efficient and predictable for businesses

Wisconsin has a substantial regulatory burden that imposes costs on businesses and consumers. Drawing on existing Badger Institute research and reporting, this chapter examines three opportunities to reduce unnecessary costs and improve Wisconsin's regulatory and business climate: restoring legislative oversight of administrative rulemaking, eliminating outdated vehicle emissions testing requirements, and reinstating specialized business courts.

Key findings

- Wisconsin's Administrative Code contains the 13th highest number of regulatory restrictions nationally and the second highest in the Midwest, according to the Mercatus Center.
- The Wisconsin Supreme Court's 2025 *Evers v. Marklein* decision substantially weakened legislative oversight of administrative rulemaking.
- Wisconsin's vehicle emissions testing program has cost taxpayers more than $275 million since its establishment and requires testing of more than 640,000 vehicles annually. Yet the program has not undergone a comprehensive performance audit since 2002, and evidence of its environmental benefits remains limited and contested.
- Just 3 percent of vehicles tested in 2023 failed emissions inspections, down from 14.2 percent in 2001. Recent model year vehicles examined in Badger Institute research had failure rates below 1 percent, raising questions about the continued necessity of widespread biennial testing.
- Wisconsin's specialized business court pilot project received favorable assessments from participating litigants: 94 percent reported fewer delays, 86 percent reported better control of legal costs, and 96 percent supported making the program permanent. Nevertheless, the state Supreme Court terminated the pilot in 2025.

Recommendations

- **Restore meaningful legislative oversight of administrative rulemaking** by completing the constitutional amendment process to allow the Legislature to suspend administrative rules.
- **Eliminate unnecessary vehicle emissions testing requirements** by seeking federal approval to end the program or replace it with a less burdensome alternative consistent with applicable air quality standards.
- **Reinstate specialized business courts** to improve the efficiency and predictability of commercial litigation, accompanied by transparent performance reporting and systematic evaluation of their effectiveness.
- **Pursue broader regulatory reform** through a comprehensive, ongoing effort to identify and eliminate ineffective, outdated or unnecessarily costly regulatory requirements.

Reducing regulatory burdens and improving Wisconsin's business climate

Introduction

Wisconsin labors under a substantial regulatory burden. According to the Mercatus Center at George Mason University, the Wisconsin Administrative Code contained more than 165,000 regulatory restrictions in 2023, the 13th highest number nationally and the second highest in the Midwest.[1] Mercatus argues that highly regulated states such as Wisconsin should re-examine their regulatory environments and eliminate rules that don't serve worthwhile purposes or whose costs exceed their benefits.

Wisconsin has opportunities to address these challenges, both by improving its regulatory institutions and by reconsidering specific requirements that impose unnecessary costs.

Over the past several years, the Badger Institute has published extensive research, reporting and commentary documenting problems with Wisconsin's regulatory and legal environment and identifying opportunities for reform. This chapter draws on that work to examine three specific proposals: restoring effective legislative oversight of administrative rulemaking, eliminating unnecessary vehicle emissions testing requirements, and reinstating specialized business courts to resolve commercial disputes more efficiently.

Case studies: opportunities to trim regulation and improve the Badger State's business climate

This section summarizes several examples of the Badger Institute's reporting and analysis on these issues. The discussion of legislative oversight draws primarily on work by Mark Lisheron[2] and Patrick McIlheran.[3] The vehicle emissions discussion relies extensively an investigation researched and authored by Ken Wysocky.[4] The discussion of specialized business courts draws on reporting and commentary by McIlheran, Lisheron and Mike Nichols, as well as formal legislative testimony submitted by the Institute.[5]

Restore meaningful legislative oversight of regulations by empowering the JCRAR

Administrative agencies play an important role in implementing laws passed by elected legislators. However, the process through which agencies develop regulations creates a potential

accountability problem. Legislative oversight of the regulatory process can ensure that agencies remain accountable for their decisions and that the costs of proposed regulations receive adequate scrutiny.

Wisconsin established an important mechanism for such oversight in 1966, when a Democrat-controlled Assembly, a Republican-controlled Senate and Republican Gov. Warren Knowles created the Joint Committee for Review of Administrative Rules (JCRAR). The committee was intended to prevent agencies from expanding regulatory requirements without meaningful scrutiny from elected lawmakers.

For nearly 60 years, JCRAR provided a mechanism through which legislators could object to proposed rules, delay their implementation and seek changes to regulations that raised concerns. In July 2025, the Wisconsin Supreme Court substantially weakened this oversight mechanism via the Evers v. Marklein decision in which the court ruled that JCRAR's authority to suspend administrative rules violated the state constitution. The decision removed an important legislative check, allowing agencies to advance rules that previously could have been suspended by the committee.

The constitutional issues surrounding this decision are examined in greater detail in the Badger Institute's "Mandate for Madison" chapter, "Restoring accountability in Wisconsin government." This subchapter addresses the economic implications of the decision and, specifically, summarizes recent Badger Institute reporting on examples where lawmakers have had concerns about the economic consequences of agency actions under consideration but lacked the oversight potential to act on those concerns.

In September 2025, Lisheron reported that the Wisconsin Department of Agriculture, Trade and Consumer Protection had proposed substantially increasing licensing fees imposed on livestock markets and transporters. The proposed changes would have increased annual livestock market licensing fees from $420 to $7,430, while raising livestock trucker registration fees from $60 to $370.[6]

The agency identified financial pressures within its regulatory programs as justification for the proposed increases. However, the proposed fees would have imposed substantial additional expenses on the affected businesses. At the time, Lisheron's reporting showed that numerous lawmakers had important concerns about the effect on businesses but were "helpless" to take action because of the weakening of the JCRAR. Following public opposition, the department withdrew the proposed livestock market fee increase. But the fact it wasn't the Legislature that made it do so illustrates the potential for regulatory requirements to impose significant costs with weak legislative input and oversight of those actions.

Another example involves revisions to Wisconsin's commercial building code. In August 2025, McIlheran reported that new building requirements were expected by industry figures to increase construction costs, notwithstanding the Department

of Safety and Professional Services' assessment that implementation would impose no additional costs. One provision required certain construction projects to employ specialized independent inspectors. According to estimates from builders reported by McIlheran, this requirement alone could add approximately $20,000 to the cost of an affected construction project.

The changes had previously been blocked by JCRAR following lawmakers' concerns about their economic consequences and the adequacy of the department's economic impact analysis. Following the Supreme Court's decision, the agency advanced the regulations unhindered.[7]

Wisconsin policymakers have already taken steps toward restoring a legislative check on rulemaking. In February 2026, both houses of the Wisconsin Legislature approved Assembly Joint Resolution 133, proposing a constitutional amendment that would authorize the Legislature to suspend administrative rules through a joint resolution. The proposal must receive approval from both houses again in a subsequent legislative session before being submitted to voters for ratification.[8]

This would not simply reinstate JCRAR's previous authority to suspend rules on its own. Instead, it would establish a constitutional mechanism through which the Legislature could intervene in administrative rulemaking.

Wisconsin should complete the constitutional amendment process to restore meaningful legislative oversight of regulations. Restoring legislative oversight would strengthen accountability and provide an additional safeguard against the imposition of unjustified regulatory costs on Wisconsin businesses and consumers.

Eliminate unnecessary vehicle emissions testing requirements

In addition to improving oversight of new regulations, Wisconsin should reconsider existing requirements that may have outlived their usefulness. The state's vehicle emissions testing program provides a clear example.

Wisconsin established its emissions testing program in 1984 to address air quality concerns in southeastern Wisconsin and to comply with requirements under the federal Clean Air Act. The program requires owners of covered vehicles in seven southeastern Wisconsin counties to undergo emissions testing, generally every two years, before they can renew their vehicle registrations.

A comprehensive Badger Institute investigation by Wysocky in October 2023 examined the program's costs and effectiveness. Subsequent reporting by Lisheron in April 2026 updated the evidence and examined opportunities for reform.[9] These analyses showed the program imposes both public and private costs without clear benefits.

According to the Institute's reporting, Wisconsin has spent more than $275 million on emissions testing since the program was established. More than 640,000 vehicles are tested annually, and the state pays approximately $2.6 million per year to a private contractor

responsible for administering the program. The program is financed through the state's Petroleum Inspection Fund, supported by a one-cent-per-gallon tax on petroleum products.

Motorists also bear costs associated with the time and inconvenience of completing the required tests. Those whose vehicles fail may face additional repair expenses before they can renew their registrations.

These public and private costs should be weighed against the environmental benefits produced by the program. However, the evidence establishing those benefits is limited and contested. Wysocky's investigation found that Wisconsin's emissions testing program had not undergone a comprehensive performance audit since 2002.

The investigation also documented broader difficulties in determining the extent to which vehicle inspection programs contribute to improved air quality. A report by the Environmental Protection Agency's Office of Inspector General found widespread failure to conduct evaluations required to establish the effectiveness of states' emissions inspection programs. The report also identified limitations in the available evidence for determining actual emissions reductions attributable to testing.[10]

These measurement problems are important because vehicle emissions have fallen dramatically over the past several decades. According to national EPA data cited in the Institute's investigation, emissions of carbon monoxide from highway vehicles declined by approximately 91 percent between 1970 and 2022. Nitrogen oxide emissions declined by 83 percent, while volatile organic compound emissions fell by 94 percent. These improvements occurred even as vehicle traffic increased substantially.

Much of this progress reflects technological developments, including improvements in engines, emissions control systems and vehicle design. Consequently, the emissions testing requirements implemented decades ago now operate in a substantially different technological environment. One particularly important indication of this change is the declining percentage of vehicles that fail emissions tests.

According to Wisconsin Vehicle Inspection Program annual reports, just 19,826 of the 644,526 vehicles tested in 2023 failed, representing a failure rate of approximately 3 percent. By comparison, the failure rate was 14.2 percent in 2001.[11] For newer vehicles, the failure rate is much lower still. Wysocky's analysis from 2023 shows that vehicles in the immediately preceding four model years for which data was available had a failure rate of below 1 percent.

The fact that a huge majority of vehicles now comply with applicable standards and the rate of failure for newer models is vanishingly small raises questions about the continued necessity of requiring hundreds of thousands of motorists to undergo testing every two years.

There is also reason to believe that the environmental problems targeted by the program may not be fully addressable through local vehicle inspection

requirements. Wisconsin Department of Natural Resources research has identified pollution transported from neighboring states, particularly Illinois and Indiana, as an important contributor to air quality problems that do persist in southeastern Wisconsin.

These findings underscore the importance of distinguishing the sources of air pollution and assessing whether a particular regulatory intervention addresses them effectively.

The central policy question surrounding the emissions testing requirement is whether its contribution to improving air quality remains substantial enough to justify the financial costs and inconvenience imposed on Wisconsinites. After more than four decades, there is little evidence that it does.

Wisconsin should therefore pursue the elimination of its existing vehicle emissions testing requirements, subject to obtaining the necessary federal approvals and maintaining compliance with applicable air quality standards.

Because the program operates within the federal Clean Air Act framework, Wisconsin cannot simply terminate the requirements without federal cooperation. However, recent developments suggest that an opportunity for reconsideration exists. In April 2026, Lisheron reported that the EPA had signaled a willingness to work with states seeking to eliminate vehicle inspection requirements. The agency had announced an expedited review of a request from New Hampshire, where lawmakers were pursuing termination of that state's testing program. Wisconsin lawmakers should similarly engage federal authorities, seeking approval to end the program or replace it with a less burdensome alternative.

A requirement that may have made sense when adopted in 1984 may no longer make sense more than 40 years later. Policymakers should be willing to reconsider such requirements rather than allowing them to remain in place indefinitely without convincing evidence that their benefits justify their costs.

Restore Wisconsin's specialized business courts

Businesses depend on courts to enforce contracts, protect property rights and resolve commercial disputes. When litigation is unnecessarily expensive, prolonged or unpredictable, it can impose substantial economic costs. These costs extend beyond legal expenses. Unresolved disputes can tie up financial resources, delay investment decisions and create uncertainty for workers, suppliers and customers.

Complex commercial disputes can also require specialized legal knowledge. Judges must sometimes adjudicate cases involving complicated contractual arrangements, corporate governance, business transactions and other matters that differ considerably from the cases typically heard in general trial courts.

In a February 2024 commentary, Badger Institute President Mike Nichols raised concerns about the limited commercial litigation experience of many Wisconsin circuit court judges.

Nichols examined the backgrounds of 22 circuit court judges appointed since September 2019 and found that relatively few had substantial experience practicing commercial or business law before joining the bench.[12]

Of course, judges do not necessarily require such experience to adjudicate business disputes. However, specialized knowledge can be helpful for judges in developing relevant expertise and familiarity with recurring issues that can improve the efficiency and consistency of the judicial process.

Wisconsin demonstrated a recognition of this reality in 2017, when the Wisconsin Supreme Court established the Commercial Docket Pilot Project. The initiative created specialized court dockets for certain business and commercial disputes, assigning qualifying cases to judges with relevant expertise. The program eventually expanded to 26 counties.

Over the following years, the Badger Institute published reporting and commentary examining the program and advocating its continuation, including work by McIlheran, Nichols and Lisheron, as well as formal legislative testimony in January 2024.[13]

There is evidence participants viewed the pilot favorably. According to surveys of litigants presented in the Institute's legislative testimony, 94 percent of respondents reported that specialized commercial dockets performed better than traditional civil courts in limiting delays. Another 86 percent reported that the specialized dockets were more effective in controlling legal costs, while 94 percent believed that participating judges were more effective in moving cases toward resolution.

Fully 96 percent of respondents supported making the program permanent. These findings suggest that the program was favorably received by businesses and other litigants who participated in it.

Critics of the program argued that specialized business courts might create preferential treatment for commercial litigants and questioned whether sufficient evidence existed to establish that the pilot was successful. These concerns were the basis of an ultimately successful legal challenge. In October 2024 the Wisconsin Supreme Court voted 4-3 to reject a petition to extend the program and ordered that no additional cases be assigned to the specialized docket. The court issued a final order terminating the pilot in July 2025, while allowing previously assigned cases to continue under the existing rules.[14]

The arguments behind the legal challenge are not compelling. Judicial specialization does not necessarily create preferential treatment. Wisconsin already uses specialized judicial arrangements for cases involving matters such as substance abuse, mental health and veterans. These arrangements recognize that expertise in particular areas of law can improve the effectiveness of judicial administration. The same principle can apply to complicated commercial disputes.

Other states have also developed specialized commercial courts. Delaware's Court of Chancery is a longstanding

example of the benefits associated with a legal system that provides expertise and predictability in resolving business disputes.

Wisconsin should restore specialized commercial dockets and establish a more systematic framework for evaluating their effectiveness. A renewed program should include clear eligibility criteria, transparent procedures and consistent performance reporting. The state should collect evidence on case duration, litigation costs and satisfaction among participating litigants, allowing policymakers to compare outcomes with similar cases heard in ordinary circuit courts.

Restoring these courts would complement regulatory reform by addressing another source of economic costs and uncertainty facing businesses. For a state seeking to attract investment, encourage entrepreneurship and strengthen economic growth, a predictable and efficient commercial legal system is an important competitive advantage.

Conclusion and recommendations

Wisconsin can strengthen its economic competitiveness by reducing unnecessary costs that government imposes on businesses and consumers. The Badger Institute's research and reporting have identified several opportunities for reform:

- **Restore** legislative oversight of administrative rulemaking by re-empowering the JCRAR.
- **Eliminate** outdated vehicle emissions testing requirements.
- **Reinstate** specialized business courts.

These proposals address different problems but share an important objective: creating a more efficient and predictable environment for economic activity. This list is meant to be illustrative rather than comprehensive. These reforms should be part of a broader, more comprehensive effort to identify and remove ineffective or outdated rules and regulations.



ENDNOTES

1 Dustin Chambers and Patrick McLaughlin, Wisconsin's Regulatory Landscape, Mercatus Center, Aug. 6, 2024.

2 Mark Lisheron, Evers administration pigs out on livestock fees, Badger Institute, Sept. 11, 2025; see also Lisheron (2026).

3 Patrick McIlheran, Building costs heading upward in first impact of bureaucrats being unleashed, Badger Institute, Aug. 28, 2025.

4 Ken Wysocky, The suspect value of Wisconsin emissions testing, Badger Institute, Oct. 19, 2023.

5 Badger Institute, 2024 Judiciary and Public Safety Testimony, Jan. 30, 2024.

6 Mark Lisheron, Evers administration pigs out on livestock fees, Badger Institute, Sept. 11, 2025; see also Lisheron (2026).

7 Patrick McIlheran, Building costs heading upward in first impact of bureaucrats being unleashed, Badger Institute, Aug. 28, 2025.

8 Wisconsin Legislature, Assembly Joint Resolution 133, 2025-2026 legislative session.

9 Mark Lisheron, Forty-year-old vehicle emissions program under new scrutiny, Badger Institute, April 2, 2026.

10 U.S. Environmental Protection Agency, Office of Inspector General, Collecting Additional Performance Data from States Would Help EPA Better Assess the Effectiveness of Vehicle Inspection and Maintenance Programs, Report No. 18-P-0283, Sept. 25, 2018.

11 Wisconsin Vehicle Inspection Program, 2023 Annual Report.

12 Mike Nichols, Lock up the tortfeasors!, Badger Institute, Feb. 1, 2024.

13 Badger Institute, 2024 Judiciary and Public Safety Testimony, Jan. 30, 2024.

14 Wisconsin Supreme Court, Final Order 16-05E, July 11, 2025.