

# Chapter 6

## Sanitary Districts

This chapter provides an overview of town sanitary districts as they relate to lake management. In some communities, town sanitary districts (commonly referred to as sanitary districts) may operate side by side with lake districts and/or voluntary lake associations. Most lake organizations share the goals of preserving and protecting their lakes but the abilities, authority and structure of sanitary districts, lake districts and voluntary groups can vary greatly. *See Chapter 1 for an overview of different lake organizations and Chapter 2 for information on initial strategies to follow when starting a lake organization. For information on forming and operating a lake district see Chapters 4 and 5.*

The laws governing the formation and operation of sanitary districts can be found in Chapter 60 of the Wisconsin State Statutes. Legal issues which are not addressed in Chapter 60 are often covered under the same body of municipal laws that govern Wisconsin towns and counties.



### Background/History

The first attempts at publicly administered lake management took place in the early 1930s when several Wisconsin lake communities formed sanitary districts to focus on lake issues. These governmental bodies could be established with boundaries following the shape of the lake. As government bodies, they could levy taxes to spread the cost of operations equitably. But, especially in the early days, sanitary districts were chiefly empowered to provide sewer and water service for urbanizing areas. Over the years, additional powers were granted to sanitary districts. Many of these related to lake management, including authority to suppress “swimmers’ itch, algae and other nuisance-producing growths.” However, they lacked the comprehensive powers needed to address lake management. Legislation in 1996 amended sanitary district laws to grant sanitary districts additional powers to undertake lake management activities. That law generally authorized a sanitary district which included at least 60% of a lake’s shoreline to exercise the powers of a lake district if no lake district had been established on the lake.

Wis. Stat. § 60.77(4)

1995  
Wisconsin Act 349

Wis. Stat. § 60.782



### Comparison to Lake Districts

Both sanitary districts and lake districts have evolved over the years. The two types of districts continue to share many characteristics. Both rely on citizen petitions to initiate district formation. Both have a board of commissioners.

In both cases, the district boundaries may be adapted to include the area benefited by the district, although a sanitary district may not include territory located within a city or village. Both have taxing power and powers that include borrowing, special assessments, and special charges.

A major difference between lake districts and sanitary districts is their method of governance. While a lake district is governed by a board of commissioners and electors at the annual meeting, a sanitary district is governed by its board of commissioners who may be appointed or elected. Non-resident property owners and electors are able to vote for lake district commissioners, budgets and other lake district business at annual meetings. By contrast, non-resident property owners do not enjoy these rights in a sanitary district.

Lake districts can only be formed on lakes that are publicly accessible. Sanitary districts do not carry this requirement.



## Formation

Wis. Stat. § 60.71(2)(a) As with lake districts, the formation of a sanitary district is usually initiated by a landowner petition.



### **A petition to form a sanitary district must set forth:**

- The proposed name of the district
- A statement of the necessity for the proposed work
- A statement that the public health, safety, convenience or welfare will be promoted by the establishment of the town sanitary district and that the property to be included will be benefited by the proposed district
- A legal description of the boundaries of the proposed town sanitary district
- A plat or sketch showing the approximate area and boundaries of the proposed town sanitary district
- A general description of the proposed improvements

Like a lake district petition, a petition to form a sanitary district must be signed by at least 51% of the landowners or the owners of at least 51% of the land within the proposed district. The sanitary district law does not define owners as precisely as the lake district law does (*see Who Signs the Petition?*, page 45). Using the definitions provided for lake districts is probably a safe course to follow in determining the eligibility of signatories.

The petition must also be verified by one or more of the petitioners, or a signer may have his or her signature notarized. The verification should state that the petition was signed personally by the persons whose signatures appear. The statute presumes that the petition was signed by the person whose signature appears. Sanitary district petitions may not be declared void because of defects in the petition. The town board may permit sanitary district petitions to be amended.

Wis. Stat. § 60.71(2)(b)

Sanitary districts may also be created by order of the Wisconsin Department of Natural Resources (WDNR).

Wis. Stat. § 60.71(2)(b)

Wis. Stat. § 60.72

## Boundaries

The considerations for lake district boundaries also apply to sanitary districts (*see General Principles on Boundaries, page 37*). However, a sanitary district may not include any lands located within a village or city.

Wis. Stat. § 60.71(5)

## Consideration of the Petition

The petition must be submitted to the town board. If the proposed sanitary district is in more than one town, the petition must be submitted to the town containing the largest portion of equalized full value of taxable property within the proposed district.

Wis. Stat. § 60.71(1)

## Expense

Unlike a lake district, sanitary district petitioners need to pay the town board's expenses if the district is not established. Petitioners must file a personal or surety bond with the town clerk at least 15 days before the town board holds a hearing on the proposed district. If, after the hearing, the town board rejects the petition to form a sanitary district, the town may recover all reasonable costs and disbursements from the petitioners.

Wis. Stat. § 60.71(3)

Wis. Stat. § 60.71(6)(f)

If the town board finds in favor of establishing a sanitary district, the town board and petitioners may submit certified bills covering reasonable costs and disbursements to the sanitary district's commissioners. These expenses are then paid out of sanitary district funds.

Wis. Stat. § 60.71(6)(c)

## Hearing

The town board is required to conduct a hearing within 30 days after receipt of the petition. Unlike lake district petition requirements, however, the town board is not required to mail the notice to each property owner within the proposed district. However, the notice must be published as a Class 2 notice<sup>1</sup> and mailed to the Wisconsin Departments of Commerce and Natural Resources at least 10 days before the hearing.

Wis. Stat. § 60.71(4)

Any person may file written comments on the proposed district and any property owner within the proposed district may appear at the hearing to address whether the district is necessary and whether his or her property will benefit from its formation. Representatives of the Wisconsin Departments of Commerce and Natural Resources may also attend the hearing and advise the town board.

### Decision

Within 30 days following the hearing, the town board is required to issue written findings and a decision on the proposed district. As a part of its findings, the town must determine if:

1. the proposed work is necessary
2. the public health, safety, convenience or welfare will be promoted by the establishment of the district
3. the property to be included in the district will be benefited by the district

If the town makes the required findings, it is required to issue an order establishing the boundaries of the district, declaring it organized and giving the district a name. Within 60 days, the town board needs to determine how the commissioners will be selected (*see Commissioners, pages 93-94*).

Wis. Stat. § 60.71(6)(c)  
Wis. Stat. § 60.74(1)

Similar to the establishment of lake districts, the town board is authorized to exclude portions of the proposed sanitary district territory that it determines would not be benefited by the establishment of the district. The town may add additional territory, but only following notice and a continued hearing. The order establishing the district must be filed with the register of deeds in each county in which the district is located and with the WDNR.<sup>2</sup>

Wis. Stat. § 60.71(6)(d)  
Wis. Stat. § 60.71(6)(e)

Wis. Stat. § 60.71(7)

### Appeal

Any person aggrieved by the town board’s action establishing a sanitary district may appeal the decision to circuit court within 90 days after the final determination.

Wis. Stat. § 60.73



### Sanitary District Powers

Once a sanitary district is created, its commissioners are authorized to exercise general and specific powers. These powers are generally directed at the provision of sewer, water and solid waste collection services, including administrative, regulatory and taxing powers.

Wis. Stat. § 60.77

Certain sanitary districts (those which include at least 60% of a lake’s shoreline and where no lake district is already in existence) have broader authority to

Wis. Stat. § 60.78(2)

undertake lake management work. The commissioners of these “lake sanitary districts” may assume some or all of the powers of a lake district board of commissioners by resolution. These include all of the powers to:

- Create, operate and maintain a water safety patrol
- Undertake projects to enhance the recreation uses of the public inland lake, including recreational boating facilities
- Appropriate money for the conservation of natural resources or for payments to a bona fide nonprofit organization for the conservation of resources within the district or beneficial to the district
- Lease or acquire property for conservation purposes

Wis. Stat.  
§ 30.79(1)(b)2

Wis. Stat. § 30.92(1)(c)

Wis. Stat.  
§ 60.782(2)(c)

Wis. Stat.  
§ 60.782(2)(d)

In addition, like a lake district, a sanitary district may enact and enforce boating ordinances if that authority is delegated to the district.

Wis. Stat. §  
30.77(3)(am)(1m)

Sanitary districts also have the power to engage in stormwater management and provide for chemical or mechanical treatment of waters for algae and nuisance aquatic plants growths.

Wis. Stat. § 60.77(4)

## Governing a Sanitary District

Unlike a lake district (where governance is shared by the board of commissioners and the annual meeting), the board of commissioners exercises substantially all of the powers of a sanitary district. There is no annual meeting. While the board of commissioners is required to conduct a public hearing on its proposed annual budget, the budget is adopted by a majority vote of the commissioners. One exception to the commissioners’ authority is the requirement that compensation of commissioners (if any) must be authorized by the town board.

*The board of commissioners exercises substantially all of the powers of a sanitary district. There is no annual meeting.*

Wis. Stat. § 60.77(3)

## Commissioners

If a sanitary district is located within a single town, the town board may establish itself as the board of commissioners, appoint commissioners or provide for their election.

When a district includes territory in two or more towns (a “joint sanitary district”), the town with the largest equalized full value of taxable property in the district determines whether to provide for appointed or elected commissioners.

Wis. Stat. § 60.74(2)



### Key Point

Except where the town board serves as the commission, a sanitary district is governed by three commissioners who serve for staggered six-year terms.

Wis. Stat. § 60.75

### Town Board Commissioners

A two-thirds vote of the town board is required to constitute itself as the sanitary district commissioners. Where the town board constitutes the board of commissioners, the number of commissioners is equal to the number of town board supervisors and the terms of the commissioners are concurrent with those of the town board supervisors. Vacancies may be filled when a successor town board supervisor is appointed or elected.

Wis. Stat. § 60.75  
Wis. Stat. § 60.75(4)

### Appointed Commissioners

If the town board chooses to appoint commissioners, it may only appoint residents of the sanitary district. However, if the district is composed “primarily of summer resort property” the board may appoint one or two nonresidents who own property in the district as commissioners.

Wis. Stat. § 60.75(3)

Appointed commissioners serve staggered six-year terms. Mid-term vacancies may be filled by the town board.

Wis. Stat. § 60.75(2)  
Wis. Stat. § 60.75(4)

### Elected Commissioners

The town board may also provide for the election of commissioners. The first such election may be held as a “special election.” Thereafter, commissioners are elected during the regular spring elections. If the first election of commissioners is held at the regular spring election, the town boards appoints interim commissioners.

Wis. Stat. § 60.74(3)

Elected sanitary district commissioners serve staggered six-year terms. Mid-term vacancies may be filled by appointment by the town board.

Wis. Stat. § 60.75(2)  
Wis. Stat. § 60.75(4)

Key Point

Unlike a lake district where nonresident property owners are entitled to vote at the annual meetings, only resident electors are entitled to vote in elections of sanitary district commissioners.

### Change from Appointed to Elected Commissioners

When sanitary district commissioners have been appointed, the town board is required to provide for the election of commissioners if a qualifying petition is filed requesting elections. The petition must contain signatures of qualified electors equal to at least 20% of the votes cast for governor in the district during the last gubernatorial election. Similarly, if a petition signed by the same number of electors requests a change to appointment of commissioners, the town board is required to submit that question to a referendum. If the manner of selecting commissioners is changed by the filing of a petition, there is a five year prohibition on the filing of a petition to change the method of selection again. Because election records are not maintained at the sanitary district level, the number of electors can be estimated based on the area of the district in relation to the voting jurisdiction(s) in which it is located.

Wis. Stat. § 60.74(4)  
Wis. Stat. § 60.74(5)  
Wis. Stat. § 60.77(6)

## Officers

Once the sanitary district has been established and its initial commissioners designated, the commissioners are required to elect a president and appoint a secretary and treasurer from its members. Where the town board constitutes itself as the commission, the town chair, clerk and treasurer assume the additional duties of sanitary district president, secretary and treasurer.

Wis. Stat. § 60.76(1)

## Oath of Office

Before assuming office, sanitary district commissioners **are required** to take and sign an oath of office and file the oath with the town clerk. The oath shall be in writing, in substantially the following form:

Wis. Stat. § 60.75(5)  
Wis. Stat. § 19.01(1)

*State of Wisconsin,*

*County of...*

*I, the undersigned, who have been elected (or appointed) to the office of ..., but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.*

*Subscribed and sworn to before me this ... day of ..., ... (year)*

*...(Signature)...*

An oath may be administered orally, as well as in writing.

Wis. Stat. § 19.01(1m)

The oath of office is good for the length of the commissioner's term.

## Compensation

Sanitary district commissioners are entitled to reimbursement for their actual expenses. The town board may authorize additional compensation for the commissioners.

Wis. Stat. § 60.77(3)

## Meetings and Records

As with lake districts, Wisconsin Open Meetings Law applies to meetings of the sanitary district's board of commissioners and their records are subject to Wisconsin Public Records Law (*see Meetings of the Board of Commissioners, page 68*).

Wis. Stat.  
§ 19.83-19.85  
Wis. Stat.  
§ 19.31-19.35

## Financing

Similar to lake districts, sanitary districts have the power to levy general property taxes on all taxable property within the district. However, unlike a lake district, which only grants this power to voters at the annual meeting, sanitary district commissioners have the authority to levy taxes. Sanitary district taxes are capped at a rate of 1 mill (\$1.00 per \$1,000 of equalized valuation of all taxable property in the district), except for taxes levied for required maintenance and operation or for the payment of principal and interest on debt.

Wis. Stat. § 60.77(6)(b)

## Other Considerations

### Bids and Purchases

Wis. Stat. § 60.77(6)(a) Contracts or purchases of \$15,000 or more are required to be awarded to the lowest responsible bidder in a manner prescribed by the commission.

### Taxes

Governmental units, including sanitary districts and lake districts, enjoy the advantages of being exempt from federal and state income tax automatically.

Like lake districts, sanitary districts can apply for state sales tax-exempt status (*see Taxes page 81*).

### Changes in Sanitary District Boundaries

Wis. Stat. § 60.785 Territory may be added to or removed from a sanitary district either through a petition process or by a request of the sanitary district commissioners to the town board. Incorporation or annexation of part of a sanitary district removes or detaches that property from the sanitary district. Incorporation or annexation of an entire sanitary district dissolves the sanitary district.

Wis. Stat. § 60.79

### Merger into a Lake District

Wis. Stat. § 33.235(3) A sanitary district may merge into an existing lake district if their boundaries are identical or contiguous (*see Merger of Two Lake Districts, page 83*).

### Conversion into a Lake District

Wis. Stat. § 33.235 A sanitary district encompassing all the frontage of a lake may be converted into a “restructured district” to allow district members to have direct input into the district by voting at annual meetings.

Restructured districts function as lake districts, with annual meetings and a combination of elected and appointed commissioners (*see Districts Created by Conversion of a Sanitary District, page 56*).

### Dissolution

Wis. Stat. § 60.79(3) An existing sanitary district may be dissolved using the procedure for creating a sanitary district.



# Endnotes

<sup>1</sup> Class 2 notice - A legal notice published in a newspaper that is required to be inserted two times.

Wis. Stat. § 985.07(2)

<sup>2</sup> The order should be filed with the Wisconsin Department of Natural Resources, Bureau of Watershed Management, 101 S. Webster Street, Box 7921, Madison, WI 53707-7921