



## Drainage Districts

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Drainage districts are special purpose districts that are organized primarily for the purpose of draining lands for agriculture.<sup>1</sup> Drainage boards manage district drainage ditches and other related facilities to drain water from lands and collect assessments on lands that benefit from those activities. This issue brief summarizes key aspects of: drainage district organization; drainage board composition, powers, and duties; and Department of Agriculture, Trade and Consumer Protection (DATCP) responsibilities.<sup>2</sup>

### **DRAINAGE DISTRICT ORGANIZATION**

To organize, or create, a drainage district, landowners in the proposed district must file a petition with the county circuit court.<sup>3</sup> The petition must be signed by a specific number of landowners, depending on the amount of land owned in the proposed district. The petition must also describe the lands to be included, state that the lands will be improved by drainage, and provide that construction costs will not exceed 75 percent of the appraised benefits of drainage (unless petitioners agree to pay the costs exceeding 75 percent).<sup>4</sup>

The circuit court refers the petition to the drainage board if one already exists; if one does not exist, the court appoints a board, as described in the next section. The board must hold a public hearing on the petition and report its findings to the court. After receiving the report, holding a hearing, and determining the petition meets statutory requirements, the court must order the organization of the district. The order is recorded with the register of deeds in each county where district lands are located.<sup>5</sup>

After the district is organized, the drainage board must (with the aid of a qualified engineer approved by DATCP) lay out the drains of sufficient depth to adequately drain the lands, including the locations and grade profiles of all drains, a map of the district boundaries, and the proposed location of all district drains. The board must also initially assess the benefits that will accrue to each parcel, award damages to any damaged lands, estimate the cost of construction and assess those costs against the benefitted lands in proportion to benefits each received, and estimate the district's annual maintenance and operation costs. The board must then prepare a report, hold a hearing, and submit the report to DATCP for approval if the district exceeds 200 acres.<sup>6</sup>

### **DRAINAGE BOARD APPOINTMENT**

Drainage board members are appointed by the county circuit court. The board must initially consist of three members who serve staggered terms, although the board may increase to five members by adopting a rule to do so. Members are appointed from recommendations provided by: the county agriculture and extension education committee; three or more landowners in the district; local or statewide agriculture, engineering, local government, or real estate organizations; and DATCP. The court must attempt to assure at least one member is an experienced farmer familiar with drainage. If a district is located within a city or village, the municipality may request membership on the board, in which case it must be increased to five members. The board must select a president and secretary from among its members. The county treasurer serves as board treasurer, unless the drainage board appoints its own treasurer.<sup>7</sup>

### **DRAINAGE BOARD POWERS AND DUTIES**

Drainage boards have various statutory responsibilities to manage district business and maintain district drains. For example, the board must notify landowners every three years that their land is in the district; maintain the district drains in good condition; repair drains when necessary; and have all drains inspected annually to determine the need for maintenance and repair work.<sup>8</sup> Drainage boards must also

file with DATCP an annual report, including a financial statement, and hold a public meeting to review the report.<sup>9</sup> Additionally, boards are authorized to purchase or condemn lands as necessary for construction, cleanout, repair, and maintenance of drainage systems; purchase or lease equipment necessary to construct, maintain, or repair district drains; bring actions necessary for the collection of monies owed to a district; contract with the federal government or other agencies; hire attorneys; and adopt and issue orders.<sup>10</sup> The board may also borrow money and enter into contracts to have district work performed.<sup>11</sup> The board may call a district meeting at any time and must hold a hearing under certain circumstances as provided in statute.<sup>12</sup>

As noted previously, one key drainage board power is to levy assessments. Specifically, drainage boards may levy assessments on parcels of land within the district for maintenance and repair of district drains, and may allocate those assessments on the basis of the benefits that each parcel receives from the drains.<sup>13</sup> In general, the assessment amounts must not exceed the benefits provided to a given parcel of property.<sup>14</sup> The board must record an order for levying such assessments in the relevant register of deeds office.<sup>15</sup> Unpaid assessments are collected as taxes, and failure to pay is enforced in the same manner as unpaid taxes.<sup>16</sup> A petition to review the validity of any assessment, correct omitted assessments, reassess benefits, or apportion benefits upon division of a parcel may be filed with the drainage board. The board must hold a hearing on the petition and the board's decision may be appealed to the circuit court.<sup>17</sup>

## ROLE OF DATCP

DATCP has certain responsibilities regarding drainage district operation and state drainage law enforcement. For example, DATCP is required to inspect drainage districts to: confirm compliance with state drainage laws; establish performance standards by rule for district structures, ditches, maintenance, and operations to minimize adverse effects on water quality; review and approve district maintenance plans and district designs for new ditches and structures to achieve and maintain compliance with performance standards; coordinate district activities with the Department of Natural Resources (DNR); and establish procedures for assessments and reassessments by rule. The statutes direct DATCP to employ a state drainage engineer to provide technical assistance upon request to drainage boards, landowners, DNR, and judges. DATCP is authorized to investigate violations of state drainage laws, issue orders, and bring civil forfeiture actions in circuit court.<sup>18</sup>

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<sup>1</sup> For more about Wisconsin's special purpose districts, see Legislative Council, *Special Purpose Districts*, Issue Brief (August 2024).

<sup>2</sup> The statutes also provide procedures for enlargement, consolidation, division, transfer to a municipality, and dissolution of a drainage district. [ss. 88.77 to 88.83, Stats.]

<sup>3</sup> If a proposed drainage district lies in more than one county, the petition must be filed in the county containing the largest acreage proposed for drainage, and the court of that county has jurisdiction of the organization of the district. [s. 88.12, Stats.]

<sup>4</sup> ss. 88.27 and 88.28, Stats.

<sup>5</sup> See ss. 88.27 to 88.34, Stats.

<sup>6</sup> s. 88.35, Stats.; and s. ATCP 48.20, Wis. Adm. Code.

<sup>7</sup> ss. 88.17 and 88.18, Stats.; and s. ATCP 48.49, Wis. Adm. Code.

<sup>8</sup> ss. 88.212 and 88.63 (1m), Stats.

<sup>9</sup> s. 88.24, Stats.; and s. ATCP 48.14 (3), Wis. Adm. Code.

<sup>10</sup> ss. 88.21, 88.22, and 88.35, Stats.

<sup>11</sup> ss. 88.54 and 88.62, Stats. The drainage board must hold a hearing in order to borrow amounts greater than \$8,000 if the loan extends beyond one year.

<sup>12</sup> See, for example, ss. 88.21 (11) and 88.215, Stats.

<sup>13</sup> s. 88.23 (1), Stats.; and ss. ATCP 48.02 (3) and 48.06 (1), Wis. Adm. Code.

<sup>14</sup> s. 88.23 (3), Stats.

<sup>15</sup> s. 88.40 (1), Stats.

<sup>16</sup> s. 88.42, Stats.

<sup>17</sup> s. 88.46, Stats.

<sup>18</sup> s. 88.11, Stats.; and ss. ATCP 48.50 and 48.52, Wis. Adm. Code.