

The following proposals for updating Chapter 33 are formatted so that reviewers can see the current text in statute, the proposed change, and the rationale.

## #1 §33.01 Definitions – §33.01(3m) Elector (new)

### Current Language

Current: - None (new)

### Proposed Language

#### §33.01(3m) Elector

(3m) "Elector" means any person residing in the district, for the purposes of receiving notifications and voting at annual meetings, who meets the definition of "Elector" under Wisconsin §Ch6.02.

### Rationale

For clarity since both owners and electors are eligible for notifications and for voting at annual meetings. ties to s. 33.28(2)(c)

## #2 §33.01 Definitions – §33.01(3r) Eligible voter or eligible to vote (new)

### Current Language

Current: - None (new)

### Proposed Language

(3r) "Eligible voter " or "eligible to vote" as it applies to voting in annual meetings, special meetings, and other references in this chapter means any person who meets either the qualification of "Elector" under Wisconsin §6.02." or "owner" under §33.01(9)(ar) and is therefore qualified to vote at district meetings.

### Rationale

Some sections within the chapter drop the "owners and electors" clause and use "eligible to vote". ties to s. 33.28(2)(c)

### #3 §33.01 Definitions – §33.01(5m) Petition or Petitions (new)

#### Current Language

Current: - None (new)

#### Proposed Language

##### (5m) “Petition”

1. For the purpose of forming an inland lake district, the word “petition” shall refer to all documents submitted as a single group to either the Town or the County when seeking to establish an inland lake district. In addition to the contents of the petition described in §33.25, it may include other documentation necessary to support the process of forming a lake district.
2. For the purpose of requesting that the lake district board of commissioners include an agenda item at an annual or special meeting, or in the case of dissolution of the district, the word “petition” shall mean the statement of item or items to be added to the agenda, together with the requisite number of owner signatures necessary to have them placed on the agenda.”
3. For the purpose of attachment or detachment of a parcel, the word petition refers to a formal request in writing by the owner of the parcel, together with the reasons for attachment or detachment.

#### Rationale

A petition may be used in three ways. 1. to form a lake district 2. Requesting a lake district to include an agenda item and 3. to detach a property parcel from a lake district. There has been and is some confusion and misunderstanding on what the petition entails, especially referenced in §33.25(3) Verification, Plat. This section is often misinterpreted as verification of only the owners’ signatures, not the entire set of documents submitted to the Town or County. The owners’ signatures are but one component of the entire petition. Additional language is proposed for §33.25 in order to clarify the intent of the statute as written that verification of the entire petition submission is to be verified by oath or notary by the one submitting the petition documents.

## #4 §33.01 Definitions - §33.01(9) (Owner) – Petitioning

### Current Language

(9) "Owner", "property owner" or "landowner" means:

(a) For the purpose of receiving notice under this chapter, a person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.

(am) For the purpose of petitioning under this chapter, any of the following:

1. A person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.

2. The spouse of a person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year if the spouse is referred to on that tax roll.

### Proposed Language

(9) "Owner", "property owner" or "landowner" means:

(a) For the purpose of receiving notice under this chapter, a person, trust, foundation, corporation, association, or organization whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.

(am) For the purpose of petitioning under this chapter to form a district under ss. 33.25 or to adopt the ss. 33.25 form of governance under ss. 33.23(3) or to attach a parcel to the district or detach a parcel from the district, a person who meets any of the following:

1. A The person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.

2. The spouse of a the person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year if the spouse is referred to on that tax roll.

3. The person is the official representative, officer or employee who is authorized to represent a trust, foundation, corporation, association or organization that owns real property in the district.

### Rationale

This restructures 33.01(9) to clarify, and incorporates 33.25(1)(b) and 33.285. It removes redundancies. Additionally, a person must be of legal age as well as an owner to sign a petition legally. An office holder must be at least 18 years of age and a US citizen. This statement was therefore included. Correcting this section eliminates the need to be redundant in 33.01(9), and between 33.01(9) and both 33.25(1)(b) and 33.285, so those sections may be stricken.

## #5 §33.01 Definitions - §33.01(9) (Owner) – official representatives holding office

### Current Language

#### §33.01 (9)

(ar) For the purpose of voting at meetings of the district, a person who is a U.S. citizen and 18 years of age or older and who meets any of the following requirements:

1. The person's name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.
2. The person owns title to real property but the person's name does not appear as an owner of real property on the tax roll specified in subd. 1.
3. The person is the official representative, officer or employee who is authorized to vote on behalf of a trust, foundation, corporation, association or organization that owns real property in the district.

(b) For the purpose of holding office in the district, a person who is a U.S. citizen and 18 years of age or older and either:

1. Whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year; or
2. Who owns title to real property but whose name does not appear as an owner of real property on the tax roll specified in subd. 1.”

### Proposed Language

#### §33.01 (9)

(ar) For the purpose of voting at meetings of the district, a person who is a U.S. citizen and 18 years of age or older and who meets any of the following requirements:

1. The person's name appears as an owner of real property on the tax roll under s. 70.65(2)(a)1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year.
2. The person owns title to real property but the person's name does not appear as an owner of real property on the tax roll specified in subd. 1.
3. The person is the official representative, officer or employee who is authorized to vote on behalf of a trust, foundation, corporation, association or organization that owns real property in the district.

(b) For the purpose of holding office in the district as an initially appointed commissioner or an elected commissioner, a person who is a U.S. citizen and 18 years of age or older and either:

1. ~~Whose~~ A person whose name appears as an owner of real property on the tax roll under s. 70.65 (2) (a) 1. that was delivered under s. 74.03 on or before the 3rd Monday in December of the previous year; or

2. ~~Who~~ A person who owns title to real property but whose name does not appear as an owner of real property on the tax roll specified in subd. 1.; or

3. A person who is the official representative, officer or employee who is authorized to vote on behalf of a trust, foundation, corporation, association or organization that owns real property in the district

#### Rationale

This restructures 33.01(9) to clarify, and incorporates 33.25(1)(b) and 33.285. It removes redundancies. Additionally, a person must be of legal age as well as an owner to sign a petition legally. An office holder must be at least 18 years of age and a US citizen. This statement was therefore included. Correcting this section eliminates the need to be redundant in 33.01(9), and between 33.01(9) and both 33.25(1)(b) and 33.285, so those sections may be stricken.

## #6 §33.01 Definitions – 33.01(9j) Self-certifying statement (new)

#### Current Language

Current: - None (new)

#### Proposed Language

(9j) Self-certifying or self-certifying statement as these apply to use in this chapter is a statement at the bottom of a report, affidavit, or list of petition signatures stating that to the best of the signer's knowledge, the information provided is true, correct, and accurate. Self-certifying statements are in the form of an affidavit but which do not require the jurat of a notary.

#### Rationale

In many instances, a self-certifying statement or affidavit is all that is required and is less formal than obtaining a signature of a notary public or equivalent. Allows a self-certification, versus a notarized statement, thus aligning with the *Nielsen v. Waukesha County Board of Supervisors* court decision

## #7 33.01(11) Independent Financial Review

### Current Language

Current: - None (new)

### Proposed Language

33.01(11) An independent financial review includes: (a) An Audit refers to a simplified independent financial review, which may be performed by an independent accountant, a town or county clerk, a town or county treasurer, or other qualified individual not associated with the lake district. Or, an Certified Audit, Review, or Compilation performed by Certified Public Accounting firm.

### Rationale

Ties to a 33.29(c) - clarifies the type of financial review a lake district may use to review its annual financial statement and associated supporting documents at the annual meeting.

## #8 §33.22(1) District: Powers - bidding

### Current Language

(1) Any district organized under this chapter may select a name for the district, sue and be sued, make contracts, accept gifts, purchase, lease, devise or otherwise acquire, hold, maintain or dispose of property, disburse money, contract debt and do any other acts necessary to carry out a program of lake protection and rehabilitation. All contracts in excess of \$2500 for the performance of any work or the purchase of any materials shall be let by the commissioners to the lowest possible bidder in a manner they prescribe.

### Proposed Language

“(1) Any district organized under this chapter may select a name for the district, sue and be sued, make contracts, accept gifts, purchase, lease, devise or otherwise acquire, hold, maintain or dispose of property, disburse money, contract debt and do any other acts necessary to carry out a program of lake protection and rehabilitation. ~~“ All contracts in excess of \$2500 for the performance of any work or the purchase of any materials shall be let by the commissioners to the lowest possible bidder in a manner they prescribe.”~~

“(1m) All district contracts in excess of \$10,000 for the performance of any public works, public construction, or purchase of any materials shall be let by the commissioners to the lowest possible bidder in a manner they prescribe with the following provisions.

(a) Bidding shall be done by sealed bid.

(b) Contracted services that require scientific knowledge and/or professional skill to perform specialized work are not considered public construction, and are not subject to competitive bid.”

(c) For contracts of any amount where a commissioner seeks to perform the work or service, the owners and electors shall be notified and allowed to bid on the contract.

(d) Any commissioner bidding on a contract, regardless of the value, shall recuse themselves from deliberations on the contract by the board of commissioners.

(e) The provisions herein are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage creates an emergency, as determined by resolution of the board of commissioners.

(f) Contracts may contain an escalator clause providing additional charges for labor and materials if the additional charges are a result of general inflation rates. Such escalator clauses shall not exceed 15% of the amount of the firm bid.

#### Rationale

1) Bidding needs its own sub paragraph.

2) The threshold for bidding should be increased to keep pace with inflation. It has not increased since the inception of lake districts. The \$10,000 threshold reflects that for Towns

3) The WI DNR Procurement Guide for grants notes legal exceptions to the bidding process for contractual work. This addition is consistent with current legal decisions as noted below.

“CONTRACTS FOR SERVICES; IN GENERAL. Contracts which are for the performance of services requiring scientific knowledge and professional skill are not considered the performance of “public construction” or public work and so need not be competitively bid. The general test to be applied in determining whether the work is considered “services” and is exempt from bidding requirements is whether it is impossible or impractical to draw specifications for the tasks identified in the contract. (Waste Management, Inc. v. Wisconsin Solid Waste Recycling Authority, 84 Wis.2d 462, 267 N.W.2d 659 (1978); Aqua-Tech, Inc. v. Como Lake Protection and Rehabilitation Dist., 71 Wis.2d 541, 239 N.W.2d 25 (1976).)

#### #9 §33.24 County Board may establish district - procedural

##### Current Language

(1) Notwithstanding s. 33.01 (3), in this section, “district” does not include a restructured district.

(2) The county board of any county may establish districts within the county if the conditions stated in s. 33.26 are found to exist. Before a district that includes any portion of a city or village may be formed under authority of this section, the city council or village board must have previously approved the inclusion of its territory within the boundaries of a proposed district.”

##### Proposed Language

(1) Notwithstanding s. 33.01 (3), in this section, “district” does not include a restructured district.

(2) The county board of any county may establish districts within the county if the conditions stated in s. 33.26 are found to exist. Before a district that includes any portion of a city or village may be formed under authority of this section, the city council or village board must have previously approved the inclusion of its territory within the boundaries of a proposed district.

(3) Before circulating petitions under s. 33.25, the Petitioners shall contact the County Real Property, Land Information, or equivalent department to define the proposed district boundaries to ensure agreement by all parties. In addition, Real Property, Land Information or equivalent

department shall provide an official list of property owners to the Petitioners for use in circulating petitions

#### Rationale

Chapter 33 is ambiguous on who precisely defines the proposed district boundary and who is a legal owner authorized to sign the petition. In instances where it was solely determined by the Petitioners, conflicts have arisen once the petitions were submitted to the County for processing. By specifying that a discussion between Petitioners and the County before petitioning begins, the boundary, legal owners, total number of owners eligible to sign, and the total number making the 51% threshold will save time and wasted energy, as well as potential conflicts upon submission by the Petitioners. Every party involved will have a clear understanding of the goals to be met.

#### # 10 §33.25(1) Petition – Who to make

##### Current Language

(1) WHO TO MAKE . (a) Before a county board may establish a district under s. 33.235 or 33.24, a petition requesting establishment shall be filed with the county clerk, addressed to the board and signed by persons constituting 51 percent of the landowners or owners of 51 percent of the lands within the proposed district. Governmental subdivisions, other than the state or federal governments, owning lands within the proposed district are eligible to sign such petitions. A city council or village or town board may be resolution represent persons owning lands within the proposed district who are within its jurisdiction, and sign for all such landowners (b) For a landowner that is a trust, foundation, corporation, association, or organization, a petition under par. (a) shall be signed by an official representative, officer, or employee who is authorized to do so by the landowner.

##### Proposed Language

(1) WHO TO MAKE . (a) Before a county board may establish a district under s. 33.235 or 33.24, a petition requesting establishment shall be filed with the county clerk, addressed to the board and signed by person constituting 51 percent of the landowners or owners of 51 percent of the lands within the proposed district. Governmental subdivisions, other than the state or federal governments, owning lands within the proposed district are eligible to sign such petitions. A city council or village or town board may be resolution represent persons owning lands within the proposed district who are within its jurisdiction, and sign for all such landowners ~~(b) For a landowner that is a trust, foundation, corporation, association, or organization, a petition under par. (a) shall be signed by an official representative, officer, or employee who is authorized to do so by the landowner."~~

(c) Only landowners or owners of property defined in 33.01(9)(am) and are within the proposed district may sign or circulate for signatures the petition to create a lake district.

(d) Each page of owner signatures shall be accompanied by a self-certifying statement at the bottom of the signature page(s). The statement shall state the person circulating or collecting the petitions is qualified to collect signatures under §33.25(1)(c). The self-certifying statement



shall contain the circulators printed name, signature, residence with street and number, if any, stating that he or she personally circulated or collected the signatures, and that to the best of their knowledge: the signers are legal owners within the proposed district in which the petition is circulated; the owner signed the petition with full knowledge of its content of the petition; the owners residence is true and correct. The circulator shall indicate the date that he or she signed the self-certification next to his or her signature.

#### Rationale

§33.25(1)(b) is redundant once 33.01(9) is corrected.

§33.25(1)(c) is new. It along with the revision to 33.25(3) clarifies that it is not the signature pages that require a notarized verification, but the entire petition submission. However, §33.25(1)(d) is intended to mirror §8.40(2) candidate petitions in Wisconsin Election statutes. Notarization is not required for obtaining signatures §8.40(2), only a self-certifying statement that the person circulating the petition is qualified to do so and that the person signing was made aware of the full contents of the petition. Therefore, a similar self-certifying statement here seems reasonable.

## #11 §33.25(2)(d) Petition boundaries

#### Current Language

33.20(2)(d) The boundaries of the territory to be included in the proposed district.

#### Proposed Language

33.20(2)(d) The boundaries of the territory to be included in the proposed district. The boundaries of the territory of the proposed district which accompany a petition may be represented by a plat or a sketch, or a general description of the boundary, or both, or any other means of identifying the territory included in the proposed district. If a general description of the boundary is used, it shall identify the Town, Range, Section Division, and any Government Lot numbers if they exist.

#### Rationale

The original statement has too broad a meaning and leaves it open to interpretation, or omission. For clarity, this subparagraph is expanded to provide examples of what may be acceptable as an indication of the “boundaries of the territory to be included in the proposed district.

## #12 §33.25(3) Verification, Plat

### Current Language

33.25(3) Verification, Plat. The petition shall be verified by one of the petitioners, and shall be accompanied by plat or sketch indicating the approximate area and boundaries of the district.

### Proposed Language

33.20(3) Verification, Plat. The petition shall be verified by one of the petitioners, before it is submitted to the town or county., and shall be accompanied by the boundaries of the district. The petition shall include items described in §33.25(2), as well as all owner signature pages accompanied by the self-certifying statement, a plat or map of the proposed district, the complete boundary description, and any other supporting documents necessary for the town or county to consider formation of the proposed district. The requirements for verification are  
( a) Verification shall be a statement of the contents of the petition.  
(b) The person verifying the petition shall state that the contents are true and correct to the best of their knowledge.  
(c) The person verifying the petition shall state that they are qualified to submit the petition.  
(d) The verification statement shall be made under oath and carries the jurat of a notary public.

### Rationale

There is often confusion regarding “verification”. It is best to indicate it is the entire petition submission as a group of documents is subject to verification, and not just the signatures or signature pages.

## #13 §33.27(4) Initial district board of commissioner - initial finances

### Current Language

33.27(4) The board may make an initial assessment of all taxable property within the district to raise funds to pay organizational costs and operate the district until the receipt of the tax voted by the first annual meeting. The manner of making the assessment shall be within the discretion of the board.”

### Proposed Language

33.27(4) The board shall prepare a budget for initial organizational costs and for operation of the district, which is separate from the budget for the coming year under 33.29(1)(g) and 33.30(3)(b).

(a) The board may make an initial assessment of all taxable property within the district to raise funds to pay organizational costs and operate the district until the receipt of the tax levy voted by owners and electors at the first annual meeting. The manner of making the assessment raising the funds shall be within the discretion of the board.

(b) The board may obtain a loan to cover initial organizational costs and operate the district until the receipt of the tax voted by owners and electors at the first annual meeting. The cost of

repayment of the loan, in-full, shall be included in the tax receipt for the coming year, voted by the first annual meeting. A statement that a tax levy required to pay the indebtedness shall be included in the meeting notice under 33.20(2)(a), 33.305(2), and 33.31(4). The electors and property owners within the district may amend the budget and loan repayment schedule at the annual meeting, 33.30(3)(b), or at a special meeting, 33.305(3)(a).

#### Rationale

First, part of the “assessment” ought to include preparing a budget of expenses in the first year. Also, the use of the phrase “initial assessment” is interpreted to imply levying and collecting a tax in the current year. It is virtually impossible to collect a tax in the first year of operation to cover initial organization costs. The language is ambiguous and requires clarification. Certainly a loan could fall under “the manner” of raising funds left to the discretion of the board, but later in Ch 33 there are stipulations regarding loans. Typically a loan may not be secured unless it is approved at a meeting of electors and owners, and only if proper notice is given. It’s a Catch-22. This part of Ch33 is expanded to spell out the options for funding in the first year, allow the board to take a loan without owner/elector consent to cover the initial organizational costs, as well as stipulate that the short term loan is only for initial organizational costs to operate the district in the first year. Any loan obtained for this purpose must be repaid in-full using tax revenue collected in the following year. This intentionally limits the loan since it was made without owner/elector consent.

#### #14 §33.28(2)(a) District board of commissioners (County appointment).

##### Current Language

33.28(2)(a) One person appointed by the county board who is a member of the county land conservation committee or who is nominated by the land conservation committee and appointed by the board.

##### Proposed Language

33.28(2)(a) One person appointed by the county board who is a member of the county land conservation committee or who is nominated by the land conservation committee and appointed by the board. The county is prohibited from appointing a town governing body member who has direct influence over the appointment of the town representative under ss. 33.28(2)(b).

#### Rationale

The situation may exist where an appointee by the County is also the Town Chair, who may exert their influence to direct another appointment to the same board under ss.33.28(2)(b). This gives undue influence to the Town. While it may not be classified technically as “incompatibility of office” under Wisconsin State Supreme Court ruling in State V. Jones [130 Wis. 572, 110 N.W. 431 (1907)] it does have the appearance of, as the court held, that if one office is in some respects superior to another office, so that the duties exercised under each office might conflict to the public detriment, the offices were incompatible. While no statute prohibits it, the court

found that this interpretation followed the common law. An appointee to a governing body should not have authority to make an appointment to the same governing body themselves.

## #15 §33.28(2)(b) and 33.28(2)(d) [see also §33.28(1) and 33.28(1m) residency requirement] District Board of Commissioners

### Current Language

33.28(2)(b) One person who is appointed by the governing body of the town, village, or city within which the largest portion of valuation of the district lies. The person appointed under this paragraph shall be a resident of the district who owns property within the district if possible or shall be a member of the governing body of the town, village, or city within which the largest portion of the valuation of the district lies.

33.28(2)(d) If the district includes a lake that is controlled by a dam, if the dam is not located in the town, village or city within which the largest portion by valuation of the district lies, and if the governing body of the town, village, or city within which the largest portion by valuation of the district lies elects not to make an appointment under par. (b) as provided under sub (2M)(c), one person who is appointed by the governing body of the town, village, or city within which the dam is located. The person appointed under this paragraph shall be a resident of the district who owns property within the district if possible or shall be a member of the governing body of the town, village, or city within which the dam lies.

### Proposed Language

33.28(2)(b) One person who is appointed by the governing body of the town, village, or city within which the largest portion of valuation of the district lies. The person appointed under this paragraph shall be ~~a resident of the district who owns property~~ either a resident property owner or shall be a member of the governing body of the town, village, or city within which the largest portion of the valuation of the district lies. The property owner residency requirement may be waived, if no resident property owner wishes to serve, by the town, village, or city making the appointment.

33.28(2)(d) If the district includes a lake that is controlled by a dam, if the dam is not located in the town, village or city within which the largest portion by valuation of the district lies, and if the governing body of the town, village, or city within which the largest portion by valuation of the district lies elects not to make an appointment under par. (b) as provided under sub (2M)(c), one person who is appointed by the governing body of the town, village, or city within which the dam is located. The person appointed under this paragraph shall be ~~a resident of the district who owns property~~ either a property owner within the district who is also a resident within the district if possible or shall be a member of the governing body of the town, village, or city within which the dam lies. The residency requirement of a property owner appointed to the board by the town, village, or city may be waived at the discretion of the town, village, or city making the appointment.

### Rationale

There are several reasons. First of which is the ambiguity of the original statement. The phrase “if possible” can be construed to mean that a resident who does not own property may be appointed, or that property owner who is not a resident may be appointed. Chapter 33 is about property owners managing the district regardless of residency. This change is to clarify the ambiguity to mean a property owner who is a resident. But to allow for a non-resident property owner to be appointed, the additional sentence is added, such that it is consistent with the wording in §33.27(1) and 33.27(1m). This phrasing shows preference to a resident owner, but gives the town, village, or city the ability to waive that requirement if they see fit to do so.

## #16 §33.28(2)(c) District Board of Commissioners when term ends

### Current Language

33.28(2)(c) Three electors or owners of property within the district elected by secret ballot by the qualified electors and property owners within the district, for staggered 3-year terms. At least one of the elected commissioners shall be a resident of the district.

### Proposed Language

“33.28(2)(c) Three electors or owners of property within the district elected by secret ballot by the qualified electors and property owners within the district, for staggered 3-year terms. A commissioner’s 3-year term begins upon the adjournment of the annual meeting at which they were elected or re-elected, and continues through the end of the annual meeting three years hence, regardless of the actual anniversary date of the term. At least one of the elected commissioners shall be a resident of the district.”

### Rationale

The inserted wording addresses the argument that the term ends on the 3 yr anniversary of the commissioner’s election. Elected terms end immediately after the meeting at which an election to re-elect, or newly elect, a commissioner ends. The current commissioner should be allowed to conclude their meeting responsibilities before transitioning the seat.

The stricken wording is in conflict with election law. §Chapter 5 – Elections: §5.01(3)(a) Plurality Shall Elect “...The person receiving the greatest number of legal votes for the office shall be declared elected,...”. There may be valid reasons the electors and owners of property within a district might elect a non-resident over a resident candidate, potentially creating a board of all non-resident owners. The sentence in the current statute, 33.28(2)(c), strips the electors and owners of their voting rights to elect the candidate of their choice. It is recognized that every effort to include a resident of the district as a commissioner should be made during the initial appointment under §33.27(1) and §33.27(1m). However, this restriction interferes with the will of the electors and owners when applied to fair elections after this initial appointment.

## #17 §33.28(2m)(b) District Board of Commissioners

### Current Language

33.38(2m)(b) If no resident is willing to be elected as required under (2)(c) for a given term, the residency requirement shall be waived until the end of that term

### Proposed Language

~~33.28(2m)(b) If no resident is willing to be elected as required under (2)(c) for a given term, the residency requirement shall be waived until the end of that term~~

### Rationale

See proposed changes to §33.28(2)(c) at #15 above

## #18 §33.28(3) District board of commissioners - quorum

### Current Language

33.28(3) Three commissioners shall constitute a quorum for the transaction of business.”

### Proposed Language

~~“33.28(3) Three commissioners shall constitute a quorum for the transaction of business. A~~  
quorum of commissioners shall be required for the transaction of business of the district. A Quorum is a simple majority of the District Board.

### Rationale

The quorum requirement now conforms to other local government quorum requirements. Eliminates the situation where a three person minority quorum is possible in a seven person board.

## #19 §33.28(5) District Board of Commissioners - Reimbursement of expenses and commissioner compensation

### Current Language

33.28(5) Commissioners shall be paid actual and necessary expenses incurred while conducting business of the district, plus such compensation as may be established by the annual meeting.

### Proposed Language

33.28(5)(a) Commissioners shall be paid actual and necessary expenses incurred while conducting business of the district., ~~plus such compensation as may be established by the annual meeting.~~

(b) Elected commissioners and appointed commissioners that are not a member of the governing body making such appointments under s. 33.28(2)(a) or under s. 33.28(2)(b) shall be paid such compensation as may be established by the annual meeting.

(c) A commissioner who also serves as a district employee to the district may be paid per s. 946.13(2)(a). This compensation shall be determined by the annual meeting. Amounts that are paid under this paragraph may be paid in addition to any amount that an individual receives under s. 33.22(1m) and s. 33.28(5)(b).

#### Rationale

Any appointed commissioner that is on the district board that is also a member of the governing body making the appointment already qualifies for compensation from the appointing governing body (county and town) to attend the district meetings. Therefore, if the district also compensates those members of an appointing governing body, it is “double-dipping” and in violation of ss 59.10(2)(c)4 59.10(2)(c)4. Compensation should only include elected commissioners, and any owner who may also be a resident appointed under ss 33.28(2) (a) or (b). The compensation mirrors other governing body officials who is also a local government employee.

## #20 §33.285 Property owning requirements

#### Current Language

Any requirement under 33.27(1) or 33.28 that a person own property within the district to be eligible for membership on the board of commissioners is satisfied if a person is an official representative, officer, or employee of any trust, foundation, corporation, association, or organization which is an owner of property within the district.

#### Proposed Language

~~Any requirement under s. 33.27(1) or 33.28 that a person own property within the district to be eligible for membership on the board of commissioners is satisfied if a person is an official representative, officer, or employee of any trust, foundation, corporation, association, or organization which is an owner of property within the district.~~

#### Rationale

The definition of “owner”, “property owner”, or “landowner” of lands within the proposed district or established district is already covered in more detail under 33.01(9) at #5 above, making s.33.285 redundant.

## #21 §33.29(1m) Board of Commissioners; officers; powers and duties

### Current Language

Current - None. New

### Proposed Language

33.29(1m) Making line item transfers between budget accounts at commissioners meetings, requiring a 2/3rds majority vote of commissioners.

### Rationale

Often unforeseen circumstances arise where one budget account has excess funding while another budget account has a shortfall. The commissioners should be able to make adjustments to the budget by making line item transfers without calling a special meeting of the district to approve an amended budget.

## #22 §33.29(2) Board of Commissioners; officers; powers and duties

### Current Language

33.29(2) The board shall have control over the fiscal matters of the district, subject to the powers and directives of the annual or a special meeting. The board shall annually at the close of the fiscal year cause an audit to be made of the financial transactions of the district, which shall be submitted to the annual meeting.

### Proposed Language

“33.29(2) The board shall have control over the fiscal matters of the district, subject to the powers and directives of the annual or a special meeting. The board shall annually at the close of the fiscal year cause an ~~audit~~ independent financial review to be made of the financial transactions of the district. The results of which shall be submitted to the district electors and property owners at the annual meeting.”

### Rationale

In finance, an audit is a specific process performed by a CPA. True audits are performed by an audit team and are costly. This is an undue burden for the limited financial resources of a lake district. Instead, an independent financial review is suitable. Such a review may be performed by an accountant, a town/county clerk or treasurer, etc. Financial review is proposed to be defined at #7 above.



## #23 §33.29(3)(c) Board of Commissioners; officers; powers and duties

### Current Language

33.29(3)(c) The treasurer shall receive and take charge of all monies of the district, and pay out the same only on order of the board.

### Proposed Language

33.29(3)(c) The treasurer shall receive and take charge of all monies of the district, and pay expenses ~~on order~~ under the direction and knowledge of the board, and in compliance with the budget.

### Rationale

If this is taken literally, the phrase “only by order of the board” implies that every transaction/payment must have the approval of the full board. Since the board only meets quarterly, it is logistically impractical to 1) foresee all expenses three months in advance to get approval, or 2) hold all bills for 3 months to seek authorization to pay at the quarterly commissioners meeting. Additionally, some expenses, such as work done under a DNR grant, are in fulfillment of a contractual obligation (DNR grant). By substituting the proposed phrases, it offers a lake district the ability to pay bills on time so long as the board remains informed, and so long as it is in compliance with an approved budget. Extraordinary expenses would require consent from the board.

## #24 §33.30(4)(a) Annual Meeting of District – delivery of tax report

### Current Language

Vote by majority a tax upon all taxable property within the district. That portion of the tax that is for the costs of operation for the coming year may not exceed a rate of 2.5 mills of equalized valuation as determined by the department of revenue and reported to the district board. The tax shall be apportioned among the municipalities having property within the district on the basis of equalized full value, and a report shall be delivered by the treasurer, by November 1, by certified statement to the clerk of each municipality having property within the district for collection.

### Proposed Language

Vote by majority a tax upon all taxable property within the district. That portion of the tax that is for the costs of operation for the coming year may not exceed a rate of 2.5 mills of equalized valuation as determined by the department of revenue and reported to the district board. The tax shall be apportioned among the municipalities having property within the district on the basis of equalized full value, ~~and a~~ The report shall contain a self-certifying statement signed by the treasurer. The report shall be delivered by the treasurer, by November 1, ~~by certified statement~~ to the clerk of each municipality having property within the district for collection.

Rationale

It is more clear to use the phrase “self-certifying”, especially once the definition of “self-certifying” is included at #6 above. The wording was reordered to be more clear.

#25 §33.30(4)(c) Annual meeting establish compensation for commissioners

Existing Language

33.30(4)(c) Establish compensation to be paid the district board commissioners

Proposed Language

33.30(4)(c) Establish compensation to be paid the elected district board commissioners and appointed commissioners that are not a member of the governing body making such appointments under ss33.28(2)(a) or under ss 33.28(2)(b).

Rationale

Any appointed commissioner that is on the district board that is also a member of the governing body making the appointment already qualifies for compensation from the appointing governing body (county and town) to attend the district meetings. Therefore, if the district also compensates those members of an appointing governing body, it is “double-dipping” and in violation of ss 59.10(2)(c)4 59.10(2)(c)4. Compensation should only include elected commissioners, and any owner who may also be a resident appointed under ss 33.28(2) (a) or (b).

#26 §33.30(4)(e) Annual meeting establish a contingency fund

Current Language

Current - None. New

Proposed Language

33.30(4)(e) create a reserve fund not to exceed 15% of the approved annual budget operating costs, to be expended by the commissioners for unanticipated budgetary shortfalls

Rationale

Contingency reserves are allowed by local governments. Districts should be afforded the same latitude.

## #27 §33.30(5)(c) Annual Meeting – Ballot Recount

### Existing Language

After the procedure under par. (b) is complete, any elector or candidate may request a recount. If a recount is requested, the secretary shall note the request in the meeting minutes. A recount requested under this paragraph shall be conducted following the same procedure as under par.(b). The recount results are final when one of the following applies:

### Proposed Language

After the procedure under par. (b) is complete, any elector or owner of property within the district, or candidate, may request a recount. If a recount is requested, the secretary shall note the request in the meeting minutes. A recount requested under this paragraph shall be conducted following the same procedure as under par.(b). The recount results are final when one of the following applies:

### Rationale

Obvious omission of property owner when providing who can request a recount; without this change people who are not qualified to vote at the annual meeting could request a recount.

## #28 §33.30(6) Meeting Materials

### Current Language

Current - None. New

### Proposed Language

“33.30(6)(a) The district may require owners and electors to complete a self-certifying affidavit confirming their eligibility to vote at the district meeting and are subject to the penalties under s. 12.13(1)(a).

(b) All ballots shall be destroyed 30 days after the annual meeting, or 30 days after the completion of a recount under s. 33.30(5).”

### Rationale

Provides clarity regarding voter eligibility and dealing with ballots after an election.

## #29 §33.302 Emergency provisions for annual meetings

### Current Language

Current - None. New

### Proposed Language

#### §33.302

(1) In the event that a state of emergency has been declared by a governmental unit with the authority to do so under Chapter 323, preventing the District from safely holding its annual meeting, or restricting the meeting attendance, or otherwise making it impractical to hold an annual meeting, the commissioners are empowered to make the following decisions regarding annual meetings:

(a) Reschedule the meeting date scheduled under s. 33.30(1), including rescheduling before May 22 or after September 8 or rescheduling a meeting date previously approved by the owners and electors at a prior annual meeting. All other conditions under s. 33.30 shall apply to the rescheduled meeting.

(b) Conduct a virtual annual meeting with reasonable provisions for those without internet access

(c) Allow an existing commissioner, whose term is expiring, to continue to hold office until the rescheduled annual meeting in (a); or appoint a replacement commissioner, who will serve until rescheduled annual meeting.

(2) In the event that a state of emergency has been declared by a governmental unit with the authority to do so under §Chapter 323, preventing the District from approving a budget at an annual meeting before the current budget year ends, endangering the ability of the district to continue budgetary expenditures, the commissioners are empowered to continue the existing budget, tax levy, special charges, and/or special assessments that are in place, and carry them over to the following year without owner/elector consent. If necessary to continue existing district programs, the commissioners are limited to raising or lowering the tax levy by no more than 15% of the existing budget without owner and elector approval at an annual meeting.

### Rationale

Lake Districts are expressly omitted from declaring emergency powers under Ch. 323. However, they must be able to continue to operate and have some relief afforded in cases of emergencies declared by local or state government. The Covid-19 pandemic and subsequent restrictions on meetings interfered with the operations of several lake districts that had early annual meetings, annual meetings scheduled by the owners/electors at a prior annual meeting, or had annual budgets that ended before the meeting restrictions could be lifted.

## #30 §33.305(1) Special meetings of the district

### Current Language

§33.305(1) The board of commissioners of a district may schedule a special meeting of the district at any time. The board of commissioners shall schedule a special meeting upon receipt of a petition signed by at least 10% of the electors and property owners in the district.”

### Proposed Language

§33.305(1) The board of commissioners of a district may schedule a special meeting of the district at any time at their discretion. The board of commissioners shall schedule a special meeting upon receipt of a petition ~~signed by at least 10% of the~~ from electors and owners within the district, where the number of signatures exceeds 20% of the number of parcels located in the district that are subject to the property tax.”

### Rationale

“at their discretion” is added to indicate that the board may spontaneously call a special meeting if necessary and without a petition triggering the special meeting. (clarification)

The way the number of signatures needed in §33.305(1) is calculated is different from the way it’s calculated in §33.30(2m)(4). Yet the approximate totals for the two methods are nearly identical. Most parcels have two owners. A few have individual owners and a few have more than two owners. Adding in the electors who are not owners, long term renters and family members of owners residing in the district, the 20% of total number of parcels is theoretically close to the 10% of electors and owners within the district. Calculating 20% of taxable parcels in the district is far easier than obtaining the voter registration and comparing it to the list of parcel owners to calculate the total number of electors and owners within the district. The argument here is consistency and ease of calculation.

## #31 §33.305 Special meetings of the district - allow for recalls

### Current Language

Current - None. New

### Proposed Language

§33.305(3m) – “A special meeting of the electors and owners of property within the district may be convened to recall an elected commissioner before that commissioner’s term expires.

(a) The petition to recall an elected commissioner shall meet 33.305(1).

(b) Written notice of the special meeting shall be given to the same persons and in the same manner required under 33.30(2).

(c) A special meeting to recall a commissioner shall be scheduled within 60 days of receipt of the petition.

### Rationale

Provisions exist under various state statutes to recall elected officials at all levels in the state of Wisconsin, except, no such provision is outlined in Ch 33. The electors and owners of property within the district may have cause to remove an elected commissioner, but without the means to recall, the electors and owners have no recourse.

## #32 §33.35 Dissolution of districts

### Current Language

§33.35 A petition to dissolve an existing district created under this chapter may not be considered at an annual meeting of the district unless an elector within the district or a property owner within the district notifies the district board of commissioners in writing at least 90 days before the annual meeting that the elector or property owner intends to petition for dissolution at that annual meeting. The notice of the annual meeting must include a statement that a petition to dissolve the district will be considered. The district may be dissolved upon a two-thirds vote of the electors and property owners present at the annual meeting. The county board shall by order dissolve the district following receipt of the petition if the county board finds that one or more of the standards for the creation of a district under s. 33.26 (3) are not met. The order for dissolution shall be conditioned upon proper petition to the circuit court and appointment of a receiver to administer the winding up of the district under the supervision of the court and a final order of the court. The attorney general shall represent the state and shall be a party to every dissolution proceeding where state money is involved.

### Proposed Language

§33.35 A petition to dissolve an existing district created under this chapter may not be considered at an annual meeting of the district unless an elector within the district or a property owner within the district notifies the district board of commissioners in writing at least 90 days before the annual meeting that the elector or property owner intends to petition for dissolution at that annual meeting. The manner of submitting a petition to the commissioners shall comply with ss 33.30(2m). The notice of the annual meeting must include a statement that a petition to dissolve the district will be considered. The district may be dissolved upon a two-thirds vote of the electors and property owners present at the annual meeting. The county board shall by order dissolve the district following receipt of the petition if the county board finds that one or more of the standards for the creation of a district under s. 33.26 (3) are not met. The order for dissolution shall be conditioned upon proper petition to the circuit court and appointment of a receiver to administer the winding up of the district under the supervision of the court and a final order of the court. The attorney general shall represent the state and shall be a party to every dissolution proceeding where state money is involved.”

### Rationale

The statute here is somewhat ambiguous and may lead owners/electors to believe that one person acting alone may petition to have the district dissolved. And that all that is required is to notify the commissioners 90 days in advance of the annual meeting. The added text clarifies that

- Notice of intent to petition is at least 90 days prior to the annual meeting, and
- The actual petition must comply with Ch 33.30(2m) in that it must have signatures of owners/electors that equal or exceed 20% of the number of taxable parcels and be submitted to the commissioners at least 30 days before the meeting.