

# Clearinghouse Rule 00-088

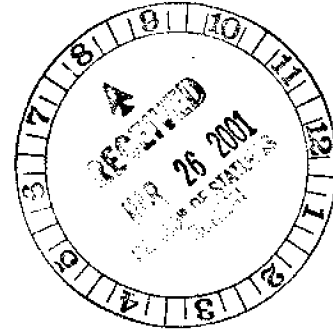


## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor  
Darrell Bazzell, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY 608-267-6897


STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Darrell Bazzell, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. LE-14-00 was duly approved and adopted by this Department on January 24, 2001. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 20<sup>th</sup> day of March, 2001.

  
\_\_\_\_\_  
Darrell Bazzell, Secretary

(SEAL)

**ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD CREATING RULES**

The Wisconsin Natural Resources Board proposes a rule to create s. NR 19.40 to implement the department's authority to void local hunting, fishing, and trapping ordinances.

LE-14-00

Analysis Prepared by the Department of Natural Resources

Statutory Authority: s. 227.11(2)(a), Stats.

Statutes Interpreted: s. 29.038, Stats.

With the creation of s. 29.038, Stats., by 1997 Act 170, the Department of Natural Resources was given the authority to declare local ordinances void which have more than an incidental impact on hunting, fishing, or trapping, or do not have public health and safety as a primary purpose. This rule provides guidance to the department in determining which ordinances exceed the local governmental unit's authority. The standards for determination are not weighted and do not appear in order of importance. The rule also provides the procedures by which the department will hold the hearings and make the determinations required by s. 29.038(4), Stats.

---

SECTION 1. NR 19.40 is created to read:

**NR 19.40 Department authority to void local hunting, fishing and trapping**

**ordinances.** (1) **PURPOSE.** These rules are developed, pursuant to s. 227.11, Stats., to establish procedures for determining when local ordinances should be voided under s. 29.038, Stats., because they have more than an incidental effect on hunting, fishing or trapping, or do not have public health and safety as a primary purpose.

(2) **DEFINITIONS.** In this section:

(a) "Building devoted to human occupancy" has the meaning used in s. 941.20(1)(d), Stats.

(b) "Undeveloped lands" has the meaning given in s. 943.13(1e)(f), Stats.

(3) DEPARTMENT DETERMINATIONS. Department determinations related to the legality of local ordinances regulating hunting, fishing or trapping shall consider the following factors when determining the validity of a local ordinance. The listed factors are not weighted and are factors which would favor a department decision to void the ordinance.

(a) The extent to which the ordinance affects undeveloped lands or lands which are zoned agricultural, forestry, lowland conservancy, upland conservancy or flood plain.

(b) The extent to which the department has received complaints about the ordinance.

(c) Whether the ordinance purports to directly regulate hunting.

(d) Whether the ordinance requires a permit to discharge a firearm or a bow, whether a fee is charged which exceeds 150% of the issuance fee established by s. NR 19.02(4)(b), creates a higher fee for non-residents or requires a background check.

Note: At the current time, the fee established by s. NR 19.02(4)(b) is \$3.00.

(e) Whether the ordinance restricts the discharge of fine shot while the shooter is in or on the water more than 100 yards from the nearest developed shoreline, and shooting away from or parallel to that shoreline.

(f) Whether the ordinance prohibits the discharge of fine shot when on undeveloped lands which are more than 100 yards from buildings devoted to human occupancy, and shooting away from the buildings.

(g) Whether the ordinance prohibits hunting, fishing or trapping on department property otherwise open to hunting, fishing or trapping or on property leased by or under easement to the department for the purpose of hunting fishing or trapping.

(h) Whether the ordinance prohibits the discharge of shotguns or bows within all areas of the municipality.

(i) Whether the ordinance prohibits the discharge of bows.

(j) Whether existing state laws adequately address the local safety concerns.

(k) Whether the ordinance prohibits fishing by individuals located on public waters.

(l) Whether less restrictive alternatives are available to address a municipality's safety concerns.

(m) Whether the ordinance prohibits live trapping.

(n) Whether the ordinance has no apparent health or safety purpose.

(4) EXCEPTION. This section does not apply to fishing rafts subject to regulation under s. 30.126, Stats.

(5) PROCEDURES. (a) Prior to holding a hearing to determine the validity of a local ordinance under s. 29.038, Stats., the department shall mail the affected municipality a notice of the time and location of the hearing. The department shall also publish a class I notice under ch. 985, Stats., of the hearing in the county in which the municipality is located. The notice shall be given at least 30 days prior to the date set for the hearing.

(b) Hearings shall be conducted to the extent possible in a manner consistent with s. 227.18(1) and (2), Stats.

(c) The final decision shall be made by the secretary or the secretary's designee.

(d) The decision shall be in writing and accompanied by findings of fact and conclusions of law.

(e) The department may void ordinances found to be in violation of s. 29.038, Stats., in whole or in part, or as applied to certain areas, certain classes of persons, certain times of the year, or certain circumstances.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 24, 2001.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin March 20, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Darrell Bazzell  
Darrell Bazzell, Secretary

(SEAL)



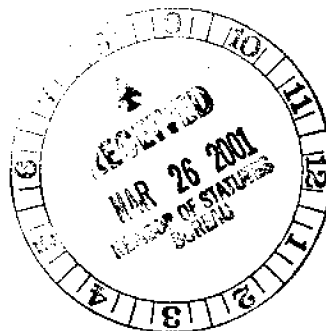
**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Scott McCallum, Governor  
Darrell Bazzell, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY 608-267-6897

March 19, 2001

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
131 West Wilson Street - Suite 800  
Madison, WI



Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. LE-14-00. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

Darrell Bazzell  
Secretary

Enc.