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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-088**

AN ORDER to create NR 19.40, relating to implementing the department's authority to void local hunting, fishing and trapping ordinances.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-09-00 RECEIVED BY LEGISLATIVE COUNCIL.

06-06-00 REPORT SENT TO AGENCY.

RNS:GAA;jal;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

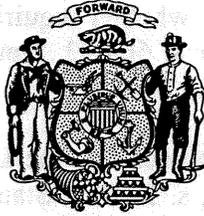
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO

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## CLEARINGHOUSE RULE 00-088

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

a. Section NR 19.40 (3) (d) requires the Department of Natural Resources (DNR) to consider whether the ordinance requires a permit to discharge a firearm or bow, whether a fee is charged that exceeds 150% of the issuance fee established by s. NR 19.02 (4) (b), creates a higher fee for nonresidents or requires a background check.

Section 66.092, Stats., relates to authorized local regulation of firearms. Section 66.092 (2), Stats., provides:

Except as provided in subs. (3) and (4), no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components, unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

Among the exceptions is: "Nothing in this section prohibits a city, village or town that is authorized to exercise village powers under s. 60.22 (3) from enacting an ordinance or adopting a resolution that restricts the discharge of a firearm."

It is questionable whether an ordinance that, for example, allows discharge of a firearm upon payment of a fee of less than 150% of the DNR's fee is authorized under s. 66.092, Stats. That is, although a local ordinance may *restrict* discharge of a firearm by, for example, prohibiting discharges, it is questionable whether requiring a permit, charging a fee or requiring a background check is authorized under s. 66.092, Stats. The provision of the rule should be examined for consistency with this statute.

b. Section NR 19.40 (4) (e) provides that the DNR may "rescind" ordinances found in violation of s. 29.038, Stats. However, s. 29.038, Stats., authorizes the DNR, if it determines that an ordinance, regulation, resolution or other restriction exceeds the authority granted to local governments, to issue a notice of the DNR's intent to issue an order. If it issues an order, that order may declare the ordinance, regulation, resolution or other restriction *void*. The DNR does not have authority to "rescind" ordinances that violate s. 29.038, Stats. The terminology of s. 29.038 (4), Stats., should be used.

## **2. Form, Style and Placement in Administrative Code**

- a. In s. NR 19.40 (2), par. (a) should be preceded by "In this section:".
- b. In s. NR 19.40 (4) (e), "certain" should be inserted before "times."

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The analysis to the rule states that the standards in the rule are not weighted and do not appear in order of importance. However, the text of the rule does not state this. Is there a need to state this in the text?

- b. In s. NR 19.40 (4) (d), "The" should be inserted before "decision."

**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.

*not in text*

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 restricted under s. 29.038, Stats., because they have more than an incidental effect on hunting, fishing or trapping, <sup>and?</sup> or do not have public health and safety as a primary purpose.

*In this sec.:*  
(2) DEFINITIONS. (a) "Building devoted to human occupancy" has the meaning used in s. 941.20(1)(d), Stats.

(b) "Unplatted lands" means lands that are not platted pursuant to ch. 236, Stats.

(3) DEPARTMENT DETERMINATIONS. Department determinations related to the legality

of local ordinances regulating hunting, fishing or trapping shall consider the following items when determining the validity of a local ordinance:

(a) The extent to which the ordinance affects unplatted 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 shore.

(f) Whether the ordinance prohibits the discharge of fine shot when on unplatted 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 the ordinance restricts the discharge of rifles in an area open to the

hunting of deer with rifles.

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

(n) Whether the ordinance prohibits live trapping.

(o) Whether the ordinance has no apparent safety purpose.

(4) 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 10 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) <sup>The</sup> Decision shall be in writing and accompanied by findings of fact and conclusions of law.

(e) The department may rescind 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, times of the year, or certain circumstances.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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 \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

StatRule2