

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-SEVENTH LEGISLATURE**      **S.F. No. 39**

(SENATE AUTHORS: KRUSE, Benson, Chamberlain, Jungbauer and Ingebrigtsen)

| DATE       | D-PG        | OFFICIAL STATUS   |
|------------|-------------|---|
| 01/13/2011 | 50          | Introduction and first reading<br>Referred to Environment and Natural Resources                       |
| 01/27/2011 | 84a<br>85   | Comm report: To pass as amended<br>Rule 21, referred to Rules and Administration                      |
| 02/10/2011 | 123<br>204  | Comm report: Amend previous comm report Re-referred to Finance<br>Comm report: To pass                |
| 03/24/2011 | 206         | Second reading  |
| 04/07/2011 | 703<br>1242 | General Orders: To pass<br>Calendar: Third reading Passed<br>See HF1010, Art. 4, Sec. 32, 46 (vetoed) |

A bill for an act

relating to natural resources; eliminating specific requirements for rulemaking on the Mississippi River Corridor Critical Area; amending Minnesota Statutes 2010, section 116G.15, subdivision 1; repealing Minnesota Statutes 2010, section 116G.15, subdivisions 2, 3, 4, 5, 6, 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 116G.15, subdivision 1, is amended to read:

Subdivision 1. ~~Establishment, purpose~~ **Designation**. The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. ~~The purpose of the designation is to:~~

~~(1) protect and preserve the Mississippi River and adjacent lands that the legislature finds to be unique and valuable state and regional resources for the benefit of the health, safety, and welfare of the citizens of the state, region, and nation;~~

~~(2) prevent and mitigate irreversible damages to these state, regional, and natural resources;~~

~~(3) preserve and enhance the natural, aesthetic, cultural, and historical values of the Mississippi River and adjacent lands for public use and benefit;~~

~~(4) protect and preserve the Mississippi River as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and~~

~~(5) protect and preserve the biological and ecological functions of the Mississippi River corridor.~~

Sec. 2. **RULEMAKING.**

**S.F. No. 39, 1st Engrossment - 87th Legislative Session (2011-2012) [S0039-1]**

2.1           The rulemaking authority granted under Minnesota Statutes, section 116G.15,  
2.2 subdivision 7, is explicitly repealed by this act and any rulemaking to effectuate the  
2.3 purpose of Laws 2009, chapter 172, article 2, section 27, commenced by the commissioner  
2.4 of natural resources under that authority or any other authority is void and must cease on  
2.5 the effective date of this section.

2.6           Sec. 3. **REPEALER.**

2.7           Minnesota Statutes 2010, section 116G.15, subdivisions 2, 3, 4, 5, 6, and 7, are  
2.8 repealed.

2.9           Sec. 4. **EFFECTIVE DATE.**

2.10          Sections 1 to 3 are effective the day following final enactment.

**116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.**

Subd. 2. **Administration; duties.** (a) The commissioner of natural resources may adopt rules under chapter 14 as are necessary for the administration of the Mississippi River corridor critical area program. Duties of the Environmental Quality Council or the Environmental Quality Board referenced in this chapter, related rules, and the governor's Executive Order No. 79-19, published in the State Register on March 12, 1979, that are related to the Mississippi River corridor critical area shall be the duties of the commissioner. All rules adopted by the board pursuant to these duties remain in effect and shall be enforced until amended or repealed by the commissioner in accordance with law. The commissioner shall work in consultation with the United States Army Corps of Engineers, the National Park Service, the Metropolitan Council, other agencies, and local units of government to ensure that the Mississippi River corridor critical area is managed as a multipurpose resource in a way that:

- (1) conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;
- (2) maintains the river channel for transportation by providing and maintaining barging and fleeting areas in appropriate locations consistent with the character of the Mississippi River and riverfront;
- (3) provides for the continuation and development of a variety of urban uses, including industrial and commercial uses, and residential uses, where appropriate, within the Mississippi River corridor;
- (4) utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, storm water, and industrial waste effluents; and
- (5) protects and preserves the biological and ecological functions of the corridor.

(b) The Metropolitan Council shall incorporate the standards developed under this section into its planning and shall work with local units of government and the commissioner to ensure the standards are being adopted and implemented appropriately.

(c) The rules must be consistent with residential nonconformity provisions under sections 394.36 and 462.357.

Subd. 3. **Districts.** The commissioner shall establish, by rule, districts within the Mississippi River corridor critical area. The commissioner must seek to determine an appropriate number of districts within any one municipality and take into account municipal plans and policies, and existing ordinances and conditions. The commissioner shall consider the following when establishing the districts:

- (1) the protection of the major features of the river in existence as of March 12, 1979;
- (2) the protection of improvements such as parks, trails, natural areas, recreational areas, and interpretive centers;
- (3) the use of the Mississippi River as a source of drinking water;
- (4) the protection of resources identified in the Mississippi National River and Recreation Area Comprehensive Management Plan;
- (5) the protection of resources identified in comprehensive plans developed by counties, cities, and towns within the Mississippi River corridor critical area;
- (6) the intent of the Mississippi River corridor critical area land use districts from the governor's Executive Order No. 79-19, published in the State Register on March 12, 1979; and
- (7) identified scenic, geologic, and ecological resources.

Subd. 4. **Standards.** (a) The commissioner shall establish, by rule, minimum guidelines and standards for the districts established in subdivision 3. The guidelines and standards for each district shall include the intent of each district and key resources and features to be protected or enhanced based upon paragraph (b). The commissioner must take into account municipal plans and policies, and existing ordinances and conditions when developing the guidelines in this section. The commissioner may provide certain exceptions and criteria for standards, including, but not limited to, exceptions for river access facilities, water supply facilities, storm water facilities, and wastewater treatment facilities, and hydropower facilities.

(b) The guidelines and standards must protect or enhance the following key resources and features:

- (1) floodplains;
- (2) wetlands;
- (3) gorges;
- (4) areas of confluence with key tributaries;
- (5) natural drainage routes;
- (6) shorelines and riverbanks;

APPENDIX

Repealed Minnesota Statutes: S0039-1

- (7) bluffs;
- (8) steep slopes and very steep slopes;
- (9) unstable soils and bedrock;
- (10) significant existing vegetative stands, tree canopies, and native plant communities;
- (11) scenic views and vistas;
- (12) publicly owned parks, trails, and open spaces;
- (13) cultural and historic sites and structures; and
- (14) water quality.

(c) The commissioner shall establish a map to define bluffs and bluff-related features within the Mississippi River corridor critical area. At the outset of the rulemaking process, the commissioner shall create a preliminary map of all the bluffs and bluff lines within the Mississippi River corridor critical area, based on the guidelines in paragraph (d). The rulemaking process shall provide an opportunity to refine the preliminary bluff map. The commissioner may add to or remove areas of demonstrably unique or atypical conditions that warrant special protection or exemption. At the end of the rulemaking process, the commissioner shall adopt a final bluff map that contains associated features, including bluff lines, bases of bluffs, steep slopes, and very steep slopes.

(d) The following guidelines shall be used by the commissioner to create a preliminary bluff map as part of the rulemaking process:

(1) "bluff face" or "bluff" means the area between the bluff line and the bluff base. A high, steep, natural topographic feature such as a broad hill, cliff, or embankment with a slope of 18 percent or greater and a vertical rise of at least ten feet between the bluff base and the bluff line;

(2) "bluff line" means a line delineating the top of a slope connecting the points at which the slope becomes less than 18 percent. More than one bluff line may be encountered proceeding upslope from the river valley;

(3) "base of the bluff" means a line delineating the bottom of a slope connecting the points at which the slope becomes 18 percent or greater. More than one bluff base may be encountered proceeding landward from the water;

(4) "steep slopes" means 12 percent to 18 percent slopes. Steep slopes are natural topographic features with an average slope of 12 to 18 percent measured over a horizontal distance of 50 feet or more; and

(5) "very steep slopes" means slopes 18 percent or greater. Very steep slopes are natural topographic features with an average slope of 18 percent or greater, measured over a horizontal distance of 50 feet or more.

Subd. 5. **Application.** The standards established under this section shall be used:

(1) by local units of government when preparing or updating plans or modifying regulations;

(2) by state and regional agencies for permit regulation and in developing plans within their jurisdiction;

(3) by the Metropolitan Council for reviewing plans and regulations; and

(4) by the commissioner when approving plans and regulations, and reviewing development permit applications.

Subd. 6. **Notification.** A local unit of government or a regional or state agency shall notify the commissioner of natural resources of all developments in the corridor that require discretionary actions under their rules at least ten days before taking final action on the application. The commissioner may establish exemptions from the notification requirement for certain types of applications. For purposes of this section, a discretionary action includes all actions that require a public hearing, including variances, conditional use permits, and zoning amendments.

Subd. 7. **Rules.** The commissioner shall adopt rules to ensure compliance with this section. By January 15, 2010, the commissioner shall begin the rulemaking required by this section under chapter 14.