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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE NO. 424

February 2, 2009

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The bill was read for the first time and referred to the Committee on Environment Policy and Oversight

March 26, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

April 6, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to natural resources; modifying the Critical Areas Act of 1973; requiring
1.3 rulemaking; appropriating money; amending Minnesota Statutes 2008, section
1.4 116G.15; repealing Minnesota Statutes 2008, section 116G.151.

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

1.6 Section 1. Minnesota Statutes 2008, section 116G.15, is amended to read:

1.7 **116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.**

1.8 Subdivision 1. Establishment; purpose. ~~(a)~~ The federal Mississippi National
1.9 River and Recreation Area established pursuant to United States Code, title 16, section
1.10 460zz-2(k), is designated an area of critical concern in accordance with this chapter. ~~The~~
1.11 ~~governor shall review the existing Mississippi River critical area plan and specify any~~
1.12 ~~additional standards and guidelines to affected communities in accordance with section~~
1.13 ~~116G.06, subdivision 2, paragraph (b), clauses (3) and (4), needed to insure preservation of~~
1.14 ~~the area pending the completion of the federal plan.~~ The purpose of the designation is to:

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

1.19 (2) prevent and mitigate irreversible damages to the natural resources listed under
1.20 clause (1);

1.21 (3) preserve and enhance the natural, aesthetic, cultural, recreational, and historical
1.22 values of the Mississippi River and its corridor for public use and benefit;

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

2.4 (5) protect and preserve the biological and ecological functions of the Mississippi
2.5 River and its corridor.

2.6 ~~The results of an environmental impact statement prepared under chapter 116D~~
2.7 ~~begun before and completed after July 1, 1994, for a proposed project that is located in~~
2.8 ~~the Mississippi River critical area north of the United States Army Corps of Engineers~~
2.9 ~~Lock and Dam Number One must be submitted in a report to the chairs of the environment~~
2.10 ~~and natural resources policy and finance committees of the house of representatives~~
2.11 ~~and the senate prior to the issuance of any state or local permits and the authorization~~
2.12 ~~for an issuance of any bonds for the project. A report made under this paragraph shall~~
2.13 ~~be submitted by the responsible governmental unit that prepared the environmental~~
2.14 ~~impact statement, and must list alternatives to the project that are determined by the~~
2.15 ~~environmental impact statement to be economically less expensive and environmentally~~
2.16 ~~superior to the proposed project and identify any legislative actions that may assist in the~~
2.17 ~~implementation of environmentally superior alternatives. This paragraph does not apply~~
2.18 ~~to a proposed project to be carried out by the Metropolitan Council or a metropolitan~~
2.19 ~~agency as defined in section 473.121.~~

2.20 ~~(b) If the results of an environmental impact statement required to be submitted by~~
2.21 ~~paragraph (a) indicate that there is an economically less expensive and environmentally~~
2.22 ~~superior alternative, then no member agency of the Environmental Quality Board shall~~
2.23 ~~issue a permit for the facility that is the subject of the environmental impact statement;~~
2.24 ~~other than an economically less expensive and environmentally superior alternative;~~
2.25 ~~nor shall any government bonds be issued for the facility, other than an economically~~
2.26 ~~less expensive and environmentally superior alternative, until after the legislature has~~
2.27 ~~adjourned its regular session sine die in 1996.~~

2.28 Subd. 2. **Administration; rules.** (a) The commissioner of natural resources may
2.29 adopt such rules pursuant to chapter 14 as are necessary for the administration of the
2.30 Mississippi River corridor critical area program. Duties of the Environmental Quality
2.31 Council or the Environmental Quality Board referenced in this chapter and related rules
2.32 and in the governor's executive order number 79-19, published in the State Register on
2.33 March 12, 1979, related to the Mississippi River corridor critical area shall be the duties of
2.34 the commissioner. All rules adopted by the board pursuant to these duties remain in effect
2.35 and shall be enforced until amended or repealed by the commissioner in accordance with
2.36 law. The commissioner shall work in consultation with the United States Army Corps

3.1 of Engineers, the National Park Service, the Metropolitan Council, other agencies, and
3.2 local units of government to ensure that the Mississippi River corridor critical area is
3.3 managed in a way that:

3.4 (1) conserves the scenic, environmental, recreational, mineral, economic, cultural,
3.5 and historic resources and functions of the river corridor;

3.6 (2) maintains the river channel for transportation by providing and maintaining
3.7 barging and fleeting areas in appropriate locations consistent with the character of the
3.8 Mississippi River and riverfront;

3.9 (3) provides for the continuation and development of a variety of urban uses,
3.10 including industrial and commercial uses, and residential uses, where appropriate, within
3.11 the Mississippi River and its corridor;

3.12 (4) utilizes certain reaches of the river as a source of water supply and for receiving
3.13 wastewater effluents and discharges that meet all applicable standards; and

3.14 (5) protects and preserves the biological and ecological functions of the corridor.

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

3.18 Subd. 3. **Districts.** The commissioner shall establish districts within the Mississippi
3.19 River corridor critical area. The commissioner must seek to minimize the number of
3.20 districts within any one municipality and take into account existing ordinances. The
3.21 commissioner shall consider the following when establishing the districts:

3.22 (1) the protection of the major features of the river in existence as of March 12, 1979;

3.23 (2) the protection of improvements such as parks, trails, natural areas, recreational
3.24 areas, and interpretive centers;

3.25 (3) the use of the Mississippi River as a source of drinking water;

3.26 (4) the protection of resources identified in the Mississippi National River and
3.27 Recreation Area Comprehensive Management Plan;

3.28 (5) the protection of resources identified in comprehensive plans developed by
3.29 counties, cities, and towns within the Mississippi River corridor critical area;

3.30 (6) the intent of the Mississippi River corridor critical area land use districts from
3.31 the governor's executive order number 79-19, published in the State Register on March
3.32 12, 1979; and

3.33 (7) identified scenic, geologic, and ecological resources.

3.34 Subd. 4. **Standards.** (a) The commissioner shall establish minimum guidelines and
3.35 standards for the districts established in subdivision 3. The guidelines and standards
3.36 for each district shall include the intent of each district, key resources and features to

4.1 be protected or enhanced based upon paragraph (b), permitted uses, and dimensional
4.2 and performance standards for development. The commissioner must take into account
4.3 existing ordinances when developing the guidelines and standards under this section. The
4.4 commissioner may provide certain exceptions and criteria for standards, including, but
4.5 not limited to, exceptions for river access facilities, water supply facilities, storm water
4.6 facilities, wastewater treatment facilities, and hydropower facilities.

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

4.9 (1) floodplains;

4.10 (2) wetlands;

4.11 (3) gorges;

4.12 (4) areas of confluence with key tributaries;

4.13 (5) natural drainage routes;

4.14 (6) shorelines and riverbanks;

4.15 (7) bluffs;

4.16 (8) steep slopes and very steep slopes;

4.17 (9) unstable soils and bedrock;

4.18 (10) significant existing vegetative stands, tree canopies, and native plant
4.19 communities;

4.20 (11) scenic views and vistas;

4.21 (12) publicly owned parks, trails, and open spaces;

4.22 (13) cultural and historic sites and structures; and

4.23 (14) water quality.

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

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

4.35 (1) "bluff face" or "bluff" means the area between the bluff line and the bluff base. A
4.36 bluff is a high, steep, natural topographic feature such as a broad hill, cliff, or embankment

5.1 with a slope of 18 percent or greater and a vertical rise of at least ten feet between the bluff
5.2 base and the bluff line;

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

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

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

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

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

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

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

5.20 (3) by the Metropolitan Council for reviewing plans, regulations, and development
5.21 permit applications; and

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

5.24 Subd. 6. **Notification; fees.** (a) A local unit of government or a regional or state
5.25 agency shall notify the commissioner of natural resources of all developments in the
5.26 corridor that require discretionary actions under their rules at least ten days before taking
5.27 final action on the application. A local unit of government or agency failing to notify the
5.28 commissioner at least ten days before taking final action shall submit a late fee of \$50
5.29 to the commissioner. The commissioner may establish exemptions from the notification
5.30 requirement for certain types of applications. For purposes of this section, a discretionary
5.31 action includes all actions that require a public hearing, including variances, conditional
5.32 use permits, and zoning amendments.

5.33 (b) The commissioner shall recover costs of reviewing information submitted under
5.34 paragraph (a). Amounts collected under this paragraph must be credited to an account in
5.35 the natural resources fund and are appropriated to the commissioner.

6.1 Subd. 7. **Rules.** The commissioner shall adopt rules to ensure compliance with this
6.2 section. By January 15, 2010, the commissioner shall begin the rulemaking required
6.3 by this section under chapter 14. Until the rules required under this section take effect,
6.4 the commissioner shall administer the Mississippi River corridor critical area program
6.5 in accordance with the governor's executive order number 79-19, published in the State
6.6 Register on March 12, 1979.

6.7 **Sec. 2. APPROPRIATION.**

6.8 \$225,000 in fiscal year 2010 and \$225,000 in fiscal year 2011 are appropriated from
6.9 the clean water fund to the commissioner of natural resources to develop and adopt rules
6.10 for the Mississippi River corridor critical area under Minnesota Statutes, section 116G.15,
6.11 in order to achieve the required outcomes. The commissioner shall begin rulemaking
6.12 under Minnesota Statutes, chapter 14, no later than January 15, 2010.

6.13 **Sec. 3. REPEALER.**

6.14 Minnesota Statutes 2008, section 116G.151, is repealed.

**116G.151 REQUIRED ENVIRONMENTAL ASSESSMENT WORKSHEET;
FACILITIES IN MISSISSIPPI RIVER AREA.**

(a) Until completion of an environmental assessment worksheet that complies with the rules of the Environmental Quality Board and this section, a state or local agency may not issue a permit for construction or operation of a metal materials shredding project with a processing capacity in excess of 20,000 tons per month that would be located in the Mississippi River critical area, as described in section 116G.15, upstream from United States Corps of Engineers Lock and Dam Number One.

(b) The Pollution Control Agency is the responsible governmental unit for the preparation of an environmental assessment worksheet required under this section.

(c) In addition to the contents required under law and rule, an environmental assessment worksheet completed under this section must also include the following major categories:

(1) effects of operation of the project, including vibrations and airborne particulates and dust, on the Mississippi River;

(2) effects of operation of the project, including vibrations and airborne particulates and dust, on adjacent businesses and on residents and neighborhoods;

(3) effects of operation of the project on barge and street traffic;

(4) discussion of alternative sites considered by the project proposer for the proposed project, possible design modifications including site layout, and the magnitude of the project;

(5) mitigation measures that could eliminate or minimize any adverse environmental effects of the proposed project;

(6) impact of the proposed project on the housing, park, and recreational use of the river;

(7) effects of waste and implication of the disposal of waste generated from the proposed project;

(8) effects on water quality from the project operations, including wastewater generated from operations of the proposed project;

(9) potential effects from fugitive emissions, fumes, dust, noise, and vibrations from project operations;

(10) compatibility of the existing operation and proposed operation with other existing uses;

(11) the report of the expert required by paragraph (g).

(d) In addition to the publication and distribution provisions relating to environmental assessment worksheets under law and rule, notice of environmental assessment worksheets performed by this section shall also be published in a newspaper of general circulation as well as community newspapers in the affected neighborhoods.

(e) A public meeting in the affected communities must be held on the environmental assessment worksheet prepared under this section. After the public meeting on the environmental assessment worksheet, there must be an additional 30-day period for review and comment on the environmental assessment worksheet.

(f) If the Pollution Control Agency determines that information necessary to make a reasonable decision about potential of significant environmental impacts is insufficient, the agency shall make a positive declaration and proceed with an environmental impact statement.

(g) The Pollution Control Agency shall retain an expert in the field of toxicology who is capable of properly analyzing the potential effects and content of any airborne particulates, fugitive emissions, and dust that could be produced by a metal materials shredding project. The Pollution Control Agency shall obtain any existing reports or documents from a governmental entity or project proposer that analyzes or evaluates the potential hazards of airborne particulates, fugitive emissions, or dust from the construction or operation of a metal materials shredding project in preparing the environmental assessment worksheet. The agency and the expert shall prepare, as part of the report, a risk assessment of the types of metals permitted to be shredded as compared to the types of materials that are likely to be processed at the facility. In performing the risk assessment, the agency and the expert must consider any actual experience at similar facilities. The report must be included as part of the environmental assessment worksheet.

(h) If the Pollution Control Agency determines that under the rules of the Environmental Quality Board an environmental impact statement should be prepared, the Pollution Control Agency shall be the responsible governmental unit for preparation of the environmental impact statement.