

CHAPTER 116G CRITICAL AREAS

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116G.01 CITATION.

Sections 116G.01 to 116G.14 shall be known as the Critical Areas Act of 1973.

History: 1973 c 752 s 1

116G.02 POLICY.

The legislature finds that the development of certain areas of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance, could result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

History: 1973 c 752 s 2

116G.03 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116G.01 to 116G.14, the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subd. 3. **Local unit of government.** "Local unit of government" means any political subdivision of the state, including but not limited to counties, municipalities, townships, together with all agencies and boards thereof.

Subd. 4. **Government development.** "Government development" means any development financed in whole or in substantial part, directly or indirectly, by the United States, the state of

Minnesota, or agency or political subdivision thereof.

Subd. 5. **Regional development commission.** "Regional development commission" means any regional development commission created pursuant to sections 462.381 to 462.396 and the Metropolitan Council created by chapter 473.

Subd. 6. **Development permit.** A "development permit" includes any building permit, zoning permit, water use permit, discharge permit, permit for dredging, filling or altering any portion of a watercourse, plat approval, rezoning, certification, variance or other action having the effect of permitting any development as defined in sections 116G.01 to 116G.14.

Subd. 7. **Development.** "Development" means the making of any material change in the use or appearance of any structure or land including but not limited to:

(1) a reconstruction, alteration of the size, or material change in the external appearance of a structure on the land;

(2) a change in the intensity of use of the land;

(3) alteration of a shore or bank of a river, stream, lake or pond;

(4) commencement of drilling (except to obtain soil samples), mining or excavation;

(5) demolition of a structure;

(6) clearing of land as an adjunct to construction;

(7) deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(8) the dividing of land into three or more parcels.

Subd. 8. **Land.** "Land" means the earth, water, and air, above, below or on the surface, and includes any improvements or structures customarily regarded as land.

Subd. 9. **Parcel.** "Parcel" of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

Subd. 10. **Developer.** "Developer" means any person, including a governmental agency, undertaking any development as defined in sections 116G.01 to 116G.14.

Subd. 11. **Structure.** "Structure" means anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

History: 1973 c 752 s 3; 1975 c 271 s 6; 1983 c 216 art 1 s 22

116G.04 RULES.

The board shall adopt such rules pursuant to chapter 14, as are necessary for the administration of sections 116G.01 to 116G.14.

History: 1973 c 752 s 4; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70

116G.05 CRITERIA FOR THE SELECTION OF AREAS OF CRITICAL CONCERN.

The board shall, in the manner provided in chapter 14, prepare criteria for the selection of areas of critical concern which have the following characteristics:

(1) An area significantly affected by, or having a significant effect upon, an existing or proposed major government development which is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and which tends to generate substantial development or urbanization.

(2) An area containing or having a significant impact upon historical, natural, scientific, or cultural resources of regional or statewide importance.

History: 1973 c 752 s 5; 1975 c 271 s 6; 1982 c 424 s 130

116G.06 DESIGNATION.

Subdivision 1. **Recommendations.** (a) The board shall periodically study and assess the resources and development of the state and shall recommend to the governor those areas that should be designated as areas of critical concern in accordance with criteria established in section 116G.05. In its recommendations, the board shall specify the boundaries of the proposed area of critical concern, state the reasons why the particular area proposed is of critical concern to the state or region, the dangers that would result from uncontrolled or inappropriate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner and shall recommend specific principles for guiding the development of the area.

(b) Each regional development commission may from time to time recommend to the board areas wholly or partially within its jurisdiction that meet the criteria for areas of critical concern as defined in section 116G.05. Each regional development commission shall solicit from the local units of government within its jurisdiction suggestions as to areas to be recommended. A local unit of government in an area where no regional development commission has been established may from time to time recommend to the board areas wholly or partially within its jurisdiction that meet the criteria for areas of critical concern as defined in section 116G.05. The board shall provide the regional development commission or local unit of government with a written statement of its decision and the reasons therefor.

(c) Prior to submitting any recommendations to the governor, under this subdivision, the board shall conduct a public hearing in the manner provided in chapter 14 on the proposed designation at a location convenient to those persons affected by such designation.

Subd. 2. **Order.** (a) The governor may designate by written order all or part of the recommended areas as areas of critical concern and specify the boundaries thereof and shall notify all local units of government in which any part or parts of a designated area or areas of critical concern are located.

(b) The order designating an area of critical concern shall (1) describe the boundaries of the area of critical concern, (2) indicate the reason that a particular area is of critical concern, (3) specify standards and guidelines to be followed in preparing and adopting plans and rules required in section 116G.07, and (4) indicate what development, if any, shall be permitted consistent with the policies of sections 116G.01 to 116G.14 pending the adoption of plans and rules.

(c) The order designating an area of critical concern shall be effective for no longer than three years pending approval by the legislature or by the regional development commission, where one exists, of each development region in which a part of the area of critical concern is located. After a regional development commission has approved the designation of an area of critical concern, it shall not revoke or rescind its approval, except as necessary to update and reevaluate plans and regulations under section 116G.10.

History: 1973 c 752 s 6; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70

116G.07 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND REGULATIONS.

Subdivision 1. **Preparation.** (a) Within 30 days of receiving notification of the designation of an area or areas of critical concern within its jurisdiction, the local unit of government shall submit existing plans and regulations which deal with or affect the area or areas so designated to the appropriate regional development commission or to the board if no regional development commission has been established.

(b) If no plans or regulations exist, the local unit of government shall upon receiving notification of the designation of an area or areas of critical concern within its jurisdiction:

(1) Within six months of said notification prepare plans and regulations for the designated area or areas of critical concern and submit them to the appropriate regional development commission for review; or

(2) Within 30 days of said notification request that the appropriate regional development commission prepare plans and regulations for the area or areas of critical concern. Within six months of receipt of such request, the regional development commission shall prepare said plans and regulations and submit them to the board for review. If no regional development commission

has been established, the local unit of government may request that the board prepare plans and rules for adoption by the local unit of government.

Subd. 2. **Review.** Within 45 days of receiving plans and regulations from the local unit of government under the provisions of subdivision 1, the regional development commission shall review the plans and regulations to determine their consistency with regional objectives and the provisions of the order designating the areas of critical concern and transmit its recommendations, together with the plans and regulations, to the board.

Subd. 3. **Approval.** (a) Within 45 days of receiving plans and regulations from the local unit of government or a regional development commission, the board shall review the plans and regulations to determine their consistency with the provisions of the order designating the area, the recommendations of the regional development commission, and the review comments of such state agencies as the board shall deem appropriate, and shall either approve the plans and regulations by written order or return them to the local unit of government or regional development commission for modification along with a written explanation of the need for modification.

(b) Plans and regulations which are returned to the local unit of government or regional development commission for modification shall be revised consistent with the instructions of the board and resubmitted to the board within 60 days of their receipt, provided that final revision need not be made until a formal meeting has been held with the board on the plans and regulations if requested by the local unit of government or regional development commission.

(c) Plans or regulations prepared pursuant to this section shall become effective when enacted by the local unit of government or, following legislative or regional development commission approval of the designation, upon such date as the board may provide in its order approving said plans and regulations.

History: 1973 c 752 s 7; 1975 c 271 s 6; 1985 c 248 s 70

116G.08 EXCEPTIONS.

(a) If, in the opinion of the board, the local unit of government is making a conscientious attempt to develop plans and regulations for the protection of a designated area or areas of critical concern within its jurisdiction, but the scope of the project is of a magnitude that precludes the completion, review, and adoption of the plans and regulations within the time limits established in section 116G.07, the board may grant an appropriate extension of time.

(b) If the board determines that a designated area or areas of critical concern is of a size and complexity that precludes the development of plans and regulations by a local unit of government or a regional development commission, or that the development of plans and regulations requires the assistance of the state, the board shall direct the appropriate state agency or agencies to assist

the local unit of government and the regional development commission in preparing the plans and regulations in accordance with a time schedule established by the board.

History: 1973 c 752 s 8; 1975 c 271 s 6

116G.09 FAILURE TO PREPARE AND SUBMIT PLANS AND REGULATIONS.

Subdivision 1. **Board to adopt plans and rules.** Except as otherwise provided in section 116G.08, if any local unit of government fails to prepare plans and regulations that are acceptable to the board within one year of the order designating an area or areas of critical concern within its jurisdiction, the board shall prepare and, after conducting a public hearing in the manner provided in chapter 14 at a location convenient to those persons affected by such plans and regulations, adopt such plans and rules applicable to that government's portion of the area of critical concern as may be necessary to effect the purposes of sections 116G.01 to 116G.14. If such plans and rules are adopted, they shall apply and be effective as if adopted by the local unit of government. Notice of any proposed order issued under this section shall be given to all units of government having jurisdiction over the area of critical concern.

Subd. 2. **Local ordinance.** Plans and rules adopted by the board under this section shall be administered by the local unit of government as if they were part of the local ordinance.

Subd. 3. **Subsequent submission.** At any time after the preparation and adoption of plans and rules by the board, a local unit of government may submit plans and regulations pursuant to section 116G.07 which, if approved by the board as therein provided, supersede any plans and rules adopted under this section.

Subd. 4. **Enforcement.** If the board determines that the administration of the local plans and regulations are inadequate to protect the state or regional interest, the board may institute appropriate judicial proceedings to compel proper enforcement of the plans and regulations.

History: 1973 c 752 s 9; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70

116G.10 UPDATING AND REEVALUATION OF PLANS AND REGULATIONS.

Subdivision 1. **Permissive resubmission.** If a local unit of government finds it necessary or desirable to amend or rescind plans and regulations that have been approved by the board, it shall resubmit its plans and regulations, together with any recommended changes thereto, for review and approval by the board.

Subd. 2. **Required resubmission.** Two years from the initial date of the board's approval of the plans and regulations of a local unit of government, or from the date of a review conducted under the provisions of subdivision 1, the local unit of government shall resubmit its plans and regulations, together with any recommended changes thereto, for review and approval by the board.

Subd. 3. **Manner of approval.** Approval of amendments or rescission shall become effective only upon approval thereof by the board in the same manner as for approval of the original plans and regulations as provided in section 116G.07.

History: 1973 c 752 s 10; 1975 c 271 s 6

116G.11 SUSPENSION OF DEVELOPMENT.

Except as provided in section 116G.12, upon the designation of an area of critical concern, no local unit of government or state agency shall grant a development permit affecting any portion of the area except as otherwise specified in the order designating the area.

History: 1973 c 752 s 11

116G.12 DEVELOPMENT PERMITS.

Subdivision 1. **Designation of area.** If an area of critical concern has been designated by the governor pursuant to section 116G.06, a local unit of government shall grant a development permit only in accordance with the provisions of this section.

Subd. 2. **Restrictions on granting permit.** If no plans and regulations for the area of critical concern have been adopted under the provisions of section 116G.07, the local unit of government shall grant a development permit only if

(a) the development is specifically permitted by the order designating the area of critical concern or is essential to protect the public health, safety, or welfare because of an existing emergency; and

(b) a local ordinance has been in effect immediately prior to the designation of the area of critical concern and a development permit would have been granted thereunder.

Subd. 3. **Restrictions on development.** If plans and regulations for an area of critical concern have become effective under the provisions of section 116G.07, the local unit of government shall permit development only in accordance with those plans and regulations.

Subd. 4. **Notification of board.** The local unit of government shall notify the board of

(a) any application for a development permit in any area of critical concern for which no plans or regulations have become effective under the provisions of section 116G.07; or

(b) any application for a special development permit in any area of critical concern for which plans and regulations have become effective under the provisions of section 116G.07.

History: 1973 c 752 s 12; 1975 c 271 s 6

116G.13 PROTECTION OF LANDOWNERS' RIGHTS.

Subdivision 1. **Generally.** Nothing in sections 116G.01 to 116G.14 authorizes any

governmental agency to adopt a rule or issue any order that is unduly restrictive or constitutes a taking of real or personal property in violation of the constitution of this state or of the United States.

Subd. 2. **No limitation of rights.** Neither the designation of an area of critical concern nor the adoption of any rules for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration and recordation of a subdivision pursuant to state laws, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued prior to the date of notice for public hearing as provided by section 116G.06. If a developer has by action in reliance on prior rules obtained vested or other legal rights that in law would have prevented a local government from changing those rules in a way adverse to the developer's interests, nothing in sections 116G.01 to 116G.14 authorizes any governmental agency to abridge those rights.

History: 1973 c 752 s 13; 1985 c 248 s 70; 1986 c 444

116G.14 PLANNING GRANTS.

The board shall prepare guidelines for disbursing funds to local units of government or regional development commissions for as much as 100 percent but not less than 50 percent of the nonfederal cost of preparing and adopting plans and rules for areas of critical concern pursuant to section 116G.07, for a period not to exceed five years from the date the legislature or regional development commissions approve the designation of an area of critical concern.

History: 1973 c 752 s 14; 1975 c 271 s 6; 1985 c 248 s 70

116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.

Subdivision 1. **Establishment; purpose.** 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.

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, stormwater, 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, stormwater 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;

(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; fees.** 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.

History: 1991 c 303 s 8; 1994 c 639 art 6 s 1; 1995 c 254 art 1 s 71; 2009 c 172 art 2 s 27

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.

History: 1994 c 639 art 6 s 2