

State of South Dakota

NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2018

381Z0047

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to provide for public recreational use of certain waters
2 overlying public and private property and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 The Legislature finds:

6 (1) The South Dakota Supreme Court, in *Parks v. Cooper*, 2004 SD 27 and *Duerre v.*
7 *Hepler*, 2017 SD 8, held that the Legislature has the obligation to determine the
8 extent of public use of water overlying private property for recreational purposes; and

9 (2) Because the State holds the waters in trust for the benefit of the public, the
10 Legislature must balance the interests of recreational users and the rights of private
11 property owners to provide a constitutionally sound and manageable basis for
12 establishing public recreational use of water overlying private property in accordance
13 with this Act.

14 Section 2. That the code be amended by adding a NEW SECTION to read:

15 Terms used in this Act mean:

16 (1) "Department," the Department of Game, Fish and Parks;



- 1 (2) "Meandered lake," any natural water body, except a river or stream, for which a
2 meander line survey was included as part of the official survey conducted by the
3 United States surveyor general for the land on which the lake is situated and the
4 meander lines are shown on plats made by the United States General Land Office;
- 5 (3) "Nonmeandered lake," any natural lake that is not a meandered lake;
- 6 (4) "Recreational use," use for one or more of the following activities, except as
7 otherwise limited by law: hunting, fishing, swimming, floating, boating, trapping,
8 off-road driving, water sports, or snowmobiling.

9 Section 3. That the code be amended by adding a NEW SECTION to read:

10 The bed of each meandered lake within the lake's ordinary high water mark and water of
11 each meandered lake is open to recreational use.

12 Section 4. That the code be amended by adding a NEW SECTION to read:

13 The department, on behalf of and in the name of the state, may negotiate with each
14 landowner to lease recreational use of all or any portion of any nonmeandered lake overlying
15 private property. Any agreement reached pursuant to this section does not constitute appealable
16 final action of the department.

17 Section 5. That the code be amended by adding a NEW SECTION to read:

18 Any nonmeandered lake overlying private property is open to recreational use without
19 permission of any owner of the private property underlying the nonmeandered lake unless the
20 owner of the private property identifies the area of the nonmeandered lake that is not open to
21 public recreational use without permission or agreement as provided under this Act. The
22 Department shall install conspicuous markers, which may consist of signs or buoys, to identify



1 the marked area. All expenses incurred pursuant to this section shall be the responsibility of the
2 department. The department shall, within a reasonable time frame, identify the marked area and
3 applicable restrictions in any map, guide, mobile application, or website maintained by the state
4 to assist the public in identifying each public hunting or fishing area.

5 Section 6. That the code be amended by adding a NEW SECTION to read:

6 Notwithstanding the provisions of this Act, any nonmeandered lake listed in section 8 of this
7 Act is declared open for recreational use, based on the following conditions occurring prior to
8 January 1, 2017:

- 9 (1) The open, obvious, and continuous recreational use by the public for a significant
10 period; and
- 11 (2) The expenditure of public funds for the construction of one or more boat ramps.

12 Section 7. That the code be amended by adding a NEW SECTION to read:

13 The following nonmeandered lakes are declared open for recreational use pursuant to
14 section 7 of this Act:

- 15 (1) Highway 81 East in Brookings County;
- 16 (2) Casey's Slough, Cottonwood GPA, Dry #1, Dry #2, Round, and Swan in Clark
17 County;
- 18 (3) Deep and Goose in Codington County;
- 19 (4) East Krause, Lynn, Middle Lynn, and Reetz in Day County;
- 20 (5) North Scatterwood in Edmunds County;
- 21 (6) Three Buck in Hamlin County;
- 22 (7) Highway 81 West in Kingsbury County;



- 1 (8) Bullhead, Cattail-Kettle, and Opitz in Marshall County;
- 2 (9) Island South in McCook County;
- 3 (10) Keisz in McPherson County;
- 4 (11) Grass, Loss, Scott, and Twin in Minnehaha County;
- 5 (12) Twin in Sanborn County;
- 6 (13) Cottonwood and Mud in Spink County;
- 7 (14) Cottonwood in Sully County; and
- 8 (15) Dog Ear in Tripp County, South Dakota.

9 Section 8. That the code be amended by adding a NEW SECTION to read:

10 Any owner of private property underlying any nonmeandered lake listed in section 8 of this
11 Act may petition the board of county commissioners to allow the owner of private property to
12 restrict recreational use of the water overlying the owner's private property. The board shall
13 determine whether to grant, deny, or modify the petition. The board shall consider the privacy,
14 safety, and substantially affected financial interests of the owner of the private property
15 underlying the water, as well as history of use, water quality, water quantity, and the public's
16 interest in recreational use of the water.

17 Section 9. That the code be amended by adding a NEW SECTION to read:

18 No lease or license entered into pursuant to section 4 of this Act may be for a term
19 exceeding ten years or be less than the property tax on the private property to be leased.

20 Section 10. That the code be amended by adding a NEW SECTION to read:

21 Any owner of private property underlying a meandered or nonmeandered lake is exempt
22 from any liability, and may not carry liability insurance on any private property underlying any



1 meandered or nonmeandered lake. The department shall assume all liability for land underlying
2 a meandered or nonmeandered lake.

3 Section 11. That the code be amended by adding a NEW SECTION to read:

4 Access to any nonmeandered lake for recreational use may only be by public roadway,
5 public right-of-way, or other lawful means. Nothing in this Act creates a right of ingress or
6 egress on private property to access a nonmeandered lake. No public roadway, public right-of-
7 way, or other lawful means shall be closed to any person or government entity.

8 Section 12. That the code be amended by adding a NEW SECTION to read:

9 No person may walk, wade, stand, or operate a motor vehicle on the bed of a nonmeandered
10 lake without permission from the landowner or any other person legally in possession of the
11 privately owned property underlying the waters of that portion of the nonmeandered lake.
12 Trapping or hunting on the frozen surface above private land, without permission from the
13 landowner or any other person legally in possession of the privately owned property underlying
14 the waters of that portion of the nonmeandered lake. A person may walk, wade, or stand on a
15 public lands, public roadway or public right-of-way if the road is submerged under a
16 nonmeandered lake.

17 Section 13. That the code be amended by adding a NEW SECTION to read:

18 Any person may petition the board of county commissioners to open a portion of the waters
19 or ice of a nonmeandered lake marked pursuant to section 6 of this Act for the limited purpose
20 of transportation to a portion of the nonmeandered lake that is open for recreational use under
21 the following conditions:

22 (1) The marked portion of the nonmeandered lake is directly between a point of legal



1 public access and a portion of the nonmeandered lake open for recreational use; and
2 (2) There is no alternative legal public access or improved legal public access to the
3 portion of the nonmeandered lake open for recreational use.

4 Section 14. That the code be amended by adding a NEW SECTION to read:

5 The board of county commissioners shall set the size and location of the area of the marked
6 portion of a nonmeandered lake opened for transportation pursuant to section 16 of this Act and
7 set reasonable speed, wake, and other limitations to protect the privacy, safety, and substantially
8 affected financial interests of the owner of private property underlying the marked portion of
9 the nonmeandered lake.

10 Section 15. That the code be amended by adding a NEW SECTION to read:

11 Any person who enters or remains upon private property or waters overlying private property
12 in violation of this Act is guilty of a criminal trespass in accordance with the applicable
13 provisions of chapters 41-9 and 22-35, except for unarmed retrieval of lawfully taken small
14 game as authorized in § 41-9-8 and subject to the affirmative defenses set forth in § 22-35-7.
15 However, any contact between recreational equipment and private property underlying any
16 nonmeandered lake that is incidental to a lawful recreational use is not a criminal trespass.

17 Section 16. Whereas, this Act is necessary for the support of the state government and
18 its existing public institutions, an emergency is hereby declared to exist, and this Act shall be
19 in full force and effect from and after its passage and approval.

