

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT
NINETY-SECOND SPECIAL SESSION
LEGISLATIVE ASSEMBLY 2017s

HOUSE BILL NO. 1001

**AN ACT TO PROVIDE FOR PUBLIC RECREATIONAL USE OF CERTAIN WATERS
OVERLYING PUBLIC AND PRIVATE PROPERTY AND TO DECLARE AN
EMERGENCY.**

A prison/jail population cost estimate statement is required for HB 1001 because section 6 the bill creates a new Class 1 misdemeanor for a landowner accepting compensation in exchange for permission to fish nonmeandered water the landowner has closed to the public. The bill also adds to the existing misdemeanor crime of criminal trespass in section 18.

In order to analyze how the new crime in section 6 would affect prison or jail populations, the LRC looked to other statutes in the code where it was a crime to wrongly accept compensation in exchange for services. There were no convictions under these statutes in the last six years, leading the LRC to conclude the penalty created by this Act is an administrative misdemeanor. Its purpose is to enforce compliance with the provisions to which it adheres. This offense is not likely to be criminally prosecuted. When this offense is prosecuted, it will not likely result in a jail sentence. Hence, the impact on jail populations is negligible. And the impact on prison populations is zero.

To analyze the impact of the new trespass charges in section 18, the LRC looked specifically to SDCL 41-9-1 which is a Class 2 misdemeanor for any person caught fishing, hunting, or trapping on private land without the landowner's permission. There is an average six convictions, statewide, per year under SDCL 41-9-1, with an average jail sentence of 2.33 days in jail. Because the circumstances that could lead to a trespass charge under HB 1001 are more narrow than the circumstances that could lead to a charge under SDCL 41-9-1, the LRC took the populations of the counties most affected by nonmeandered waters and compared the populations of those counties to the population of the state. The populations of the counties where the Department of Game, Fish and Parks has restricted access to boat ramps is 246,423, which is 28.88% of the total population of South Dakota. When this is multiplied by the average convictions under SDCL 41-9-1, it means South Dakota could expect two new convictions a year under HB 1001.

Two new convictions with an average sentence of 2.33 days in jail, at a cost of \$105.40 a day would result in a jail impact of \$246 per year or, \$2,456 over ten years. There is no impact on prison populations.

Approved: /s/ Jason Hancock Date: 6/12/2017
Director, Legislative Research Council
