

State of South Dakota

NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2018

813Z0053

SENATE 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;

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 the
11 private property owners to provide a constitutionality sound and manageable basis
12 for establishing public recreational use of water overlying private property in
13 accordance with this Act; and

14 (3) The Legislature finds that recreation is a beneficial use of water held in the public
15 trust.

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



1 Terms used in this Act mean:

2 (1) "Commission," the Game, Fish and Parks Commission;

3 (2) "Department," the Department of Game, Fish and Parks;

4 (2) "Meandered lake," any natural water body, except a river or stream, for which a
5 meander line survey was included as part of the official survey conducted by the
6 United States surveyor general for the land on which the lake is situated and the
7 meander lines are shown on plats made by the United States General Land Office;

8 (3) "Nonmeandered lake," any natural lake that is not a meandered lake;

9 (4) "Recreational use," any activity performed for the purposes of exercise, education,
10 relaxation, or pleasure.

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

12 The commission shall promulgate rules, pursuant to chapter 1-26, to establish a process
13 whereby an owner of private property underlying any nonmeandered lake may petition the
14 commission to allow the owner of private property to restrict recreational use of the water
15 overlying the owner's private property. The commission pursuant to chapter 1-26 shall
16 determine whether to grant, deny, or modify the petition. The commission shall consider the
17 privacy, safety, and substantially affected financial interests of the owner of the private property
18 underlying the water, as well as history of use, water quality, water quantity, and the public's
19 interest in recreational use of the water.

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

21 The liability of any owner of private property underlying a meandered or nonmeandered lake
22 is limited as provided in §§ 20-9-12 to 20-9-18, inclusive.

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

24 Access to any nonmeandered lake for recreational use may only be by public roadway,

1 public right-of-way, or other lawful means. Nothing in this Act creates a right of ingress or
2 egress on private property to access a nonmeandered lake

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

4 No person may walk, wade, stand, or operate a motor vehicle on the bed of a nonmeandered
5 lake, or trap or hunt on the frozen surface above private land, without permission from the
6 landowner or any other person legally in possession of the privately owned property underlying
7 the waters of that portion of the nonmeandered lake.

8 Section 7. That § 41-2-18 be amended to read:

9 41-2-18. The Game, Fish and Parks Commission may adopt such rules as may be necessary
10 to implement the provisions of chapters 41-1 to 41-15, inclusive. The rules may be adopted to
11 regulate:

- 12 (1) The conservation, protection, importation, and propagation of wild animals and fish
13 except for any nondomestic animal ~~which~~ that is regulated pursuant to § 40-3-26;
- 14 (2) The hunting, taking, killing, possession, sale, and transportation of all wild birds,
15 wild animals, and wild fish except for any nondomestic animal which is regulated
16 pursuant to § 40-3-26;
- 17 (3) The management of nongame, endangered, or threatened wildlife to ensure their
18 perpetuation as viable components of the ecosystem;
- 19 (4) The management, control of traffic, improvement and public use of all lands and
20 water owned, leased, or controlled by the state and Department of Game, Fish and
21 Parks designated as public shooting areas, game production areas, wildlife refuges,
22 lake and fishing access use areas and controlled hunting areas;
- 23 (5) The management, use, and improvement of all meandered and nonmeandered lakes,
24 sloughs, marshes, and streams extending to and over dry or partially dry meandered

- 1 lakes, sloughs, marshes, and streams, including all lands to which the state has
2 acquired any right, title or interest for the purpose of water conservation or
3 recreation;
- 4 (6) The creation, modification, or vacation of state game refuges, state waterfowl
5 refuges, and state game bird refuges on all public land and on private land with the
6 written consent of the landowner;
- 7 (7) The management and improvement of all islands or accumulations of land formed
8 in the bed of a navigable stream or meandered lake on the Missouri River below the
9 Fort Randall Power Plant and Lake Francis Case;
- 10 (8) The appointment, management, bonding, and cancellation of licensing agents;
- 11 (9) The gathering, purchasing, distributing, and transferring of all wild animals and fish
12 for population management, stocking purposes, scientific study, and
13 intergovernmental trades;
- 14 (10) The form of and the manner and placement of any tags, coupons, or permits
15 necessary for the transportation of any wild animal or fish;
- 16 (11) The sale, breeding, raising, and transportation of any nondomestic animal ~~which~~ that
17 is not regulated pursuant to § 40-3-26;
- 18 (12) The form, procedures for, and content of all license applications authorized under this
19 title;
- 20 (13) The form, procedures for, fee, and manner of validation, replacement, or cancellation
21 of all licenses authorized under this title that are not already established by statute;
- 22 (14) The devices, weapons, ammunition, traps, tackle, bait, lures, and equipment which
23 may be used to hunt, kill, capture, or locate any wild animal or fish if use of the
24 above items would adversely affect the health, safety, or welfare of people or wildlife

- 1 resources;
- 2 (15) The hunting, fishing, and trapping in the boundary waters of this state;
- 3 (16) The release, hunting, and taking of animals and birds on private shooting preserves;
- 4 (17) The establishment of, and the opening, closing, modifying, or curtailing of hunting,
5 fishing, and trapping seasons, if the seasons are not established by statute;
- 6 (18) The setting of fees for special licenses not covered by statute to manage specific and
7 limited wildlife populations;
- 8 (19) The number of persons who may cooperate as a group in the pursuit, hunting, taking,
9 or killing of game birds or game animals;
- 10 (20) The acquisition, possession, use, and disposition of raptors;
- 11 (21) The acquisition, possession, transportation, sale, and release of bait fish and frogs;
- 12 (22) The regulation of, and the acquisition, possession, transportation, sale, and release
13 of fish, from private fish hatcheries;
- 14 (23) The regulation of fish houses or other sheltering structures maintained upon the ice
15 of any public waters;
- 16 (24) The issuance and cancellation of taxidermist licenses and the acquisition, possession,
17 and disposition of specimens for taxidermy purposes; and
- 18 (25) The operation of controlled hunting areas.

19 The rules shall be adopted pursuant to chapter 1-26 and shall be in accordance with the
20 provisions of this chapter.

21 A violation of the substantive provision of any rule authorized by this section is a Class 2
22 misdemeanor. If the same incident is a violation of statute and of the rules authorized by this
23 section only the penalty authorized for the violation of the statute may be imposed.

24 Section 8. Whereas, this Act is necessary for the support of the state government and its

- 1 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
- 2 full force and effect from and after its passage and approval