



2021 South Dakota Legislature

Senate Bill 76

Introduced by: **Senator Schoenbeck**

1 **An Act to revise provisions regarding public access to certain meandered bodies of**
 2 **water.**

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

4 **Section 1.** That § 43-17-30 be AMENDED.

5 **43-17-30. Powers of Department of Game, Fish and Parks.**

6 Nothing in §§ 43-17-2, 43-17-20, 43-17-21, and 43-17-27 to 43-17-29, inclusive,
 7 diminishes any power of the Department of Game, Fish and Parks to administer, control,
 8 or otherwise regulate any lands or interest in lands within its jurisdiction. The secretary of
 9 the department may close a portion of a meandered body of water to public use for a
 10 period of up to two years to protect the privacy, safety, or substantially affected
 11 agricultural financial interests of an owner of private property adjacent to a meandered
 12 body of water. The restriction on public use must be narrowly tailored to serve the owner's
 13 interests. The decision of the secretary may be renewed as many times as the secretary
 14 determines to be appropriate. A party may petition the Game, Fish and Parks Commission
 15 to review a decision of the secretary to close a portion of a meandered body of water. The
 16 commission may affirm, modify, or reverse the decision of the secretary. A decision not
 17 to close a portion of a meandered body of water is not subject to review. No decision of
 18 the secretary or the commission made pursuant to this section is quasi-judicial.

19 **Section 2.** That § 43-17-29 be AMENDED.

20 **43-17-29. Public rights in lake above high water mark.**

21 If any water level rises above the ordinary high water mark of a ~~navigable~~
 22 meandered lake, the right of the public to enjoyment of the entire lake may not be limited,
 23 except that access to the lake shall be by public right-of-way or by permission of the
 24 riparian landowner and is subject to ~~§§~~ § 43-17-2, 43-17-31, 43-17-32, and 43-17-33.

1 **Section 3.** That § 43-17-2 be AMENDED.

2 **43-17-2. Upland owner taking to edge of navigable lake or stream at**
3 **low-water mark--Exception--Navigable rivers and lakes as public highways.**

4 Unless the grant under which the land is held indicates a different intent, the owner
5 of the upland, if it borders upon a navigable lake or stream, takes to the edge of the lake
6 or stream at low water mark. All navigable rivers and meandered lakes are public highways
7 within fifty feet landward from the water's nearest edge, provided that the outer boundary
8 of such public highway may not expand beyond the ordinary high water mark and may
9 not contract within the ordinary low water mark, and subject to ~~§§~~ § 43-17-29, ~~43-17-~~
10 ~~31, 43-17-32, and 43-17-33.~~

11 **Section 4.** That § 43-17-31 be REPEALED.

12 **43-17-31. Landowner's right to deny public access to taxable property--**
13 **Department to clearly mark certain inundated property--Exception.**

14 **Section 5.** That § 43-17-32 be REPEALED.

15 **43-17-32. Landowner's right to deny state agency use of taxable property--**
16 **Conditions for public access--Exceptions.**

17 **Section 6.** That § 43-17-33 be REPEALED.

18 **43-17-33. Public access to private lands pursuant to § 43-17-32--**
19 **Identification of affected property by state agency.**