



2022 South Dakota Legislature

Senate Bill 126

Introduced by: **Senator Herman Otten**

1 **An Act to require closure of litigation over the recreational use of nonmeandered**
 2 **waters.**

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

4 **Section 1. That § 41-23-1 be AMENDED:**

5 **41-23-1.** The Legislature finds that:

- 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
 9 purposes; ~~and~~
- 10 (2) ~~Because~~ On February 25, 2004, the South Dakota Supreme Court remanded *Parks*
 11 *v. Cooper*, but left intact an injunction issued by the Circuit Court, Fifth Judicial
 12 Circuit, until such time as the Circuit Court has the opportunity to consider the
 13 positions of the parties, the state agencies, and the public, and grant such relief as
 14 it deems appropriate;
- 15 (3) ~~On March 15, 2017, the South Dakota Supreme Court remanded *Duerre v. Hepler*~~
 16 ~~and directed that the Circuit Court, Fifth Judicial Circuit, modify its injunction so as~~
 17 ~~to prohibit the Department of Game, Fish and Parks from facilitating access for~~
 18 ~~members of the public to enter or use the bodies of water or ice on the plaintiff's~~
 19 ~~private property for any recreational purpose, including hunting and fishing, in the~~
 20 ~~absence of authorization from the Legislature;~~
- 21 (4) ~~On June 12, 2017, by enacting this chapter, there was affirmation and~~
 22 ~~acknowledgment that the state holds the waters in trust for the benefit of the~~
 23 ~~public, the Legislature must balance and that there now exists an appropriate~~
 24 ~~balancing of the interests of recreational users and the rights of private property~~
 25 ~~owners to provide a constitutionally sound and manageable basis for establishing~~

1 public with respect to the recreational use of water overlying private property in
2 accordance with this chapter; and

3 (5) Despite the Legislature having enacted the statutory authorization referenced in
4 this section, neither the injunction issued by the Circuit Court, Fifth Judicial District,
5 and left intact by the South Dakota Supreme Court in the Parks case, nor the
6 injunction remanded by the South Dakota Supreme Court for modification in the
7 Duerre case, has been lifted or dissolved.

8 **Section 2.** The Department of Game, Fish and Parks shall seek an order from the Circuit
9 Court, Fifth Judicial District, lifting or dissolving any injunctions remaining in the case of *Parks*
10 *v. Cooper* and *Duerre v. Hepler*, and shall provide a report to the Executive Board of the
11 Legislative Research Council, quarterly, beginning September 1, 2022, regarding the
12 department's efforts to comply with this section.

13 **Section 3. That § 41-23-19 be REPEALED:**

14 ~~Before June 2, 2019, but after April 1, 2019, the department shall deliver a report~~
15 ~~to the Executive Board of the Legislative Research Council which includes the following:~~

16 ~~(1) An estimate of the number of acres of nonmeandered lakes open for public~~
17 ~~recreation and the number of acres of nonmeandered lakes marked pursuant to~~
18 ~~§ 41-23-5;~~

19 ~~(2) For the agreements contemplated pursuant to § 41-23-3, a statistical summary~~
20 ~~relative to:~~

21 ~~(a) Agreements reached with landowners;~~

22 ~~(b) Negotiations in progress;~~

23 ~~(c) Failed negotiations;~~

24 ~~(d) Number of inquiries from landowners to commence negotiations;~~

25 ~~(3) An analysis of the agreements pursuant to § 41-23-3 compared to voluntary walk~~
26 ~~in access programs for landowners;~~

27 ~~(4) A listing of transportation lanes set pursuant to § 41-23-17; and~~

28 ~~(5) A summary of complaints, prosecutions, convictions, or other resolution of~~
29 ~~violations on nonmeandered waters pursuant to §§ 41-23-6 and 41-23-18.~~

30 ~~Following receipt and public dissemination of the report, the executive board or a~~
31 ~~designated committee of the executive board shall hold one or more public hearings, which~~
32 ~~shall occur before September 3, 2019, to discuss the report and solicit input from~~
33 ~~landowners, recreational users, and the general public.~~