
HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY REGARDING STATE STATUTES THAT MAY BE ENHANCED OR STRENGTHENED TO PROTECT WATERS IN THE STATE IF THE FEDERAL CLEAN WATER RULE IS REVISED TO BE LESS STRINGENT OR IS RESCINDED.

1 WHEREAS, the Clean Water Act provides the federal
2 government with broad authority to limit pollution in major
3 bodies of water that are considered waters of the United States;
4 and

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6 WHEREAS, the definition of "waters of the United States"
7 and the scope of federal regulatory jurisdiction applicable to
8 those waters have long been disputed; and

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10 WHEREAS, the disputes have centered largely on whether
11 "waters of the United States" include only navigable bodies of
12 water or also include certain types of swamps, wetlands, and
13 non-navigable lakes, streams, and tributaries; and

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15 WHEREAS, the United States Supreme Court, in deciding
16 *Rapanos v. United States* in 2006, split on how to define the
17 federal government's jurisdiction over certain bodies of water
18 under the federal Clean Water Act; and

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20 WHEREAS, the United States Environmental Protection Agency
21 (EPA) and the United States Army Corps of Engineers (USACE) in
22 2015 issued the federal Clean Water Rule, which defined the
23 waters of the United States to include those waters that have a
24 "significant nexus" to navigable rivers and the sea to qualify
25 as protected under the federal Clean Water Act; and

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27 WHEREAS, industries opposed to the revised federal Clean
28 Water Rule, and thirty-one states, have filed legal challenges



1 to the rule, and the United States Supreme Court has agreed to
2 resolve whether federal appellate or district courts have
3 jurisdiction to review the rule; and
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5 WHEREAS, President Trump has issued an executive order
6 directing the EPA and USACE to review the federal Clean Water
7 Rule and publish for notice and comment a proposed rule
8 rescinding or revising the rule; and
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10 WHEREAS, the executive order directed the EPA and USACE to
11 consider interpreting the Clean Water Act to apply strictly to
12 navigable waters, and to non-navigable waters only if those
13 waters are relatively permanent, standing, or flowing bodies of
14 water such as streams, rivers, lakes, and bodies of water
15 forming geographic features; and
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17 WHEREAS, rescinding or revising the federal Clean Water
18 Rule is expected to take several years to complete and would
19 require compliance with the Administrative Procedures Act, which
20 necessitates public notice and comment periods; and
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22 WHEREAS, changes to the federal Clean Water Rule could
23 impact waters in the State and their regulation under federal
24 and state laws; and
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26 WHEREAS, it may become necessary to amend state laws to
27 further protect waters in the State if the federal Clean Water
28 Rule is amended or rescinded; now, therefore,
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30 BE IT RESOLVED by the House of Representatives of the
31 Twenty-ninth Legislature of the State of Hawaii, Regular Session
32 of 2017, the Senate concurring, that the Legislative Reference
33 Bureau is requested to review state statutes that rely on, or
34 are applied in conjunction with, the Clean Water Act; and
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36 BE IT FURTHER RESOLVED that the Legislative Reference
37 Bureau is requested to consider how state statutes may be
38 amended to protect waters in the State if the federal Clean
39 Water Rule is amended to be less stringent than the current rule
40 or is rescinded; and
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H.C.R. NO. 102

1 BE IT FURTHER RESOLVED that the Department of Health assist
2 the Legislative Reference Bureau as may be necessary with regard
3 to environmental protection laws and rules under its
4 jurisdiction; and

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6 BE IT FURTHER RESOLVED that the Legislative Reference
7 Bureau is requested to submit a report, including any findings
8 and recommendations, and proposed legislation if any, to the
9 Legislature no later than twenty days prior to the convening of
10 the 2018 Regular Session; and

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12 BE IT FURTHER RESOLVED that certified copies of this
13 Concurrent Resolution be transmitted to the Director of the
14 Legislative Reference Bureau and the Director of Health.

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OFFERED BY: *Guthrie Yickel*
MAR 09 2017