

JAN 19 2024

A BILL FOR AN ACT

RELATING TO WATER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that protection of the
2 State's natural resources, including state waters, is critical
3 to ensure a clean environment. On May 25, 2023, the Supreme
4 Court of the United States limited the jurisdiction of the Clean
5 Water Act, title 33 United States Code section 1251, et seq. in
6 *Sackett v. Environmental Protection Agency*, 598 US (2023).
7 The Supreme Court limited the federal definition of "navigable
8 waters" to exclude wetlands that lack a "continuous surface
9 connection" with other navigable waters. The limited scope of
10 "navigable waters" created a gap in protections for many
11 wetlands throughout the country, leaving critical natural
12 resources vulnerable to harmful pollutants.

13 The legislature further finds that the department of health
14 has broad regulatory authority to control and enforce water
15 quality standards statewide. The department of health utilizes
16 the issuance of federally authorized permits and certificates to
17 control the quality of state waters and protect areas from



1 hazardous waste and pollution. While existing law authorizes
2 the department of health to issue permits and variances,
3 additional clarity and regulation is necessary to ensure the
4 protection of state waters.

5 Accordingly, the purpose of this Act is to:

- 6 (1) Define "isolated wetland" and "wetland";
- 7 (2) Clarify the scope of "state waters" to include
8 wetlands and isolated wetlands;
- 9 (3) Require the director of health to determine whether
10 wetlands in the State are isolated wetlands or waters
11 of the United States; and
- 12 (4) Prohibit persons from discharging any water pollutant
13 into or at any location that enters state waters.

14 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By adding two new definitions to be appropriately
17 inserted and to read:

18 "Isolated wetland" means a wetland that is not included in
19 navigable waters of the United States as defined in title 33
20 United States Code section 1362(7).



1 "Wetland" means an area that is inundated or saturated by
2 surface or ground water at a frequency and duration sufficient
3 to support, and that under normal circumstances, does support a
4 prevalence of vegetation typically adapted for life in saturated
5 soil conditions. Wetlands include but are not limited to:

- 6 (1) Swamps;
- 7 (2) Marshes;
- 8 (3) Bogs;
- 9 (4) Fens; and
- 10 (5) Other similar areas."

11 2. By amending the definition of "state waters" to read:
12 ""State waters" means all waters, fresh, brackish, or salt,
13 around and within the State, including but not limited to
14 coastal waters, wetlands, streams, rivers, drainage ditches,
15 ponds, reservoirs, wetlands including but not limited to
16 isolated wetlands, canals, ground waters, and lakes; provided
17 that drainage ditches, ponds, and reservoirs required as a part
18 of a water pollution control system are excluded. "State
19 waters" also includes all waters that are within the scope of
20 navigable waters of the United States as defined in title 33
21 United States Code section 1362(7)."

1 SECTION 3. Section 342D-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§342D-4 Duties; rules. (a) In addition to any other
4 power or duty prescribed by law and in this chapter, the
5 director shall prevent, control, and abate water pollution in
6 the State and may control all management practices for domestic
7 sewage, sewage sludge, and recycled water, whether or not the
8 practices cause water pollution. In the discharge of this duty,
9 the director may adopt rules pursuant to chapter 91 necessary
10 for the purposes of this chapter. Any person heard at the
11 public hearing shall be given written notice of the action taken
12 by the department with respect to the rules.

13 (b) In furtherance of these duties and powers, the
14 director shall delineate all wetlands within the State.
15 Delineations shall include a determination whether a wetland is
16 an isolated wetland or is included in waters of the United
17 States."

18 SECTION 4. Section 342D-50, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) No person, including any public body, shall discharge
21 into any state waters or into or at any location that may cause



1 or allow any water pollutant to enter into state waters, [~~or~~
2 ~~cause or allow any water pollutant to enter state waters~~] except
3 in compliance with this chapter, rules adopted pursuant to this
4 chapter, or a permit, water quality certification, or variance
5 issued by the director."

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.

9

INTRODUCED BY: *Karl Rhoad*



S.B. NO. 2390

Report Title:

Department of Health; Wetlands; Isolated Wetlands; State Waters;
Water Pollution

Description:

Defines "isolated wetlands" and "wetlands". Clarifies the definition of "state waters" to include wetlands and isolated wetlands. Requires the Director of Health to determine all wetlands in the State, including whether a wetland is an isolated wetland or is included in the waters of the United States. Prohibit persons from discharging any water pollutant into or at any location that enters state waters.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

