

2024 Regular Session

SENATE CONCURRENT RESOLUTION NO. 64

BY SENATOR FESI

WATER/WATERWAYS. Requests the Dept. of Energy and Natural Resources to take certain actions in light of Court's decision on "waters of the United States".

1                                   A CONCURRENT RESOLUTION

2       To urge and request the Department of Energy and Natural Resources to take certain actions

3                   in light of the United States Supreme Court's decision on "waters of the United

4                   States".

5                   WHEREAS, the Department of Energy and Natural Resources, and specifically its

6       office of coastal management, administers issues relating to the deposit of dredged or fill

7       materials into wetlands, in cooperation with other state and federal agencies; and

8                   WHEREAS, the Clean Water Act, the principal federal law regulating pollution in

9       the "waters of the United States", has been applied to include regulation of such activities

10      as the discharge of dredged or fill materials into certain wetlands; and

11                  WHEREAS, the meaning of "waters of the United States", particularly with regard

12      to wetlands, has been the subject of much controversy and litigation; and

13                  WHEREAS, the United States Supreme Court in *Michael Sackett, et ux. v.*

14      *Environmental Protection Agency, et al.*, 585 U.S. 651 (2023) ("Sackett"), authoritatively

15      clarified the meaning of "waters of the United States" as that term applies to wetlands; and

16                  WHEREAS, Sackett reasoned that the Clean Water Act's use of "waters"

17      encompasses only those relatively permanent, standing or continuously flowing bodies of

18      water forming geographical features that are described in ordinary parlance as streams,

1 oceans, rivers, and lakes; and

2 WHEREAS, Sackett further concluded that the Clean Water Act covers wetlands  
3 only when they have a continuous surface connection to bodies that are "waters of the United  
4 States" in their own right; and

5 WHEREAS, Sackett rejected agency rules treating "adjacent wetlands" as being  
6 covered by the Clean Water Act if they possess a significant nexus to traditional navigable  
7 waters, and treating wetlands as adjacent when they neighbor covered waters, even if  
8 separated from those waters by dry land; and

9 WHEREAS, the Clean Water Act expressly protects the primary responsibilities and  
10 rights of states to prevent, reduce, and eliminate pollution and to plan the development and  
11 use of land and water resources; and

12 WHEREAS, it is well known that Louisiana faces a devastating land loss crisis and  
13 loses many wetlands for reasons other than the deposit of dredged or fill materials into  
14 wetlands, requiring a coordinated program of coastal restoration and protection that is  
15 essential to the survival of many communities; and

16 WHEREAS, the excessive regulation of the deposit of dredged or fill material  
17 impedes and imposes undue costs and delays upon the development of communities, flood  
18 protection of those communities, and restoration of ecosystems.

19 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby  
20 urge and request the Department of Energy and Natural Resources, and in particular its  
21 office of coastal management, or such other appropriate agency if the department may be  
22 reorganized, to perform the following:

23 (1) Conduct a thorough review of the majority opinion of the United States Supreme  
24 Court in Sackett and all Louisiana laws, regulations, and processes affecting the deposit of  
25 dredged or fill materials into wetlands, and related permit and mitigation requirements.

26 (2) Suspend the enforcement of Louisiana regulations and laws as necessary to  
27 eliminate the enforcement of restrictions and related permit and mitigation requirements  
28 applicable to the deposit of dredged or fill materials into wetlands that Sackett provides are  
29 not "waters of the United States" under the Clean Water Act.

30 (3) Revise Louisiana regulations in compliance with the Administrative Procedure

1 Act, and propose appropriate changes to laws, to eliminate restrictions and related permit  
2 and mitigation requirements applicable to the deposit of dredged or fill materials into  
3 wetlands that Sackett provides are not "waters of the United States" under the Clean Water  
4 Act.

5 (4) Adopt a broad and clear definition of "fastlands" that are exempt from regulation  
6 or the requirement of a permit or mitigation for the deposit of dredged or fill material.

7 (5) Provide a report to the Senate Committee on Natural Resources and the House  
8 Committee on Natural Resources and Environment on or before October 31, 2024, and  
9 annually by October 31 of each subsequent year until 2028, detailing its actions in response  
10 to this Resolution.

11 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
12 secretary of the Louisiana Department of Energy and Natural Resources.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Jacob Wilson.

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DIGEST

SCR 64 Original

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