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# A BILL FOR AN ACT

RELATING TO CESSPOOLS.

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

1 PART I

2 SECTION 1. The legislature finds that there are  
3 approximately eighty-three thousand cesspools across the State,  
4 with 48,596 on Hawaii island, fourteen thousand three hundred on  
5 Kauai, eleven thousand thirty-eight on Maui, 7,491 on Oahu, and  
6 one thousand four hundred on Molokai. Pursuant to Act 125,  
7 Session Laws of Hawaii 2017, every cesspool in the State,  
8 excluding cesspools granted exemptions by the director of  
9 health, must be upgraded or converted to a director of health-  
10 approved wastewater system or connected to a sewerage system by  
11 January 1, 2050.

12 Additionally, the legislature also finds that because many  
13 cesspools will need to be converted each year, planning and  
14 coordination need to occur between state and county agencies,  
15 communities and residents affected, and those involved in the  
16 replacement of cesspools to ensure an adequate supply of



1 materials, workers, and equipment as demand to convert  
2 increases.

3       The legislature further finds that the counties are  
4 responsible for wastewater management and are in the best  
5 position to identify priority neighborhoods that are conducive  
6 to connection to an existing or proposed wastewater treatment  
7 system; conduct necessary public outreach to communicate to  
8 affected residents; conduct appropriate feasibility studies;  
9 plan, design, and construct wastewater connections and  
10 improvements; and implement user connection and monthly billing  
11 fees.

12       As such, the legislature finds that creating a pilot  
13 program that provides upfront planning funds might encourage the  
14 counties to identify the most feasible neighborhoods to connect  
15 to an existing or future wastewater treatment plant, engage  
16 communities in the discussion, conduct preliminary engineering,  
17 and estimate upfront and ongoing costs. A successful pilot  
18 program could provide the necessary data and plans to assist the  
19 counties to implement wastewater connections and scale future  
20 programs to ensure cesspools are converted by 2050.

21       Therefore, the purpose of this part is to:



- 1           (1) Establish a pilot program within the environmental  
2           management division of the department of health to  
3           work with each county to identify a priority area to  
4           expand the county sewage system or other centralized  
5           treatment system to connect individual properties in  
6           the priority area and reduce or eliminate cesspools in  
7           the identified area; and
- 8           (2) Appropriate funds to the department of health to  
9           provide planning grants to each county for a pilot  
10          cesspool conversion project.

11          SECTION 2. (a) There is established a county cesspool  
12 conversion pilot program within the environmental management  
13 division of the department of health to work with the four  
14 counties to:

- 15          (1) Identify a priority area in each county in which a  
16          pilot project could be implemented to expand the  
17          county sewage system or other centralized treatment  
18          system to connect individual properties in the  
19          priority area and reduce or eliminate cesspools in the  
20          identified area;



- 1           (2) Meet with appropriate community stakeholders and  
2           homeowners to gather input regarding plans for the  
3           pilot project;
- 4           (3) Conduct planning and design;
- 5           (4) Estimate capital and ongoing maintenance costs; and
- 6           (5) Equitably allocate the funds available to each county  
7           to carry out the pilot project.
- 8           (b) Each county shall submit a report on the progress made  
9           on priority areas to convert or upgrade cesspools to a director  
10          of health-approved wastewater system to the legislature no later  
11          than twenty days prior to the convening of the regular sessions  
12          of 2024, 2025, and 2026. The report shall include:
- 13          (1) The location, costs of the cesspool conversion  
14          project, and number of homes or units assisted;
- 15          (2) Outreach efforts conducted with community stakeholders  
16          and homeowners on the pilot project;
- 17          (3) Status of planning and design;
- 18          (4) Estimated capital and maintenance expenses and  
19          potential sources of revenues to construct projects;  
20          and



1 (5) Recommendations for future priority areas suitable for  
2 municipal sewer connections to further eliminate  
3 cesspools in the county.

4 (c) The pilot program shall cease to exist on June 30,  
5 2026.

6 (d) As used in this section, "cesspool" has the same  
7 meaning as in section 342D-72, Hawaii Revised Statutes.

8 SECTION 3. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so  
10 much thereof as may be necessary for fiscal year 2023-2024 and  
11 the same sum or so much thereof as may be necessary for fiscal  
12 year 2024-2025 for the establishment of a county cesspool  
13 conversion pilot program within the environmental management  
14 division of the department of health to work with each county to  
15 identify a priority area to expand the county sewage system or  
16 other centralized treatment system to connect individual  
17 properties in the priority area and reduce or eliminate  
18 cesspools in the identified area; provided that the  
19 environmental management division of the department of health  
20 may obtain contractor support to provide any services required  
21 to establish and implement the pilot program.



1 The sums appropriated shall be expended by the department  
2 of health for the purposes of this Act.

3 PART II

4 SECTION 4. The legislature further finds that the cesspool  
5 conversion working group recently issued recommendations to  
6 facilitate the statewide conversion of all cesspools. The  
7 implementation of these recommendations will require a  
8 significant effort and a commitment of additional personnel  
9 resources. This investment will also help to ensure that the  
10 State complies with the mandate of Act 125, Session Laws of  
11 Hawaii 2017, to upgrade, convert, or connect all cesspools in  
12 the State by 2050.

13 Accordingly, the purpose of this part is to:

- 14 (1) Create a new cesspool conversion section within the  
15 department of health's wastewater branch that is  
16 dedicated to facilitating the conversion of cesspools  
17 within the State; and
- 18 (2) Establish and appropriate funds for new full-time  
19 equivalent permanent positions within the new cesspool  
20 conversion section in fiscal year 2023-2024,



1 and additional full-time equivalent positions in  
2 fiscal year 2024-2025.

3 SECTION 5. Chapter 342D, Hawaii Revised Statutes, is  
4 amended by adding a new section to part IV to be appropriately  
5 designated and to read as follows:

6 **"§342D- Wastewater branch; cesspool conversion section.**

7 There is established a cesspool conversion section within the  
8 wastewater branch of the department, which shall:

- 9 (1) Manage and facilitate various state financing options
- 10 for the conversion of cesspools in the State;
- 11 (2) Develop and manage public outreach and education
- 12 regarding the conversion of cesspools;
- 13 (3) Inform cesspool owners of available options and
- 14 assistance for compliant conversions of cesspools;
- 15 (4) Manage any federal, state, or other available grants
- 16 to assist with the conversion of cesspools;
- 17 (5) Secure available federal funding that may be used to
- 18 assist in the conversion of cesspools; and
- 19 (6) Facilitate partnerships with counties, non-
- 20 governmental organizations, and the private sector



1 relating to the department's responsibilities under  
2 this section."

3 SECTION 6. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2023-2024 and  
6 the same sum or so much thereof as may be necessary for fiscal  
7 year 2024-2025 to establish full-time equivalent ( FTE)  
8 permanent positions, a program specialist VI and a planner IV,  
9 within the cesspool conversion section.

10 The sums appropriated shall be expended by the department  
11 of health for the purposes of this Act.

12 SECTION 7. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$ or so  
14 much thereof as may be necessary for fiscal year 2024-2025 to  
15 establish full-time equivalent ( FTE) permanent  
16 positions, a program specialist V and contracts specialist,  
17 within the cesspool conversion section.

18 The sum appropriated shall be expended by the department of  
19 health for the purposes of this Act.

20 PART III



1 SECTION 8. The legislature finds that one recommendation  
2 of the cesspool conversion working group is to ensure that  
3 buyers of real property are adequately informed about the  
4 existence of a cesspool on a property they are considering  
5 purchasing, a requirement that would protect consumers and help  
6 to incentivize cesspool conversions. Chapter 508D, Hawaii  
7 Revised Statutes, requires a written disclosure statement  
8 prepared by the seller, or at the seller's direction, that fully  
9 and accurately discloses all material facts relating to  
10 residential real property being offered for sale. A "material  
11 fact" is defined to mean "any fact, defect, or condition, past  
12 or present that would be expected to measurably affect the value  
13 to a reasonable person of the residential real property being  
14 offered for sale." The legislature finds that a property with a  
15 cesspool that must be converted by a set date is a material fact  
16 that should be clearly and explicitly disclosed by the seller in  
17 a real property transaction. Further, if the property does have  
18 a cesspool, the priority level of that cesspool as determined by  
19 the Hawaii cesspool prioritization tool, including the date by  
20 which that cesspool must be converted, should also be disclosed.



1           The legislature further finds that there is a need to  
2   reinstate the cesspool upgrade, conversion, or connection tax  
3   credit that expired at the end of 2020. There will be a need  
4   for a variety of financing options to assist residents with the  
5   cost of cesspool conversions, including the grant program  
6   established by Act 153, Session Laws of Hawaii 2022. The re-  
7   establishment of the cesspool upgrade, conversion, or connection  
8   tax credit will complement the grant program.

9           The purpose of this part is to:

- 10          (1) Re-establish the cesspool upgrade, conversion, or  
11             connection income tax credit that sunset on  
12             December 31, 2020; and
- 13          (2) Require that mandatory seller disclosures in real  
14             estate transactions include whether the property has a  
15             cesspool, including the date by which state law  
16             mandates that the cesspool be upgraded, converted, or  
17             connected, and the priority level of the cesspool  
18             according to the Hawaii cesspool hazard assessment and  
19             prioritization tool.



1 SECTION 9. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4 "§235- Cesspool upgrade, conversion, or connection;  
5 income tax credit. (a) There shall be allowed to each taxpayer  
6 subject to the tax imposed under this chapter a cesspool  
7 upgrade, conversion, or connection income tax credit that shall  
8 be deductible from the taxpayer's net income tax liability, if  
9 any, imposed by this chapter for the taxable year in which the  
10 credit is properly claimed.

11 (b) In the case of a partnership, S corporation, estate,  
12 or trust, the tax credit allowable is for qualified expenses  
13 incurred by the entity for the taxable year. The expenses upon  
14 which the tax credit is computed shall be determined at the  
15 entity level. Distribution and share of credit shall be  
16 determined by rule.

17 (c) The cesspool upgrade, conversion, or connection income  
18 tax credit shall be equal to the qualified expenses of the  
19 taxpayer, up to a maximum of \$10,000; provided that, in the case  
20 of a qualified cesspool that is a residential large capacity  
21 cesspool, the amount of the credit shall be equal to the



1 qualified expenses of the taxpayer, up to a maximum of \$10,000  
2 per residential dwelling connected to the cesspool, as certified  
3 by the department of health pursuant to subsection (e). There  
4 shall be allowed a maximum of one cesspool upgrade, conversion,  
5 or connection income tax credit per qualified cesspool. The  
6 cesspool upgrade, conversion, or connection income tax credit  
7 shall be available only for the taxable year in which the  
8 taxpayer's qualified expenses are certified by the department of  
9 health.

10 (d) The total amount of tax credits allowed under this  
11 section shall not exceed \$ \_\_\_\_\_ for all taxpayers in any  
12 taxable year; provided that any taxpayer who is not eligible to  
13 claim the credit in a taxable year due to the \$ \_\_\_\_\_ cap  
14 being reached for that taxable year shall be eligible to claim  
15 the credit in the subsequent taxable year.

16 (e) The department of health shall:

17 (1) Certify all qualified cesspools for the purposes of  
18 this section;

19 (2) Collect and maintain a record of all qualified  
20 expenses certified by the department of health for the  
21 taxable year; and



1       (3) Certify to each taxpayer the amount of credit the  
2       taxpayer may claim; provided that if, in any year, the  
3       annual amount of certified credits reaches  
4       \$ \_\_\_\_\_ in the aggregate, the department of health  
5       shall immediately discontinue certifying credits and  
6       notify the department of taxation.

7       The director of health may adopt rules under chapter 91 as  
8       necessary to implement the certification requirements under this  
9       section.

10       (f) The director of taxation:

11       (1) Shall prepare any forms that may be necessary to claim  
12       a tax credit under this section;

13       (2) May require the taxpayer to furnish reasonable  
14       information to ascertain the validity of the claim for  
15       the tax credit made under this section; and

16       (3) May adopt rules under chapter 91 necessary to  
17       effectuate the purposes of this section.

18       (g) If the tax credit under this section exceeds the  
19       taxpayer's income tax liability, the excess of the credit over  
20       liability may be used as a credit against the taxpayer's income  
21       tax liability in subsequent years until exhausted. All claims



1 for the tax credit under this section, including amended claims,  
2 shall be filed on or before the end of the twelfth month  
3 following the close of the taxable year for which the credit may  
4 be claimed. Failure to comply with the foregoing provision  
5 shall constitute a waiver of the right to claim the credit.

6 (h) As used in this section:

7 "Cesspool" has the same meaning as in section 342D-72.

8 "Qualified cesspool" means a cesspool that is:

9 (1) Certified by the department of health to be:

10 (A) Located within a priority level 1 or 2 area  
11 according to the University of Hawaii's 2022  
12 Hawaii cesspool hazard assessment and  
13 prioritization tool; or

14 (B) A residential large capacity cesspool; or

15 (2) Certified by a county or private sewer company to be  
16 appropriate for connection to its existing sewerage  
17 system.

18 "Qualified expenses" means costs that are necessary and  
19 directly incurred by the taxpayer for upgrading or converting a  
20 qualified cesspool to a director of health-approved wastewater



1 system, or connecting a qualified cesspool to a sewerage system,  
2 and that are certified as such by the department of health.

3 "Residential large capacity cesspool" means a cesspool that  
4 is connected to more than one residential dwelling.

5 "Sewerage system" has the same meaning as in  
6 section 342D-1.

7 "Wastewater" has the same meaning as in section 342D-1."

8 SECTION 10. Section 23-94, Hawaii Revised Statutes, is  
9 amended by amending subsection (c) to read as follows:

10 "(c) This section shall apply to the following:

11 (1) Section 235-4.5(a)--Exclusion of intangible income  
12 earned by a trust sited in this State;

13 (2) Section 235-4.5(b)--Exclusion of intangible income of  
14 a foreign corporation owned by a trust sited in this  
15 State;

16 (3) Section 235-4.5(c)--Credit to a resident beneficiary  
17 of a trust for income taxes paid by the trust to  
18 another state;

19 (4) Section 235- --Credit for cesspool upgrade,  
20 conversion, or connection;



- 1        [~~(4)~~] (5)    Sections 235-55 and 235-129--Credit for income  
2                    taxes paid by a resident taxpayer to another  
3                    jurisdiction;
- 4        [~~(5)~~] (6)    Section 235-71(c)--Credit for a regulated  
5                    investment company shareholder for the capital gains  
6                    tax paid by the company;
- 7        [~~(6)~~] (7)    Section 235-110.6--Credit for fuel taxes paid by  
8                    a commercial fisher;
- 9        [~~(7)~~] (8)    Section 235-110.93--Credit for important  
10                   agricultural land qualified agricultural cost;
- 11       [~~(8)~~] (9)    Section 235-110.94--Credit for organically  
12                   produced agricultural products;
- 13       [~~(9)~~] (10)   Section 235-129(b)--Credit to a shareholder of  
14                   an S corporation for the shareholder's pro rata share  
15                   of the tax credit earned by the S corporation in this  
16                   State; and
- 17       [~~(10)~~] (11)   Section 209E-10--Credit for a qualified business  
18                   in an enterprise zone; provided that the review of  
19                   this credit pursuant to this part shall be limited in  
20                   scope to income tax credits."



1 SECTION 11. Section 23-95, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:  
3 "(c) This section shall apply to the following:  
4 (1) Section 235-5.5--Deduction for individual housing  
5 account deposit;  
6 (2) Section 235-7(f)--Deduction of property loss due to a  
7 natural disaster;  
8 [~~(3)~~] ~~Section 235-16.5--Credit for cesspool upgrade,~~  
9 ~~conversion, or connection;~~  
10 ~~(4)~~] (3) Section 235-19--Deduction for maintenance of an  
11 exceptional tree;  
12 [~~(5)~~] (4) Section 235-55.91--Credit for the employment of a  
13 vocational rehabilitation referral;  
14 [~~(6)~~] (5) Section 235-110.2--Credit for in-kind services  
15 contribution for public school repair and maintenance;  
16 and  
17 [~~(7)~~] (6) Sections 235-110.8 and 241-4.7--Credit for  
18 ownership of a qualified low-income housing building."  
19 SECTION 12. Section 508D-15, Hawaii Revised Statutes, is  
20 amended to read as follows:



1       **"§508D-15 Notification required; ambiguity.** (a) When  
2 residential real property lies:  
3       (1) Within the boundaries of a special flood hazard area  
4           as officially designated on flood maps promulgated by  
5           the National Flood Insurance Program of the Federal  
6           Emergency Management Agency for the purposes of  
7           determining eligibility for emergency flood insurance  
8           programs;  
9       (2) Within the boundaries of the noise exposure area shown  
10           on maps prepared by the department of transportation  
11           in accordance with Federal Aviation Regulation part  
12           150, Airport Noise Compatibility Planning (14 C.F.R.  
13           part 150), for any public airport;  
14       (3) Within the boundaries of the Air Installation  
15           Compatible Use Zone of any Air Force, Army, Navy, or  
16           Marine Corps airport as officially designated by  
17           military authorities;  
18       (4) Within the anticipated inundation areas designated on  
19           the department of defense's emergency management  
20           tsunami inundation maps; or



1           (5) Within the sea level rise exposure area as designated  
2                    by the Hawaii climate change mitigation and adaptation  
3                    commission or its successor,  
4 subject to the availability of maps that designate the five  
5 areas by tax map key (zone, section, parcel), the seller shall  
6 include the material fact information in the disclosure  
7 statement provided to the buyer subject to this chapter. Each  
8 county shall provide, where available, maps of its jurisdiction  
9 detailing the five designated areas specified in this  
10 subsection. The maps shall identify the properties situated  
11 within the five designated areas by tax map key number (zone,  
12 section, parcel) and shall be of a size sufficient to provide  
13 information necessary to serve the purposes of this section.  
14 Each county shall provide legible copies of the maps and may  
15 charge a reasonable copying fee.

16           (b) When it is questionable whether residential real  
17 property lies within any of the designated areas referred to in  
18 subsection (a) due to the inherent ambiguity of boundary lines  
19 drawn on maps of large scale, the ambiguity shall be construed  
20 in favor of the seller; provided that a good faith effort has



1 been made to determine the applicability of subsection (a) to  
2 the subject real property.

3 (c) When residential real property contains a cesspool and  
4 the cesspool is identified by the maps in the University of  
5 Hawaii 2022 Hawaii cesspool hazard assessment and prioritization  
6 tool, subject to the availability of the maps, the seller shall  
7 include the material fact information in the disclosure  
8 statement provided to the buyer subject to this chapter. The  
9 maps shall identify the cesspool priority level and the date,  
10 established by law, by which the cesspool is required to be  
11 upgraded or converted to a director of health-approved  
12 wastewater system or connected to a sewerage system.

13 [~~e~~] (d) Except as required under subsections (a) and  
14 (b), and as required under section 508D-3.5, the seller shall  
15 have no duty to examine any public record when preparing a  
16 disclosure statement."

17 PART IV

18 SECTION 13. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 14. This Act shall take effect on June 30, 3000.



**Report Title:**

Cesspools; Pilot Program; Counties; Priority Area; DOH; Cesspool Conversion Section; Positions; Income Tax Credit; Real Property; Mandatory Disclosures; Appropriation

**Description:**

Part I: Establishes and appropriates funds for a county cesspool pilot program in DOH to work with each county to identify a priority area to expand the county sewage system or other centralized treatment system to connect individual properties in the priority area and reduce or eliminate cesspools in the identified area. Part II: Creates a cesspool conversion section in DOH to facilitate the conversion of cesspools within the State. Establishes and appropriates funds for positions. Part III: Establishes an income tax credit for the cost of upgrading or converting a qualified cesspool to a director of health-approved wastewater system or connecting to a sewerage system. Requires certain information regarding cesspools on real property to be included in seller mandatory disclosures for real property transactions. Effective 6/30/3000. (HD2)

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

