

JAN 20 2023

A BILL FOR AN ACT

RELATING TO CESSPOOLS.

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

1 SECTION 1. The legislature finds that water pollution from
2 nonpoint contamination sources that flow off the land directly,
3 rather than through pipes or ditches, poses a threat to the
4 State's streams, groundwater, and ocean. As a nonpoint
5 contamination source, cesspools are substandard systems that
6 discharge raw, untreated sewage into the ground. Cesspool
7 pollution from disposed, untreated wastewater creates
8 significant risk to finite groundwater, drinking water, streams,
9 the ocean and other aquatic resources across the State.

10 The legislature additionally finds that cesspools in Hawaii
11 release approximately fifty-three million gallons of untreated
12 sewage into the ground each day. There are approximately
13 eighty-eight thousand cesspools in the State, with nearly fifty
14 thousand located on Hawaii island, approximately fourteen
15 thousand on Kauai, over twelve thousand on Maui, over eleven
16 thousand on Oahu, and over fourteen hundred on Molokai.



1 Presently, forty-three thousand cesspools pose a risk to the
2 State's water resources.

3 The legislature further finds that cesspools near drinking
4 water wells or within two hundred feet of surface waters and
5 cesspools that are connected to multiple residential dwellings
6 present a higher risk of harm to public health and the
7 environment and should be prioritized by the department of
8 health for upgrade. The department of health indicates that
9 there are approximately six thousand seven hundred cesspools in
10 those priority locations. Therefore, priority should be given
11 to cesspool owners who request financial assistance to upgrade,
12 convert, or connect cesspools that: affect public drinking
13 water wells; are within two hundred feet of the shoreline,
14 streams, or wetlands; or are connected to multiple residential
15 dwellings.

16 To address the ongoing threat of water contamination caused
17 by cesspools, the legislature passed Act 125, Session Laws of
18 Hawaii 2017 (Act 125), which requires the replacement of all
19 cesspools by 2050. Additionally, the legislature passed Act
20 132, Session Laws of Hawaii 2018, which requires the department
21 of health to convene the cesspool conversion working group to



1 create a comprehensive plan for cesspool conversion statewide,
2 pursuant to the mandates established by Act 125. The
3 legislature recognizes that, to protect the State's finite water
4 resources and achieve the goals mandated by Act 125, decreasing
5 the financial burden on homeowners with cesspools is of utmost
6 importance.

7 Accordingly, the purpose of this Act is to offer financial
8 assistance to owners of cesspools who:

9 (1) Upgrade or convert a qualified cesspool into a
10 director of health-approved wastewater system; or

11 (2) Connect a qualified cesspool to a sewer system,
12 by establishing a cesspool upgrade, conversion, or connection
13 income tax credit.

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

17 "§235- Cesspool upgrade, conversion, or connection;
18 income tax credit. (a) There shall be allowed to each taxpayer
19 subject to the tax imposed under this chapter, a cesspool
20 upgrade, conversion, or connection income tax credit that shall
21 be deductible from the taxpayer's net income tax liability, if



1 any, imposed by this chapter for the taxable year in which the
2 credit is properly claimed.

3 (b) In the case of a partnership, S corporation, estate,
4 or trust, the tax credit allowable is for qualified expenses
5 incurred by the entity for the taxable year. The expenses upon
6 which the tax credit is computed shall be determined at the
7 entity level. Distribution and share of credit shall be
8 determined by rule.

9 (c) The cesspool upgrade, conversion, or connection income
10 tax credit shall be equal to the qualified expenses of the
11 taxpayer, up to a maximum of \$10,000; provided that, in the case
12 of a qualified cesspool that is a residential large capacity
13 cesspool, the amount of the credit shall be equal to the
14 qualified expenses of the taxpayer, up to a maximum of \$10,000
15 per residential dwelling connected to the cesspool, as certified
16 by the department of health pursuant to subsection (e). There
17 shall be allowed a maximum of one cesspool upgrade, conversion,
18 or connection income tax credit per qualified cesspool. The
19 cesspool upgrade, conversion, or connection income tax credit
20 shall be available only for the taxable year in which the



1 taxpayer's qualified expenses are certified by the appropriate
2 government agency.

3 (d) The total amount of tax credits allowed under this
4 section shall not exceed \$5,000,000 for all taxpayers in any
5 taxable year; provided that any taxpayer who is not eligible to
6 claim the credit in a taxable year due to the \$5,000,000 cap
7 having been exceeded for that taxable year shall be eligible to
8 claim the credit in the subsequent taxable year.

9 (e) The department of health shall:

10 (1) Certify all qualified cesspools for the purposes of
11 this section; provided that the department of health,
12 in its discretion, may certify not more than two
13 residential large capacity cesspools as qualified
14 cesspools;

15 (2) Collect and maintain a record of all qualified
16 expenses certified by an appropriate government agency
17 for the taxable year; and

18 (3) Certify to each taxpayer the amount of credit the
19 taxpayer may claim; provided that if, in any year, the
20 annual amount of certified credits reaches
21 \$5,000,000 in the aggregate, the department of health



1 shall immediately discontinue certifying credits and
2 notify the department of taxation.

3 The director of health may adopt rules under chapter 91 as
4 necessary to implement the certification requirements under this
5 section.

6 (f) The director of taxation:

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

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

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

14 (g) If the tax credit under this section exceeds the
15 taxpayer's income tax liability, the excess of the credit over
16 liability may be used as a credit against the taxpayer's income
17 tax liability in subsequent years until exhausted. All claims
18 for the tax credit under this section, including amended claims,
19 shall be filed on or before the end of the twelfth month
20 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision
2 shall constitute a waiver of the right to claim the credit.

3 (h) As used in this section:

4 "Cesspool" means an individual wastewater system consisting
5 of an excavation in the ground whose depth is greater than its
6 widest surface dimension, that receives untreated wastewater,
7 and retains or is designed to retain the organic matter and
8 solids discharged into it, but permits the liquid to seep
9 through its bottom or sides to gain access to the underground
10 geographic formation.

11 "Qualified cesspool" means a cesspool that is certified by
12 the department of health as being:

13 (1) Located within:

14 (A) Two hundred feet of a shoreline, perennial
15 stream, or wetland; or

16 (B) A source water assessment program area (two year
17 time of travel from a cesspool to a public
18 drinking water source); or

19 (2) A residential large capacity cesspool.

20 "Qualified expenses" means costs that are necessary and
21 directly incurred by the taxpayer for upgrading or converting a



1 qualified cesspool into a director of health-approved wastewater
2 system, or connecting a qualified cesspool to a sewer system,
3 and that are certified as such by the appropriate government
4 agency.

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

7 "Sewer system" means a system of piping, with
8 appurtenances, for collecting and conveying wastewater from
9 source to discharge following treatment.

10 "Wastewater" means any liquid waste, whether or not treated
11 and whether animal, mineral, or vegetable, including
12 agricultural, industrial, and thermal wastes."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act, upon its approval, shall apply to
15 taxable years beginning after December 31, 2023.

16

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line.

S.B. NO. 405

Report Title:

Cesspools; Cesspool Conversion; Tax Credit; Established

Description:

Establishes the cesspool conversion tax credit to upgrade or convert cesspools certified by the Department of Health into a director-approved wastewater system. Effective for taxable years beginning after 12/31/2023.

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

