
A BILL FOR AN ACT

RELATING TO CESSPOOLS.

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

PART I

SECTION 1. Section 235-16.5, Hawaii Revised Statutes, is amended to read as follows:

"§235-16.5 Cesspool upgrade, conversion, or connection; income tax credit. (a) There shall be allowed to each taxpayer subject to the tax imposed under this chapter, a cesspool upgrade, conversion, or connection income tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

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



1 If a taxpayer is awarded a grant under section 342D-B, no
2 tax credit shall be allowed for that portion of qualified
3 expenses paid for by grant moneys.

4 (c) The cesspool upgrade, conversion, or connection income
5 tax credit shall be equal to the qualified expenses of the
6 taxpayer, up to a maximum of \$10,000; provided that, in the case
7 of a qualified cesspool that is a residential large capacity
8 cesspool, the amount of the credit shall be equal to the
9 qualified expenses of the taxpayer, up to a maximum of \$10,000
10 per residential dwelling connected to the cesspool, as certified
11 by the department of health pursuant to subsection (e). There
12 shall be allowed a maximum of one cesspool upgrade, conversion,
13 or connection income tax credit per qualified cesspool or per
14 tax map key number where more than one residence is connected to
15 a residential large-capacity cesspool. The cesspool upgrade,
16 conversion, or connection income tax credit shall be available
17 only for the taxable year in which the taxpayer's qualified
18 expenses are certified by the appropriate government agency.

19 (d) The total amount of tax credits allowed under this
20 section shall not exceed \$5,000,000 for all taxpayers in any
21 taxable year; provided that any taxpayer who is not eligible to



1 claim the credit in a taxable year due to the \$5,000,000 cap
2 having been exceeded for that taxable year shall be eligible to
3 claim the credit in the subsequent taxable year.

4 (e) The department of health shall:

5 (1) Certify all qualified cesspools for the purposes of
6 this section; provided that, as a pilot program, the
7 department of health, in its discretion, may certify
8 no more than two residential large capacity cesspools
9 as qualified cesspools;

10 (2) Collect and maintain a record of all qualified
11 expenses certified by an appropriate government agency
12 for the taxable year; and

13 (3) Certify to each taxpayer the amount of credit the
14 taxpayer may claim; provided that if, in any year, the
15 annual amount of certified credits reaches \$5,000,000
16 in the aggregate, the department of health shall
17 immediately discontinue certifying credits and notify
18 the department of taxation.

19 The director of health may adopt rules under chapter 91 as
20 necessary to implement the certification requirements under this
21 section.



1 (f) The director of taxation:

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

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

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

9 (g) If the tax credit under this section exceeds the
10 taxpayer's income tax liability, the excess of the credit over
11 liability [~~may be used as a credit against the taxpayer's income~~
12 ~~tax liability in subsequent years until exhausted.~~] shall be
13 refunded to the taxpayer; provided that tax credits properly
14 claimed by an individual who has no income tax liability shall
15 be paid to the individual; provided further that no refunds or
16 payment on account of the tax credits allowed by this section
17 shall be made for amounts less than \$1. All claims for the tax
18 credit under this section, including amended claims, shall be
19 filed on or before the end of the twelfth month following the
20 close of the taxable year for which the credit may be claimed.



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

3 (h) This section shall not apply to taxable years beginning
4 after December 31, [~~2020.~~] 2022.

5 (i) The tax credit under this section shall not be
6 available to the following:

- 7 (1) A taxpayer filing a single return or a married person
8 filing separately with a federal adjusted gross income
9 of \$ _____ or more;
- 10 (2) A taxpayer filing as a head of household with a
11 federal adjusted gross income of \$ _____ or more;
12 or
- 13 (3) A taxpayer filing a joint return or as a surviving
14 spouse with a federal adjusted gross income of
15 \$ _____ or more.

16 ~~[(i)]~~ (j) As used in this section:

17 "Aerobic treatment unit system" means an individual
18 wastewater system that consists of an aerobic treatment unit
19 tank, aeration device, piping, and a discharge method that is in
20 accordance with rules adopted by the department of health
21 relating to household aerobic units.



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

8 "Qualified cesspool" means a cesspool that is certified by
9 the department of health as ~~[being]~~:

10 (1) ~~[Located]~~ Being located within:

11 (A) Two hundred feet of a shoreline, perennial
12 stream, or wetland; or

13 (B) A source water assessment program area (two year
14 time of travel from a cesspool to a public
15 drinking water source); ~~[or]~~

16 (2) ~~[A]~~ Being a residential large capacity cesspool ~~[or]~~; or

17 (3) Having been shown to impact drinking water supplies or
18 recreational waters.

19 "Qualified expenses" means costs that are necessary and
20 directly incurred by the taxpayer for upgrading or converting a
21 qualified cesspool into a septic system or an aerobic treatment



1 unit system, or connecting a qualified cesspool to a sewer
2 system, and that are certified as such by the appropriate
3 government agency.

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

6 "Septic system" means an individual wastewater system that
7 typically consists of a septic tank, piping, and a drainage
8 field where there is natural biological decontamination as
9 wastewater discharged into the system is filtered through soil.

10 "Sewer system" means a system of piping, with
11 appurtenances, for collecting and conveying wastewater from
12 source to discharge following treatment.

13 "Wastewater" means any liquid waste, whether or not treated
14 and whether animal, mineral, or vegetable, including
15 agricultural, industrial, and thermal wastes."

16 SECTION 2. Act 120, Session Laws of Hawaii 2015, is
17 amended by amending section 4 to read as follows:

18 "SECTION 4. This Act shall take effect on July 1, 2015,
19 and shall apply to taxable years beginning after December 31,
20 2015; provided that this Act shall be repealed on December 31,
21 [~~2020-~~] 2022."



PART II

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

"§342D-A Cesspools; mandatory upgrade, conversion, or connection. (a) Prior to January 1, 2050, every cesspool in the State shall be:

(1) Upgraded or converted to a septic system or aerobic treatment unit system; or

(2) Connected to a sewerage system.

(b) As used in this section:

"Aerobic treatment unit system" means an individual wastewater system that consists of an aerobic treatment unit tank, aeration device, piping, and a discharge method that is in accordance with rules adopted by the department relating to household aerobic units.

"Cesspool" means an individual wastewater system consisting of an excavation in the ground whose depth is greater than its widest surface dimension, which receives untreated wastewater, and retains or is designed to retain the organic matter and solids discharged into it, but permits the liquid to seep



1 through its bottom or sides to gain access to the underground
2 geographic formation.

3 "Septic system" means an individual wastewater system that
4 typically consists of a septic tank, piping, and a drainage
5 field where there is natural biological decontamination as
6 wastewater discharged into the system is filtered through soil.

7 §342D-B Cesspool compliance grant program. (a) There is
8 established in the department the cesspool compliance grant
9 program to assist homeowners in meeting the costs of:

10 (1) Upgrading or converting a cesspool to a septic system
11 or aerobic treatment unit system; or

12 (2) Connecting a cesspool to a sewerage system,
13 in compliance with section 342D-A.

14 (b) No grant under this section shall be awarded to a
15 person whose income level exceeds those described in section
16 235-16.5(i).

17 (c) The department shall adopt rules to carry out the
18 purposes of the grant program."

19 SECTION 4. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2017-2018 for
2 deposit into the water pollution control revolving fund.

3 SECTION 5. There is appropriated out of the water
4 pollution control revolving fund the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2017-2018 to
6 implement the cesspool compliance grant program.

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

9 **PART III**

10 SECTION 6. Chapter 342D, Hawaii Revised Statutes, is
11 amended by adding a new section to part I to be appropriately
12 designated and to read as follows:

13 "§342D-C Cesspools; mandatory disclosure; guidelines. The
14 department shall develop guidelines to determine the
15 circumstances under which the disclosure of the existence of a
16 cesspool, prior to the sale or transfer of the real property
17 where the cesspool is located, shall be mandatory."

18 SECTION 7. Chapter 508D, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§508D- Cesspools; material fact; disclosure. If the
2 disclosure of the existence of a cesspool on real property
3 subject to this chapter is determined to be mandatory under
4 guidelines developed by the department of health under section
5 342D-C, the existence of the cesspool shall be considered a
6 material fact and shall be included in a seller's disclosure
7 statement."

8 PART IV

9 SECTION 8. In codifying the new sections added by sections
10 3 and 6 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 9. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect upon its approval;
19 provided that:

20 (1) Section 1 shall apply to taxable years beginning after
21 December 31, 2017; and



1 (2) Sections 4 and 5 shall take effect on July 1, 2017.



Report Title:

Cesspools; Income Tax Credit; Mandatory Upgrade, Conversion, or Connection; Grant Program; Mandatory Disclosure; Real Property; Appropriation

Description:

Amends the cesspool upgrade, conversion, or connection income tax credit for taxable years beginning after 12/31/17 to: make the tax credit refundable; disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain amounts; expand the criteria for cesspools that qualify for the tax credit; and extend the sunset date to 12/31/2022. Requires that all cesspools in the State be upgraded or converted to septic or aerobic treatment unit systems or connected to sewer systems by 01/01/2050. Establishes a grant program to assist with cesspool upgrade or conversion costs. Appropriates funds for the grant program. Requires the department of health to develop guidelines for the mandatory disclosure of cesspools on real property. (SD1)

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