
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 the State's streams,
3 groundwater, and ocean are being harmed by water pollution from
4 nonpoint contamination sources that flow off the land directly,
5 rather than through pipes or ditches. Cesspools constitute a
6 nonpoint contamination source of grave concern. These
7 substandard systems are essentially holes in the ground that
8 discharge raw, untreated sewage. Groundwater, drinking water
9 sources, streams, and the ocean are contaminated by cesspool
10 pollution from systems that do not treat wastewater, but merely
11 dispose of it.

12 The legislature further finds that cesspools in Hawaii
13 release approximately 55,000,000 gallons of untreated sewage
14 into the ground each day. There are approximately 90,000
15 cesspools in the State, with nearly 50,000 located on Hawaii
16 island, approximately 14,000 on Kauai, more than 12,000 on Maui,
17 more than 11,000 on Oahu, and more than 1,400 on Molokai.



1 Reducing the number of cesspools in the State is a matter of
2 great importance. The legislature additionally finds that
3 cesspools near drinking water wells or within two hundred feet
4 of surface waters and cesspools that are connected to multiple
5 residential dwellings present a higher risk of harm to public
6 health and the environment and should be prioritized by the
7 department of health for upgrade. The department of health
8 indicates that there are over 6,000 cesspools in those priority
9 locations.

10 The purpose of this Act is to provide financial assistance
11 to owners of cesspools who upgrade or convert a qualified
12 cesspool into a septic system or an aerobic treatment unit
13 system by:

- 14 (1) Including high priority cesspool areas in the list of
15 areas that are eligible for the income tax credit;
16 (2) Expanding tax credits allowed under and extending the
17 expiration date of the cesspool upgrade, conversion,
18 or connection income tax credit;
19 (3) Making the income tax credit refundable for certain
20 tax payers; and



(4) Establishing a grant program for cesspool owners with income below a particular level.

PART II

SECTION 2. 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.

If a taxpayer is awarded a grant under section 342D-A, no tax credit shall be allowed for that portion of qualified expenses paid for by grant funds.



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

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



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(e) The department of health shall:

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

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

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

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

(f) The director of taxation:

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



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

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

(g) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over liability ~~[may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.]~~ shall be refunded to the taxpayer; provided that tax credits properly claimed by an individual who has no income tax liability shall be paid to the individual; provided further that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1. All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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



1 (i) The tax credit under this section shall not be
2 available to:

3 (1) A taxpayer filing a single return or a married person
4 filing separately with a federal adjusted gross income
5 of \$ or more;

6 (2) A taxpayer filing as a head of household with a
7 federal adjusted gross income of \$ or more;
8 or

9 (3) A taxpayer filing a joint return or as a surviving
10 spouse with a federal adjusted gross income of \$
11 or more.

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

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

18 "Cesspool" means an individual wastewater system consisting
19 of an excavation in the ground whose depth is greater than its
20 widest surface dimension, which receives untreated wastewater,
21 and retains or is designed to retain the organic matter and



1 solids discharged into it, but permits the liquid to seep
2 through its bottom or sides to gain access to the underground
3 geographic formation.

4 "Qualified cesspool" means a cesspool that is:

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

6 (A) Located within:

7 (i) Five hundred feet of a shoreline, perennial
8 stream, or wetland; ~~[or]~~

9 (ii) A source water assessment program area (two
10 year time of travel from a cesspool to a
11 public drinking water source); or

12 (iii) An area categorized as a priority level 1 or
13 priority level 2 area, as described in the
14 department of health's report to the
15 legislature submitted in response to Act
16 125, Session Laws of Hawaii 2017;

17 (B) Shown to impact drinking water supplies or
18 recreational waters; or

19 (C) A residential large capacity cesspool; or



1 (2) Certified by a county or private sewer company to be
2 appropriate for connection to its existing sewer
3 system.

4 "Qualified expenses" means costs that are necessary and
5 directly incurred by the taxpayer for upgrading or converting a
6 qualified cesspool into a septic system or an aerobic treatment
7 unit system, or connecting a qualified cesspool to a sewer
8 system, and that are certified as such by the appropriate
9 government agency.

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

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

16 "Sewer system" means a system of piping, with
17 appurtenances, for collecting and conveying wastewater from
18 source to discharge following treatment.

19 "Wastewater" means any liquid waste, whether or not treated
20 and whether animal, mineral, or vegetable, including
21 agricultural, industrial, and thermal wastes."



SECTION 3. Act 120, Session Laws of Hawaii 2015, is amended by amending section 4 to read as follows:

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

PART III

SECTION 4. 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 Cesspool compliance grant program. (a) There is established in the department the cesspool compliance grant program to assist homeowners in meeting the costs of:

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

(2) Connecting a cesspool to a sewerage system,
in compliance with section 342D-72.

(b) No grant under this section shall be awarded to a person whose federal adjusted gross income exceeds the amount established in section 235-16.5(i) for the person's applicable income tax filing status.



1 (c) The department shall adopt rules to carry out the
2 purposes of the grant program.

3 **§342D-B Cesspools; mandatory disclosure; guidelines.** The
4 department shall develop guidelines to determine the
5 circumstances under which disclosure of the existence of a
6 cesspool shall be mandatory prior to the sale or transfer of the
7 real property on which the cesspool is located."

8 SECTION 5. Chapter 508D, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§508D- Cesspools; material fact; disclosure.** If the
12 disclosure of the existence of a cesspool on real property
13 subject to this chapter is determined to be mandatory under
14 guidelines developed by the department of health pursuant to
15 section 342D-B, the existence of the cesspool shall be
16 considered a material fact and shall be included in a seller's
17 disclosure statement."

18 SECTION 6. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2018-2019 to be
21 deposited into the water pollution control revolving fund,



1 established pursuant to section 342D-83, Hawaii Revised
2 Statutes.

3 SECTION 7. 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 2018-2019 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 IV

10 SECTION 8. In codifying the new sections added by section
11 4 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 9. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval;
17 provided that:

18 (1) Section 2 shall apply to taxable years beginning after
19 December 31, 2018; and

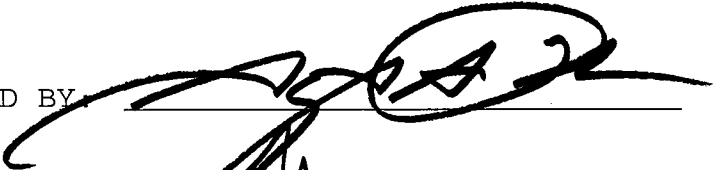


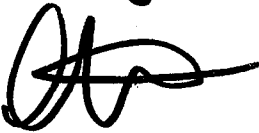
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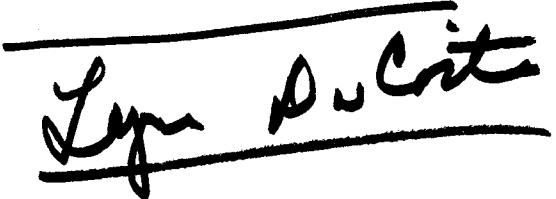
1 (2) Sections 6 and 7 shall take effect on July 1, 2018.

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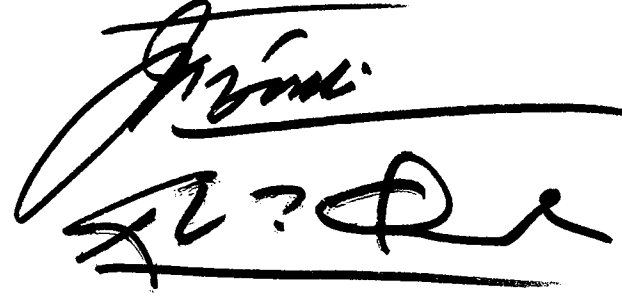
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JAN 24 2018

H.B. NO. 2573

Report Title:

Cesspools; Tax Credit; Grants; Mandatory Disclosure; Real Property; Appropriation

Description:

Amends the cesspool upgrade, conversion, or connection income tax credit for taxable years beginning after 12/31/18. Establishes and appropriates funds for a grant program to assist with cesspool upgrade or conversion costs. Requires the Department of Health to develop guidelines for the mandatory disclosure of cesspools on real property prior to the sale or transfer of the real property.

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

