

JAN 25 2017

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. A taxpayer eligible to claim a tax credit under this section may assign all or a portion of a tax credit under this section to any assignee. An assignee may subsequently assign a tax credit or any portion of a tax credit assigned under this subsection to one or more assignees. A taxpayer may claim a portion of a tax credit and assign the remaining tax credit amount. A tax credit assignment under this subsection shall be irrevocable. The tax credit assignment



1 under this subsection shall be made on a form prescribed by the
2 department of taxation. A taxpayer claiming a tax credit under
3 this section shall submit a copy of the completed assignment
4 form to the department in the tax year in which the assignment
5 is made and shall attach a copy of the form to the tax return on
6 which the tax credit is claimed.

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

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

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



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

10 (d) The total amount of tax credits allowed under this
11 section shall not exceed \$5,000,000 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 \$5,000,000 cap
14 having been exceeded for that taxable year shall be eligible to
15 claim 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; provided that, as a pilot program, the
19 department of health, in its discretion, may certify
20 no more than two residential large capacity cesspools
21 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;

(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; and 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.

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

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



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

or

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

~~[(i)]~~ (j) 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 of health
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
through its bottom or sides to gain access to the underground
geographic formation.

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



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

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

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

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

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

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

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

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



1 "Sewer system" means a system of piping, with
2 appurtenances, for collecting and conveying wastewater from
3 source to discharge following treatment.

4 "Wastewater" means any liquid waste, whether or not treated
5 and whether animal, mineral, or vegetable, including
6 agricultural, industrial, and thermal wastes."

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

9 "SECTION 4. This Act shall take effect on July 1, 2015,
10 and shall apply to taxable years beginning after December 31,
11 2015; provided that this Act shall be repealed on December 31,
12 ~~[2020-]~~ 2022."

13 PART II

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

17 "§342D-A Cesspools; mandatory upgrade, conversion, or
18 connection. (a) Prior to January 1, 2050, every cesspool in
19 the State shall be:

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



1 (2) Connected to a sewerage system.

2 (b) As used in this section:

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

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

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

19 §342D-B Cesspool compliance grant program. (a) There is
20 established in the department the cesspool compliance grant
21 program to assist homeowners in meeting the costs of:



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

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

5 (b) No grant under this section shall be awarded to a
6 person whose income level exceeds those described in section
7 235-16.5(i).

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

10 SECTION 4. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ or so much
12 thereof as may be necessary for fiscal year 2017-2018 for
13 deposit into the water pollution control revolving fund.

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

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



PART III

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

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

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

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



PART IV

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







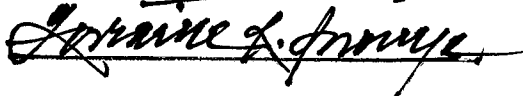
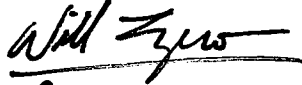
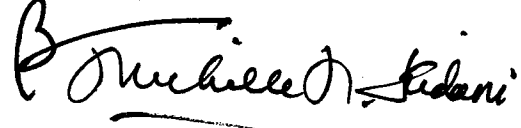
SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

- (1) Section 1 shall apply to taxable years beginning after December 31, 2016; and
- (2) Sections 4 and 5 shall take effect on July 1, 2017.

INTRODUCED BY:



S.B. NO. 1180

Report Title:

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

Description:

Amends the cesspool upgrade, conversion, or connection income tax credit to: (1) make the tax credit assignable; (2) make the tax credit refundable; (3) disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain amounts; (4) expand the criteria for cesspools that qualify for the tax credit; and (5) 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. Establishes a grant program to assist with cesspool upgrade or conversion costs. Appropriates funds for the grant program. Requires DOH to develop guidelines for the mandatory disclosure of cesspools on 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.

