

JAN 21 2022

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# A BILL FOR AN ACT

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RELATING TO ABANDONED WELLS.

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

1       SECTION 1. The legislature finds that wells in a state of  
2 disuse or disrepair can become conduits through which  
3 contaminants can be introduced to ground water. Abandoned wells  
4 can also become receptacles for the disposal of waste, resulting  
5 in additional potential for contamination and associated risk to  
6 public health and environmental degradation.

7       The legislature further finds that the commission on water  
8 resource management has developed minimum standards relating to  
9 water wells, including their sealing and abandonment, in order  
10 to protect the quality and quantity of the State's ground-water  
11 resources.

12       The purpose of this Act is to:

- 13       (1) Establish an income tax credit for taxpayers who are  
14           required to fill and seal abandoned wells on their  
15           real property;
- 16       (2) Require sellers of real property to disclose the  
17           existence of wells on the property;



(3) Require an owner or prior owner of an abandoned well to repair or fill and seal the well at their own expense; and

(4) Appropriate funds for three full-time equivalent ground surveyor positions in the commission of water resource management.

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

"§235- Well abandonment compliance income tax credit.

(a) There shall be allowed to each taxpayer a well abandonment compliance 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) The cost upon which the tax credit is computed shall be determined at the entity level. In the case of a partnership, S corporation, estate, trust, or other pass through entity, distribution and share of the credit shall be determined by rule.



1        (c) The well abandonment compliance income tax credit  
2 shall be equal to        per cent of the qualified compliance  
3 costs incurred by the taxpayer, up to a maximum of \$        .

4        (d) If the tax credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of the credit over  
6 liability may be used as a credit against the taxpayer's income  
7 tax liability in subsequent years until exhausted. All claims  
8 for the tax credit under this section, including amended claims,  
9 shall be filed on or before the end of the twelfth month  
10 following the close of the taxable year for which the credit may  
11 be claimed. Failure to comply with the foregoing provision  
12 shall constitute a waiver of the right to claim the credit.

13        (e) The director of taxation:

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

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

19        (3) May adopt rules pursuant to chapter 91 to effectuate  
20        this section.

21        (f) The commission on water resource management shall:



- 1        (1) Maintain records of the total amount of qualified
- 2        compliance costs for each taxpayer claiming a credit;
- 3        (2) Verify the amount of the qualified compliance costs
- 4        claimed;
- 5        (3) Total all qualified compliance costs claimed; and
- 6        (4) Certify the total amount of the tax credit for each
- 7        taxable year.

8        Upon each determination, the commission on water resource  
9        management shall issue a certificate to the taxpayer verifying  
10       the qualified compliance costs and the credit amount certified  
11       for each taxable year. For a taxable year, the commission on  
12       water resource management may certify a credit for a taxpayer  
13       who could have claimed the credit in a previous taxable year,  
14       but chose not to because the maximum annual credit amount under  
15       subsection (g) was reached in that taxable year.

16       The taxpayer shall file the certificate with the taxpayer's  
17       tax return with the department of taxation. Notwithstanding the  
18       commission on water resource management's certification  
19       authority under this section, the director of taxation may audit  
20       and adjust certification to conform to the facts.



1        Notwithstanding any other law to the contrary, the  
2        information required by this subsection shall be available for  
3        public inspection and dissemination under chapter 92F.

4        (g) If in any taxable year the annual amount of certified  
5        credits reaches \$                      in the aggregate, the commission on  
6        water resource management shall immediately discontinue  
7        certifying credits and notify the department of taxation. In no  
8        instance shall the commission on water resource management  
9        certify a total amount of credits exceeding \$                      per  
10       taxable year. To comply with this restriction, the commission  
11       on water resource management shall certify credits on a first  
12       come, first served basis.

13       The department of taxation shall not allow the aggregate  
14       amount of credits claimed to exceed that amount per taxable  
15       year.

16       (h) As used in this section:

17       "Abandoned well" shall have the same meaning as defined in  
18       section 174C-81.

19       "Net income tax liability" means income tax liability  
20       reduced by all other credits allowed under this chapter.



1       "Qualified compliance costs" means construction costs that  
2       are necessary and directly incurred by the taxpayer to fill and  
3       seal an abandoned well in compliance with section 174C-87.

4       "Qualified compliance costs" does not include costs incurred to  
5       seal or plug:

6       (1)   A well that has not been certified by the commission  
7           on water resource management pursuant to section  
8           174C-27;

9       (2)   A well for which a permit has been issued under  
10       section 174C-84, but the construction has not been  
11       completed; or

12       (3)   An incomplete and abandoned well pursuant to section  
13       174C-84(e).

14       "Well" shall have the same meaning as defined in section  
15       174C-3."

16       SECTION 3. Chapter 508D, Hawaii Revised Statutes, is  
17       amended by adding a new section to be appropriately designated  
18       and to read as follows:

19       "§508D-       Wells; material fact; disclosure. (a) The  
20       existence of a well, abandoned or otherwise, on real property



1 subject to this chapter shall be considered a material fact and  
2 shall be included in a seller's disclosure statement.

3 (b) If a seller fails to disclose the existence of a well,  
4 as required under subsection (a), and the buyer is required by  
5 the commission on water resource management to abandon and seal  
6 the well, the seller shall be liable to the buyer for costs  
7 incurred by the buyer to fill and seal the well in compliance  
8 with section 174C-87."

9 SECTION 4. Section 174C-81, Hawaii Revised Statutes, is  
10 amended by amending the definition of "abandoned well" to read  
11 as follows:

12 "Abandoned well" means any well [that] the purpose or use  
13 of which has been permanently discontinued. Any well shall be  
14 deemed abandoned [which is] whenever the well has served its  
15 purpose, the well use has been permanently discontinued, the  
16 well is not properly maintained, the physical condition of the  
17 well is causing a waste of ground water or is impairing or  
18 threatens to impair the quality of the ground water resources,  
19 or the well is in such a state of disrepair that its continued  
20 use [for the purpose of obtaining ground water] is  
21 impractical[-] or it is a hazard to public health or safety."



SECTION 5. Section 174C-87, Hawaii Revised Statutes, is amended to read as follows:

**"§174C-87 Abandonment of wells.** (a) When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the commission may require.

(b) The owner of an abandoned well shall repair or fill and seal the well at the owner's expense, as provided by rules adopted pursuant to chapter 91.

(c) Notwithstanding any other law to the contrary, if the owner of real property that includes an abandoned well transfers ownership of the real property, the owner shall notify the commission on water resource management of that transfer before going into escrow. In addition, if the owner of real property transfers ownership to another person without first reporting





1 and repairing or filling and sealing the abandoned well pursuant  
2 to subsection (a), the transferring owner shall be liable for  
3 the abandoned well under this section; provided that the  
4 commission establishes that:

5       (1) The well was abandoned when the transferring owner  
6       transferred the property; and

7       (2) The transferring owner did not report and repair or  
8       fill and seal the well pursuant to subsection (a);

9 provided further that a new owner shall not be liable for an  
10 abandoned well under this section if the commission establishes  
11 the transferring owner's liability for that abandoned well  
12 pursuant to this subsection."

13       SECTION 6. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$                   or so  
15 much thereof as may be necessary for fiscal year 2022-2023 for  
16 three full-time equivalent (3.0 FTE) ground surveyor positions  
17 in the commission on water resource management.

18       The sum appropriated shall be expended by the department of  
19 land and natural resources for the purposes of this Act.




1       SECTION 7. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4       SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 9. This Act shall take effect on July 1, 2022;  
7 provided that section 2 of this Act shall apply to taxable years  
8 beginning after December 31, 2021.

9

INTRODUCED BY: 



# S.B. NO. 2752

**Report Title:**

Water; Abandoned Wells; Income Tax Credit; Seller's Disclosure; Liability; Appropriation

**Description:**

Establishes an income tax credit for taxpayers who are required to fill and seal abandoned wells on their real property. Clarifies the definition of the term "abandoned well". Requires sellers of real property to disclose the existence of wells on the property. Requires an owner or prior owner of an abandoned well to repair or fill and seal the well at the owner's or prior owner's expense. Appropriates funds for three full-time equivalent ground surveyor positions under the Commission on Water Resource Management.

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

