

JAN 21 2022

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# 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 Hawaii has nearly  
2       88,000 cesspools that release more than 50,000,000 gallons of  
3       raw sewage into the State's groundwater and surface waters every  
4       day. Cesspools are an antiquated technology for disposal of  
5       untreated sewage that have the potential to pollute groundwater  
6       and harm streams and coastal resources, including coral reefs.

7       The legislature further finds that Act 125, Session Laws of  
8       Hawaii 2017 (Act 125), established a requirement for the  
9       conversion of all cesspools in the State to department of health  
10      approved wastewater management systems by 2050. However, in  
11      order to achieve this goal by 2050, the State must begin to take  
12      action now.

13      The legislature further finds that one mechanism commonly  
14      used by other states that have faced similar challenges is to  
15      require that existing cesspools are converted at the point of  
16      sale, or when a property is sold in a real estate transaction.  
17      This requirement would systematically reduce the number of



1 cesspools in Hawaii, protect homebuyers by ensuring that the  
2 wastewater management system on the property they are buying  
3 will not be illegal in 2050, and open up financing options for  
4 the cost of the conversion. Massachusetts, New Jersey, New  
5 York, and Rhode Island are examples of states that have enacted  
6 point-of-sale cesspool conversion requirements.

7 The legislature further finds that the cost of cesspool  
8 conversion can be a challenge for low- and middle-income  
9 residents and that offering an income tax credit to offset the  
10 cost of cesspool conversion would help to mitigate the financial  
11 burden on these individuals. Act 125 offered a temporary income  
12 tax credit for the cost of upgrading, converting, or connecting  
13 a cesspool.

14 Accordingly, the purpose of this Act is to protect the  
15 public health and environment by:

- 16 (1) Requiring certain cesspool upgrades, conversions, or  
17 connections to sewer at the point of sale of real  
18 property before point of sale or within twelve months  
19 of date of recordation with certain exemptions; and  
20 (2) Providing a tax credit for the upgrade or conversion  
21 of a cesspool to a wastewater system approved by the



1 director of health or connection of a cesspool to a  
2 sewerage system.

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

6 "§235- Cesspool upgrade, conversion, or connection;  
7 income tax credit. (a) There shall be allowed to each taxpayer  
8 subject to the tax imposed under this chapter a cesspool  
9 upgrade, conversion, or connection income tax credit that shall  
10 be deductible from the taxpayer's net income tax liability, if  
11 any, imposed by this chapter for the taxable year in which the  
12 credit is properly claimed.

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

19 (c) The amount of the tax credit shall be equal to the  
20 qualified expenses of the taxpayer, up to a maximum of:



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(1) \$15,000 per residential dwelling connected to the cesspool, for a taxpayer with an adjusted gross income of less than \$ \_\_\_\_\_ ;

(2) \$10,000 per residential dwelling connected to the cesspool, for a taxpayer with an adjusted gross income of at least \$ \_\_\_\_\_ but less than \$ \_\_\_\_\_ ;

(3) \$7,500 per residential dwelling connected to the cesspool, for a taxpayer with an adjusted gross income of at least \$ \_\_\_\_\_ but less than \$ \_\_\_\_\_ ; and

(4) \$0 per residential dwelling connected to the cesspool, for a taxpayer with an adjusted gross income greater than \$ \_\_\_\_\_ .

(d) A maximum of one tax credit may be issued per cesspool. The tax credit shall be available only for the taxable year in which the taxpayer's qualified expenses are certified by the appropriate government agency.

(e) The total amount of tax credits allowed under this section shall not exceed \$ \_\_\_\_\_ for all taxpayers in any taxable year; provided that any taxpayer who is not eligible to claim the credit in a taxable year due to the cap having been



1 exceeded for that taxable year shall be eligible to claim the  
2 credit in the subsequent taxable year.

3 (f) The department of health shall:

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

7 (2) Certify to each taxpayer the amount of credit the  
8 taxpayer may claim; provided that if, in any year, the  
9 annual amount of certified credits reaches \$  
10 in the aggregate, the appropriate government agency  
11 shall immediately discontinue certifying credits and  
12 notify the department of taxation.

13 (g) The director of taxation:

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

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

19 (3) Shall adopt rules under chapter 91 as necessary to  
20 implement this section.



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1        (h) If the tax credit claimed by the taxpayer under this  
2 section exceeds the amount of the income tax payments due from  
3 the taxpayer, the excess of credit over payments due shall be  
4 refunded to the taxpayer; provided that the tax credit properly  
5 claimed by a taxpayer who has no income tax liability shall be  
6 paid to the taxpayer; provided further that no refunds or  
7 payments on account of the tax credit allowed by this section  
8 shall be made for amounts less than \$1. All claims for the tax  
9 credit under this section, including amended claims, shall be  
10 filed on or before the end of the twelfth month following the  
11 close of the taxable year for which the credit may be claimed.  
12 Failure to comply with the foregoing provision shall constitute  
13 a waiver of the right to claim the credit.

14        (i) This section shall apply to taxable years beginning  
15 after December 31, 2021, and ending before January 1, 2029.

16        (j) As used in this section:

17        "Approved wastewater system" includes aerobic treatment  
18 unit systems, septic systems, and other types of onsite  
19 wastewater systems that have been approved by the Hawaii  
20 department of health.



1       "Aerobic treatment unit system" has the same meaning as in  
2 section 342D-72.

3       "Cesspool" has the same meaning as in section 342D-72.

4       "Qualified expenses" means costs that are necessary and  
5 directly incurred by the taxpayer for upgrading or converting a  
6 cesspool into wastewater system approved by the director, or  
7 connecting a cesspool to a sewerage system, and that are  
8 certified as such by the appropriate government agency.

9       "Septic system" has the same meaning as in section 342D-72.

10       "Sewerage system" has the same meaning as in section  
11 342D-1.

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

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

18       "§342D-       Cesspool upgrade, conversion or connection; upon  
19 sale. (a) Any cesspool located within five hundred feet of a  
20 shoreline, perennial stream, wetland, source water protection  
21 area, or sensitive body of water as defined by department rule



1 on real property that is sold or whose ownership is transferred  
2 on or after January 1, 2024, shall be:

3 (1) Upgraded or converted to a wastewater system approved  
4 by the director; or

5 (2) Connected to a sewerage system, at the time of sale or  
6 transfer of ownership of the real property.

7 (b) The department of health shall adopt rules pursuant to  
8 chapter 91 to implement this section, including any exemptions  
9 from this section that the department deems necessary; provided  
10 that the rules shall include at least the following exemptions:

11 (1) Cesspools on real property transferred between joint  
12 tenants or tenants in common;

13 (2) Cesspools on real property transferred to a spouse,  
14 child, or parent;

15 (3) Cesspools on real property transferred between spouses  
16 resulting from a decree of dissolution of marriage, a  
17 decree of legal separation, or a property settlement  
18 agreement that is incidental to the decree; and

19 (4) Cesspools on real property transferred resulting from  
20 a short sale, pre-foreclosure, or foreclosure.

21 (c) As used in this section:





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1       "Approved wastewater system" includes aerobic treatment  
2       unit systems, septic systems, and other types of onsite  
3       wastewater systems that have been approved by the director of  
4       health.

5       "Aerobic treatment unit system" has the same meaning as in  
6       section 342D-72.

7       "Cesspool" has the same meaning as in section 342D-72.

8       "Septic system" has the same meaning as in section  
9       342D-72."

10       SECTION 4. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$400,000 or so much  
12 thereof as may be necessary for fiscal year 2022-2023 for four  
13 full-time equivalent positions (4.0 FTE) for the purposes of  
14 this Act.

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

17       SECTION 5. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20       SECTION 6. New statutory material is underscored.



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1       SECTION 7. This Act shall take effect upon its approval;  
2       provided that section 2 shall apply to taxable years beginning  
3       after December 31, 2023 and shall be repealed on December 31,  
4       2028.

5  
INTRODUCED BY:

*Mike Gabbard*



# S.B. NO. 2995

**Report Title:**

Cesspools; Wastewater Systems; Upgrades; Tax Credit;  
Appropriation

**Description:**

Requires upgrades to cesspools at the time of sale and allows a tax credit for certain wastewater systems. Makes an appropriation.

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

