
A BILL FOR AN ACT

RELATING TO CESSPOOLS.

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

PART I

SECTION 1. The legislature finds that there are approximately eighty-three thousand cesspools across the State, with 48,596 on Hawaii island, fourteen thousand three hundred on Kauai, eleven thousand thirty-eight on Maui, 7,491 on Oahu, and one thousand four hundred on Molokai. Pursuant to Act 125, Session Laws of Hawaii 2017, every cesspool in the State, excluding cesspools granted exemptions by the director of health, must be upgraded or converted to a director of health-approved wastewater system or connected to a sewerage system by January 1, 2050.

Additionally, the legislature also finds that because many cesspools will need to be converted each year, planning and coordination must occur between state and county agencies, communities and residents affected, and those involved in the replacement of cesspools to ensure an adequate supply of



1 materials, workers, and equipment as demand for conversions
2 increases.

3 The legislature further finds that the counties are
4 responsible for wastewater management and are in the best
5 position to identify priority neighborhoods that are conducive
6 to connect to an existing or proposed wastewater treatment
7 system; conduct necessary public outreach to communicate with
8 affected residents; conduct appropriate feasibility studies;
9 plan, design, and construct wastewater connections and
10 improvements; and implement user connection and monthly billing
11 fees.

12 As such, the legislature finds that creating a pilot
13 program that provides upfront planning funds might encourage the
14 counties to identify the most feasible neighborhoods to connect
15 to an existing or future wastewater treatment plant, engage
16 communities in the discussion, conduct preliminary engineering,
17 and estimate upfront and ongoing costs. A successful pilot
18 program could provide the necessary data and plans to assist the
19 counties to implement wastewater connections and scale future
20 programs to ensure cesspools are converted by 2050.

21 Therefore, the purpose of this part is to:



- 1 (1) Establish a pilot program within the environmental
2 management division of the department of health to
3 work with each county to identify a priority area to
4 expand the county sewage system or other centralized
5 treatment system to connect with individual properties
6 in the priority area and reduce or eliminate cesspools
7 in the identified area; and
- 8 (2) Appropriate funds to the department of health to
9 provide planning grants to each county for a pilot
10 cesspool conversion project.

11 SECTION 2. (a) There is established a county cesspool
12 conversion pilot program within the environmental management
13 division of the department of health to work with the four
14 counties to:

- 15 (1) Identify a priority area in each county in which a
16 pilot project could be implemented to expand the
17 county sewage system or other centralized treatment
18 system to connect with individual properties in the
19 priority area and reduce or eliminate cesspools in the
20 identified area;



1 (2) Meet with appropriate community stakeholders and
2 homeowners to gather input regarding plans for the
3 pilot project;

4 (3) Conduct planning and design;

5 (4) Estimate capital and ongoing maintenance costs; and

6 (5) Equitably allocate the funds available to each county
7 to carry out the pilot project.

8 (b) Each county shall submit a report on the progress made
9 in priority areas to connect cesspools to a county sewage system
10 to the legislature no later than twenty days prior to the
11 convening of the regular sessions of 2024, 2025, and 2026. The
12 report shall include:

13 (1) The location, costs of the cesspool conversion
14 project, and number of homes or units assisted;

15 (2) Outreach efforts conducted with community stakeholders
16 and homeowners on the pilot project;

17 (3) Status of planning and design;

18 (4) Estimated capital and maintenance expenses and
19 potential sources of revenues to construct projects;

20 and



1 (5) Recommendations for future priority areas suitable for
2 municipal sewer connections to further eliminate
3 cesspools in the county.

4 (c) The pilot program shall cease to exist on June 30,
5 2026.

6 (d) As used in this section, "cesspool" has the same
7 meaning as in section 342D-72, Hawaii Revised Statutes.

8 SECTION 3. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2023-2024 and
11 the same sum or so much thereof as may be necessary for fiscal
12 year 2024-2025 for the establishment of a county cesspool
13 conversion pilot program within the environmental management
14 division of the department of health to work with each county to
15 identify a priority area to expand the county sewage system or
16 other centralized treatment system to connect individual
17 properties in the priority area and reduce or eliminate
18 cesspools in the identified area; provided that the
19 environmental management division of the department of health
20 may obtain contractor support to provide any services required
21 to establish and implement the pilot program.



1 and additional full-time equivalent positions in
2 fiscal year 2024-2025.

3 SECTION 5. Chapter 342D, Hawaii Revised Statutes, is
4 amended by adding a new section to part IV to be appropriately
5 designated and to read as follows:

6 "§342D- Wastewater branch; cesspool conversion section.

7 There is established a cesspool conversion section within the
8 wastewater branch of the department, which shall:

9 (1) Manage and facilitate various state financing options
10 for the conversion of cesspools in the State;

11 (2) Develop and manage public outreach and education
12 regarding the conversion of cesspools;

13 (3) Inform cesspool owners of available options and
14 assistance for compliant conversions of cesspools;

15 (4) Manage any federal, state, or other available grants
16 to assist with the conversion of cesspools;

17 (5) Secure available federal funding that may be used to
18 assist in the conversion of cesspools; and

19 (6) Facilitate partnerships with counties,
20 non-governmental organizations, and the private sector



1 relating to the department's responsibilities under
2 this section."

3 SECTION 6. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2023-2024 and
6 the same sum or so much thereof as may be necessary for fiscal
7 year 2024-2025 to establish full-time equivalent (FTE)
8 permanent positions, a program specialist VI and a planner IV,
9 within the cesspool conversion section.

10 The sums appropriated shall be expended by the department
11 of health for the purposes of this section.

12 SECTION 7. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2024-2025 to
15 establish full-time equivalent (FTE) permanent
16 positions, a program specialist V and contracts specialist,
17 within the cesspool conversion section.

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



1 PART III

2 SECTION 8. The purpose of this part is to require the
3 department of health to retain qualified consultants to identify
4 necessary public outreach and education resources and tools and
5 develop a comprehensive public outreach strategy and website to
6 provide necessary information to educate homeowners regarding
7 the State's cesspool upgrade, conversion, and connection
8 requirements and deadlines.

9 SECTION 9. Section 342D-59, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~342D-59~~§~~ **Research, educational, and training**
12 **programs.** The director may:

13 (1) Conduct and supervise research programs for the
14 purpose of determining the causes, effects, and
15 hazards of water pollution, the quality of the
16 receiving water and the means to monitor the quality
17 of water, or to effect the proper disposal of sewage,
18 drainage, and waste;

19 (2) With the approval of the governor, cooperate with, and
20 receive money from the federal government, or any
21 political subdivision of the State or from private



1 sources for the study and control of water pollution;
2 [and]

3 (3) Conduct and supervise state educational and training
4 programs on water pollution prevention, control, and
5 abatement, including the preparation and distribution
6 of information relating to water pollution[-]; and

7 (4) In consultation with counties, nonprofit
8 organizations, and wastewater industry professionals:

9 (A) Identify necessary resources and tools for public
10 outreach and education, including necessary
11 funding and timelines, to meet the requirements
12 of section 342D-72;

13 (B) Develop a comprehensive public outreach strategy
14 for the State and counties to educate homeowners
15 on cesspool conversion options and resources; and

16 (C) Develop a website to educate homeowners on why
17 cesspools need to be converted, when conversions
18 are required, options and resources available to
19 help with the conversions, and other relevant
20 information."



1 SECTION 10. Notwithstanding section 342D-83, Hawaii
2 Revised Statutes, or any other law to the contrary, there is
3 appropriated out of the water pollution control revolving fund
4 the sum of \$ or so much thereof as may be necessary
5 for fiscal year 2023-2024 and the same sum or so much thereof as
6 may be necessary for fiscal year 2024-2025 for the department of
7 health to retain qualified consultants, as necessary, to
8 identify necessary public outreach and education resources and
9 tools, and develop a comprehensive public outreach strategy and
10 website to provide necessary information to educate homeowners
11 regarding the State's cesspool, and connection upgrade,
12 conversion requirements and deadlines.

13 The sums appropriated shall be expended by the department
14 of health for the purposes of this section.

15 PART IV

16 SECTION 11. The legislature finds that one recommendation
17 of the cesspool conversion working group is to ensure that
18 buyers of real property are adequately informed about the
19 existence of a cesspool on a property they are considering
20 purchasing, a requirement that would protect consumers and help
21 to incentivize cesspool conversions. Chapter 508D, Hawaii



1 Revised Statutes, requires a written disclosure statement
2 prepared by the seller, or at the seller's direction, that fully
3 and accurately discloses all material facts relating to
4 residential real property being offered for sale. A "material
5 fact" is defined to mean "any fact, defect, or condition, past
6 or present, that would be expected to measurably affect the
7 value to a reasonable person of the residential real property
8 being offered for sale." The legislature finds that a property
9 with a cesspool that must be converted by a set date is a
10 material fact that should be clearly and explicitly disclosed by
11 the seller in a real property transaction. Further, if the
12 property does have a cesspool, the priority level of that
13 cesspool as determined by the Hawaii cesspool prioritization
14 tool, including the date by which that cesspool must be
15 converted, should also be disclosed.

16 The legislature further finds that there is a need to
17 reinstate the cesspool upgrade, conversion, or connection tax
18 credit that expired at the end of 2020. There will be a need
19 for a variety of financing options to assist residents with the
20 cost of cesspool conversions, including the grant program
21 established by Act 153, Session Laws of Hawaii 2022. The



1 re-establishment of the cesspool upgrade, conversion, or
2 connection tax credit will complement the grant program.

3 The purpose of this part is to:

4 (1) Re-establish the cesspool upgrade, conversion, or
5 connection income tax credit that sunset on
6 December 31, 2020; and

7 (2) Require that mandatory seller disclosures in real
8 estate transactions include whether the property has a
9 cesspool, including the date by which state law
10 mandates that the cesspool be upgraded, converted, or
11 connected, and the priority level of the cesspool
12 according to the Hawaii cesspool hazard assessment and
13 prioritization tool.

14 SECTION 12. Chapter 235, Hawaii Revised Statutes, is
15 amended by adding a new section to part I to be appropriately
16 designated and to read as follows:

17 **"§235- Cesspool upgrade, conversion, or connection;**
18 **income tax credit.** (a) For taxable years beginning after
19 December 31, 2023, there shall be allowed to each taxpayer
20 subject to the tax imposed under this chapter a cesspool
21 upgrade, conversion, or connection income tax credit that shall



1 be deductible from the taxpayer's net income tax liability, if
2 any, imposed by this chapter for the taxable year in which the
3 credit is properly claimed.

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

10 (c) The cesspool upgrade, conversion, or connection income
11 tax credit shall be equal to the qualified expenses of the
12 taxpayer, up to a maximum of \$10,000; provided that, in the case
13 of a qualified cesspool that is a residential large capacity
14 cesspool, the amount of the credit shall be equal to the
15 qualified expenses of the taxpayer, up to a maximum of \$10,000
16 per residential dwelling connected to the cesspool, as certified
17 by the department of health pursuant to subsection (e). There
18 shall be allowed a maximum of one cesspool upgrade, conversion,
19 or connection income tax credit per qualified cesspool. The
20 cesspool upgrade, conversion, or connection income tax credit
21 shall be available only for the taxable year in which the



1 taxpayer's qualified expenses are certified by the department of
2 health.

3 (d) The total amount of tax credits allowed under this
4 section shall not exceed \$ _____ for all taxpayers in any
5 taxable year; provided that any taxpayer who is not eligible to
6 claim the credit in a taxable year due to the \$ _____ cap
7 being reached for that taxable year shall be eligible to claim
8 the credit in the subsequent taxable year.

9 (e) The department of health shall:

10 (1) Certify all qualified cesspools for the purposes of
11 this section;

12 (2) Collect and maintain a record of all qualified
13 expenses certified by the department of health for the
14 taxable year; and

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



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

4 (f) The director of taxation:

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

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

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

12 (g) If the tax credit under this section exceeds the
13 taxpayer's income tax liability, the excess of the credit over
14 liability may be used as a credit against the taxpayer's income
15 tax liability in subsequent years until exhausted. All claims
16 for the tax credit under this section, including amended claims,
17 shall be filed on or before the end of the twelfth month
18 following the close of the taxable year for which the credit may
19 be claimed. Failure to comply with the foregoing provision
20 shall constitute a waiver of the right to claim the credit.

21 (h) As used in this section:



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

2 "Qualified cesspool" means a cesspool that is:

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

4 (A) Located within a priority level 1 or 2 area
5 according to the university of Hawaii's 2022
6 Hawaii cesspool hazard assessment and
7 prioritization tool; or

8 (B) A residential large capacity cesspool; or

9 (2) Certified by a county or private sewer company to be
10 appropriate for connection to its existing sewerage
11 system.

12 "Qualified expenses" means costs that are necessary and
13 directly incurred by the taxpayer for upgrading or converting a
14 qualified cesspool to a director of health-approved wastewater
15 system, or connecting a qualified cesspool to a sewerage system,
16 and that are certified as such by the department of health.

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

19 "Sewerage system" has the same meaning as in
20 section 342D-1.

21 "Wastewater" has the same meaning as in section 342D-1."



1 SECTION 13. Section 23-94, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) This section shall apply to the following:

4 (1) Section 235-4.5(a)--Exclusion of intangible income
5 earned by a trust sited in this State;

6 (2) Section 235-4.5(b)--Exclusion of intangible income of
7 a foreign corporation owned by a trust sited in this
8 State;

9 (3) Section 235-4.5(c)--Credit to a resident beneficiary
10 of a trust for income taxes paid by the trust to
11 another state;

12 (4) Section 235- --Credit for cesspool upgrade,
13 conversion, or connection;

14 [~~4~~] (5) Sections 235-55 and 235-129--Credit for income
15 taxes paid by a resident taxpayer to another
16 jurisdiction;

17 [~~5~~] (6) Section 235-71(c)--Credit for a regulated
18 investment company shareholder for the capital gains
19 tax paid by the company;

20 [~~6~~] (7) Section 235-110.6--Credit for fuel taxes paid by
21 a commercial fisher;



1 [~~7~~] (8) Section 235-110.93--Credit for important
2 agricultural land qualified agricultural cost;
3 [~~8~~] (9) Section 235-110.94--Credit for organically
4 produced agricultural products;
5 [~~9~~] (10) Section 235-129(b)--Credit to a shareholder of
6 an S corporation for the shareholder's pro rata share
7 of the tax credit earned by the S corporation in this
8 State; and

9 [~~10~~] (11) Section 209E-10--Credit for a qualified business
10 in an enterprise zone; provided that the review of
11 this credit pursuant to this part shall be limited in
12 scope to income tax credits."

13 SECTION 14. Section 23-95, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) This section shall apply to the following:

- 16 (1) Section 235-5.5--Deduction for individual housing
- 17 account deposit;
- 18 (2) Section 235-7(f)--Deduction of property loss due to a
- 19 natural disaster;

20 [~~3~~] ~~Section 235-16.5--Credit for cesspool upgrade,~~
21 ~~conversion, or connection,~~



1 ~~(4)~~ (3) Section 235-19--Deduction for maintenance of an
2 exceptional tree;

3 ~~(5)~~ (4) Section 235-55.91--Credit for the employment of a
4 vocational rehabilitation referral;

5 ~~(6)~~ (5) Section 235-110.2--Credit for in-kind services
6 contribution for public school repair and maintenance;
7 and

8 ~~(7)~~ (6) Sections 235-110.8 and 241-4.7--Credit for
9 ownership of a qualified low-income housing building."

10 SECTION 15. Section 508D-15, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§508D-15 Notification required; ambiguity.** (a) When
13 residential real property lies:

14 (1) Within the boundaries of a special flood hazard area
15 as officially designated on flood maps promulgated by
16 the National Flood Insurance Program of the Federal
17 Emergency Management Agency for the purposes of
18 determining eligibility for emergency flood insurance
19 programs;

20 (2) Within the boundaries of the noise exposure area shown
21 on maps prepared by the department of transportation



1 in accordance with Federal Aviation Regulation part
2 150, Airport Noise Compatibility Planning (14 C.F.R.
3 part 150), for any public airport;

4 (3) Within the boundaries of the Air Installation
5 Compatible Use Zone of any Air Force, Army, Navy, or
6 Marine Corps airport as officially designated by
7 military authorities;

8 (4) Within the anticipated inundation areas designated on
9 the department of defense's emergency management
10 tsunami inundation maps; or

11 (5) Within the sea level rise exposure area as designated
12 by the Hawaii climate change mitigation and adaptation
13 commission or its successor,

14 subject to the availability of maps that designate the five
15 areas by tax map key (zone, section, parcel), the seller shall
16 include the material fact information in the disclosure
17 statement provided to the buyer subject to this chapter. Each
18 county shall provide, where available, maps of its jurisdiction
19 detailing the five designated areas specified in this
20 subsection. The maps shall identify the properties situated
21 within the five designated areas by tax map key number (zone,



1 section, parcel) and shall be of a size sufficient to provide
2 information necessary to serve the purposes of this section.
3 Each county shall provide legible copies of the maps and may
4 charge a reasonable copying fee.

5 (b) When it is questionable whether residential real
6 property lies within any of the designated areas referred to in
7 subsection (a) due to the inherent ambiguity of boundary lines
8 drawn on maps of large scale, the ambiguity shall be construed
9 in favor of the seller; provided that a good faith effort has
10 been made to determine the applicability of subsection (a) to
11 the subject real property.

12 (c) When residential real property contains a cesspool and
13 the cesspool is identified by the maps in the university of
14 Hawaii 2022 Hawaii cesspool hazard assessment and prioritization
15 tool, subject to the availability of the maps, the seller shall
16 include the material fact information in the disclosure
17 statement provided to the buyer subject to this chapter. The
18 maps shall identify the cesspool priority level and the date,
19 established by law, by which the cesspool is required to be
20 upgraded or converted to a director of health-approved
21 wastewater system or connected to a sewerage system.



Report Title:

Cesspools; Pilot Program; Counties; Priority Area; DOH; Cesspool Conversion Section; Positions; Income Tax Credit; Real Property; Mandatory Disclosures; Appropriation

Description:

Part I: Establishes and appropriates funds for a county cesspool pilot program in the Department of Health to work with each county to identify a priority area to expand the county sewage system or other centralized treatment system to connect individual properties in the priority area and reduce or eliminate cesspools in the identified area. Part II: Creates a cesspool conversion section in the Department of Health to facilitate the conversion of cesspools within the State. Establishes and appropriates funds for positions. Part III: Requires the Department of Health to retain qualified consultants to identify necessary public outreach and education resources and tools, and develop a comprehensive public outreach strategy and educate homeowners regarding the State's cesspool upgrade, conversion, and connection requirements and deadlines. Part IV: Establishes, for all taxable years after December 31, 2023, an income tax credit for the cost of upgrading or converting a qualified cesspool to a Director of Health-approved wastewater system or connecting to a sewerage system. Requires that, effective 11/1/23, certain information regarding cesspools on real property be included in seller mandatory disclosures for real property transactions. Effective 6/30/3000. (SD2)

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

