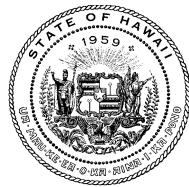


JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 440, Relating to Cesspools

BEFORE THE:

House Committee on Energy and Environmental Protection

DATE: Thursday, February 2, 2023

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 325

Chair Lowen, Vice-Chair Cochran, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 440 for your consideration.

H.B.440 adds a new section to Chapter 235, Hawaii Revised Statutes, to create a nonrefundable income tax credit for qualified expenses, up to a maximum of \$10,000, for upgrading or converting a qualified cesspool to an approved wastewater system or connecting a qualified cesspool to a sewerage system. The bill sets an aggregate cap of \$5,000,000 and requires the Department of Health to certify all qualified cesspools for the credit. This bill is effective upon approval and applies to taxable years beginning after December 31, 2022.

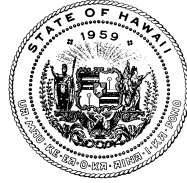
First, the Department defers to the Department of Health on its ability to certify this credit and administer its aggregate cap, but respectively requests that a third-party certification requirement be maintained, as the Department lacks subject-matter expertise to determine eligibility for and to administer this credit.

Second, as currently drafted, the measure's definition of "qualified expenses" refers to "director-approved wastewater system." To avoid ambiguity for which director

will approve the wastewater system, the Department recommends amending the definition of “qualified expenses” by replacing “director-approved wastewater system” with “wastewater system approved by the Department of Health.”

Finally, the Department notes that due to the number of bills with law changes that have been introduced this year, the Department may not have the resources to implement all measures passed this session in time for tax year 2023. The Department will continue to monitor the status of the proposed legislation and will advise whether some changes will require a later effective date.

Thank you for the opportunity to provide comments on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. BOX 3378
HONOLULU, HI 96801-3378
doh.testimony@doh.hawaii.gov

In reply, please refer to:
File:

**Testimony in SUPPORT of HB0440
RELATING TO CESSPOOLS**

REPRESNETATIVE NICOLE E. LOWEN, CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
REPRESENTATIVE LINDA ICHIYAMA, CHAIR
HOUSE COMMITTEE ON WATER & LAND
Hearing Date: 2/2/2023 Room Number: 325

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities.

4 **Department Testimony:** The Department supports the re-establishment of the cesspool
5 upgrade, conversion, or connection income tax credit program. The Department recognizes that
6 there is a need to provide a variety of financing options to assist residents for cesspool
7 conversions in addition to the program that was established by Act 153, Session Laws of Hawaii
8 2022. The Department also supports the mandatory seller disclosures in real estate transactions
9 to include whether the property has a cesspool, including the date by which state law mandates
10 that the cesspool be upgraded, converted or connected to a sewer system.

11 The Department recommends that the measure be amended to reference the University of
12 Hawaii's 2022 Hawaii cesspool hazard assessment and prioritization tool since it is the current
13 version of the tool that is available. In addition, on Page 11, line 15, it might not be advisable to
14 tie the bill to Hawaii Revised Statutes, section 342D-72, which is the general mandate to convert
15 by 2050. Other bills seek to move up that deadline for priority levels 1 and 2, and would be
16 placed in a different section in Chapter 342D. This reference would exclude that proposed added
17 section.

18 Thank you for the opportunity to testify.

- 1 **Offered Amendments:** The Department suggests amending the bill on Page 11, Line 15, to
- 2 remove the reference to section 342D-72 and Page 7, Line 5 and Page 11, Line 17 to reference
- 3 the University of Hawaii's 2022 Hawaii cesspool hazard assessment and prioritization tool.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
House Committees on Energy & Environmental Protection and Water & Land
Thursday, February 2, 2023 at 8:30 a.m.

By

Darren T. Lerner, PhD

Director, University of Hawai'i (UH) Sea Grant College Program,
School of Ocean and Earth Science and Technology

And

Thomas Giambelluca

Director, UH Water Resources Research Center

And

Michael Bruno, Provost

University of Hawai'i at Mānoa

HB 440 – RELATING TO CESSPOOLS

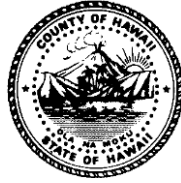
Chairs Lowen and Ichiyama, Vice Chairs Cochran and Poepoe, and Members of the Committees:

The University of Hawai'i Sea Grant College Program (Hawai'i Sea Grant) and UH Water Resources Research Center support HB 440. This bill would establish an income tax credit to offset the financial difficulties of cesspool conversion and upgrades. The Cesspool Conversion Working Group recently reported that the vast majority of cesspool owners cannot afford the upgrade of their cesspool to an advanced form of wastewater treatment. Because it is critical to both human and environmental health that the state's cesspools be eliminated as soon as possible, it is important that a multitude of mechanisms for financial assistance be created for homeowners. Hawai'i Sea Grant and UH Water Resources Research Center further support the disclosure of a cesspool's presence on a property during a real estate transaction. This disclosure would motivate conversion prior to the sale of the property, accelerating the statewide conversion and upgrade of cesspools, and would also prevent the new buyer from the undue burden of conversion.

Thank you for the opportunity to testify on this measure.

Mitchell D. Roth
Mayor

Lee Lord
Managing Director



Ramzi I. Mansour
Director

Brenda Iokepa-Moses
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720 · cohdem@hawaiiicounty.gov

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February 1, 2023

Nicole E. Lowen, Chair, and
Members of the Committee on Energy and Environmental Protection

Linda Ichiyama, Chair, and
Members of the Committee on Water and Land

Chair Lowen, Chair Ichiyama, and Committee Members,

I am a member of the Cesspool Conversion Working Group. The Department of Environmental Management supports this bill. HB 440 codifies **Priority A2** of the group's recommendations into statute.

A2. Adopt and implement policies and mechanisms to accelerate cesspool conversions statewide, prioritizing the highest risk areas. Recommendations include:

- Point-of-sale conversion requirements
- Require a seller's disclosure form for any property sold that has a cesspool
- **Financial incentives including grants, tax credits, and loans to offset the cost of conversion**

The working group analyzed the financial burdens that these cesspool conversions will impose and identified ways to ameliorate the impacts. Hawai'i County, where many of the cesspools in the State are located, faces significant challenges in meeting the 2050 conversion mandate, and so any assistance that would support compliance with the conversion deadline would be appreciated.

I refer to our report (DC175) for the importance of passing this bill:

“The working group further recommends the adoption of policies and mechanisms that will facilitate this acceleration and the need for an iterative process as new findings are established.”

Thank you for the opportunity to provide testimony.

Ramzi Mansour, Director



Environmental Caucus of The Democratic Party of Hawai'i

To: The Honorable Nicole E. Lowen, Chair
The Honorable Elle Cochran, Vice Chair
Committee on Energy & Environmental Protection

The Honorable Linda Ichiyama, Chair
The Honorable Mahina Poepoe, Vice Chair
Committee on Water & Land

Re: **HB 440 – RELATING TO CESSPOOLS**

Hearing: Thursday, February 2, 2023, 8:30 a.m., Conference Room 325 & Videoconference

Position: **Strong support**

Aloha, Chairs Lowen and Ichiyama, Vice Chairs Cochran and Poepoe, and Members of the Committee on Energy & Environmental Protection and Committee on Water & Land:

The Environmental Caucus of the Democratic Party of Hawai'i stands in strong support of HB 440. This measure establishes 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. It also requires certain information regarding cesspools on real property to be included in seller mandatory disclosures on real property transactions.

The Democratic Party of Hawai'i Platform on the environment provides that its members are to “protect and preserve Hawai'i's environment and achieve energy sustainability, advance measures to re-establish a healthy climate and environment for humans and fellow species, including actions to urgently address climate change, and work towards 100% renewable energy goals.

We believe that all people have the right to live in a clean, healthy and safe environment. We believe that the preservation of our natural environment and its ecological well-being is essential to ensuring a safe, healthy, bountiful life for future generations in Hawai'i. We support policies that create a more sustainable society. We support the restoration, preservation, and protection of native ecosystems.

We believe in the resource management principles outlined in the Public Trust doctrine of [Article XI, Section 1 of] the Hawai'i State Constitution.” [OUR PLATFORM | DPH \(hawaiidemocrats.org\)](#)

Hawaii currently has an official goal to replace all its cesspools with better sewage treatment systems that cause less harm to the local environment and public health by 2050; however, as many as 83,000 cesspools release about 53 million gallons of untreated sewage into the islands' soil, streams and nearshore waters daily making the 2050 deadline too late to prevent substantial harm.

In the Report of the [Cesspool Conversion Working Group](#), nearly 14,000 of the worst Hawaii cesspools – the ones that would potentially cause the most damage based on their location – are to be removed by 2030; followed by more than 12,000 “priority two” cesspools to be removed by 2035; and the remaining “priority three” 55,000 cesspools are to be removed by the original 2050 deadline.



February 2, 2023
Page 2

“There are no benefits to human health or the environment if homeowners wait or postpone conversion until closer to the 2050 ... deadline,” the 17-member task force of scientists, public health officials, private industry representatives, elected leaders and environmental advocates wrote in a new 1,182-page report to the Legislature. [Microsoft Word - Cesspool Conversion Plan Draft Final-copy-blue wave-FINAL use this one \(hawaii.gov\)](#)

Establishing (1) 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, and (2) requiring certain information regarding cesspools on real property to be included in seller mandatory disclosures on real property transactions are consistent with the state and counties’ duties under the Public Trust Doctrine and the DPH Platform environmental plank on restoring, preserving, and protecting our native ecosystem.

Please support and pass this bill.

Mahalo for the opportunity to testify on this measure.

/s/ Melodie Aduja and Alan Burdick
Co-Chairs, Environmental Caucus of the Democratic Party of Hawai'i

February 2, 2023

The Honorable Nicole E. Lowen, Chair

House Committee on Energy & Environmental Protection

The Honorable Linda Ichiyama, Chair

House Committee on Water & Land

State Capitol, Conference Room 325 & Videoconference

RE: House Bill 440, Relating to Cesspools

HEARING: Thursday, February 2, 2023, at 8:30 a.m.

Aloha Chair Lowen, Chair Ichiyama, and Members of the Joint Committees:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR supports the intent and provides **comments** on House Bill 440, which establishes 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 certain information regarding cesspools on real property to be included in seller mandatory disclosures on real property transactions.

Hawai'i REALTORS® supports the goal of protecting our drinking water, streams, ground water, and ocean resources. We recognize that cesspool conversion is important to preserve our environment. There are approximately 83,000 cesspools divided into three priorities¹ across the State (48,596 on Hawai'i Island; 14,300 on Kauai; 11,038 on Maui; 1,400 on Molokai; and 7,491 on O'ahu) with only 27 years to meet the state's mandate to convert all cesspools to a Director of Health approved wastewater system. To convert 83,000 cesspools by 2050, at least 3,000 cesspools would need to be converted per year.

Affordability and financial planning are key. The Cesspool Conversion Working Group conducted an affordability analysis² for homeowners. Based on the analysis, 97% of homeowners would be financially burdened by cesspool conversion costs. Equally concerning, even with a \$10,000 rebate 82% of homeowners would still be financially burdened. Most homeowners will not be able to afford to do this alone. As such, tax credits can be a beneficial tool in helping homeowners convert their cesspools to a Director of Health approved wastewater system. We believe that this bill is a step in the right direction; however, most homeowners will need additional assistance to ensure that they can meet the mandate to convert.

¹ University of Hawai'i Sea Grant College Program. *Hawai'i Cesspool Prioritization Tool*.

<https://seagrant.soest.hawaii.edu/cesspools-tool/>

² Cesspool Conversion Working Group. (2022). *Final Report to the 2023 Regular Session Legislature*. State of Hawai'i Department of Health. <https://health.hawaii.gov/opppd/files/2022/12/Act-170-SLH-2019-Nov-2022.pdf>



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Additionally, Hawai'i REALTORS® already has disclosure provisions relating to cesspools in our Seller's Real Property Disclosure Statement so this provision of the bill may not be necessary. HAR has a Standard Forms Committee that continuously reviews or creates our real estate contracts to ensure it's current with industry standards and the law. Additionally, the Standard Forms Committee has created a subcommittee to explore the cesspool conversion issue further with regard to the standard forms that we generate for the real estate industry.

Thank you for the opportunity to provide comments on this measure. Mahalo for the opportunity to testify.





Feb. 1, 2023

In Support of **HB440** Relating to Cesspools
House Committees on Energy & Environmental Protection (EEP) and Water & Land (WAL)
Hearing on Feb. 2, 8:30am, Rm. 325

Aloha, Chairs Lowen & Ichiyama, Vice-Chairs Cochran & Poepoe and Members of the Committee:

On behalf of the non-profit WAI: Wastewater Alternatives & Innovations, I am writing in **strong support of HB440**. This bill will require mandatory disclosures of cesspools on a property in real estate transactions and establish an income tax credit for the cost of upgrading or converting a cesspool to a qualified wastewater system. Converting cesspools to new technologies is expensive, and this bill would help homeowners with the costs of conversion.

Hawaii has more than 83,000 cesspools across the state, discharging 52 million gallons of raw sewage each day into Hawaii's waters. That's similar to a massive sewage spill every day! The people of Hawaii need this law to make sure their wastewater systems aren't polluting the groundwater or nearby surface waters. As a member of the State's Cesspool Conversion Working Group over the last four years, we believe that bringing back economic incentives like the \$10,000 tax credits that expired in 2020 are important to jumpstart the conversion process.

WAI is dedicated to protecting our drinking water, groundwater and near-shore ecosystems by reducing sewage pollution from cesspools and failing septic systems. Our goal is to help find more innovative, affordable, and eco-friendly solutions to wastewater management. Better sanitation systems reduce sewage pollution and make properties more valuable, while also protecting our groundwater, streams and the health of our coral reefs and coastal areas.

Hawaii is struggling with serious sewage pollution problems, and the state has a mandate to make sure all cesspools are converted in the next three decades. Without earlier deadlines and a clear mandate, the previous tax credit didn't work as well. But with mandatory disclosure of cesspools on a property during real estate transactions, the \$10,000 tax break will have more appeal and effectiveness. Although this bill will primarily benefit people with larger tax burdens, it is a good companion to HB2195 / Act 153 (2022), which will focus on giving up to \$20,000 in rebates to lower-mid income homeowners. It will also help the state meet the mandate to convert all cesspools by 2050. Mahalo for your leadership on this issue and support of this bill.

Aloha,

Stuart Coleman

Stuart H. Coleman, Executive Director

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for Cesspool Upgrade, Conversion, or Connection

BILL NUMBER: HB 440, SB 947

INTRODUCED BY: HB by LOWEN, CHUN, COCHRAN, GANADEN, GARRETT, HUSSEY-BURDICK, KAPELA, KILA, KITAGAWA, LAMOSAO, MARTEN, MATAYOSHI, MIZUNO, NAKASHIMA, NISHIMOTO, ONISHI, PERRUSO, POEPOE, TAKENOUCI, TARNAS, TODD, WARD, Martinez; SB by KEOHOKALO

EXECUTIVE SUMMARY: Re-establishes the 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 certain information regarding cesspools on real property to be included in seller mandatory disclosures on real property transactions.

SYNOPSIS: Adds a new section to chapter 235, HRS, allowing a nonrefundable income tax credit for a cesspool upgrade, conversion, or connection to a sewer system.

The credit equals the qualified expenses of the taxpayer, up to \$10,000. For a residential large capacity cesspool that services more than one dwelling, the maximum credit (apparently per taxpayer) is \$10,000 times the number of dwellings connected to the cesspool.

The total amount of tax credits allowed statewide is not to exceed \$5 million. Taxpayers whose credit claims are disallowed because of the cap may claim the credit in the following year.

The Department of Health is tasked with the responsibility of examining and certifying claims for the credit.

Amends sections 23-94 and 23-95, HRS, to allow for a periodic review of the credit by the State Auditor.

Amends section 508D-3.5, HRS, to require the disclosure of cesspools located on the real property if the property is offered for sale and is subject to a recorded declaration.

EFFECTIVE DATE: Upon Approval, applicable to taxable years beginning after December 31, 2022.

STAFF COMMENTS: Act 120, SLH 2015, enacted a temporary income tax credit, expiring on December 31, 2020, for 100% of the qualified costs of a cesspool upgrade, conversion, or connection, up to \$10,000. Act 182, SLH 2016, made clarifying amendments.

This measure means to reinstate the credit, which is an extension of the current effort to mitigate the public health hazards caused by cesspools, which release millions of gallons of untreated sewage into the ground. Many houses, especially in rural areas, still have them. Converting them is expensive, hence the credit to encourage homeowners to do so.

Re: HB 440

Page 2

We question why the disclosure requirement only applies to properties subject to a recorded declaration. It seems that the disclosure requirement should apply to all properties on which there is a cesspool in use.

Digested: 1/31/2023

HB-440

Submitted on: 1/31/2023 11:59:11 AM

Testimony for EEP on 2/2/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gladys C Baisa	Individual	Comments	Written Testimony Only

Comments:

A tax credit is a good thing for high income taxpayers who can benefit from a credit. Low income taxpayers will need help with paying for the conversion and a tax credit won't help them as they still have to come up with the cost to convert. Grants for them is a much better solution to offer.

HB-440

Submitted on: 1/31/2023 8:46:54 PM

Testimony for EEP on 2/2/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Hawai'i has more than 80,000 cesspools that release more than 50 million gallons of raw sewage into the state's groundwater and surface waters every day. Cesspools are an antiquated technology for the disposal of untreated sewage that can pollute drinking water, streams, coastal waters, and coral reefs, posing a significant threat to the environment and to human health. There is a clear need to reinstate the cesspool upgrade, conversion, or connection tax credit that expired at the end of 2020. Please support HB440.

HB-440

Submitted on: 1/31/2023 9:52:29 PM

Testimony for EEP on 2/2/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Theresa M Thompson	Individual	Support	Written Testimony Only

Comments:

I support HB440.

Theresa Thompson

HB-440

Submitted on: 2/1/2023 9:59:44 AM

Testimony for EEP on 2/2/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nicolas Storie	Individual	Support	Written Testimony Only

Comments:

Aloha, Chairs Lowen & Ichiyama, Vice-Chairs Cochran & Poepoe and Members of the Committee:

I am a resident of Kaimuki and am writing in support of HB440.

As a Ph.D. student at UH-Mānoa, my central research focus is understanding the sources of coastal sewage pollution across the state. With over 83,000 cesspools across the state leaking 52 million gallons of untreated sewage each day, we face a direct risk to the health of our communities, economy, and coral reefs.

Hawaii is struggling with serious sewage pollution problems, and the state has a mandate to make sure all cesspools are converted in the next three decades. Without earlier deadlines and a clear mandate, the previous tax credit didn't work as well. But with mandatory disclosure of cesspools on a property during real estate transactions, the \$10,000 tax break will have more appeal and effectiveness. Although this bill will primarily benefit people with larger tax burdens, it is a good companion to HB2195 / Act 153 (2022), which will focus on giving up to \$20,000 in rebates to lower-mid income homeowners. It will also help the state meet the mandate to convert all cesspools by 2050. Mahalo for your leadership on this issue and support of this bill.

Best,

Nicolas Storie

HB-440

Submitted on: 2/1/2023 11:19:42 AM

Testimony for EEP on 2/2/2023 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Graeme Lander	Individual	Support	Written Testimony Only

Comments:

Aloha,

As an avid ocean user, surfer, and freediver, I am deeply concerned about the negative impact of cesspools on our environment and public health. The discharge of untreated wastewater into the ocean has led to a decline in water quality, harm to marine life and reefs, and increased health risks for ocean users like myself.

I strongly support the establishment of an income tax credit for the cost of upgrading or converting a qualified cesspool to a DOH-approved wastewater system or connecting to a sewerage system. This tax credit will provide much-needed financial support for homeowners, contractors, and engineers who are working to improve our community's wastewater management infrastructure.

I also commend the proposal to include information regarding cesspools on real property in mandatory disclosures during real estate transactions. This will increase transparency and ensure that prospective buyers are aware of any potential health and environmental risks associated with a property.

These initiatives align with the expert panel recommendations outlined by the cesspool conversion working group and will play a vital role in mitigating the negative impacts of cesspools on our community. I strongly encourage you to support this proposal and take action to protect our environment and public health.

Mahalo,

Graeme Lander