

JAN 19 2024

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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 the State's streams,  
2 groundwater, and ocean are being harmed by water pollution from  
3 nonpoint contamination sources that flow off the land directly,  
4 rather than through pipes or ditches. Cesspools constitute a  
5 nonpoint contamination source of grave concern. These  
6 substandard systems are essentially underground pits that  
7 discharge raw, untreated sewage. Groundwater, drinking water  
8 sources, streams, and the ocean are contaminated by cesspool  
9 pollution. The department of health indicates that there are  
10 approximately eighty-eight thousand cesspools in the State, of  
11 which approximately forty-three thousand pose a risk to the  
12 State's water resources.

13           The legislature further finds that reducing the number of  
14 cesspools in the State is a matter of great importance.  
15 Cesspools near drinking water wells or within five hundred feet  
16 of surface waters and cesspools that are connected to multiple  
17 residential dwellings present a higher risk of harm to public



1 health and the environment and should be prioritized by the  
2 department of health for upgrade. The department of health  
3 indicates that there are at least six thousand seven hundred of  
4 these cesspools in the State.

5 Priority should be given to cesspool owners who request  
6 financial assistance to upgrade, convert, or connect cesspools  
7 that: affect public drinking water wells; are within five  
8 hundred feet of the shoreline, streams, or wetlands; or are  
9 connected to multiple residential dwellings.

10 Act 200, Session Laws of Hawaii 2014, established the tax  
11 credit for the costs to upgrade or convert a qualified cesspool  
12 into a septic system or an aerobic treatment unit system, or to  
13 connect a qualified cesspool to a sewer system, effective for  
14 taxable years beginning after December 31, 2015. This tax  
15 credit expired December 31, 2020. Before its expiration, the  
16 tax credit was claimed on sixty-four tax returns for tax year  
17 2019 and the amounts claimed totaled \$371,000. For tax year  
18 2018, the tax credit was claimed on forty-one tax returns and  
19 the amounts claimed totaled \$219,000, up from \$143,000 claimed  
20 for tax year 2017.



1           The purpose of this Act is to reinstate the cesspool  
2 upgrade, conversion, or connection income tax credit and thereby  
3 provide financial assistance to owners of cesspools who:

4           (1) Upgrade or convert a qualified cesspool into a septic  
5           system or an aerobic treatment unit system; or

6           (2) Connect a qualified cesspool to a sewer system.

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

10           "§235-       Cesspool upgrade, conversion, or connection;  
11 income tax credit. (a) There shall be allowed to each taxpayer  
12 subject to the tax imposed under this chapter, a cesspool  
13 upgrade, conversion, or connection income tax credit that shall  
14 be deductible from the taxpayer's net income tax liability, if  
15 any, imposed by this chapter for the taxable year in which the  
16 credit is properly claimed. The credit shall not be allowed for  
17 a taxpayer with an adjusted gross income of more than  
18 \$ \_\_\_\_\_.

19           (b) In the case of a partnership, S corporation, estate,  
20 or trust, the tax credit allowable is for qualified expenses  
21 incurred by the entity for the taxable year. The expenses on



1 which the tax credit is computed shall be determined at the  
2 entity level. Distribution and share of credit shall be  
3 determined by rule. The credit shall not be allowed for an  
4 entity with an adjusted gross income of more than \$ .

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

19 (d) The total amount of tax credits allowed under this  
20 section shall not exceed \$5,000,000 for all taxpayers in any  
21 taxable year; provided that any taxpayer who is not eligible to



1 claim the credit in a taxable year due to the \$5,000,000 cap  
2 having been exceeded for that taxable year shall be eligible to  
3 claim the credit in the subsequent taxable year.

4 (e) The department of health shall:

5 (1) Certify all qualified cesspools for the purposes of  
6 this section;

7 (2) Collect and maintain a record of all qualified  
8 expenses certified by an appropriate government agency  
9 for the taxable year; and

10 (3) Certify to each taxpayer the amount of credit the  
11 taxpayer may claim; provided that if in any year the  
12 annual amount of certified credits reaches \$5,000,000  
13 in the aggregate, the department of health shall  
14 immediately discontinue certifying credits and notify  
15 the department of taxation.

16 The director of health may adopt rules under chapter 91 as  
17 necessary to implement the certification requirements under this  
18 section.

19 (f) The director of taxation:

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



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

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

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

15       (h) This section shall not apply to taxable years beginning  
16       after December 31, \_\_\_\_\_.

17       (i) For the purposes of this section:

18       "Aerobic treatment unit system" means an individual  
19       wastewater system that consists of an aerobic treatment unit  
20       tank, aeration device, piping, and a discharge method that is in



1 accordance with rules adopted by the department of health  
2 relating to household aerobic units.

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

10 "Qualified cesspool" means a cesspool that is:

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

12 (A) Located within:

13 (i) Five hundred feet of a shoreline, perennial  
14 stream, or wetland; or

15 (ii) A source water assessment program area (two-  
16 year time of travel from a cesspool to a  
17 public drinking water source);

18 (B) Shown to impact drinking water supplies or  
19 recreational waters; or

20 (C) A residential large capacity cesspool; or



1        (2) Certified by a county or private sewer company to be  
2                    appropriate for connection to its existing sewer  
3                    system.

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

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

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

16       "Sewer system" means a system of piping, with  
17 appurtenances, for collecting and conveying wastewater from  
18 source to discharge following treatment.

19       "Wastewater" means any liquid waste, whether or not treated  
20 and whether animal, mineral, or vegetable, including  
21 agricultural, industrial, and thermal wastes."



1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act, upon its approval, shall apply to  
3 taxable years beginning after December 31, 2020.

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INTRODUCED BY:

Lyn Deloitte



# S.B. NO. 2540

**Report Title:**

Income Tax Credit; Cesspool Upgrade, Conversion, Connection

**Description:**

Reinstates income tax credit for cesspool upgrade, conversion, or connection for eligible taxpayers and eligible expenses. Applies retroactively to 12/31/2020.

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

