
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 more than
2 eighty thousand cesspools that release more than fifty million
3 gallons of raw sewage into the State's groundwater and surface
4 waters every day. Cesspools are an antiquated technology for
5 the disposal of untreated sewage that can pollute drinking
6 water, streams, coastal waters, and coral reefs, posing a
7 significant threat to the environment and to human health. In
8 recognition of the serious concerns of cesspool pollution, the
9 legislature created the cesspool conversion working group in
10 2018 to develop recommendations on how to address this issue
11 proactively.

12 The legislature further finds that one recommendation of
13 the cesspool conversion working group is to ensure that buyers
14 of real property are adequately informed about the existence of
15 a cesspool on a property they are considering purchasing, a
16 requirement that would protect consumers and help to incentivize
17 cesspool conversions. Chapter 508D, Hawaii Revised Statutes,



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

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



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

3 The purpose of this Act 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 2. 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) There shall be allowed to each taxpayer
19 subject to the tax imposed under this chapter a cesspool
20 upgrade, conversion, or connection income tax credit that shall
21 be deductible from the taxpayer's net income tax liability, if



1 any, imposed by this chapter for the taxable year in which the
2 credit is properly claimed.

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

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



1 taxpayer's qualified expenses are certified by the appropriate
2 government agency.

3 (d) The total amount of tax credits allowed under this
4 section shall not exceed \$5,000,000 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 \$5,000,000 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 an appropriate government agency
14 for the 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 \$5,000,000
18 in the aggregate, the department of health shall
19 immediately discontinue certifying credits and notify
20 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 priority level 1 or 2 area
5 according to the University of Hawaii's 2021
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-approved wastewater system, or
15 connecting a qualified cesspool to a sewerage system, and that
16 are certified as such by the appropriate government agency.

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 3. 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 4. 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 5. Section 508D-3.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) If the residential real property being offered for
13 sale is subject to a recorded declaration, the seller shall
14 provide the following documents and any amendments or
15 supplements thereto, to the extent applicable:

16 (1) Articles of incorporation or other document, if any,
17 creating the corporation or association whereby the
18 corporation or association has the power to enforce
19 the declaration;

20 (2) Bylaws of the corporation or association;



1 (3) Declaration or similar organizational documents, and
2 any exhibits thereto; [~~and~~]

3 (4) Any rules relating to the use of common areas,
4 architectural control, maintenance of units, or
5 payment of money as a regular assessment or otherwise
6 in connection with the provisions, maintenance, or
7 service for the benefit of the residential real
8 property or other real property or common areas[~~-~~];
9 and

10 (5) Information on any cesspools located on the real
11 property, if any, including:

12 (A) The date by which the cesspool is required to be
13 upgraded or converted to a director of health-
14 approved wastewater system or connected to a
15 sewerage system pursuant to section 342D-72; and

16 (B) The priority level of the area according to the
17 University of Hawaii's 2021 Hawaii cesspool
18 hazard assessment and prioritization tool."

19 SECTION 6. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 7. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2022.

3

INTRODUCED BY:

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JAN 20 2023



H.B. NO. 440

Report Title:

Cesspool Upgrade, Conversion, or Connection; Income Tax Credit;
Real Property; Mandatory Disclosures

Description:

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.

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

