

JAN 20 2023

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 eighty-three thousand cesspools that release more than fifty
3 million gallons of raw sewage into the State's groundwater and
4 surface waters every day. Cesspools are an antiquated
5 technology for disposal of untreated sewage that have the
6 potential to pollute groundwater and harm streams and coastal
7 resources, including coral reefs.

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

14 The legislature further finds that the cost of cesspool
15 conversion can be a challenge for low- and middle-income
16 residents. Offering an income tax credit to offset the cost of
17 cesspool conversion would help to mitigate the financial burden



1 on these individuals. Act 125 also established a temporary
2 income tax credit for the cost of upgrading, converting, or
3 connecting a cesspool.

4 The legislature further finds that requiring conversion of
5 existing cesspools at the point of sale or time a property is
6 sold in a real estate transaction is a common mechanism used by
7 other states. Massachusetts, New Jersey, New York, and Rhode
8 Island have all enacted point-of-sale cesspool conversion
9 requirements. This requirement would systematically reduce the
10 number of cesspools in Hawaii, protect homebuyers by ensuring
11 that the purchased property's wastewater management system will
12 comply with 2050 conversion requirements, and open up financing
13 options for conversion costs.

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

16 (1) Providing a tax credit for the upgrade or conversion
17 of a cesspool to a director of health-approved
18 wastewater system or connection of a cesspool to a
19 sewerage system;



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1 (2) Requiring certain cesspool upgrades, conversions, or
 2 connections at the point of sale or transfer of
 3 ownership of real property; and

4 (3) Requiring cesspools be upgraded by 2030, 2035, or 2050
 5 depending on the cesspool's priority level, as
 6 determined by the University of Hawaii's 2022 Hawaii
 7 cesspool hazard assessment and prioritization tool.

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

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

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



1 determined at the entity level. Distribution and share of
2 credit shall be determined by rule.

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

5 (1) \$15,000 per residential dwelling connected to the
6 cesspool, for a taxpayer with an adjusted gross income
7 of less than \$ _____ ;

8 (2) \$10,000 per residential dwelling connected to the
9 cesspool, for a taxpayer with an adjusted gross income
10 of at least \$ _____ but less than \$ _____ ;

11 (3) \$7,500 per residential dwelling connected to the
12 cesspool, for a taxpayer with an adjusted gross income
13 of at least \$ _____ but less than \$ _____ ; and

14 (4) \$0 per residential dwelling connected to the cesspool,
15 for a taxpayer with an adjusted gross income greater
16 than \$ _____ .

17 (d) A maximum of one tax credit may be issued per
18 cesspool. The tax credit shall be available only for the
19 taxable year in which the taxpayer's qualified expenses are
20 certified by the department of health.



1 (e) The total amount of tax credits allowed under this
2 section shall not exceed \$ for all taxpayers in any
3 taxable year; provided that any taxpayer who is not eligible to
4 claim the credit in a taxable year due to the cap having been
5 exceeded for that taxable year shall be eligible to claim the
6 credit in the subsequent taxable year.

7 (f) The department of health shall:

8 (1) Collect and maintain a record of all qualified
9 expenses certified by the department of health for the
10 taxable year; and

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

17 (g) The director of taxation:

18 (1) Shall prepare any forms that may be necessary to claim
19 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) Shall adopt rules under chapter 91 as necessary to
5 implement this section.

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

19 (i) This section shall apply to taxable years beginning
20 after December 31, 2023, and ending before January 1, 2030.

21 (j) As used in this section:



1 "Aerobic treatment unit system" means an individual
2 wastewater system that consists of an aerobic treatment unit
3 tank, aeration device, piping, and a discharge method that is in
4 accordance with rules adopted by the department relating to
5 household aerobic units.

6 "Approved wastewater system" includes aerobic treatment
7 unit systems, septic systems, and other types of onsite
8 wastewater systems that have been approved by the department of
9 health.

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

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

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

20 "Sewerage system" has the same meaning as in section
21 342D-1.



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

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

5 "§342D- Cesspool upgrade, conversion or connection; upon
6 sale. (a) Any cesspool located within five hundred feet of a
7 shoreline, perennial stream, wetland, source water protection
8 area, or sensitive body of water, as defined by department rule,
9 on real property that is sold or the ownership of which is
10 transferred on or after January 1, 2025, shall be:

11 (1) Upgraded or converted to an approved wastewater
12 system; or

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

16 (b) The department shall adopt rules pursuant to chapter
17 91 to implement this section, including any exemptions from this
18 section that the department deems necessary; provided that the
19 rules shall include, at a minimum, the following exemptions:

20 (1) Cesspools on real property transferred between joint
21 tenants or tenants in common;



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

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

7 (4) Cesspools on real property transferred as a result of
8 a short sale, pre-foreclosure, or foreclosure.

9 (c) As used in this section:

10 "Aerobic treatment unit system" means an individual
11 wastewater system that consists of an aerobic treatment unit
12 tank, aeration device, piping, and a discharge method that is in
13 accordance with rules adopted by the department relating to
14 household aerobic units.

15 "Approved wastewater system" includes aerobic treatment
16 unit systems, septic systems, and other types of onsite
17 wastewater systems that have been approved by the director of
18 health.

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

20 "Septic system" means an individual wastewater system that
21 typically consists of a septic tank, piping, and a drainage



1 field where there is natural biological decontamination as
2 wastewater discharged into the system is filtered through soil."

3 SECTION 4. Section 342D-72, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Before January 1, 2050, every cesspool in the State,
6 excluding cesspools granted exemptions by the director of health
7 pursuant to subsection (b), shall be:

8 (1) Upgraded or converted to a director-approved
9 wastewater system; or

10 (2) Connected to a sewerage system[-];
11 provided that cesspools categorized as priority level one, as
12 determined by the University of Hawaii's 2022 Hawaii cesspool
13 hazard assessment and prioritization tool, shall conform to
14 paragraph (1) or (2) by January 1, 2030; provided further that
15 cesspools categorized as priority level two, as determined by
16 the University of Hawaii's 2022 Hawaii cesspool hazard
17 assessment and prioritization tool, shall conform to paragraph
18 (1) or (2) by January 1, 2035."

19 SECTION 5. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2023-2024 and



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1 the same sum or so much thereof as may be necessary for fiscal
2 year 2024-2025 for the purposes of this Act.

3 The sums appropriated shall be expended by the department
4 of health for the purposes of this Act.


5 SECTION 6. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2023;
11 provided that section 2 shall apply to taxable years beginning
12 after December 31, 2023 and shall be repealed on December 31,
13 2029.

14

INTRODUCED BY:





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Report Title:

Cesspools; Wastewater Systems; Upgrades; Conversions;
Connections; Income Tax Credits; Point of Sale; Prioritization;
Appropriation

Description:

Establishes an income tax credit for certain cesspool upgrades.
Requires upgrades to certain cesspools at the point of sale.
Requires cesspools be upgraded by 2030, 2035, or 2050 depending
on the cesspool's priority level. Appropriates funds.

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