

A Bill for an Act Relating to Cesspools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State's streams, groundwater, and ocean are being harmed by water pollution from nonpoint contamination sources that flow off the land directly, rather than through pipes or ditches. Cesspools constitute a nonpoint contamination source of grave concern. These substandard systems are essentially holes in the ground that discharge raw, untreated sewage. Groundwater, drinking water sources, streams, and the ocean are

contaminated by cesspool pollution from systems that do not treat wastewater, but merely dispose of it.

The legislature further finds that cesspools in Hawaii release approximately 55,000,000 gallons of untreated sewage into the ground each day. There are approximately 90,000 cesspools in the State, with nearly 50,000 located on Hawaii island, approximately 14,000 on Kauai, over 12,000 on Maui, over 11,000 on Oahu, and over 1,400 on Molokai. Reducing the number of cesspools in the State is a matter of great importance. The legislature additionally finds that cesspools near drinking water wells or within two hundred feet of surface waters and cesspools that are connected to multiple residential dwellings present a higher risk of harm to public health and the environment and should be prioritized by the department of health for upgrade. The department of health indicates that there are approximately 6,860 cesspools in those priority locations.

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

The purpose of this Act is to offer financial assistance to owners of cesspools who:

- (1) Upgrade or convert a qualified cesspool into a septic system or an aerobic treatment unit system; or
- (2) Connect a qualified cesspool to a sewer system,

by establishing a cesspool upgrade, conversion, or connection income tax credit.

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

**“§235- Cesspool upgrade, conversion, or connection; income tax credit.**

(a) There shall be allowed to each taxpayer subject to the tax imposed under this chapter, a cesspool upgrade, conversion, or connection income tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

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

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

(d) The total amount of tax credits allowed under this section shall not exceed \$5,000,000 for all taxpayers in any taxable year; provided that any taxpayer who is not eligible to claim the credit in a taxable year due to the \$5,000,000 cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year.

(e) The department of health shall:

- (1) Certify all qualified cesspools for the purposes of this section; provided that, as a pilot program, the department of health, in its discretion, may certify no more than two residential large capacity cesspools as qualified cesspools;
- (2) Collect and maintain a record of all qualified expenses certified by an appropriate government agency for the taxable year; and
- (3) Certify to each taxpayer the amount of credit the taxpayer may claim; provided that if, in any year, the annual amount of certified credits reaches \$5,000,000 in the aggregate, the department of health shall immediately discontinue certifying credits and notify the department of taxation.

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

- (f) The director of taxation:
  - (1) Shall prepare any forms that may be necessary to claim a tax credit under this section;
  - (2) May require the taxpayer to furnish reasonable information to ascertain the validity of the claim for the tax credit made under this section; and
  - (3) May adopt rules under chapter 91 necessary to effectuate the purposes of this section.
- (g) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(h) This section shall not apply to taxable years beginning after December 31, 2020.

(i) As used in this section:  
 "Aerobic treatment unit system" means an individual wastewater system that consists of an aerobic treatment unit tank, aeration device, piping, and a discharge method that is in accordance with rules adopted by the department of health relating to household aerobic units.

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

"Qualified cesspool" means a cesspool that is certified by the department of health as being:

- (1) Located within:
  - (A) Two hundred feet of a shoreline, perennial stream, or wetland; or
  - (B) A source water assessment program area (two year time of travel from a cesspool to a public drinking water source); or
- (2) A residential large capacity cesspool.

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

“Residential large capacity cesspool” means a cesspool that is connected to more than one residential dwelling.

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

“Sewer system” means a system of piping, with appurtenances, for collecting and conveying wastewater from source to discharge following treatment.

“Wastewater” means any liquid waste, whether or not treated and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2015, and shall apply to taxable years beginning after December 31, 2015; provided that this Act shall be repealed on December 31, 2020.

(Approved June 12, 2015.)

**Note**

1. Edited pursuant to HRS §23G-16.5.