



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony in SUPPORT of SB 1272 S.D.1
RELATING TO CESSPOOLS**

SENATOR JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date: February 27, 2015
Time: 1:00 p.m.

Room Number: 211

- 1 **Fiscal Implications:** This measure may impact the priorities as set forth in the Governor's Executive
- 2 Budget.
- 3 **Department Testimony:** The Department supports the concept of establishing a program that would
- 4 provide financial assistance to taxpayers who upgrade their existing cesspools. However, the measure
- 5 must not adversely impact the priorities as set forth in the Governor's Executive Budget.
- 6 Thank you for the opportunity to testify.
- 7 **Offered Amendments:** None.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 27, 2015
Time: 1:00 P.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1272, S.D. 1, Relating to Cesspools

The Department of Taxation (Department) appreciates the intent of this measure to protect the environment and defers to the Department of Health on the merits of the measure. The Department provides the following comments regarding S.B. 1272, S.D. 1 for your consideration.

S.B. 1272, S.D. 1 provides a refundable temporary income tax credit to an individual or corporate taxpayer for the cost of converting a cesspool to a septic system or to an aerobic treatment unit system, or for the cost of connecting a cesspool to a sewer system. The credit amount is not stated in the measure, and would apply to taxable years beginning after December 31, 2015, and would be repealed on an unspecified date.

The Department appreciates that the Senate Committee on Energy and Environment added language to address the Department's concerns over the original version of this measure by requiring that the credit be available only after a county agency in charge of issuing permits for such installations has approved the installation as meeting the requirements for the credit. This is particularly important because the Department has no expertise in cesspools, septic systems, or aerobic treatment unit systems.

The Department notes that the credit is available only to individual and corporate taxpayers. Thus, partnerships, estates, and trusts would not be eligible for the credit. It is not clear to the Department whether this omission is intentional or inadvertent. If inadvertent, subsection (a) should be rewritten as follows:

(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 which shall be deductible against the taxpayer's net income tax liability,

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

In addition, a new subsection would need to be added to resolve the situations in which the taxpayer is a partnership, S corporation, estate, or trust:

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

Finally, the Department also notes that this tax credit is refundable. As a general matter, the Department prefers nonrefundable credits because refundable credits create the potential for wrongful claims and abuse.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: INCOME, Tax credit for cesspool conversion

BILL NUMBER: SB 1272, SD-1

INTRODUCED BY: Senate Committee on Energy and Environment

EXECUTIVE SUMMARY: This measure adds a cesspool conversion tax credit of an unspecified amount based on the lesser of a certain percentage of the qualified expenses of a taxpayer or a fixed amount. Lawmakers need to be careful choosing credit language, and make sure it is tight. Otherwise the cesspool contents are not the only thing that will be disappearing into a black hole; our state monies will be flushed away as well!

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer to claim a cesspool conversion tax credit of ___% of the qualified expenses of a taxpayer or \$____, whichever is less. Defines “qualified expenses” as costs incurred by the taxpayer for converting a cesspool into a septic system or an aerobic treatment unit system, or connecting a cesspool to a sewer system. Defines “aerobic treatment system,” “cesspool,” “septic system” and “sewer system” for purposes of the measure.

Tax credits in excess of a taxpayer’s tax liability shall be refunded to the taxpayer provided such amounts are in excess of \$1. Requires all claims, including amended claims, to 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. Directs the director of taxation to require evidence of county verification and approval to ascertain the validity to claim the credit. Also requires the director to prepare the necessary forms to claim a credit under this section.

This section shall not be applicable to tax years beginning after December 31, _____. Repeals this act on _____.

EFFECTIVE DATE: Tax years beginning after December 31, 2015

STAFF COMMENTS: This measure proposes a tax credit for conversion or hookup of a cesspool to a septic system or sewer system. While the measure allows taxpayers to claim the credit regardless of a taxpayer’s need for tax relief, the proposed credit is nothing more than a partial subsidy by the state to taxpayers for such conversion with absolutely no indication of the taxpayer’s need for that subsidy. This type of targeted tax incentive creates winners and losers, the winners being those in the favored industry who receive the incentives and the losers being the rest of us who have to pay for them.

When judging targeted tax incentives such as this one, we all should be mindful of these observations of the 2001-2003 Tax Review Commission: *“Targeted tax incentives are generally only demonstrably good for those relatively few taxpayers that qualify for the benefits, and may not be demonstrably good for anyone else. They are not supported by rules of sound tax policy. In the first instance, they decrease*

State revenue and add complexity to the tax system. They may also be unfair to other businesses. Almost all of the present incentives lack accountability, and therefore create something of a “black hole” in State fiscal responsibility. A targeted tax incentive does not appropriate hard earned and increasingly scarce revenues. Rather, it creates a tax benefit of unknown proportions against future revenues, before the revenues are collected and subjected to the legislative appropriation process.”

Appropriations to favored businesses, or subsidies, are rarely enacted. Every public appropriation is publicly scrutinized. A tax incentive is a potential “black hole,” because it is a future benefit of unknown proportions, which is determined by the favored taxpayer’s interpretation of what the tax credit should be, and is claimed on a tax return which is confidential.

Digested 2/26/15

February 27, 2015

The Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: S.B. 1272, S.D.1, Relating to Cesspools

HEARING: Friday, February 27, 2015, at 1:00 p.m.

Aloha Chair Tokuda, Vice-Chair Kouchi and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,400 members. HAR **supports** S.B. 1272, S.D.1, which provides a temporary income tax credit for the cost of converting a cesspool to a septic system or an aerobic treatment unit system or connecting a cesspool to a sewer system.

The Department of Health (DOH) proposed changes to Hawai'i Administrative Rules, Chapter 11-62, relating to Wastewater Systems. Under the proposed rules, an estimated cesspool residential property count of 50,000 on Hawai'i, 14,000 on Kaua'i, 12,000 on Maui, 11,000 on Oahu, and 1,400 on Molokai would be affected. Additionally, the cost to convert each cesspool system could range from \$10,000, to \$30,000.

Under the DOH's proposed rules, it would create a point of sale mandate by requiring cesspool closure and conversion to either a septic system or public sewer system at the next conveyance or sale of a property. HAR expressed concerns that a property could take years, if ever, before it is sold or transferred, all while the cesspool could be one in a high risk area, as established by the 2014 Geology and Geophysics Report prepared for the DOH.

HAR believes that managing wastewater and its effects on Hawaii's water quality is important. However, it should be done in a rational and practical manner. This proposal is a good and practical approach towards incentivizing owners to convert their cesspool systems. Furthermore, this will help homeowners with the large cost to convert a cesspool system or connect to a sewer system.

Mahalo for the opportunity to submit written testimony.



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February 27, 2015

HEARING BEFORE THE
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY ON SB 1272 SD 1
RELATING TO CESSPOOLS

Room 211
1:00 PM

Aloha Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,932 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports SB 1272, SD 1. Our farmer and rancher members across the islands could benefit from this effort to mitigate the financial hardship that would be caused by any future mandatory cesspool conversions.

To protect the quality of Hawaii's near shore waters and drinking water supplies, HFB believes that cesspools which pose a risk to the ocean, surface, or ground water should be converted to septic systems, or where available, a sewer connection should be made to a county treatment system. Because the cost to upgrade is substantial, reportedly approximately \$20,000 per cesspool, Hawaii may accomplish these conversions more quickly if owners have assistance through tax incentives.

Several months ago, the State Department of Health proposed an extremely broad brush regulation to mandate elimination of all cesspools statewide within 180 days of a sale of the subject property. Farmers, homeowners, and others were alarmed that they would be subject to the exorbitant and unexpected costs associated with such a project.

HFB did not agree that every cesspool in the state, even those that pose very little or no risk to either groundwater or surface water quality, needs to be converted, nor do we believe that conversions should be mandatory in the rushed and arbitrary manner proposed by the Department. Additionally, we do not believe that the DOH proposed point of sale approach is appropriate, as it would require many cesspools that are not contributing to water quality degradation to be upgraded, while allowing cesspools that may be causing problems to continue to operate indefinitely, so long as the property is not sold.

SB 1272 SD 1 would help Hawaii phase out of inappropriately sited cesspools. It follows the lead of other states which have provisions for tax credits to help fund cesspool conversion.

Thank you for the opportunity to testify in support of this bill.

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1272 SD1 Relating to Cesspools
Senate Committee on Ways and Means
Friday, February 27, 2015, 1:00PM, Room 211

For more than 35 years, The Nature Conservancy of Hawai'i has been working closely with government agencies, local businesses, private landowners, non-profit partners, and interested communities across the state to preserve the lands and waters upon which all life in these islands depends. The Conservancy is a private non-profit conservation organization that has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 35,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i, and support 19 coastal communities seeking to co-manage marine resources in partnership with the State of Hawai'i.

The Nature Conservancy supports S.B. 1272 SD1 to provide a temporary income tax credit to incentivize cesspool replacement.

We also recognize that the much larger issue of wastewater impacts on coral reefs, near shore waters, and human health come from untreated sewage overflowing from overburdened wastewater treatment facilities and underground injection wells, especially on Maui and Hawai'i island. We urge the State and counties to consider a thorough review, repair, and retrofit of wastewater treatment facilities, especially if the State will be requiring more people to connect to those already overburdened facilities.

Scientists estimate that populations of many of Hawai'i's near shore reef fishes have declined by more than 75% over the past 100 years. Marine managers, community stewards, and scientists across the state are also cataloguing and working to address increased instances of coral disease, bleaching and reef smothering alien algae. Scientific analysis together with long-term community experience and observation suggest that a number of factors are contributing to and exacerbating these threats to Hawai'i's marine health, including over-harvesting of fishes, land-based sources of pollution, as well as higher temperatures and acidification due to human induced climate change. Degradation of Hawai'i's reefs and near shore environments is not only a detriment to our health and quality of life, but also a grave loss to Hawai'i's economy, safety, and to a cultural heritage that is unique in the world.

Effluent from cesspools – including untreated human waste, bacteria, viruses, pharmaceuticals, cleaning products, nitrogen, phosphorus, and other contaminants – is discharged directly into the ground. From there, these pollutants can make their way into groundwater systems and near shore marine environments. In coastal areas in Hawai'i with porous soils and substrates, studies have shown that waste from cesspools can reach near-shore waters within a matter of minutes to just a few days. Replacing these coastal cesspools should be a priority.

Caring for the health and future productivity of Hawai'i's fresh and marine waters requires a combination of strategies in an ahupua'a approach. Taking care of watershed forests, upgrading wastewater treatment systems, enhancing water re-use, preventing and controlling invasive species, encouraging responsible resource use, and retiring and replacing outdated infrastructure are all a part of the solution to the variety of threats we face. Prohibiting new cesspools and replacing old ones is one important component of this collective effort.

Thank you for the opportunity to comment.

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SB1272

Submitted on: 2/25/2015

Testimony for WAM on Feb 27, 2015 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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