

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony COMMENTING on SB3084 S.D.1 H.D.1
RELATING TO CESSPOOLS**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: April 5, 2016
Time: 2:31 PM

Room Number: 308

1 **Fiscal Implications:** This measure does not provide the resources necessary to implement the
2 proposed tax credit or rebate program for low-income households under Section 2.

3 **Department Testimony:** Section 1: The Department is able to implement the income tax credit
4 program as passed by the Legislature (Act 120 of 2015) and pursuant to rules recently
5 promulgated, Hawaii Administrative Rules §11-62-31.1(j). The Department has no objection to
6 the income limits proposed in Section 1(i) of the bill regarding eligibility for the income tax
7 credit. The Department also supports the change from per cesspool to per tax map key for large
8 capacity cesspools in Section 1(c).

9 Section 2: While the Department appreciates the intent of this bill to assist lower income
10 households that perform a cesspool upgrade, conversion, or connection to a sewer system, the
11 Department opposes this portion because it currently does not have the resources or expertise to
12 implement a rebate program as stated in Section 2 of this measure.

13 Section 3: The Department does not oppose the requirement for the Department to submit a
14 report to the legislature including findings and recommendations, but thinks it should not be
15 “implementing draft legislation” in such a report.

16 Furthermore, the Department defers to the Department of Taxation and the Governor’s Executive
17 Budget to address the fiscal implications that would be involved with the implementation of this
18 bill.

19 Thank you for the opportunity to testify on this measure.

- 1 **Offered Amendments:** Revise SECTION 3 to read, “The Department of Health shall report its
- 2 findings and recommendations, including any proposed legislation to the legislature, no later
- 3 than twenty days prior to the convening of the regular session of 2017 on the following: . . .”

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: INCOME, Disallow Cesspool Credit Based on Income Level

BILL NUMBER: SB 3084, HD-1

INTRODUCED BY: House Committees on Energy & Environmental Protection and Health

EXECUTIVE SUMMARY: This bill would entirely disallow the credit for cesspool conversion for any taxpayer with adjusted gross income over certain levels. Also enacts a cesspool upgrade, conversion, or connection rebate program. This measure would contribute to a “tax cliff” for couples reaching \$200,000 AGI, that could result in the next \$1 in income subjecting the couple to massive additional state tax.

BRIEF SUMMARY: Adds a new section to HRS chapter 342D providing that the department of health may establish a cesspool upgrade, conversion, or connection rebate program to offset qualified expenses incurred by low-income households. Eligibility will be restricted to persons whose family income is no more than ___% of the federal poverty level. The dollar amount of a rebate is not to exceed \$10,000 per cesspool, or per tax map key for residential large-capacity cesspools.

New HRS section 342D-___(e) provides that any cesspool found to be in noncompliance with chapter 321, 322, 342D, or 342E, or rules adopted thereunder, as a result of any inspection or other action conducted by state or county personnel pursuant to a taxpayer applying for a rebate under this section, shall not be subject to any penalty imposed by those chapters or rules.

Amends HRS section 235-16.5 to provide that the income tax credit for cesspool upgrade, conversion, or connection will be entirely disallowed for taxpayers at or above the following federal adjusted gross income (FAGI) levels:

- \$200,000 for a single taxpayer or married filing separately.
- \$300,000 head of household.
- \$400,000 married filing jointly, or as a surviving spouse.

A person claiming a tax credit is not entitled to the same immunity from chapter 321, 322, 342D, or 342E as a person applying for the rebate.

EFFECTIVE DATE: January 1, 2050; applies to tax years beginning after December 31, 2015.

STAFF COMMENTS: Act 120, SLH 2015, enacted a temporary income tax credit, expiring on December 31, 2020, for 100% of the qualified costs of a cesspool upgrade, conversion, or connection, up to \$10,000. The recitals in the Act explain the problem addressed:

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.

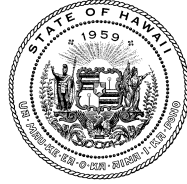
As we noted at the time, this credit was given without any consideration of the taxpayer's need for tax relief. This bill now seeks to correct this, but does so in somewhat ham-fisted fashion with an all-or-nothing approach.

The legislature may want to consider the following technical suggestions:

- Phasing in the disallowance, so the "tax cliff" effect upon taxpayers is mitigated.
- Allowing for prospective application. A retroactive disallowance, which is possible under the bill as it is now written, would unfairly penalize taxpayers who have already contracted and/or paid for the work in reliance on the credit.
- Specifying whether and to what extent a taxpayer can "double dip" with the credit and rebate. Most tax credit statutes explicitly disallow as eligible costs any costs for which the taxpayer receives reimbursement, through a rebate or otherwise. As the bill is currently written, a taxpayer could claim both.

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LATE

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Tuesday, April 5, 2016
Time: 2:31 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 3084 S.D. 1 H.D. 1, Relating to Cesspools.

The Department of Taxation (Department) appreciates the intent of S.B. 3084 S.D. 1, H.D. 1, but has serious concerns about the provisions that allow the Department of Health (DOH) to establish a tax credit program in addition to a rebate program. The Department defers to the DOH on the merits of the balance of this bill, and provides the following comments regarding for your consideration.

As amended by the House Committees on Energy and Environmental Protection and Health, this measure would authorize the DOH to establish a cesspool upgrade, conversion, or connection rebate or tax credit program of up to \$10,000 per cesspool provided that the family's income is an unstated percentage of the federal poverty level, disallows the tax credit for cesspool upgrade, conversion, or connection for taxpayers whose adjusted gross income exceeds certain amounts, and provides that cesspools found to be illegal, as a result of an inspection conducted due to a person applying for a rebate shall not be subject to any penalty that under chapters 321, 322, 342D, or 342E, Hawaii Revised Statutes (HRS). The measure has a defective effective date of January 1, 2015 and is applicable to taxable years ending after December 31, 2015.

First, the Department notes that it firmly believes that a rebate system is far preferable than a tax credit for assisting low income taxpayers because it enables a low income household to obtain funds sooner, rather than having to wait till the end of a tax year before filing a claim for tax refund. The Department also notes that the tax credit is applicable only to a person who has a tax liability, and therefore would not assist any taxpayer who is not subject to tax.

Second, Section 2 of the measure seems to provide the DOH the authority to "establish a cesspool upgrade, conversion, or connection tax credit or rebate program". It is not clear whether the intent is to add a second tax credit program, since one already exists at section 235-

16.5, HRS. If there is no intent to provide second tax credit, the Department suggests that the phrase “tax credit or” be deleted wherever found in section 2.

Third, with reference to the rebate program being considered under this measure, the Department recommends that a definition of “wastewater” be added, and that it should be the same definition as used in the tax credit provision, since both the rebate program and the tax credit program cover the same subject matter.

Fourth, while the rebate program sets an unspecified date for a homeowner to apply without penalty for a rebate for any cesspool which has been installed illegally and/or without proper approvals, the tax credit program has no such date. It is recommended that the date by which a homeowner can obtain a tax credit without fear of the imposition of a penalty be the same as that used for the rebate program.

Finally, the Department notes that while it appears that the intent is that a taxpayer not receive both the benefit of a rebate and a tax credit for the same cesspool upgrade, conversion, or connection, the wording of the measure is not clear since subsection (f) of the rebate program only provides that a taxpayer may not qualify for any “similar” tax credit. Because the word “similar” is ambiguous and may lead to applicant and taxpayer confusion, the Department recommends that the rebate program state that no other credit, including the credit under section 235-16.5, HRS, may be claimed.

Thank you for the opportunity to provide comments.

April 5, 2016

The Honorable Sylvia Luke, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

LATE

RE: S.B. 3084, S.D.1, H.D.1, Relating to Cesspools

HEARING: AGENDA #4, Tuesday, April 5, 2016 at 2:31 p.m.

Aloha Chair Luke, Vice-Chair Nishimoto, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,900 members. HAR **supports the intent** of S.B. 3084, S.D.1, H.D.1 which disallows the tax credit for cesspool upgrade, conversion, or connection for taxpayers whose federal adjusted gross income exceeds certain amounts.

While we appreciate this measure, HAR prefers the language in H.B. 1983, H.D.1, S.D.1.

HAR believes that an income tax credit narrowly limits the upgrade, conversion, or connection to those homeowners that have the funding already available or through a personal loan. With many families in our communities, the tax credit will not necessarily fulfill the objective of voluntary conversion if they are required to pay first.

Rather, we support the language in H.B. 1983, H.D.1, S.D.1 that provides for a rebate program. The rebate program is preferable to a tax credit for assisting low-income taxpayers because it enables a low-income household to obtain funds sooner, rather than waiting until the end of the tax year to file a claim for a refund.

Mahalo for the opportunity to testify in support this measure but prefers the language in H.B. 1983, H.D.1, S.D.1 which provides for a rebate program.