

HB1244 HD1

Measure Title: RELATING TO CESSPOOLS.

Report Title: Cesspools; Tax Credit; Upgrade, Conversion, or Connection; Grant; Appropriation; (\$)

Description: Amends the cesspool upgrade, conversion, or connection income tax credit to make it assignable and refundable, applicable to more cesspools, and applicable through 12/31/2022. Requires upgrade, conversion, or connection to the sewer system of all cesspools in the State before 2050. Establishes a grant program to mitigate costs. Appropriates funds. (HB1244 HD1)

Companion:

Package: None

Current Referral: CPH/AEN, WAM

Introducer(s): KEOHOKALOLE, BELATTI, BROWER, CACHOLA, LOWEN, SAN BUENAVENTURA, TODD, DeCoite, Gates



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of HB1244 HD1
RELATING TO CESSPOOLS**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: March 20, 2017
Time: 1:20 PM

Room Number: 224

1 **Fiscal Implications:** The Department would need resources to implement the proposed cesspool
2 compliance grant program under Section 342D-B of this measure.

3 **Department Testimony:** The Department strongly supports this bill as long as it does not replace
4 our priorities requested in the Executive Budget.

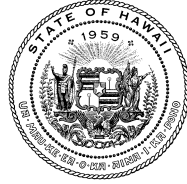
5 Cesspools are a major source of pollution to Hawaii's waters. There are approximately 90,000
6 cesspools in the State, discharging approximately 55 million gallons of untreated sewage into the
7 groundwater every day. Ground water flows into drinking water sources, streams and the ocean,
8 harming public health and the environment, including beaches and coral reefs. Ninety-five percent
9 of all drinking water in Hawaii comes from ground water sources. Cesspools should be phased out
10 in order to eliminate threats to drinking water and recreational waters. Expanded tax credits and
11 grants would help facilitate the phasing out of cesspools.

12 The Department supports using all available regulatory tools to achieve the upgrading and
13 conversion of cesspools as soon as feasible, but not later than January 1, 2050. The Department
14 also supports the establishment of a new compliance grant program that will assist homeowners
15 with cesspool upgrades or connection to a sewage system.

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

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Agriculture and Environment

Date: Monday, March 20, 2017
Time: 1:20 P.M.
Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1244, H.D. 1, Relating to Cesspools

The Department of Taxation (Department) appreciates the intent of H.B. 1244, H.D. 1, which seeks to incentivize the conversion of cesspools to more environment friendly alternatives, but has serious concerns over the provisions of the measure which allow the tax credit to be assigned, as well as the provisions which make the tax credit refundable. The Department otherwise defers to the Department of Health on the merits of this bill, and provides the following comments on for your consideration.

With respect to tax aspects of H.B. 1244, H.D. 1, the measure amends the cesspool upgrade, conversion, or connection income tax credit to:

- Make the tax credit assignable;
- Make the credit refundable;
- Disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain unstated amounts;
- Expands which cesspools qualify for the tax credit; and
- Extends the sunset date from the current sunset date of December 31, 2020 to December 31, 2022.

H.D. 1 has a defective effective date of July 1, 2090, but otherwise applies to taxable years beginning after December 31, 2016.

First, the Department firmly believes that a rebate or grant program is far preferable than a tax credit for assisting low income taxpayers in converting a cesspool, because it enables a low income household to obtain funds sooner; a tax credit requires the taxpayer to wait until the end of a tax year before they can file a claim for tax refund. As a general matter, the Department prefers nonrefundable credits because refundable credits create the potential for wrongful claims and substantial abuse. This is especially true with this credit, since it is a 100% credit of qualified expenses, up to a maximum of \$10,000.

Validation of a tax credit claim requires a review of extremely detailed and technical information, and disputes concerning the credit are not easily resolved. For example, it is common that audits and related appeals can span several years of extensive and costly litigation.

Second, the Department is very concerned with the provisions which would allow an assignment of the credit. There is no feasible way to monitor such assignments and would require the examination of the assignor and assignee to validate whether an assignment was legitimate. Assignment or sale of credits invite fraudulent and improper claims. Similarly, the Act 221 Qualified High Technology Business Investment Tax Credit (Act 221 credit) also allowed the selling or assignment of tax credits by relaxing the application of section 704 of the Internal Revenue Code, which limits the amount of tax credits that a partner or member can claim based on the partner or member's ownership interest. The Act 221 credit created a very heavy compliance burden on the Department, and the assignment or selling of the credit as proposed by this measure is likely to do the same.

Furthermore, the fact that the claim can be assigned multiple times, or can be assigned in pieces greatly increases the likelihood of fraud, and increases the burden of the Department. If assignments are allowed, the Department will need to track numerous pieces of a single claim to ensure that the pieces do not total more than the whole.

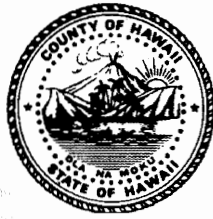
Third, it is unclear why assignment or selling of the credit is even necessary if the credit is made refundable. A taxpayer would only seek assignment if they do not have the tax liability to offset the credit with. Refundability means that the taxpayer can receive the amount of credit, after offsetting their tax liability, back in cash. Between assignment and refundability, the Department prefers refundability as administration and compliance enforcement would not require the review of multiple taxpayers per credit claim.

Fourth, Section 3 of this measure creates a cesspool compliance grant program. If the intent of this program to provide grants to homeowners with limited incomes, then the Department suggests leaving the cesspool tax credit nonrefundable as the taxpayers who claim the credit instead of receiving a grant will likely have the income tax liability to use the nonrefundable cesspool credit as an offset.

Finally, if the Committee wishes to advance this measure, the Department requests that effective date be made no earlier than taxable years beginning after December 31, 2017. This will allow the Department sufficient time to make the necessary form, instruction and computer system modifications necessary for proper implementation.

Thank you for the opportunity to provide comments.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i

Office of the Mayor

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March 16, 2017

Senator Rosalyn H. Baker, Chair
Committee on Commerce, Consumer Protection, and Health
Hawai'i State Capitol
Honolulu, HI 96813

Senator Mike Gabbard, Chair
Committee on Agriculture and Environment
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chairs Baker and Gabbard, and Members:

**RE: HB 1244, HD 1
Relating to Cesspools**

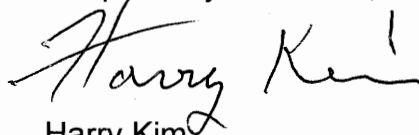
Thank you for this opportunity to testify against Part II of HB 1244. I know the bill is well intended, but the abolition of cesspools is unnecessary and it is contrary to our efforts to make housing more affordable.

Yes, I realize that Hawaii has changed and we are now in the 21st century, but those of us who grew up in ancient times know that some of the old practices, while not entirely compatible with modern thought, are nevertheless environmentally sound and do not need to be discarded. As a prime example, in Hawaii County we have literally thousands of lots on which cesspools pose absolutely no hazard to groundwater nor any risk of pollution. Many of these lots may represent the best hope for current and future Hawaii residents to live in a dwelling rather than on the street.

I recently directed my departments to do everything in their power to figure out how to bring down the cost of housing. If we were to require septic tanks in areas where cesspools should be acceptable, we immediately would be adding \$10,000-\$20,000 to the cost of every dwelling, with no environmental benefit whatsoever.

If the Legislature wishes to offer financial incentives to install septic or other treatment systems, by all means do so, but please do not outlaw cesspools, even if the prohibition does not take effect until 2050.

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive style with a large, stylized "H" and "K".

Harry Kim
Mayor

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Modify Tax Credit for Cesspool Conversion

BILL NUMBER: HB 1244, HD-1

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

EXECUTIVE SUMMARY: Amends the cesspool upgrade, conversion, or connection income tax credit to: (1) make the tax credit assignable; (2) make the tax credit refundable; (3) disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain amounts; (4) expand the criteria for cesspools that qualify for the tax credit; and (5) extend the sunset date to 12/31/2022. Requires that all cesspools in the State be upgraded or converted to septic or aerobic treatment unit systems or connected to sewer systems. Establishes a grant program to assist with cesspool upgrade or conversion costs.

The amendments proposed are not consistent in their policy goals.

SYNOPSIS: Amends HRS section 235-16.5 to:

- (1) make the tax credit assignable;
- (2) make the tax credit refundable;
- (3) disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain amounts;
- (4) expand the criteria for cesspools that qualify for the tax credit; and
- (5) extend the sunset date to 12/31/2022.



EFFECTIVE DATE: July 1, 2090, applies to taxable years beginning after December 31, 2016. The grant program appropriations are effective July 1, 2017.


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. Act 182, SLH 2016, made clarifying amendments.

Some of the amendments contained within this bill are not consistent. For example, if the tax credit is made refundable, there would be no need to make it assignable. Assignability is a way for a taxpayer who is unable to use a nonrefundable credit to monetize it by selling it to someone who can use the credit. Typically, a buyer would buy the credit at a discount off the face value to compensate the buyer for paying out money now to cash in the credit later. If the credit is refundable, the State would pay the taxpayer for the credit at full value so there would be no need to expend the effort to assign it.

Digested 2/21/2017



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March 20, 2017

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Mike Gabbard, Chair

Senate Committee on Agriculture and Environment

State Capitol, Room 224

Honolulu, Hawaii 96813

RE: H.B. 1244, H.D.1, Relating to Cesspools

HEARING: Monday, March 20, 2017, at 1:20 p.m.

Aloha Chair Baker, Chair Gabbard, and Members of the Committees.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,200 members. HAR **offers comments** on H.B. 1244, H.D.1 which amends the cesspool upgrade, conversion, or connection income tax credit to make it assignable and refundable, applicable to more cesspools, and applicable through 12/31/2022. It also requires upgrade, conversion, or connection to the sewer system of all cesspools in the State before 2050.

Over the years since the availability of the tax credit, it has narrowly limited the upgrade, conversion, or connection to only those homeowners that have the funding readily available or through a personal loan. We further add homeowners that may have an interest of upgrading their wastewater systems have run into issues as being unqualified under the tax credit.

HAR believes that a rebate or grant program is far preferable than a tax credit for assisting low income taxpayers in converting a cesspool because it enables a low income households to obtain funds sooner whereas a tax credit requires the household taxpayer to wait until the end of a tax year before they can file a claim for a refund.

To add to the complex issue, we have also been informed that properties that are in Special Management Area (SMA) are now triggering a review by the State Historic Preservation Division (SHPD). This trigger will not only increase the cost of the upgrade but also requires an archaeological survey on the property, which increases the cost dramatically.





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While HAR supports efforts of the state to pursue the voluntary upgrade of cesspool wastewater systems, we question whether the income tax program is working as originally planned.

At this time, we are unsure if the mandate of 2050 will have an impact on future underwriting loans of properties with conversion or upgrade requirements. Typical loans are amortized on 30 year fixed loan and is dependent on property taxes, insurance, interest, and principal. A mandate for an upgrade could jeopardize underwriting such loans.

Mahalo for the opportunity to testify.





SIERRA CLUB OF HAWAI'I
MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE JOINT COMMITTEE ON CONSUMER PROTECTION, COMMERCE, AND
HEALTH AND AGRICULTURE & ENVIRONMENT

Monday, March 20, 2017 1:20 PM Room 224

In SUPPORT HB 1244 HD1 Relating to Cesspools

Aloha Chairman Gabbard, Chairwoman Baker, and members of the joint AEN/CPN Committee,

The Sierra Club of Hawai'i strongly supports HB 1244 HD1, which seeks to expand the income tax credit for the upgrade, conversion, or connection of cesspools.

We have 20,000 members and supporters throughout the Hawaiian Islands. Since 1968, the Sierra Club of Hawai'i has been working to protect the unique natural and cultural resources of our islands. We are deeply concerned with water quality and public health issues. Cesspools pose a significant threat to both.

Hawai'i has approximately 90,000 cesspools in the state, which release 55 million gallons of untreated sewage into the ground in Hawai'i each day.¹ Most of these cesspools pose risks to our groundwater, streams, and oceans. With each heavy rainfall, cesspools overflow and contaminate our oceans and streams, and the state must issue brown water advisories. Brown water poses serious health hazards, such as bacteria and viruses that can cause gastroenteritis, Hepatitis A, conjunctivitis, leptospirosis, salmonellosis, and cholera, among other ailments. Contamination not only poses great risks to public health, but also harms endangered and endemic marine wildlife.

Hawai'i has made progress by banning the construction of new cesspools in 2015, but the state still faces the immense public health threats presented by existing cesspools. The current HD1 of HB1244 helps to advance this progress by lowering barriers to the tax credit. Many residents with existing cesspools are unable to transition to sewer or septic tanks because the cost of new construction is prohibitively high. This bill allows more residents access to the tax relief necessary to off-set the cost of conversion. Allowing more homeowners to take advantage of the tax credit program to eliminate their cesspools benefits the health and safety of our whole community. It is imperative that the state moves quickly to reduce and ultimately eliminate untreated sewage contamination to our sensitive environment.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,
Marti Townsend
Director

¹ <http://health.hawaii.gov/wastewater/cesspools/>

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 1244 HD1 Relating to Cesspools
Senate Committee on Commerce, Consumer Protection and Health
Senate Committee on Agriculture and Environment
Monday, March 20, 2017, 1:20PM, Room 224

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which all life depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. We manage 40,000 acres in 14 preserves and work in 19 coastal communities to help protect the near-shore reefs and waters of the main Hawaiian Islands. We forge partnerships with government, private parties and communities to protect Hawai'i's important watershed forests and coral reefs.

The Nature Conservancy supports appropriate tax or other financial incentives to replace cesspools especially in areas where marine and fresh water resources may be affected.

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. 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 several 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 sustainable and responsible resource use, and retiring and replacing outdated infrastructure are all a part of the solution to the variety of threats we face. Replacing old cesspools is one important component of this collective effort.

Thank you for the opportunity to comment.

BOARD OF TRUSTEES

Mark Agne Paul Alston Christopher Benjamin Dr. C. Tana Burkert Anne Carter Richard Cooke III Brian Doyle
Thomas Gottlieb James Haynes III Sean Hehir Eiichiro Kuwana Duncan MacNaughton Kathy Matsui
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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 19, 2017 9:37 PM
To: CPH Testimony
Cc: birdofparadise@hawaii.rr.com
Subject: Submitted testimony for HB1244 on Mar 20, 2017 13:20PM

HB1244

Submitted on: 3/19/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Nandoskar	Individual	Support	No

Comments: Please support this bill which provide tax credits and grants to help homeowners with the cost of upgrades. Hawaii has 90,000 Cesspools, far more than any other state, that put 55,000 million gallons of raw sewage into our drinking water and polluting our oceans and harming precious coral reefs. This bill will help remove the financial barrier preventing most homeowners from upgrading. Mahalo for your consideration. Please support this legislation which will help protect our ocean from unnecessary pollution.

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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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 16, 2017 9:11 PM
To: CPH Testimony
Cc: ramagers603@gmail.com
Subject: *Submitted testimony for HB1244 on Mar 20, 2017 13:20PM*

HB1244

Submitted on: 3/16/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Rebekah	Individual	Support	No

Comments:

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Cc: mdeycaza@yahoo.com
Subject: Submitted testimony for HB1244 on Mar 20, 2017 13:20PM

HB1244

Submitted on: 3/16/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
mike deYcaza	Individual	Support	No

Comments: I hope provision in this bill will allow people to convert to composting toilets. We had one in Waimanalo. It was from the Sunmar company but there are others. There are lots of them on Big Island but few on Oahu where we really need them! Uses no water, doesn't smell when used according to instructions, only uses a small solar fan to facilitate drying and you get safe nonsmelly compost for your garden.

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Sent: Thursday, March 16, 2017 7:39 AM
To: CPH Testimony
Cc: angkpix@hotmail.com
Subject: *Submitted testimony for HB1244 on Mar 20, 2017 13:20PM*

HB1244

Submitted on: 3/16/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
ANGELA	Individual	Support	No

Comments:

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Sent: Wednesday, March 15, 2017 11:25 PM
To: CPH Testimony
Cc: yappygrl1@aol.com
Subject: *Submitted testimony for HB1244 on Mar 20, 2017 13:20PM*

HB1244

Submitted on: 3/15/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Fujita	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 15, 2017 2:49 PM
To: CPH Testimony
Cc: marilynmick@pobox.com
Subject: *Submitted testimony for HB1244 on Mar 20, 2017 13:20PM*

HB1244

Submitted on: 3/15/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Mick	Individual	Support	No

Comments:

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To: CPH Testimony
Cc: terez.amato@yahoo.com
Subject: Submitted testimony for HB1244 on Mar 20, 2017 13:20PM

HB1244

Submitted on: 3/15/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Terez Amato Lindsey	Individual	Support	No

Comments: please, let's give people the incentive they need to do the right thing for our environment. Thank you.

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To: CPH Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1244 on Mar 20, 2017 13:20PM*

HB1244

Submitted on: 3/13/2017

Testimony for CPH/AEN on Mar 20, 2017 13:20PM in Conference Room 224

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

Comments:

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