



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of HB1244 HD1
RELATING TO CESSPOOLS**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 23, 2017
Time: 12:00 PM

Room Number: 308

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
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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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

Date: Thursday, February 23, 2017
Time: 12:00 P.M.
Place: Conference Room 308, 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 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.

Among other things, H.B. 1244 amends the cesspool upgrade, conversion, or connection income tax credit to make the tax credit assignable as well as making it refundable; disallows 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. The joint House Committee on Health and Energy and Environmental Protection amended the measure deleting restrictions on the number of residential large capacity cesspools that may be eligible for the credit; deleting income-based requirements for homeowner eligibility to claim the credit; expanding eligibility criteria for all cesspools; establishing a sliding scale for grant awards; and deleting mandatory disclosure requirements for real estate transactions. H.D. 1 has a defective effective date of July 1, 2090.

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 in 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 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.

Finally, if the Committee wishes to advance this measure with transferability or the test for adjusted gross income, 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.

Thank you for the opportunity to provide comments.

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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February 23, 2017

The Honorable Sylvia Luke, Chair

House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

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

HEARING: AGENDA #2: Thursday, February 23, 2017, at 12:00 p.m.

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee.

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 9,000 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.


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.


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.





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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. An additional mandate for an upgrade may jeopardize underwriting such loans.

Mahalo for the opportunity to testify.



From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2017 10:14 AM
To: FINTestimony
Cc: sue.leeloy@hawaiicounty.gov
Subject: *Submitted testimony for HB1244 on Feb 23, 2017 12:00PM*

HB1244

Submitted on: 2/22/2017

Testimony for FIN on Feb 23, 2017 12:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Council Woman Sue Lee Loy	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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HOUSE FINANCE COMMITTEE

Thursday, February 23, 2017 12:00 PM Room 308

In **SUPPORT** HB 1244 HD1 Relating to Cesspools

LATE

Aloha Chairwoman Luke, and members of the FIN 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 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.

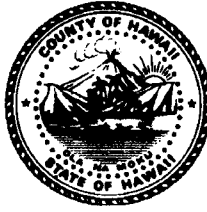
Hawai'i has made progress by banning the construction of new cesspools in 2015, but the state still faces the immense public health threats presented by existing cesspools. The current HD1 of HB1244 helps to advance this progress by lowering barriers to the tax credit. Many residents with existing cesspools are unable to transition to sewer or septic tanks because the cost of new constructive 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/>

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
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February 22, 2017

Representative Sylvia Luke
Finance Committee
Hawai'i State Capitol
Honolulu, HI 96813

LATE

Dear Chair Luke and members:

RE: **HB 1244**

Thank you for this opportunity to testify against HB 1244. I know the bill is well intended, but it is unnecessary, and it is contrary to our efforts to find a way 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 of groundwater 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 have just 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 start date is 2050.

Respectfully submitted,

Harry Kim
Mayor