

STAND. COM. REP. NO.

2600

Honolulu, Hawaii

MAR 01 2018

RE: S.B. No. 2567  
S.D. 2

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,  
to which was referred S.B. No. 2567, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CESSPOOLS,"

begs leave to report as follows:

The purpose and intent of this measure is to improve the State's ability to control and reduce water pollution from cesspools by requiring property owners to upgrade cesspools by connecting to a sewer system or installing an individual wastewater system that complies with Department of Health rules, within one hundred eighty days after the sale of the property.

Your Committee received testimony in support of this measure from the Department of Health, Hawaii County Councilmember Eileen O'Hara, Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, Surfrider Foundation Oahu Chapter, Surfrider Foundation, Energy and Climate Change Environmental Caucus of the Democratic Party of Hawaii, and twenty-two individuals. Your Committee received testimony in opposition to this measure from the Hawaii Association of REALTORS and one individual.

Your Committee finds that public health and the quality of Hawaii's drinking water, streams, ground waters, and ocean are being harmed by water pollution from cesspools. Hawaii has eighty-eight thousand cesspools that deposit approximately fifty-



three million gallons of raw sewage directly into the groundwater every day.

Your Committee also finds that upgrading cesspools can be expensive for homeowners, with an average cost of \$20,000. However, when a property with a cesspool is sold, property sellers typically have sales proceeds that may be used to pay for upgrading the cesspool. Sellers should disclose the presence of a cesspool as a material fact, and buyers and sellers can negotiate the payment of the upgrade costs as part of the sale.

Your Committee has heard the concerns of the Hawaii Association of REALTORS that this measure will not appreciably reduce the number of cesspools and will instead place needless barriers on home sales. However, your Committee finds that other states, including Rhode Island and New Jersey, have adopted similar measures which have proven effective in phasing out cesspools. Your Committee further finds that progress in upgrading cesspools under existing law, including section 235-16.5, Hawaii Revised Statutes, which offers a tax credit to assist with upgrade costs, has been slow, and further measures are needed to expedite and facilitate the upgrading of cesspools. Your Committee finds that additional discussion on this measure is warranted, including to determine the length of the compliance period.

Your Committee also finds that sellers of residential real property are already under a duty to disclose material facts to buyers, and that the presence of a cesspool should uniformly constitute a material fact in all cases to ensure compliance with the proposed requirements of this measure. Your Committee also finds that realtors are best suited to provide education to buyers and sellers of residential real property as to the new requirements that would be imposed by this measure, and that such education is desirable to limit the depression of real estate sales that might otherwise result from confusion about the effect of this measure.

Your Committee has amended this measure by:

- (1) Amending the definition of "material fact" at section 508D-1, Hawaii Revised Statutes, to include the presence

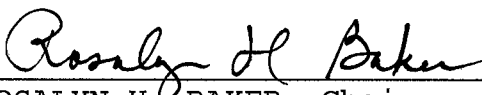


of a cesspool on a property for purposes of disclosure during the sale of that property;

- (2) Requiring realtors to inform their clients of their clients' rights and responsibilities;
- (3) Inserting a blank number of days after the sale of the residential real estate by which the upgrade of the cesspool must be accomplished;
- (4) Inserting an effective date of December 31, 2050, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2567, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2567, S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce, Consumer  
Protection, and Health,

  
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ROSALYN H. BAKER, Chair



