

SB1180

Measure Title: RELATING TO CESSPOOLS.

Report Title: Cesspools; Income Tax Credit; Mandatory Upgrade, Conversion, or Connection; Grant Program; Appropriation; Mandatory Disclosure; Real Property (\$)

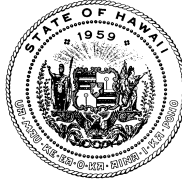
Description: Amends the cesspool upgrade, conversion, or connection income tax credit to: (1) make the tax credit assignable; (2) make the tax credit refundable; (3) disallow the tax credit for taxpayers whose federal adjusted gross income exceeds certain amounts; (4) expand the criteria for cesspools 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. Appropriates funds for the grant program. Requires DOH to develop guidelines for the mandatory disclosure of cesspools on real property.

Companion: [HB1244](#)

Package: None

Current Referral: CPH/AEN, WAM

Introducer(s): RIVIERE, ESPERO, HARIMOTO, INOUYE, KIDANI, K. RHOADS, S. Chang, Galuteria, Ihara, Nishihara



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of SB1180
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: February 10, 2017
Time: 1:15 p.m.

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.

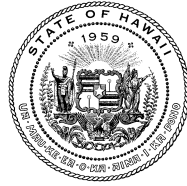
5 Cesspools are a major source of pollution to Hawaii's waters. There are approximately 90,000
6 cesspools in the State, discharging approximately 55 million gallons of untreated sewage into the
7 groundwater every day. Ground water flows into drinking water sources, streams and the ocean,
8 harming 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. The existing Water Pollution
15 Control Revolving Fund loan program provides low interest loans to Hawaii's four counties,
16 funding wastewater infrastructure projects such as construction and repair of wastewater treatment
17 plants, pump stations, sewer lines, and water reuse facilities. Federal regulations prohibit the use of
18 the existing Water Pollution Control Revolving funds for the proposed grant program, so a new
19 compliance grant program would be required.

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

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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MARIA E. ZIELINSKI
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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: Friday, February 10, 2017
Time: 1:15 P.M.
Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1180, Relating to Cesspools

The Department of Taxation (Department) appreciates the intent of the measure, 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 for your consideration.

Among other things, S.B. 1180 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

First, the Department firmly believes that a rebate or grant system is far preferable than a tax credit for assisting low income taxpayers convert a cesspool, since 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 allowed, the Department will need to track numerous pieces of a single claim to insure 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.

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; SB 1180

INTRODUCED BY: HB by KEOHOKALOLE, BELATTI, BROWER, CACHOLA, LOWEN, SAN BUENAVENTURA, TODD, DeCoite, Gates; SB by RIVIERE, ESPERO, HARIMOTO, INOUYE, KIDANI, K. RHOADS, S. Chang, Galuteria, Ihara, Nishihara

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.

BRIEF SUMMARY: 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: Upon approval, 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.

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. 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.



Along the same line, if the credit is assignable, it is questionable why it would be disallowed to taxpayers whose federal AGI is larger. Any taxpayer who faces disallowance of the credit could sell it to someone who could use it, and thereby get around the disallowance. And if a taxpayer who is poor enough to need the credit can't sell it to someone who has money because the credit


Re: HB 1244
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would not be available in the recipient's hands, then the whole point of assignability would seem to be missed.

Digested 2/8/2017



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February 10, 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: S.B. 1180, Relating to Cesspools

HEARING: Friday, February 10, 2017, at 1:15 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 9,000 members. HAR **opposes Part III, Sections 6 and 7** of S.B. 1180 which requires the Department of Health to develop guidelines for the mandatory disclosure of cesspools on real property.

HAR's industry practice is to create forms that exceed what is called for via laws, rules and regulations. HAR's 5-page Seller's Real Property Disclosure Statement ("SRPDS") is a comprehensive form that asks questions on various items that could be a material fact inasmuch as it measurably affects the value of the property. As part of those questions, our SRPDS already includes multiple questions related to wastewater or sewer systems of the subject property.

HAR believes that Part III, Sections 6 and 7 is unnecessary. HAR would be available to work with the Department of Health should there be specific items that they would like included in the form.

HAR would also note that 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.





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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. HAR is available to work with parties to ensure that the program works as it is intended.

Mahalo for the opportunity to testify.

- YES NO NTMK NA**
- 33) [] [] [] [] [] Is the Property subject to a Homeowners' and/or Community Association or any other Association?
- 33a) [] [] [] [] [] (a) Is membership mandatory?
- 33b) _____ (b) If yes, what are the fees and payments? _____
- 33c) _____ (c) What is included in the fees and payments? _____
- 33d) [] [] [] [] [] (d) Are you aware of future maintenance fee increases, special assessments, association loans or pending litigation for or against your Association(s)?

IF ANY OF THE ABOVE ARE CHECKED YES, NOTE: If the Property is subject to a recorded Declaration, Seller is subject to mandatory disclosure obligations pursuant to Hawaii Revised Statutes Chapter 508D as amended. To the best of Seller's knowledge, Seller shall provide the documents and any amendments or supplements within the deadlines set forth in the Purchase Contract.



C. UTILITIES AND SERVICES: Complete and describe problems, if any, in Section G.

- 34) What is your source of water supply?
 a) [] Public [] Private
 Is this Property separately metered? [] Yes [] No
 Is this a sub-meter? [] Yes [] No
 Is there a shared water supply? [] Yes [] No
 b) [] Catchment: Tank type _____ Capacity _____ Age _____ Condition _____
 c) [] Other _____
- 35) What type of waste water/sewage system do you have?
 a) [] Public Sewer [] Private Sewer Connected? [] Yes [] No
 If not, is connection currently required? [] Yes [] No
 Is there a separate sewer fee? [] Yes [] No Amount of current sewer fee _____
 b) [] Cesspool [] Septic System [] Individual Sewage Treatment Plant Location _____
 Last Pumped _____ How Often? _____
 c) [] Abandoned septic or cesspool Location _____ Filled? [] Yes [] No [] NTMK
 d) Does the cesspool serve more than one dwelling or living unit (A "dwelling" or, "living unit" is defined as having its own kitchen/food preparation area, bathroom and sleeping/living area), including "ohana" units? [] Yes [] No
- 36) What is your source of electrical power?
 [] Public [] Photo Voltaic [] Other: _____
 a) Is the Property subject to Special Subdivision Project Provision (SSPP) connection fees? [] Yes [] No
 b) Hawaii law requires Sellers who pay their electricity bills directly to make a good faith declaration of electricity costs based upon the most recent three-month period that the property was occupied. In this context, please answer the following:
 Do you pay your electrical utility bill directly? [] Yes [] No
 If yes, please state the amount you paid for electricity for the most recent three-month period that the property was occupied.
 Mon/Yr: _____ Amount: _____ Mon/Yr: _____ Amount _____ Mon/Yr: _____ Amount: _____
 Buyer's actual electricity costs may vary substantially.
 c) If Seller's interest in a photovoltaic system is included in the sale, please answer the following and attach ALL applicable documentation (i.e. leases/finance agreements, service/maintenance agreements, utility agreements net metering / buyback and/or credit agreements, user manuals, battery maintenance and warranties)
 Is the system [] Leased [] Financed [] Owned outright [] Other _____
- 37) If a Solar Hot Water System is included with the sale, please answer the following and attach ALL applicable documentation (i.e. lease/financing agreement, service/maintenance agreements, user manuals).
 Is the system [] Leased [] Financed [] Owned outright
- 38) If a Security Alarm and/or Home Automation System is included with the sale, please answer the following and attach ALL applicable documentation (i.e. lease/financing agreement, service/maintenance agreements, user manuals).
 Is the system [] Leased [] Financed [] Owned outright
- 39) Gas: [] Piped [] Tank [] None
- 40) Telephone Service: [] Traditional [] Party line only [] Cable [] Cell [] Satellite
- 41) Television Service: [] Cable [] Satellite [] Antenna [] Not available
- 42) Broadband Internet [] DSL [] Cable [] None [] Other
- 43) US Postal Delivery: [] PO Box [] Community Box [] Individual Curbside Box [] To Door

[] D. IMPROVEMENTS: Do any of the following conditions exist? If "yes", use the same number and describe in Section G.

- YES NO NTMK NA**
- 44) [] [] [] [] [] Were any improvements, additions, structural modifications or alterations built without building permits, association design committee or other governmental approvals?
- 45) [] [] [] [] [] For any improvement(s) subject to a mechanic's and materialman's lien, has Notice of Completion been published?
- 45a) _____ (a) Date of publication _____ Unknown
- 46) [] [] [] [] [] Were any of the building permits not finalized (closed) by the permitting agency?

 BUYER'S INITIALS & DATE

 SELLER'S INITIALS & DATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 1:35 PM
To: CPH Testimony
Cc: djf991960@hotmail.com
Subject: Submitted testimony for SB1180 on Feb 10, 2017 13:15PM

SB1180

Submitted on: 2/1/2017

Testimony for CPH/AEN on Feb 10, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
David Fukuzawa	Individual	Support	No

Comments: I am in support of this bill.

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: Monday, February 6, 2017 12:28 PM
To: CPH Testimony
Cc: fu_dog_5@yahoo.com
Subject: *Submitted testimony for SB1180 on Feb 10, 2017 13:15PM*

SB1180

Submitted on: 2/6/2017

Testimony for CPH/AEN on Feb 10, 2017 13:15PM in Conference Room 224

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

Comments:

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Hello,

My name is Kim from Nuuanu on Oahu, and I am writing in SUPPORT of SB1180.

I received my PhD from UH Manoa on work that I did showing the impacts of nutrient pollution, like that from cess pools, on coral reef ecosystems. The state has more cess pools per person than any other state in the nation - only Long Island, NY can compete with this status. The 90,000 cess pools need to be upgraded to septic, or preferably ATUs, in order to reduce the impact to our drinking water, recreational waters and ecosystems.

This bill makes a small step in the right direction.

Dr. Kim Falinski