



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony in SUPPORT of SB0369
RELATING TO WASTEWATER SYSTEMS**

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: 2/17/2021

Room Number: Via Videoconference

1 **Fiscal Implications:** This measure will impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities. The Department would need at least two full-time staff to manage the
4 inspection and repair program of individual wastewater systems at the time of sale or transfer of
5 ownership of a property.

6 **Department Testimony:** The Department supports this measure with comments.

7 The United States Environmental Protection Agency and the National Oceanic
8 Atmospheric Administration have indicated that an individual wastewater system inspection
9 program that includes a significant majority of the systems in the State is necessary for Hawaii to
10 receive approval of its coastal nonpoint program pursuant to Section 6217 of the Coastal Zone
11 Act Reauthorization Amendments of 1990. The Department and the Department of Business,
12 Economic Development and Tourism could potentially lose approximately \$1.1 million of
13 federal funds if an inspection program is not implemented. This measure would be a starting
14 point for developing an inspection program that is needed to satisfy federal requirements and it
15 would also decrease the number of failing systems, thereby having a beneficial impact on water
16 quality.

17 Requiring the inspection of the individual wastewater systems at the time of sale of a
18 property will protect a potential buyer. Problems with an individual wastewater system can

1 range from simple repairs to very complex replacement which can cost thousands of dollars. The
2 individual wastewater system is considered an extension of the plumbing of a home. During
3 home inspections at the time of sale, it is common for plumbing and electrical systems to be
4 inspected for deficiencies. Inspecting individual wastewater systems at the time of sale to spot
5 deficiencies would be consistent.

6 The Department suggests the following amendments.

7 **Offered Amendments:** Section 2(b), the phrase, “This section shall not apply to:” should be
8 revised to read, “This section *and any rules promulgated to implement this section* shall not
9 apply to:” The reason for the change is because subsection (e) of the proposed new section
10 mandates that Rules be adopted to implement this section, and the additional language would
11 make it clear that administrative rules would also not apply.

12 Section 2(b)(3), the phrase, “...incidental to the decrees” should be revised to,
13 “...incidental to *such* decrees.” The reason for the change is because the phrase, “the decree”
14 does not clearly identify what decree it relates to- “such decrees” may be interpreted to relate to
15 decrees of dissolution of marriage and legal separation, and may also be interpreted to relate to
16 decrees of a similar nature. In addition, this provision as currently drafted clearly applies in the
17 case of a marriage, but it is not clear if it applies to (or is intended to apply to) dissolution of a
18 civil union.

19 Section 2(d) should be revised to read, “If an individual wastewater system fails
20 inspection, the system shall be repaired or replaced within one year by the current property
21 owner or by the prospective property owner with written agreement, to meet the design and
22 construction requirements adopted by the department.”

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



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Agriculture and Environment
Tuesday, February 17, 2021 at 1:00 p.m.

By
Darren T. Lerner, Director
Hawaii Sea Grant
University of Hawai'i at Mānoa

SB 369 – RELATING TO WASTEWATER SYSTEMS

Chair Gabbard, Vice Chair Nishihara, and members of the committee:

The University of Hawai'i Sea Grant College Program strongly supports this measure.

Previous research and review, by specialists at The University of Hawai'i Sea Grant College Program, of other state efforts to convert cesspools and outdated onsite wastewater treatment systems (OWTS) supports this additional option/method of conversion to help the state meet the Act 125 mandate. Several states (Arizona, Iowa, Massachusetts, Delaware, and New Mexico) along with many counties and municipalities require an inspection of onsite wastewater systems before a property can transfer ownership. A review of these regulations reveal they are varied and provide flexibility for unique situations. In general, rules such as SB 369, are thought to provide protection to all parties involved, with minimal burden, and assist with the speed in which outdated and polluting onsite wastewater systems are replaced.

Thank you for the opportunity to testify on this measure.



Environmental Caucus of The Democratic Party of Hawai'i

February 17, 2021

To: Senate Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

Re: SB 369 – RELATING TO WASTEWATER SYSTEMS

Hearing: Wednesday, February 17, 2021, 1:00 p.m., via videoconference

Position: **STRONG SUPPORT**

Aloha, Chair Gabbard, Vice Chair Nishihara, and Members of the Committee on Agriculture and Environment:

The Environmental Caucus of the Democratic Party of Hawai'i and its Human Environmental Impacts Committee are in strong support of SB 369, which would minimize the polluted runoff created by failing individual wastewater systems in the State by establishing a program to oversee their inspection and repair of individual wastewater systems at the time of an attached property's transfer or sale.

The Democratic Party of Hawai'i (Party) has adopted at its 2018 State Convention, clear safeguards to protect the *'āina* against polluted runoff. At page 17 of the Party Platform, it specifically provides that “[c]esspools throughout the State of Hawai'i threaten drinking water supplies, coral reefs and the health of people who swim and surf in our island waters. They create a serious public safety issue, environmental problem and economic danger that is exacerbated by the effects of climate change. We support septic tank upgrades and wastewater sewage systems where feasible by 2025.”

Polluted runoff results from our activities on the land and in the water. Sources of polluted runoff include urban areas, [agriculture](#), and [cesspools](#). . . . Cesspools, another source of polluted runoff, discharge untreated human waste directly into the ground, where it can contaminate the ocean, streams, and groundwater by releasing nutrients and disease-causing bacteria and viruses. [Clean Water Branch | Polluted Runoff Control Program \(hawaii.gov\)](#)

To reduce polluted runoff from cesspools, we urge you to pass SB 369 as it establishes a program to oversee their inspection and repair of individual wastewater systems at the time of an attached property's transfer or sale, all of which are consistent with the Democratic Party Platform.

Thank you very much for the opportunity to testify on this key issue.

Respectfully yours,

Alan Burdick and
Melodie Aduja
Co-Chairs, Environmental Caucus
Co-Chairs, Human Environmental Impacts Committee
Democratic Party of Hawai`i
Email: burdick808@gmail.com and
legislativepriorities@gmail.com

SB-369

Submitted on: 2/15/2021 6:55:30 PM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Charlie Quesnel	Testifying for Surfrider Maui Chapter	Support	No

Comments:

I support this bill.

SB-369

Submitted on: 2/16/2021 10:54:55 AM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Reef and Ocean Coalition	Testifying for Hawaii Reef and Ocean Coalition	Support	No

Comments:

To: The Honorable Michael Gabbard, Chair, The Honorable Clarence Nishihara, Vice Chair, and Members of the Senate Committee on Agriculture and Environment

From: Hawaii Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing SB369 RELATING TO WASTEWATER SYSTEMS.

Wednesday February 17, 2021, 1:00 p.m., by videoconference

Position: **Strongly Support SB369!**

The HAWAI'I REEF AND OCEAN COALITION-HIROC- **STRONGLY SUPPORTS SB369**. HIROC was formed in 2017 by coral reef scientists, educators, local Hawaii environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs and other marine life. Coral reefs are already being severely harmed by ocean waters that are warming and becoming more acidic as a result of greenhouse gas emissions worldwide. Coral reefs are also being harmed in Hawaii by sediment runoff from the land, by overfishing (especially of reef-cleaning herbivores), sunscreen petrochemicals, and particularly by nutrients from cesspools and failing individual wastewater systems.

Effluent from cesspools and failing individual wastewater systems— 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 failing individual wastewater systems (such as cesspools, septic systems and aerobic treatment units designed to dispose of not more than 1,000 gallons of domestic wastewater per day) can reach near-shore waters within a matter of minutes to just a few days. Though it sometimes takes longer, the waste does flow toward and can eventually degrade surface waters.

Hawaii's tourism, recreational lifestyle, and shorelines depend on healthy coral reefs. Hawaii receives over \$1 million per year in grants from the federal coastal zone program that is contingent on the State taking measures to address and minimize polluted runoff, including runoff from on-site sewage facilities. Replacing coastal cesspools and failing individual wastewater systems should be a priority for Hawaii!

This Bill proposes to minimize the polluted runoff created by cesspools and failing individual wastewater in the State by establishing a program to oversee their inspection and repair at the time of an attached property's transfer or sale. The bill exempts property transfers within families, between joint tenants or tenants in common, or spouses dissolving marriages. If an individual wastewater system fails inspection, the system shall be renovated within one year by the current owner or buyer with written agreement to meet construction standards.

Under Hawaii law, cesspools must be upgraded by 2050. Requiring inspection and possible upgrade on transfer makes good sense. Property buyers and sellers have capital at transfer that many do not have at other times. They can negotiate between them on who shall pay for inspections and upgrades where one is needed as part of the transfer. This bill provides a gradual way for some cesspools to be upgraded without State funds at a time of least hardship to property owners.

Please pass this bill to protect our precious coral reefs and oceans from the harms from wastewater pollution in a cost-effective manner for property owners!

Mahalo!

Hawaii Reef and Ocean Coalition (by Ted Bohlen)



Feb. 16, 2021

In Support of **SB369** Relating to Wastewater Systems
Senate Committee on Agriculture and the Environment (AEN)
Feb. 17, 1:00pm, Via Videoconference

Aloha, Chair Gabbard, Vice-Chair Nishihara and Members of the Committee:

On behalf of the non-profit WAI: Wastewater Alternatives & Innovations, I am writing in **strong support of SB369**. This bill would establish the inspection of individual wastewater systems (IWS) upon point of sale (POS) of a property and make sure that substandard cesspools or failing septic systems are replaced during the sale or transfer of real properties (allowing for certain exemptions). The Hawaii Dept. Of Health (DOH) and the people of Hawaii need this law to make sure their wastewater systems aren't polluting the groundwater or nearby surface waters.

As a member of the State's Cesspool Conversion Working Group, I believe this bill is an important policy tool for the state to fulfill its mandate under Act 125 to convert all cesspools by 2050. Hawaii has more than 88,000 cesspools across the state, discharging 53 million gallons of raw sewage each day into Hawaii's waters. That's like a massive sewage spill every day! Hawaii is struggling to deal with this sewage pollution problem and meet the mandate to convert all cesspools in the next three decades. Most homeowners don't have enough money to convert their individual cesspools, but with this law, buyers and sellers can negotiate and/or share the cost while there is money on the table during the point of sale. Otherwise, unimproved cesspools become a liability for all involved.

WAI is dedicated to protecting our drinking water, groundwater and near-shore ecosystems by reducing sewage pollution from cesspools and failing septic systems. Our goal is to help communities and homeowners find more innovative, affordable, and eco-friendly solutions to wastewater management. Better sanitation systems reduce sewage pollution and make properties more valuable, while also protecting our groundwater, streams, and the health of our coral reefs and coastal areas. By allowing these PPP's, the state will encourage the counties and technology companies to partner and find affordable solutions, as well as opportunities to grow our economy.

As an amendment, I would suggest adding the language of SB368 to this bill because it's so similar. Currently, Act 125 limits the options for cesspool conversions to traditional septic systems and aerobic treatment units (ATU's). By adding the language of SB368 to this bill, it would create more options for cesspool conversions and upgrades and include newer and more efficient, innovative and affordable wastewater systems that will help reduce sewage pollution and improve our water quality across the state.

This bill creates a common sense and expedient way to inspect and convert cesspools and failing septic systems during the point of sale or transfer of a property. It will also help the state and the DOH tackle the problems of cesspools and wastewater management. Mahalo for your leadership on this issue and support of this bill. Please let me know if you have any questions.

Aloha,

Stuart H. Coleman

WAI: Wastewater Alternatives & Innovations * 2927 Hibiscus Pl. * Honolulu, HI 96815
808-381-6220 * info@waicleanwater.org * www.WaiCleanWater.org

SB-369

Submitted on: 2/4/2021 3:49:19 PM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments:

I support this measure having the DOH inspect wastewater systems during a time of sale or transfer.

SB-369

Submitted on: 2/15/2021 11:35:42 AM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl J. Berg	Individual	Support	No

Comments:

I support SB369

SB-369

Submitted on: 2/15/2021 3:21:38 PM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maui OFR	Individual	Support	No

Comments:

It's super important that we are properly repairing our wastewater systems and the DOH should be able to do so

SB-369

Submitted on: 2/16/2021 8:52:06 PM

Testimony for AEN on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jackie Orsa	Individual	Support	No

Comments:

I am a West Hawaii Island Realtor submitting my testimony in support of Senate Bill 369 establishing the time of transfer wastewater system inspection program. I believe that it should be a legislative priority to establish and implement a plan for the conversion of cesspool wastewater system. If we are to achieve the State's goal of converting all cesspools in the State by 2050, a plan to begin conversions at a substantial rate needs to be put into place immediately. Many homeowner's do not understand the related costs, environmental & health benefits, or tax credit opportunities that are associated with converting cesspools into a more sustainable wastewater system and without proper legislation there will be no urgency for homeowner to take the next step to converting their wastewater system. Instead of being reactive and only converting of a cesspool when it fails, it is time to be proactive and protect our island's water.

While there are property inspections during a real estate escrow, there are currently no inspections that require a wastewater system be inspected. Given the proven environmental health consequences that cesspools have on our environment and our human health, the importance of a wastewater inspection should not be overlooked. There is no better time to have this inspection conducted than at the time of the sale.

I believe this proposed legislation gives Realtors an opportunity to assist homeowners in their education on sustainable wastewater systems as well as their opportunities for tax-credits that are associated with converting cesspools into a better system. It is our ethical responsibility to act with our client's best interests in mind and I believe this proposed legislation gives Realtors an opportunity to be a "source of the source" for education on sustainable wastewater systems as well as their opportunities for tax-credits that are associated with converting cesspools into a better system. While it may initially create some turbulence to the real estate process, SB369 will also create more opportunities for negotiation between buyers and sellers - it will ultimately benefit the homeowner and the community at large.

SB-369

Submitted on: 2/17/2021 12:50:44 AM

Testimony for AEN on 2/17/2021 1:00:00 PM

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

Comments:

Please Support SB369!!

February 17, 2021

The Honorable Mike Gabbard, Chair
Senate Committee on Agriculture and Environment
Via Videoconference

LATE

RE: S.B. 369 Relating to Wastewater Systems

HEARING: Wednesday, February 17, 2021, at 1:00 p.m.

Aloha Chair Gabbard, Vice Chair Nishihara, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **opposes** Senate Bill 369 which establishes the time of transfer wastewater system inspection program in the Department of Health to oversee the inspection and repair of any individual wastewater system at the time of sale or transfer of residential real property attached to the wastewater system. Excludes certain sales or transfers.

HAR supports the goal of protecting Hawaii's drinking water, streams, ground water and ocean resources. However, it could be years or a property owner may never sell their property. As such, point of sale requirements are not a practical solution to address the issue of individual wastewater system repair.

HAR would note that there are numerous inspection periods during the real estate transaction, which are negotiated between the buyer and seller. Under this measure, this could add delays and financing issues to a real estate transaction, especially if the individual waste water system has to be inspected and possibly renovated within one year to meet construction standards.

Additionally, there already is a shortage of inspectors. As such, this could add additional delays to the home selling process.

Instead we should be focusing on efforts that encourage homeowners to convert their individual wastewater systems, such as educational outreach, tax credits and looking at new cost-effective technologies to support the State's goal of converting all cesspools in the State by 2050, provided they do not have an exemption.

Finally, HAR would note that Act 132, Session Laws of Hawai'i 2018, created a Cesspool Conversion Working group comprised of various government and industry partners, including Hawai'i REALTORS®. The work of the Working Group is not finalized and as such HAR believes that this measure is premature until a comprehensive plan is finalized which is due to the Legislature next year.

Mahalo for the opportunity to testify.