

DAVID Y. IGE  
GOVERNOR

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**DEPARTMENT OF TAXATION**  
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To: The Honorable Mark M. Nakashima, Chair;  
The Honorable Scot Z. Matayoshi, Vice Chair;  
and Members of the House Committee on Judiciary & Hawaiian Affairs

From: Isaac W. Choy, Director  
Department of Taxation

Date: Monday, March 21, 2022  
Time: 2:00 P.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 2752, S.D. 2, H.D. 1, Relating to Abandoned Wells**

The Department of Taxation (Department) offers the following comments on S.B. 2752, S.D. 2, H.D. 1, for the committee's consideration.

S.B. 2752, S.D. 2, H.D. 1, adds a new section to chapter 235, Hawaii Revised Statutes (HRS), creating a new nonrefundable tax credit for well abandonment compliance. The credit is equal to an unspecified percentage of qualified compliance costs, up to an unspecified maximum cap. There is also an unspecified annual aggregate cap for all taxpayers. The Commission on Water Resource Management will be responsible for maintaining records and certification of the credit. The measure defines "qualified compliance costs" as construction costs that are necessary and directly incurred by the taxpayer to fill and seal an abandoned well in compliance with the State Water Code. The measure has a defective effective date of July 1, 2050, and otherwise applies to taxable years beginning after December 31, 2021.

The Department defers to the Commission on Water Resource management regarding its ability to certify this credit, but respectfully requests that this certification provision be maintained.

Additionally, if the Committee wishes to insert a functional effective date and advance this measure, the Department respectfully requests that the new tax credit be made applicable to taxable years beginning after December 31, 2022. This will give the Department necessary time to make the necessary form and computer changes.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
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EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
ON  
SENATE BILL NO. 2752, S.D. 2, H.D. 1

**March 21, 2022**  
**2:00 p.m.**  
**Room 325 and Videoconference**

RELATING TO ABANDONED WELLS

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2752, S.D. 2, H.D. 1, does the following: 1) amends Section 174C-81, HRS, to amend the definition of "abandoned well"; 2) amends Section 174C-87, HRS, to require an owner or prior owner of an abandoned well to repair or fill and seal the well at the owner's or prior owner's expense; 3) adds a new section to Chapter 235, HRS, that establishes a non-refundable tax credit equal to an unspecified percentage of qualified compliance costs up to an unspecified maximum amount for taxpayers who are required to fill and seal abandoned wells on their real property; and 4) appropriates an unspecified amount of general funds in FY 23 for either 2.00 Engineering Technician positions or 2.00 Environmental Health Specialist positions and 1.00 clerical position in the Department of Land and Natural Resources to effectuate this bill.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or

administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

B&F also notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the ARP Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
JUDICIARY & HAWAIIAN AFFAIRS**

**Monday, March 21, 2022  
2:00 PM**

**State Capitol, Conference Room 325, Via Videoconference**

**In consideration of  
SENATE BILL 2752, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO ABANDONED WELLS**

Senate Bill 2752, Senate Draft 2, House Draft 1 proposes to: 1) establish an income tax credit for taxpayers who are required to seal abandoned wells on their real property; 2) clarify the definition of the term "abandoned well"; 3) require an owner of an abandoned well to seal the well at the owner's expense; and 4) appropriate funds for three full-time equivalent (3.0 FTE) positions under the Department of Land and Natural Resources' (Department) Commission on Water Resource Management (Commission). **The Department strongly supports this measure provided that its passage does not replace or adversely impact priorities indicated in the Executive Supplemental Budget Request and offers the following comments and suggested amendments.**

Abandoned wells that are not properly sealed can pose a threat to groundwater by providing a direct conduit for pollution or contamination to be introduced into an aquifer. Certain types of abandoned wells, such as shallow dug wells or shaft-type wells, can also pose a risk to public health and safety as humans, animals, or even vehicles may fall into these wells if not properly sealed. There are many reasons well owners do not comply with the law and seal their abandoned wells. The owner may not be aware of the regulatory requirements of well sealing or may be unable to afford the full cost to properly seal their well. The establishment of a state tax credit for taxpayers to seal their abandoned wells will incentivize these tax paying well owners to comply with the law, seal their wells and protect groundwater from potential contamination.

The Commission's Hawaii Well Construction and Pump Installation Standards (2004) require wells to be completely sealed with concrete or other similar materials. Depending on the size,

depth, and type of well, the cost to seal will average in several thousand dollars for most wells and up to tens to hundreds of thousands of dollars for other especially large or deep wells around the State.

The current draft of this measure does not provide a numeric amount for the percentage, cap amount, and aggregate annual amount for this tax credit. The Department suggests amending (grey highlight) Section 235-\_\_ (c) and (g), Hawaii Revised Statutes (HRS), as follows:

(c) The well abandonment compliance income tax credit shall be equal to thirty per cent of the qualified compliance costs incurred by the taxpayer, up to a maximum of \$250,000.

(g) If in any taxable year the annual amount of certified credits reaches \$1,000,000 in the aggregate, the commission on water resource management shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the commission on water resource management certify a total amount of credits exceeding \$1,000,000 per taxable year. To comply with this restriction, the commission on water resource management shall certify credits on a first come, first served basis. The department of taxation shall not allow the aggregate amount of credits claimed to exceed that amount per taxable year.

The Department based its numeric suggestions on prior sealing cost for various sizes and types of wells and on other similar tax credits as the renewable energy technologies income tax credit, Section 235-12.5, HRS, and the historic preservation income tax credit, Section 235-110.97, HRS.

The Department appreciates the Legislature's acknowledgement that new technical staff positions with funding would be required to implement an abandoned well sealing program within the Commission.

Thank you for the opportunity to comment on this measure.

**SB-2752-HD-1**

Submitted on: 3/20/2022 1:39:26 PM

Testimony for JHA on 3/21/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ryan Imata	DLNR-CWRM	Support	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

March 21, 2022

**The Honorable Mark M. Nakashima, Chair**  
House Committee on Judiciary & Hawaiian Affairs  
Via Videoconference

**RE: Senate Bill 2752, SD2, HD1, Relating to Abandoned Wells**

**HEARING: Monday, March 21, 2022, at 2:00 p.m.**

Aloha Chair Nakashima, Vice Chair Matayoshi, 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 11,000 members. HAR **provides comments** on, Senate Bill 2572, SD2, HD1, which establishes an income tax credit for taxpayers who are required to seal abandoned wells on their real property. Clarifies the definition of the term "abandoned well". Requires an owner of an abandoned well to seal the well at the owner's expense. Appropriates funds for three full-time equivalent (3.0 FTE) positions under the Commission on Water Resource Management.

Under this measure it provides that, "if the owner of real property that includes an abandoned well transfers ownership of the real property, the owner shall notify the commission on water resource management of that transfer before entering escrow."

Unless a seller seals or discovers the abandoned well themselves, they could have no knowledge of the presence of a well that was abandoned by a prior owner because it would be hidden from view, such as on large tracts of land on the island of Hawai'i. As such, HAR respectfully requests the following amendment, consistent with disclosures required under Hawai'i Revised Statutes §508D:

Page 7, lines 17-21:

(c) Notwithstanding any other law to the contrary, if the owner of real property that includes an abandoned well transfers ownership of the real property, and providing that the presence or existence of the abandoned well is: a) within the knowledge of the owner; or b) visible from an accessible area; the owner shall notify the commission on water resource management of that transfer ~~before entering escrow upon opening of escrow.~~"

Additionally, if the Committee is inclined to pass this measure, we would respectfully request a **November 1<sup>st</sup> effective date** to make amendments to our Standard Forms, such as the Purchase Contract, and educate our members on the changes.

Mahalo for the opportunity to testify.