

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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 SENATE COMMITTEE ON WATER AND LAND
ON
SENATE BILL NO. 2752

January 31, 2022
1:00 p.m.
Room 229 & Videoconference

RELATING TO ABANDONED WELLS

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

Senate Bill No. 2752 does the following: 1) adds a new section to Chapter 508D, HRS, to require sellers of real property to disclose the existence of wells on the property; 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 3.00 Ground Surveyor positions 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.

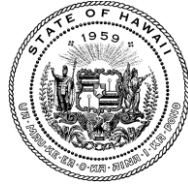
If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

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.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Lorraine R. Inouye, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Water and Land

From: Isaac W. Choy, Director
Department of Taxation

Date: Monday, January 31, 2022
Time: 1:00 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2752, Relating to Abandoned Wells

The Department of Taxation (Department) appreciates the intent of S.B. 2752 and offers the following comments for the committee's consideration.

S.B. 2752 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 is effective July 1, 2022, with the new tax credit in Section 2 applying 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. The Department lacks the subject-matter expertise to properly administer this credit without third-party certification.

Additionally, 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 sufficient time to make the necessary form and computer changes.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
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HAWAII



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

ROBERT K. MASUDA
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WATER AND LAND

Monday, January 31, 2022
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 2752
RELATING TO ABANDONED WELLS

Senate Bill 2752 proposes to amend Chapters 174C, 235, and 508D, Hawai'i Revised Statutes (HRS), to establish a compliance income tax credit to seal abandoned wells and require sellers to disclose the existence of a well on their property. This measure is to be effective on July 1, 2022, with credit applicable to taxable years beginning December 31, 2021. **The Department of Land and Natural Resources (Department) strongly supports the intent of this measure and offers the following comments and suggested amendments.**

First, this measure refers to the permit required to abandon and seal wells. To clarify the difference between an abandoned and sealed well, the Department suggests amending (grey highlight) Section 174C-87, HRS as follows:

"§174C-87 ~~[Abandonment]~~ **Sealing of wells.** (a) When a well is abandoned, the owner shall ~~[fill and]~~ seal the well in a manner approved by the commission. Before ~~[abandonment,]~~ **sealing,** the owner shall file with the commission ~~[a report showing the owner's name and address; the water use permit, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment;]~~ **an application for a well sealing permit signed by a driller licensed to do the work** and such other information as the commission may require.

(b) The owner of an abandoned well shall repair or fill and seal the well at the owner's expense, as provided by [rules adopted pursuant to chapter 91.] the well construction and pump installation standards.

Second, to fulfill the measure's goal of protecting and preventing contamination of aquifers and to incentivize more voluntary abandonment and sealing of wells, the Department suggests striking (grey highlight) the exclusions in the definitions of the "qualified compliance costs" in Section 235- (h) of this measure as follows:

"Qualified compliance costs" means construction costs that are necessary and directly incurred by the taxpayer to fill and seal an abandoned well in compliance with section 174C-87. ["Qualified compliance cost" does not include costs incurred to seal or plug:]

(1) A well that has not been certified by the commission on water resource management pursuant to section 174C-27;

(2) A well for which a permit has been issued under section 174C-84, but the construction has not been completed; or

(3) An incomplete and abandoned well pursuant to section 174C-87 (e).]

Third, this measure should clarify if the compliance income tax credit applies to or is excluded from sealing well activities under the jurisdiction and regulation of: 1) the State Department of Health's (DOH) Underground Injection Control Program (injection wells, Section 11-23 Hawai'i Administrative Rules (HAR)); 2) DOH's Underground Storage Tank and the Office of Hazard Evaluation and Emergency Response Programs (environmental wells, Chapter 11-28.1, HAR, and Chapter 128D, HRS, respectively); and 3) the Department's Engineering Division (geothermal wells, Chapter 183, HAR). If these wells are intended to be included, these agencies should be responsible for the requirements listed under the proposed Section 235- (f), HRS, of this measure under their respective programs rather than the Department's Commission on Water Resource Management (Commission) including the issuance of certificates verifying qualifying compliance cost and credits each taxable year for similar sealing activities.

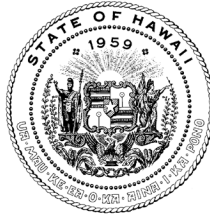
Fourth, this measure should clarify if there are differences in compliance income tax credit for voluntary or Commission-ordered sealing. There are issues between voluntary sealing, Commission action requiring sealing, water use reporting of ground water data, and enforcement of these issues. The 2019 Water Resource Protection Plan Section I.3.2 provides more detail but generally explains the Commission's efforts and authority to determine when a source meets the definition of abandonment and requires sealing as authorized under Section 13-168-16, HAR. Commission efforts to determine abandonment is difficult and time consuming as many well owners are reluctant to voluntarily declare their well abandoned because wells are generally considered assets to the property and can be expensive to properly seal. If a well owner complies with monthly reporting requirements or allows Commission staff to gather data from a well not threatening the groundwater resource, then this is good for monitoring the health of the resource. However, if the owner does not report or allow the Commission to monitor its well, then significant

Commission efforts can be expended on enforcement, fines, and orders to seal. This measure should encourage voluntary sealing and make a distinction between voluntary sealing and well owners who require the Commission to take extra action to determine well abandonment and order their well source sealed.

Lastly, the Department appreciates the establishment of three full-time positions in the Commission. To support this well abandonment program, the Department suggest establishing the following positions: two positions dedicated to site inspections to determine abandonment and to oversee the procurement, management and monitoring of well sealing contracts, compliance costs and tax credits, and one position for accounting and clerical work associated with the program.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
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CHAIRPERSON
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(b) The owner of an abandoned well shall repair or fill and seal the well at the owner's expense, as provided by [rules adopted pursuant to chapter 91.] the well construction and pump installation standards.

Second, to fulfill the measure's goal of protecting and preventing contamination of aquifers and to incentivize more voluntary abandonment and sealing of wells, the Department suggests striking (grey highlight) the exclusions in the definitions of the "qualified compliance costs" in Section 235- (h) of this measure as follows:

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Fourth, this measure should clarify if there are differences in compliance income tax credit for voluntary or Commission-ordered sealing. There are issues between voluntary sealing, Commission action requiring sealing, water use reporting of ground water data, and enforcement of these issues. The 2019 Water Resource Protection Plan Section I.3.2 provides more detail but generally explains the Commission's efforts and authority to determine when a source meets the definition of abandonment and requires sealing as authorized under Section 13-168-16, HAR. Commission efforts to determine abandonment is difficult and time consuming as many well owners are reluctant to voluntarily declare their well abandoned because wells are generally considered assets to the property and can be expensive to properly seal. If a well owner complies with monthly reporting requirements or allows Commission staff to gather data from a well not threatening the groundwater resource, then this is good for monitoring the health of the resource. However, if the owner does not report or allow the Commission to monitor its well, then significant

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Thank you for the opportunity to comment on this measure.

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Thank you for the opportunity to comment on this measure.

January 31, 2022

The Honorable Lorraine Inouye, Chair
Senate Committee on Water and Land
Via Videoconference

RE: Senate Bill 2752, Relating to Abandoned Wells

HEARING: Monday, January 31, 2022, at 1:00 p.m.

Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members of the Committee,

I am Mary Begier, Business and Real Estate Transaction Subcommittee Chair of the Government Affairs Committee, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,800 members. HAR **opposes**, Senate Bill 2572, which establishes an income tax credit for taxpayers who are required to fill and seal abandoned wells on their real property. Clarifies the definition of the term "abandoned well". Requires sellers of real property to disclose the existence of wells on the property. Requires 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. Appropriates funds for three full-time equivalent ground surveyor positions under the Commission on Water Resource Management.

Under Hawai'i Revised Statutes 508D, sellers are required to disclose all material facts that are within the knowledge or control of the seller or can be observed from visible, accessible areas. Unless a seller seals a 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.

Additionally, this measure places an unreasonable duty of disclosure upon a seller, even if they had no knowledge of the existence of an abandoned well and imposes liability on the seller for the costs of filling and sealing a well the seller had no knowledge of. HAR would also note that it could be years before the existence of an abandoned well is discovered and the property may have changed owners multiple times. As such, determining liability could be extremely difficult.

Mahalo for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for Filling and Sealing Abandoned Wells

BILL NUMBER: SB 2752

INTRODUCED BY: INOUYE, DECOITE, KEITH-AGARAN, MISALUCHA, Kidani, San Buenaventura

EXECUTIVE SUMMARY: Establishes an income tax credit for taxpayers who are required to fill and seal abandoned wells on their real property. Clarifies the definition of the term “abandoned well.” Requires sellers of real property to disclose the existence of wells on the property. Requires 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. Appropriates funds for three full-time equivalent ground surveyor positions under the Commission on Water Resource Management. Our view is that the same goals can be accomplished in a more efficient manner by appropriating some money to the commission and allowing it to give grants to those who need it to comply with the law.

SYNOPSIS: Adds a new section to chapter 235, HRS, to establish a well abandonment compliance income tax credit. The credit amount is to be ___% of the qualified compliance costs incurred by the taxpayer, up to a maximum of \$_____.

The credit is nonrefundable but may be carried forward. The credit must be claimed within twelve months after the end of the taxable year in which the costs are incurred, or the credit is waived.

The commission on water resource management is tasked with verifying the compliance costs and certifying the credit claimed by the taxpayer.

Establishes a statewide aggregate cap of \$_____. Prohibits the commission from certifying credits exceeding \$_____ in the aggregate. States that credits shall be certified on a first come, first served basis.

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 section 174C-87. “Qualified compliance costs” does not include costs incurred to seal or plug: (1) A well that has not been certified by the commission on water resource management pursuant to section 174C-27; (2) A well for which a permit has been issued under section 174C-84, but the construction has not been completed; or (3) An incomplete and abandoned well pursuant to section 174C-84(e).

Defines “well” by cross reference to section 174C-3.

Adds a new section to chapter 508D, HRS, stating that the existence of a well, abandoned or otherwise, is a material fact that needs to be stated on a seller's disclosure statement if the real property on which the well sits is for sale.

Amends section 174C-81, HRS, to define an abandoned well as any well the purpose or use of which has been permanently discontinued. Any well shall be deemed abandoned whenever the well has served its purpose, the well use has been permanently discontinued, the well is not properly maintained, the physical condition of the well is causing a waste of ground water or is impairing or threatens to impair the quality of the ground water resources, or the well is in such a state of disrepair that its continued use is impractical or it is a hazard to public health or safety.

Amends section 174C-87, HRS, to state that the owner of an abandoned well shall repair or fill and seal the well at the owner's expense, and that if the real property including an abandoned well is transferred without proper disclosure, the transferring owner will be required to incur the repair or filling costs.

EFFECTIVE DATE: July 1, 2022; provided that the tax credit shall apply to taxable years beginning after December 31, 2021.

STAFF COMMENTS: The tax system is there to raise revenue to keep the government moving. Using the tax system to give taxpayers money to do things they are required to do anyway merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount.

Furthermore, tax credits are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

The additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount.

Finally, the statewide cap may inject some unfairness, because some families may get a state subsidy of their repair costs while those who get the job done later, perhaps because they live in a rural area that is harder to access, would get none.

If lawmakers are concerned that families and businesses that are required to comply with the law will not do so because the cost is prohibitive, lawmakers could consider appropriating a few dollars to the commission on water resource management and allow the commission to give families some compensation when they complete the required repairs.

Digested: 1/29/2022