

JAN 19 2024

A BILL FOR AN ACT

RELATING TO CESSPOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the health of
2 Hawaii's people and quality of Hawaii's waters are being harmed
3 by pollution from cesspools. Hawaii has more than eighty
4 thousand cesspools that discharge about fifty million gallons of
5 wastewater into the State's groundwater every day. Cesspools
6 are antiquated, substandard systems that damage public health;
7 pollute drinking water; and lower water quality in streams,
8 ground waters, nearshore marine areas, and the ocean. Cesspool
9 pollution also harms public recreation and the precious coral
10 reefs on which Hawaii's economy, shoreline, fisheries, and
11 native species depend.

12 The purpose of this Act is to implement various
13 recommendations of the working group established by Act 132,
14 Session Laws of Hawaii 2018, including:

15 (1) Accelerating the dates for required upgrades,
16 conversions, or connections of:



- 1 (A) The 13,821 priority level 1 cesspools in the
2 State to 2035, with certain exceptions; and
3 (B) The 12,367 priority level 2 cesspools in the
4 State to 2040;
- 5 (2) Appropriating funds to provide financing assistance
6 via the cesspool compliance pilot grant project
7 established pursuant to Act 153, Session Laws of
8 Hawaii 2022; and
- 9 (3) Establishing a cesspool upgrade, conversion, or
10 connection income tax credit.

11 PART II

12 SECTION 2. Chapter 342D, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§342D- Cesspools; mandatory upgrade, conversion, or
16 connection; priority level 1; priority level 2. (a) Every
17 cesspool in the State categorized as priority level 1 according
18 to the University of Hawaii's Hawaii cesspool prioritization
19 tool shall be:

- 20 (1) Upgraded or converted to a director-approved
21 wastewater system; or



1 (2) Connected to a sewerage system,
2 before January 1, 2035; provided that priority level 1
3 cesspools on recreational residence leases within the Kokee
4 state park and Waimea Canyon state park on the island of Kauai
5 shall be upgraded, converted, or connected before January 1,
6 2040.

7 (b) Every cesspool in the State designated as priority
8 level 2 according to the University of Hawaii's Hawaii cesspool
9 prioritization tool shall be:

10 (1) Upgraded or converted to a director-approved
11 wastewater system; or

12 (2) Connected to a sewerage system,
13 before January 1, 2040.

14 (c) The director may grant an exemption from the
15 requirements of subsections (a) and (b) to the property owner of
16 a cesspool who applies for an exemption and presents
17 documentation showing a legitimate reason that makes it
18 infeasible to upgrade, convert, or connect the cesspool. For
19 the purposes of this subsection, a legitimate reason shall
20 include but not be limited to:

21 (1) Small lot size;



- 1 (2) Steep topography;
- 2 (3) Poor soils;
- 3 (4) Accessibility issues; or
- 4 (5) A planned development of sewerage upgrades to an area.

5 (d) The department may grant extensions of up to five
6 years at a time from the requirements of subsections (a) and (b)
7 based on demonstration of financial inability to pay for or
8 finance a cesspool upgrade, conversion, or connection; provided
9 that the department of health may adopt rules pursuant to
10 chapter 91 necessary to effectuate the purposes of this
11 subsection.

12 (e) Notwithstanding any law to the contrary, no penalty or
13 other assessment for any violation of this section shall
14 constitute a lien on the real property. Notwithstanding any law
15 to the contrary, no seizure of real property shall be authorized
16 for any violation of this section.

17 (f) As used in this section, "cesspool" has the same
18 meaning as in section 342D-72."

19 SECTION 3. Section 342D-72, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) [~~Before~~] Except as otherwise provided in section
2 342D- , before January 1, 2050, every cesspool in the State,
3 excluding cesspools granted exemptions by the director of health
4 pursuant to subsection (b), shall be:

5 (1) Upgraded or converted to a director-approved
6 wastewater system; or

7 (2) Connected to a sewerage system."

8 PART III

9 SECTION 4. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2024-2025 to
12 implement the cesspool compliance pilot grant project
13 established pursuant to Act 153, Session Laws of Hawaii 2022.

14 The sum appropriated shall be expended by the department of
15 health for the purposes of this part.

16 SECTION 5. In accordance with section 9 of article VII of
17 the Hawaii State Constitution and sections 37-91 and 37-93,
18 Hawaii Revised Statutes, the legislature has determined that the
19 appropriations contained in H.B. No. , will cause the state
20 general fund expenditure ceiling for fiscal year 2024-2025 to be
21 exceeded by \$ or per cent. In addition, the



1 appropriation contained in this Act will cause the general fund
 2 expenditure ceiling for fiscal year 2024-2025 to be further
 3 exceeded by \$ or per cent. The combined total
 4 amount of general fund appropriations contained in only these
 5 two Acts will cause the state general fund expenditure ceiling
 6 for fiscal year 2024-2025 to be exceeded by
 7 \$ or per cent. The reasons for exceeding the
 8 general fund expenditure ceiling are that:

- 9 (1) The appropriation made in this Act is necessary to
- 10 serve the public interest; and
- 11 (2) The appropriation made in this Act meets the needs
- 12 addressed by this Act.

PART IV

14 SECTION 6. Chapter 235, Hawaii Revised Statutes, is
 15 amended by adding a new section to part I to be appropriately
 16 designated and to read as follows:

17 "§235- Cesspool upgrade, conversion, or connection;
 18 income tax credit. (a) There shall be allowed to each taxpayer
 19 subject to the tax imposed under this chapter a cesspool
 20 upgrade, conversion, or connection income tax credit that shall
 21 be deductible from the taxpayer's net income tax liability, if



1 any, imposed by this chapter for the taxable year in which the
2 credit is properly claimed.

3 (b) In the case of a partnership, S corporation, estate,
4 or trust, the tax credit allowable is for qualified expenses
5 incurred by the entity for the taxable year. The expenses upon
6 which the tax credit is computed shall be determined at the
7 entity level. Distribution and share of credit shall be
8 determined by rule.

9 (c) The cesspool upgrade, conversion, or connection income
10 tax credit shall be equal to the qualified expenses of the
11 taxpayer, up to a maximum of \$10,000; provided that, in the case
12 of a qualified cesspool that is a residential large capacity
13 cesspool, the amount of the credit shall be equal to the
14 qualified expenses of the taxpayer, up to a maximum of \$10,000
15 per residential dwelling connected to the cesspool, as certified
16 by the department of health pursuant to subsection (e). There
17 shall be allowed a maximum of one cesspool upgrade, conversion,
18 or connection income tax credit per qualified cesspool. The
19 cesspool upgrade, conversion, or connection income tax credit
20 shall be available only for the taxable year in which the



1 taxpayer's qualified expenses are certified by the department of
2 health.

3 (d) The total amount of tax credits allowed under this
4 section shall not exceed \$ _____ for all taxpayers in any
5 taxable year; provided that any taxpayer who is not eligible to
6 claim the credit in a taxable year due to the \$ _____ cap
7 being reached for that taxable year shall be eligible to claim
8 the credit in the subsequent taxable year.

9 (e) The department of health shall:

10 (1) Certify all qualified cesspools for the purposes of
11 this section;

12 (2) Collect and maintain a record of all qualified
13 expenses certified by the department of health for the
14 taxable year; and

15 (3) Certify to each taxpayer the amount of credit the
16 taxpayer may claim; provided that if, in any year, the
17 annual amount of certified credits reaches
18 \$ _____ in the aggregate, the department of health
19 shall immediately discontinue certifying credits and
20 notify the department of taxation.



1 The director of health may adopt rules under chapter 91 as
2 necessary to implement the certification requirements under this
3 section.

4 (f) The director of taxation:

5 (1) Shall prepare any forms that may be necessary to claim
6 a tax credit under this section;

7 (2) May require the taxpayer to furnish reasonable
8 information to ascertain the validity of the claim for
9 the tax credit made under this section; and

10 (3) May adopt rules under chapter 91 necessary to
11 effectuate the purposes of this section.

12 (g) If the tax credit under this section exceeds the
13 taxpayer's income tax liability, the excess of the credit over
14 liability may be used as a credit against the taxpayer's income
15 tax liability in subsequent years until exhausted. All claims
16 for the tax credit under this section, including amended claims,
17 shall be filed on or before the end of the twelfth month
18 following the close of the taxable year for which the credit may
19 be claimed. Failure to comply with the foregoing provision
20 shall constitute a waiver of the right to claim the credit.

21 (h) As used in this section:



1 "Cesspool" has the same meaning as in section 342D-72.

2 "Qualified cesspool" means a cesspool that is:

3 (1) Certified by the department of health to be:

4 (A) Located within a priority level 1 or 2 area
5 according to the University of Hawaii's 2022
6 Hawaii cesspool hazard assessment and
7 prioritization tool; or

8 (B) A residential large capacity cesspool; or

9 (2) Certified by a county or private sewer company to be
10 appropriate for connection to its existing sewerage
11 system.

12 "Qualified expenses" means costs that are necessary and
13 directly incurred by the taxpayer for upgrading or converting a
14 qualified cesspool to a director of health-approved wastewater
15 system, or connecting a qualified cesspool to a sewerage system,
16 and that are certified as such by the department of health.

17 "Residential large capacity cesspool" means a cesspool that
18 is connected to more than one residential dwelling.

19 "Sewerage system" has the same meaning as in
20 section 342D-1.

21 "Wastewater" has the same meaning as in section 342D-1."



1 SECTION 7. Section 23-92, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) This section shall apply to the following:

4 (1) Sections 235-12.5 and 241-4.6--Credit for renewable
5 energy technology system installed and placed in
6 service in the State. For the purpose of section 23-
7 91(b)(5), this credit shall be deemed to have been
8 enacted for an economic benefit; ~~and~~

9 (2) Section 235-17--Credit for qualified production costs
10 incurred for a qualified motion picture, digital
11 media, or film production~~[-]~~; and

12 (3) Section 235- --Credit for cesspool upgrade,
13 conversion, or connection."

14 SECTION 8. Section 23-94, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) This section shall apply to the following:

17 (1) Section 235-4.5(a)--Exclusion of intangible income
18 earned by a trust sited in this State;

19 (2) Section 235-4.5(b)--Exclusion of intangible income of
20 a foreign corporation owned by a trust sited in this
21 State;



- 1 (3) Section 235-4.5(c)--Credit to a resident beneficiary
2 of a trust for income taxes paid by the trust to
3 another state;
- 4 (4) Sections 235-55 and 235-129--Credit for income taxes
5 paid by a resident taxpayer to another jurisdiction;
- 6 (5) Section 235-71(c)--Credit for a regulated investment
7 company shareholder for the capital gains tax paid by
8 the company;
- 9 (6) Section 235-110.6--Credit for fuel taxes paid by a
10 commercial fisher;
- 11 (7) Section 235-110.93--Credit for important agricultural
12 land qualified agricultural cost;
- 13 ~~+(8) Section 235-110.94--Credit for organically produced~~
14 ~~agricultural products;~~
- 15 +(9)] (8) Section 235-129(b)--Credit to a shareholder of an
16 S corporation for the shareholder's pro rata share of
17 the tax credit earned by the S corporation in this
18 State; and
- 19 ~~+(10)]~~ (9) Section 209E-10--Credit for a qualified business
20 in an enterprise zone; provided that the review of



1 this credit pursuant to this part shall be limited in
2 scope to income tax credits."

3 SECTION 9. Section 23-95, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) This section shall apply to the following:

6 (1) Section 235-5.5--Deduction for individual housing
7 account deposit;

8 (2) Section 235-7(f)--Deduction of property loss due to a
9 natural disaster;

10 [~~3~~] ~~Section 235-16.5--Credit for cesspool upgrade,~~
11 ~~conversion, or connection;~~

12 ~~4~~] (3) Section 235-19--Deduction for maintenance of an
13 exceptional tree;

14 ~~5~~] (4) Section 235-55.91--Credit for the employment of a
15 vocational rehabilitation referral;

16 ~~6~~] (5) Section 235-110.2--Credit for in-kind services
17 contribution for public school repair and maintenance;
18 and

19 ~~7~~] (6) Sections 235-110.8 and 241-4.7--Credit for
20 ownership of a qualified low-income housing building."

21 PART V



1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval;
4 provided that:

5 (1) Section 4 shall take effect on July 1, 2024; and

6 (2) Part IV shall apply to taxable years beginning after
7 December 31, 2023.

8

INTRODUCED BY:





S.B. NO. 2426

Report Title:

Cesspools; Cesspool Conversion Working Group; Mandatory Upgrade, Conversion, or Connection; Prioritization; Income Tax Credit; Appropriation; Expenditure Ceiling

Description:

Part II: Requires certain priority level 1 cesspools to be upgraded, converted, or connected before 1/1/2035, and priority level 2 cesspools to be upgraded, converted, or connected before 1/1/2045, rather than before 1/1/2050. Part III: Appropriates funds to implement the cesspool compliance pilot grant project established pursuant to Act 153, Session Laws of Hawaii 2022. Part IV: Establishes an income tax credit for the cost of upgrading or converting a qualified cesspool to a director of health-approved wastewater system or connecting to a sewerage system.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

