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# 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 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           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.



**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. Declares that the general expenditure ceiling is exceeded. 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. (SD1)

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

