



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of HB 1140 S.D.1
RELATING TO CESSPOOLS**

SENATOR JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date: April 2, 2015

Room Number: 211

1 **Fiscal Implications:** This measure may impact the priorities as set forth in the Governor's
2 Executive Budget.

3 **Department Testimony:** The Department supports the intent of this bill of providing financial
4 assistance to taxpayers who upgrade their existing cesspools. However, the measure must not
5 adversely impact the priorities as set forth in the Governor's Executive Budget.

6 Eliminating cesspools is critical to protecting public health, the environment and the many
7 aspects of the State's economy that depend on a pristine environment. As the bill notes,
8 cesspools inject 55 million gallons per day of raw sewage into Hawaii's public drinking water
9 sources and surface waters. This sewage contains disease-causing pathogens (viruses and
10 bacteria), as well as nutrients, pharmaceuticals, and other pollutants that degrade water quality
11 in recreational waters where thousands of people swim, and may contribute to degradation of
12 precious coral reefs that protect our shorelines and are key to Hawaii's economy.

13 The cost of upgrading cesspools will be substantial, however. Many homeowners will need
14 financial assistance to upgrade their cesspools. In order to limit the cost to the State, DOH
15 recommends that cesspool upgrades be phased in, with priority targeting the approximately 6,860
16 cesspools statewide that most affect waters—those in close proximity to public drinking water

- 1 wells (about 2,552) and those within 200 feet of the shoreline, streams and wetlands (about
- 2 4,308).
- 3 Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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HONOLULU, HAWAII 96809
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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Thursday, April 2, 2015
Time: 9:30 A.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1140 H.D. 1 S.D. 1, Relating to Cesspools

The Department of Taxation (Department) appreciates the intent of H.B. 1140, H.D. 1 S.D. 1 and provides the following comments for your consideration. The Department defers to the Department of Health on the merits of the measure.

H.B.1140 H.D. 1 S.D. 1 provides a refundable temporary income tax credit to an individual or corporate taxpayer for the cost of converting a cesspool to a septic system or to an aerobic treatment unit system, or for the cost of connecting a cesspool to a sewer system. The credit amount is 100 percent of qualified costs up to a maximum of \$5,000 per cesspool conversion, and would apply to taxable years beginning after December 31, 2015, and would be repealed on December 31, 2020.

Because the Department has no expertise in cesspools, septic systems, or aerobic treatment unit systems, the Department requests that the taxpayers be required to obtain verification from the respective county agencies in charge of issuing permits for such installations, and that the credit be available only after such county agency has approved the installation as meeting the requirements for the credit, and only in such year in which such approval is obtained.

The Committee on Energy and Environment amended Section 1 of the bill to state that priority should be given to conversion of cesspools that affect public drinking water wells or are within two hundred feet of the shoreline, streams, or wetlands and gave the Department of Health authority to adopt rules to further this priority.

However, as drafted, the measure allows the credit regardless of risk to drinking water wells or proximity to shorelines, streams, or wetlands. If the intent is to prioritize conversion of cesspools that pose a high risk to public health and the environment, then the Department suggests making this a requirement to claim the credit, and to have the Department of Health

certify that requirement.

The Department notes that the credit is available only to individual and corporate taxpayers. Thus, partnerships, estates, and trusts would not be eligible for the credit. It is not clear to the Department whether this omission is intentional or inadvertent. If inadvertent, the Department suggests that subsection (a) be rewritten as follows:

- (a) There shall be allowed to each taxpayer subject to the tax imposed under this chapter, a cesspool upgrade, conversion, or connection income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

In addition, a new subsection should be added to address situations in which the taxpayer is a partnership, S corporation, estate, or trust:

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified costs incurred by the entity for the taxable year. The cost upon which the tax credit is calculated shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

Finally, the Department also notes that this tax credit is refundable. As a general matter, the Department prefers nonrefundable credits because refundable credits create the potential for wrongful claims and abuse.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax credit for cesspool conversion

BILL NUMBER: HB 1140, SD-1

INTRODUCED BY: Senate Committee on Energy and Environment

EXECUTIVE SUMMARY: This measure adds a tax credit for cesspool upgrade, conversion or connection. The proposed credit is simply a subsidy of the favored activity, with an unknown price tag, that needs to be paid for by the rest of us who are not so favored.

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer to claim a cesspool upgrade, conversion or connection tax credit of the qualified expenses of a taxpayer up to \$5,000. There shall be a maximum of one tax credit per cesspool. Defines “qualified expenses” as costs necessary and directly incurred by the taxpayer for upgrading or converting a cesspool into a septic system or an aerobic treatment unit system, or connecting a cesspool to a sewer system. Defines “aerobic treatment system,” “cesspool,” “septic system,” “sewer system” and “wastewater” for purposes of the measure.

Tax credits in excess of a taxpayer’s tax liability shall be refunded to the taxpayer provided such amounts are in excess of \$1. Requires all claims, including amended claims, to be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. Directs the director of taxation to prepare the necessary forms to claim a credit under this section.

Provides that the director of health may adopt rules to implement this section and to prioritize upgrades for cesspool locations with the highest risk of harm to public health and environment.

Repeals this act on December 31, 2020.

EFFECTIVE DATE: Tax years beginning after December 31, 2015

STAFF COMMENTS: This measure proposes a tax credit for conversion or hookup of a cesspool to a septic system or sewer system. While the measure allows taxpayers to claim the credit regardless of a taxpayer’s need for tax relief, the proposed credit is nothing more than a partial subsidy by the state to taxpayers for such conversion with absolutely no indication of the taxpayer’s need for that subsidy. This type of targeted tax incentive creates winners and losers, the winners being those in the favored industry who receive the incentives and the losers being the rest of us who have to pay for them.

When judging targeted tax incentives such as this one, we all should be mindful of these observations of the 2001-2003 Tax Review Commission: *“Targeted tax incentives are generally only demonstrably good for those relatively few taxpayers that qualify for the benefits, and may not be demonstrably good for anyone else. They are not supported by rules of sound tax policy. In the first instance, they decrease State revenue and add complexity to the tax system. They may also be unfair to other businesses. Almost all of the present incentives lack accountability, and therefore create something of a “black*

hole” in State fiscal responsibility. A targeted tax incentive does not appropriate hard earned and increasingly scarce revenues. Rather, it creates a tax benefit of unknown proportions against future revenues, before the revenues are collected and subjected to the legislative appropriation process.”

Appropriations to favored businesses, or subsidies, are rarely enacted. Every public appropriation is publicly scrutinized. A tax incentive is a potential “black hole,” because it is a future benefit of unknown proportions which is determined by the favored taxpayer’s interpretation of what the tax credit should be and is claimed on a tax return which is confidential.

Digested 4/1/15

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 1140 HD1 SD1 Relating to Cesspools
Senate Committee on Ways and Means
Thursday, April 2, 2015, 9:30AM, Room 211

For more than 35 years, The Nature Conservancy of Hawai'i has been working closely with government agencies, local businesses, private landowners, non-profit partners, and interested communities across the state to preserve the lands and waters upon which all life in these islands depends. The Conservancy is a private non-profit conservation organization that has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 35,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i, and support 19 coastal communities seeking to co-manage marine resources in partnership with the State of Hawai'i.

The Nature Conservancy supports H.B. 1140 HD1 SD1 to provide a temporary income tax credit to incentivize cesspool replacement.

We also recognize that the much larger issue of wastewater impacts on coral reefs, near shore waters, and human health come from untreated sewage overflowing from overburdened wastewater treatment facilities and underground injection wells, especially on Maui and Hawai'i island. We urge the State and counties to consider a thorough review, repair, and retrofit of wastewater treatment facilities, especially if the State will be requiring more people to connect to those already overburdened facilities.

Scientists estimate that populations of many of Hawai'i's near shore reef fishes have declined by more than 75% over the past 100 years. Marine managers, community stewards, and scientists across the state are also cataloguing and working to address increased instances of coral disease, bleaching and reef smothering alien algae. Scientific analysis together with long-term community experience and observation suggest that a number of factors are contributing to and exacerbating these threats to Hawai'i's marine health, including over-harvesting of fishes, land-based sources of pollution, as well as higher temperatures and acidification due to human induced climate change. Degradation of Hawai'i's reefs and near shore environments is not only a detriment to our health and quality of life, but also a grave loss to Hawai'i's economy, safety, and to a cultural heritage that is unique in the world.

Effluent from cesspools – 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 cesspools can reach near-shore waters within a matter of minutes to just a few days. Replacing these coastal cesspools should be a priority.

Caring for the health and future productivity of Hawai'i's fresh and marine waters requires a combination of strategies in an ahupua'a approach. Taking care of watershed forests, upgrading wastewater treatment systems, enhancing water re-use, preventing and controlling invasive species, encouraging responsible resource use, and retiring and replacing outdated infrastructure are all a part of the solution to the variety of threats we face. Prohibiting new cesspools and replacing old ones is one important component of this collective effort.

Thank you for the opportunity to comment.

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April 2, 2015

HEARING BEFORE THE
SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY ON HB 1140 HD 1 SD 1
RELATING TO CESSPOOLS

Room 211
9:30 AM

Aloha Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,932 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports HB 1140 HD 1 SD 1. Our farmer and rancher members across the islands could benefit from this effort to mitigate the financial hardship that would be caused by any future mandatory cesspool conversions.

As we have testified on previous versions of this bill, HFB believes that to protect the quality of Hawaii's near shore waters and drinking water supplies, a cesspool that poses a risk to the ocean, surface, or ground water should be converted to a septic system, or where available, connected to a county sewer treatment system. Because the cost to upgrade is substantial, reportedly approximately \$20,000 per cesspool, Hawaii may accomplish these conversions more quickly if owners have assistance through tax incentives.

The intent of HB 1140 HD 1 SD 1 is to help Hawaii phase out of high risk cesspools by providing tax credits to partially defray the cost of cesspool conversions. HFB would prefer to see a larger credit than the \$5,000 credit that is currently being proposed, but recognizes the significant impact to the State's limited budget if a more substantial credit is provided.

We are pleased that this measure authorizes and provides guidance to the Department of Health (DOH) to adopt rules that prioritize upgrades for cesspool locations with the highest risk of harm to public health and the environment. We hope that when DOH re-drafts its recently proposed rules to mandate elimination of all cesspools based on sale of the subject property, the agency will instead consider applying a mandate only to high risk cesspools, and allow conversion within a reasonable time frame, not based on the sale of the property.

HFB does not believe that every cesspool in the state, especially those that pose very little or no risk to either groundwater or surface water quality, needs to be converted. The recently proposed DOH rules would have required many cesspools that are not contributing to water quality degradation to be

upgraded, while allowing cesspools that may be causing problems to continue to operate indefinitely, so long as the property is not sold.

Thank you for the opportunity to testify in support of this bill.

Rafael Bergstrom
Surfrider Foundation Oahu Chapter Coordinator
HB1140: Cesspools
Strong Support
Committee: WAM, April 2nd 2015, 9:30AM

The Surfrider Foundation Oahu Chapter strongly supports this bill as cesspools and their high risk contamination issues need to be phased out of our island waste water systems. Cesspools dump untreated fecal waste into our water systems - contaminating groundwater and the near shore ocean waters. Protecting our near shore ecosystems and ocean resources is vital to our states livelihood and well-being.

It is understandable that issues lie in the equity of banning cesspools and the high cost of sewage treatment replacement, but cost and money can no longer continue to trump our environmental health. Water quality in Hawaii, and Oahu in particular, is in an obvious state of decline. It is appropriate that the State take action to facilitate these changes by relieving some of the financial burden with tax credits.

Surfrider Oahu has been receiving multiple complaints around the island recently of poor water quality, skin rashes, and concerns over sickness. Ongoing studies at University of Hawaii Manoa are revealing the devastating consequences of this accumulating wastewater problem in our most important resource – our freshwater systems and near shore ocean ecosystems.

Thank you for your time and consideration!

Sincerely,
Rafael Bergstrom
Oahu Chapter Coordinator, Surfrider Foundation

April 2, 2015

The Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: H.B. 1140, H.D.1, S.D.1, Relating to Cesspools

HEARING: Thursday, April 2, 2015, at 9:30 a.m.

Aloha Chair Tokuda, Vice Chair Kouchi and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,400 members. HAR **supports the intent** of H.B. 1140, H.D.1, S.D.1, which provides a temporary income tax credit for the cost of converting a cesspool to a septic system or an aerobic treatment unit system or connecting to a sewer system.

The Department of Health (DOH) has proposed changes to Hawai'i Administrative Rules, Chapter 11-62, relating to Wastewater Systems. Under the proposed rules, an estimated cesspool residential property count of 50,000 on Hawai'i, 14,000 on Kaua'i, 12,000 on Maui, 11,000 on Oahu, and 1,400 on Molokai would be affected. Additionally, the cost to convert each cesspool system could range from \$10,000, to \$30,000.

Under the proposed rules, it would create a point of sale mandate by requiring cesspool closure and conversion to either a septic system or public sewer system at the next conveyance or sale of a property. HAR expressed concerns that a property could take years, if ever, before it is sold or transferred, all while the cesspool could be one in a high risk area, as established by the 2014 Geology and Geophysics Report prepared for the DOH.

HAR believes that managing wastewater and its effects on Hawaii's water quality is important. However, it should be done in a rational and practical manner. This proposal is a good and practical approach towards incentivizing owners to voluntarily convert their cesspool systems. Furthermore, this will help homeowners with the large cost to convert a cesspool system.

Mahalo for the opportunity to submit written testimony.

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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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April 1, 2015

TO: Honorable Jill N. Tokuda, Chair
Senate Committee Ways and Means

FROM: Councilmember Gladys C. Baisa

A handwritten signature in cursive script that reads "Gladys C. Baisa".

SUBJECT: **HEARING ON APRIL 2, 2015, TESTIMONY IN SUPPORT OF HB 1140
H.D. 1, S.D. 1, RELATING TO CESSPOOLS**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to provide temporary income tax credit for the cost of upgrading or converting a cesspool to a septic tank system or and aerobic treatment unit system, or connecting to a sewer system.

I **support** this measure for the following reasons:

1. Our farmers, ranchers and owners of cesspools across the islands could benefit from this effort to mitigate the financial hardship that would be caused by any future mandatory cesspool conversions.
2. The intent of HB 1140 HD1, SD1 is to help Hawaii phase out of cesspools, following the lead of other states which have provisions for tax credits to fund cesspool conversion. I recognize the significant impact to the State's limited budget which could affect already underfunded current programs should this measure be passed and implemented.
3. Therefore I respectfully offer a suggestion that would limit State funding as follows;
 - We hope that when DOH re-drafts its recently proposed rules to mandate elimination of all cesspools based on sale of the subject property the agency will consider to prioritizes mandatory conversion only for high risk cesspools and allow conversion within a reasonable time frame, not based on the sale of the property.
 - I don't believe that every cesspool in the state especially those that pose little or no risk to either groundwater or surface water quality, needs to be converted yet under the DOH proposed rules

April 1, 2015
Page 2

there are cesspools that may be causing problems will continue to operate so long as the property is not sold.

- Tax credits or other incentives be available only to those who convert these high risk cesspools.

For the foregoing reasons, I **support** this measure.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: edward.g.bohlen@hawaii.gov
Subject: Submitted testimony for HB1140 on Apr 2, 2015 09:30AM
Date: Wednesday, April 01, 2015 1:15:52 PM

HB1140

Submitted on: 4/1/2015

Testimony for WAM on Apr 2, 2015 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Bohlen	Individual	Support	No

Comments: Hawaii has 88,000 cesspools, far more than any other state, polluting our groundwater with 55 million gallons daily of raw sewage. This sewage pollutes drinking water and recreational waters where thousands of people swim. Hawaii needs to protect public health, the environment and our economy by eliminating many of its cesspools, with priority for those located near public drinking water and surface waters. This bill providing a tax credit is needed to assist owners with the substantial cost of upgrading their cesspools. Mahalo!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: thorneabbott@yahoo.com
Subject: Submitted testimony for HB1140 on Apr 2, 2015 09:30AM
Date: Wednesday, April 01, 2015 8:54:03 AM

HB1140

Submitted on: 4/1/2015

Testimony for WAM on Apr 2, 2015 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Thorne Abbott	Individual	Support	No

Comments: I strongly endorse providing an incentive to landowners to upgrade individual wastewater systems (IWS) to reduce adverse impacts on water quality. I particularly support providing this incentive to those with financial constraints or limitations. Having recently completed five community outreach meetings related to post-disaster reconstruction in Maui County, a clear and consistent message among the communities was the challenges of converting cesspools to septic systems after a disaster event. Providing an incentive to convert IWS now was a consistent heard repeatedly at these meetings. For this and many other reasons, such as protection of sustainable fishing and reef resources, please support and have the agencies fully implement the intent of HB 1140. Thank you!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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