THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

S.B. NO. 2478

JAN 2 2 2016

A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

PART I

SECTION 1. The legislature finds that in the next twenty years, nearly one-third of the State's population will be over the age of sixty. The youngest baby boomers will become fifty years old in 2014. In Hawaii, the average person lives to age eighty-two. The number of residents sixty-five and older in Hawaii is projected to more than double from 198,094 in 2010 to 403,370 in 2040, according to the executive office on aging's projections. The demand for home-based long-term care services is quickly outpacing affordability of caring for seniors.

Many kupuna erroneously believe that medicare will cover the costs of nursing homes. The other option is for kupuna to surrender nearly all of their financial assets to qualify for medicaid, in which case taxpayers pick up the cost. Private nursing homes in Hawaii cost nearly fifty per cent more than anywhere else in the country, with an average price of nearly $145,000 a year according to AARP Hawaii.

Hawaii's long-term care costs are among the highest in the country, and the costs continue to increase. Consequently, many people desire and do receive care at home. This concept is known as aging in place, which is a cultural tradition in Hawaii. However, families need money to financially facilitate care at home for aging family members.

The legislature further finds that taking care of kupuna at home is particularly burdensome in Hawaii, where college-educated adult children may live on the mainland and thus are incapable of caring for their aging parents in Hawaii. Adult children who work on the mainland may have to return home to live, and abandon careers in the process, in order to care for their parents at home, which is the only alternative to expensive institutional care. If the children already live in Hawaii, they often have to quit their jobs to stay home to care for their aging parents, which may result in financial disaster for the family and a loss of tax revenue for the State.

In 2002, Act 245, Session Laws of Hawaii 2002, established the Hawaii long term care financing program as a way to provide a universal and affordable system of providing long term care. Known as the care plus program, it was supported by the legislature and the executive office on aging and backed by extensive actuarial models and calculations. The board of trustees established by Act 245 recommended funding such as a program with a mandatory dedicated income tax. In 2003, the legislature passed S.B. No. 1088, S.D. 2, H.D. 2, C.D. 1, which would have implemented the design of the long term care insurance program and the requisite tax necessary to fund it. However, the governor vetoed the measure, and the veto was not overridden. The legislature finds that it is incumbent on the State to ease the financial burden placed on families to provide long-term care to their kupuna and it is more imperative than ever that the surcharge go into effect as soon as possible.

The purpose of this Act is to establish a long-term care surcharge on state tax as a dedicated source of funding under the long-term care financing program established under chapter 346C, Hawaii Revised Statutes.

PART II

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- **Long-term care surcharge on state tax.** (a) Beginning on January 1, 2018, there shall be levied, assessed, and collected as provided in this section a long-term care surcharge on state tax, which shall be 0.5 per cent of all gross proceeds and gross income taxable under this chapter.

With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter.

(b) The long-term care surcharge on state tax shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income is received as payments beginning in the taxable year in which the taxes become effective on contracts entered into before June 30 of the year prior to the taxable year in which the taxes become effective, and the written contracts do not provide for the passing on of increased rates of taxes, the long-term care surcharge on state tax shall not be imposed on the gross proceeds or gross income covered under the written contracts. The long-term care surcharge on state tax shall be imposed on the gross proceeds or gross income from all contracts entered into on or after June 30 of the year prior to the taxable year in which the taxes become effective, regardless of whether the contract allows for the passing on of any tax or any tax increases.

(c) No long-term care surcharge on state tax shall be imposed on any:

(1) Gross income or gross proceeds taxable under this chapter at the 0.5 per cent tax rate;

(2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or

(3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

(d) The director of taxation shall revise the general excise tax forms to provide for the clear and separate designation of the imposition and payment of the long-term care surcharge on state tax.

(e) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the penalties an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule.

(f) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective and ending before January 1 of the following year."

SECTION 3. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§238- Long-term care surcharge on state tax.** (a) Beginning on January 1, 2018, the long-term care surcharge on state tax shall be levied, assessed, and collected as provided in this section on the value of tangible personal property, services, and contracting taxable under this chapter. The long-term care surcharge on state tax shall be 0.5 per cent of the value of tangible personal property, services, and contracting taxable under this chapter.

With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter.

(b) The long-term care surcharge on state tax shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income is received as payments beginning in the taxable year in which the taxes become effective on contracts entered into before June 30 of the year prior to the taxable year in which the taxes become effective, and the written contracts do not provide for the passing on of increased rates of taxes, then the long-term care surcharge on state tax shall not be imposed on the gross proceeds or gross income covered under the written contracts. The long-term care surcharge on state tax shall be imposed on the gross proceeds or gross income from all contracts entered into on or after June 30 of the year prior to the taxable year in which the taxes become effective, regardless of whether the contract allows for the passing on of any tax or any tax increases.

(c) No long-term care surcharge on state tax shall be imposed on:

(1) Tangible personal property, services, or contracting taxable under this chapter at the 0.5 per cent tax rate;

(2) Tangible personal property, services, or contracting taxable under this chapter at the 0.15 per cent tax rate; or

(3) Tangible personal property, services, or contracting exempt from tax under this chapter.

(d) The director of taxation shall revise the use tax forms to provide for the clear and separate designation of the imposition and payment of the long-term care surcharge on state tax.

(e) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the penalties an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the use tax by taxation district on the schedule required under this subsection.

(f) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective and ending before January 1 of the following year."

PART III

SECTION 4. Chapter 231, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§231-A **Long-term care surcharge on state tax; disposition of proceeds.** (a) All long-term care surcharge on state tax collected by the director of taxation shall be paid into the long-term care benefits trust fund quarterly within ten working days after collection and shall be placed by the director of finance into a special account.

(b) The quarterly payments shall be made after the long-term care surcharge on state tax has been paid into the state treasury special accounts or after the disposition of any tax appeal, as the case may be. All long-term care surcharge on state tax collected shall be a long-term care benefits trust fund realization, to be used for the purpose of paying claims for defined benefits under chapter 346C.

§231-B Annual data; confidentiality. (a) For purposes of chapter 346C, the director of taxation shall compile annually, in machine-readable files (read-only computer compact disk or other suitable media), the following information from the most recent tax return concerning each taxpayer who has filed a Hawaii resident income tax single or joint return:

(1) Name, address, and social security number;

(2) Filing status; and

(3) Taxable year and date of filing of the tax return.

(b) The files compiled shall be:

(1) Transmitted to the board of trustees of the long-term care financing program under chapter 346C no later than December 31 of each year; and

(2) Used by the board of trustees of the long-term care financing program solely for the purpose of:

(A) Determining eligibility to receive defined benefits; provided that the information may be accessed by a qualified entity contracted pursuant to section 346C-4(b) to administer the long-term care financing program;

(B) Maintaining an administrative file of taxpayers eligible for long-term care benefits under chapter 346C;

(C) Determining the payment status of each individual taxpayer eligible for long-term care benefits under chapter 346C; and

(D) Computing vesting credits gained or lost for eligible taxpayers."

PART IV

SECTION 5. Chapter 346C, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

"**§346C-A Long-term care benefits trust fund; established.** (a) There is established in the state treasury the long-term care benefits trust fund, into which shall be deposited moneys collected from the long-term care fund surcharge on state tax under sections 237-   and 238-   . All moneys in the long-term care benefits trust fund, including income and capital gains earned therefrom, shall be used exclusively to pay defined benefits for the purposes of chapter 346C, including administrative expenses. No transfers shall be made from the long-term care benefits trust fund to any other fund for any purpose.

(b) The long-term care benefits trust fund shall be administered by the board of trustees.

(c) Moneys in the long-term care benefits trust fund shall be deposited into an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State.

§346C-B Funding for program; expenditures. (a) The program shall be funded through:

(1) Deposits into the long-term care benefits trust fund; and

(2) Appropriations as necessary to enable the trust fund to meet its immediate obligations for five years forward from any point in time to pay for long-term care services as may be required by this chapter.

(b) The board of trustees may make expenditures from the long-term care benefits trust fund as necessary to pay for claims for qualifying long-term care services under this chapter.

§346C-C Actuarial report and actuarial opinion. (a) The board of trustees shall cause to be prepared an actuarial report and actuarial opinion, as defined by the Actuarial Standards Board. The report and opinion shall be prepared by a member of the American Academy of Actuaries who is a fellow of the Society of Actuaries, certifying that the program is in actuarial balance. Costs of the actuarial report shall be deemed an administrative expense.

(b) The actuarial report under subsection (a) shall contain a statement by the actuary certifying that the techniques and methods used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. The report shall include:

(1) An estimate of the expected future income to and disbursements from the Hawaii long-term care benefits trust fund during each of the next ten ensuing fiscal years;

(2) A projection of the tax rates necessary to keep the Hawaii long-term care benefits trust fund actuarially sound over the short-range and long-range future periods;

(3) A statement of actuarial assumptions and methods used to determine costs and a detailed explanation of any change in actuarial assumptions or methods;

(4) The current and projected number of participants and beneficiaries and the current and projected amounts paid in taxes, defined benefits, current and permanent benefit defined benefits, and the like, aggregated by current and past Hawaii taxpayer status and age;

(5) The current value of accumulated assets of the Hawaii long-term care financing program and the value of assets used by the actuary in any computation of the amount of required taxes; and

(6) The results of short-range and long-range actuarial sensitivity analyses.

(c) Based upon the actuarial report and actuarial opinion under subsection (b), the board of trustees shall report to the legislature, no later than twenty days prior to the convening of each regular session, any recommended statutory amendments to the long-term care surcharge on state tax.

(d) The actuarial report shall demonstrate actuarial solvency for seventy-five years and be submitted annually to the governor and the legislature.

(e) All work products, papers, documents, and data used or prepared by the actuary in preparing the actuarial report shall be subject to chapter 92F; provided that section 92F-13 shall not apply to the actuarial report or the work product, papers, documents, and data used to prepare the report.

§346C-D **Obligations of the qualified entity to administer the program.** If a qualified entity is contracted by the board of trustees to administer the program pursuant to section 346C-4(b), the qualified entity shall:

(1) Establish a procedure to allow individuals to prove eligibility for receipt of long-term care benefits, including qualifications and length and proof of residency status in cases where the individuals were not required to file a state tax return;

(2) Ensure against fraud and abuse in claims for and payment of long-term care services; and

(3) Implement procedures to safeguard the confidentiality of information in its possession; provided that the entity may disclose information pertaining to the taxpayer's vesting status to the taxpayer, the taxpayer's spouse, or the taxpayer's designated representative as indicated by a general power of attorney or a designated agent as indicated by a power of attorney for health care.

§346C-E Defined benefit. (a) Beginning no earlier than the day following the end of the fifth year of long-term care surcharge on state tax collections, payment of defined benefits for long-term care services shall commence. The defined benefit

<u>shall be $70 a day up to a cumulative period of three hundred sixty-five days; provided that the daily defined benefit may be adjusted from time to time by the board of trustees.</u>

<u>(b) Payment of a defined benefit shall begin after the thirtieth day following the date of the approval of the written certification under section 346C-8(b) and shall be made to the recipient of a long-term care service, or to the legal representative of the recipient in the name of the recipient, as a reimbursement for long-term care service expenditures. The amount of the defined benefit shall not be qualified by the income of the recipient.</u>

<u>(c) The defined benefit under the program shall be primary to private insurance and medicaid benefits. An individual shall not receive a defined benefit while the individual is receiving medicare benefits for long-term care; provided that if medicare benefits are exhausted, the individual shall be required to qualify under section 346C-8.</u>

<u>(d) Prior to adoption of any administrative adjustment to the amount of the long-term care benefit, the board of trustees shall request a review and an opinion by the actuary in the actuarial report under section 346C-C.</u>

(e) The defined benefit received under this section shall not constitute income and shall be excluded from the state income tax pursuant to section 235-7(a)(6).

§346C-F Vesting to receive a defined benefit. (a) Any individual who has filed a Hawaii resident income tax return for the most recent ten years shall be fully vested to receive the defined benefit.

(b) An individual shall earn one-tenth of the defined benefit for each year that the individual files the income tax return. An individual shall be allowed one year of non-filing of the income tax return without penalty; provided that after one year of non-filing, the individual shall forfeit one-tenth of the defined benefit amount for each year of non-filing.

§346C-G Rulemaking. The board of trustees shall adopt rules, pursuant to chapter 91, necessary for the purposes of this chapter."

SECTION 6. Section 235-116, Hawaii Revised Statutes, is amended to read as follows:

"**§235-116 Disclosure of returns unlawful; penalty.** All tax returns and return information required to be filed under this chapter shall be confidential, including any copy of any portion of a federal return that may be attached to a state tax return, or any information reflected in the copy of the federal return[~~.~~], except that the director of taxation shall provide tax return information to the board of trustees of the long-term care financing program pursuant to section 231-B and to the qualified entity contracted pursuant to section 346C-4(b) to administer the long-term care financing program. It shall be unlawful for any person, or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to make known intentionally information imparted by any income tax return or estimate made under sections 235-92, 235-94, 235-95, and 235-97 or wilfully to permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized agent, persons duly authorized by the State in connection with their official duties, the Multistate Tax Commission or the authorized representative thereof, except as otherwise provided by law. Any offense against the foregoing provisions shall be punishable as a class C felony."

SECTION 7. Section 346C-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of trustees shall:

(1) Have and maintain a fiduciary obligation for the program;

(2) Discharge their duties solely in the best interest of the program;

(3) Not knowingly participate in or undertake to conceal an act or omission of a trustee, when the act or omission is known to be a breach of fiduciary responsibility; or fail to discharge specific fiduciary responsibilities in a manner that enables another trustee to commit a breach; or having knowledge of a breach, fail to take whatever action that is reasonable and appropriate under the circumstances to remedy the breach;

(4) Act with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent trustee, acting in a like capacity and familiar with similar matters would use in conducting an enterprise of similar character and purpose; [~~and~~]

(5) Establish a procedure to allow individuals to prove eligibility for receipt of long-term care benefits, including qualifications and length and proof of residency status in cases where the individuals were not required to file a state tax return; and

[~~(5)~~] (6) Maintain proper books of accounts and records of the administration of the program."

SECTION 8. Section 346C-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) With the advice of the director of finance to ensure investment soundness, the board of trustees shall invest moneys in the long-term care benefits trust fund [~~solely~~] in[~~:~~] investments with sufficient liquidity to allow market transactions to meet expected payout requirements without substantial loss in value or unreasonable delay. The board of trustees shall invest solely in:

(1) Obligations of any of the following classes:

(A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that the principal of and interest on such obligations are payable in currency of the United States, or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;

(B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and

(C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

(2) Obligations eligible by law for purchase in the open market by federal reserve banks; <u>and</u>

(3) Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs[~~; and~~

~~(4) Any other investments deemed secure on the advice of the state director of finance~~]."

SECTION 9. Section 346C-7, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§346C-7[~~]~~] **Annual audits of the long-term care benefits trust fund.** The auditor shall conduct an audit of the long-term care benefits trust fund annually for the first three years from the date the fund first receives deposits, and every three years thereafter; provided that the auditor may modify the time periods after the first three years as appropriate to the circumstances. The auditor shall publish a report of the results of every audit, including any recommendations."

PART V

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2016-2017 for the implementation and collection of the long-term care surcharge on state tax.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

PART VI

SECTION 11. In codifying the new sections added by sections 4 and 5 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2016.

INTRODUCED BY:

S.B. NO. 2478

Report Title:
Long-term Care; Long-term Care Surcharge on State Tax; General Excise Tax; Use Tax; Appropriation

Description:
Establishes a long-term care surcharge on state tax beginning on 1/1/2018 to pay for claims for defined benefits under the long-term care financing program. Makes an appropriation to the department of taxation for costs of implementation and collection.

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