
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.



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

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

18 In 2002, Act 245, Session Laws of Hawaii 2002, established
19 the Hawaii long term care financing program as a way to provide
20 a universal and affordable system of providing long term care.
21 Known as the care plus program, it was supported by the



1 legislature and the executive office on aging and backed by
2 extensive actuarial models and calculations. The board of
3 trustees established by Act 245 recommended funding such as a
4 program with a mandatory dedicated income tax. In 2003, the
5 legislature passed S.B. No. 1088, S.D. 2, H.D. 2, C.D. 1, which
6 would have implemented the design of the long term care
7 insurance program and the requisite tax necessary to fund it.
8 However, the governor vetoed the measure, and the veto was not
9 overridden. The legislature finds that it is incumbent on the
10 State to ease the financial burden placed on families to provide
11 long-term care to their kupuna and it is more imperative than
12 ever that the surcharge go into effect as soon as possible.

13 The purpose of this Act is to establish a long-term care
14 surcharge on state tax as a dedicated source of funding under
15 the long-term care financing program established under chapter
16 346C, Hawaii Revised Statutes.

17 **PART II**

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



1 "§237- Long-term care surcharge on state tax. (a)

2 Beginning on January 1, 2018, there shall be levied, assessed,
3 and collected as provided in this section a long-term care
4 surcharge on state tax, which shall be 0.5 per cent of all gross
5 proceeds and gross income taxable under this chapter.

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

9 (b) The long-term care surcharge on state tax shall be
10 imposed on the gross proceeds or gross income of all written
11 contracts that require the passing on of the taxes imposed under
12 this chapter; provided that this section shall not apply to
13 gross income or gross proceeds from binding written contracts
14 entered into prior to July 1, 2015, that do not permit the
15 passing on of increased rates of taxes.

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

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

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



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

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

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

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

19 "§238- Long-term care surcharge on state tax. (a)
20 Beginning on January 1, 2018, the long-term care surcharge on
21 state tax shall be levied, assessed, and collected as provided



1 in this section on the value of tangible personal property,
2 services, and contracting taxable under this chapter. The long-
3 term care surcharge on state tax shall be 0.5 per cent of the
4 value of tangible personal property, services, and contracting
5 taxable under this chapter.

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

9 (b) The long-term care surcharge on state tax shall be
10 imposed on the gross proceeds or gross income of all written
11 contracts that require the passing on of the taxes imposed under
12 this chapter; provided that this section shall not apply to
13 gross income or gross proceeds from binding written contracts
14 entered into prior to July 1, 2015, that do not permit the
15 passing on of increased rates of taxes.

16 (c) No long-term care surcharge on state tax shall be
17 imposed on any use taxable under this chapter at the one-half
18 per cent tax rate or upon any use that is not subject to
19 taxation or that is exempt from taxation under this chapter.

20 (d) The director of taxation shall revise the use tax
21 forms to provide for the clear and separate designation of the



1 imposition and payment of the long-term care surcharge on state
2 tax.

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

12 **PART III**

13 **SECTION 4.** Chapter 231, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§231- Long-term care surcharge on state tax;
17 disposition of proceeds. (a) All long-term care surcharge on
18 state tax collected by the director of taxation shall be paid
19 into the long-term care benefits trust fund quarterly, within
20 ten working days after collection, and shall be placed by the
21 director of finance into a special account.



8 PART IV

12 "§346C-A Long-term care benefits trust fund; established.

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1 long-term care benefits trust fund to any other fund for any
2 purpose.

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

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

9 §346C-B Funding for program; expenditures. (a) The
10 program shall be funded through:

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

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

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



1 §346C-C Actuarial report and actuarial opinion. (a) The
2 board of trustees shall cause to be prepared an actuarial report
3 and actuarial opinion, as defined by the Actuarial Standards
4 Board. The report and opinion shall be prepared by a member of
5 the American Academy of Actuaries who is a fellow of the Society
6 of Actuaries, certifying that the program is in actuarial
7 balance. Costs of the actuarial report shall be deemed an
8 administrative expense.

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

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

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



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

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

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

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

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



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

4 (e) The actuarial report and the work product, papers,
5 documents, and data used or prepared by the actuary in preparing
6 the actuarial report shall be public records disclosable
7 pursuant to chapter 92F.

8 §346C-D Obligations of the qualified entity to administer
9 the program. If a qualified entity is contracted by the board
10 of trustees to administer the program pursuant to section
11 346C-4(b), the qualified entity shall:

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

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

19 (3) Implement procedures to safeguard the confidentiality
20 of information in its possession; provided that the
21 entity may disclose information pertaining to the



1 taxpayer's vesting status to the taxpayer, the
2 taxpayer's spouse, or the taxpayer's designated
3 representative as indicated by a general power of
4 attorney or a designated agent as indicated by a power
5 of attorney for health care.

6 **§346C-E Defined benefit.** (a) Beginning no earlier than
7 the day following the end of the fifth year of long-term care
8 surcharge on state tax collections, payment of defined benefits
9 for long-term care services shall commence. The defined benefit
10 shall be \$70 a day up to a cumulative period of three hundred
11 sixty-five days; provided that the daily defined benefit may be
12 adjusted from time to time by the board of trustees.

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



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

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

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

14 §346C-F Vesting to receive a defined benefit. (a) Any
15 individual who has filed a Hawaii resident income tax return for
16 the most recent ten years shall be fully vested to receive the
17 defined benefit.

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



1 one year of non-filing, the individual shall forfeit one-tenth
2 of the defined benefit amount for each year of non-filing.

3 §346C-G Rulemaking. The board of trustees shall adopt
4 rules, pursuant to chapter 91, necessary for the purposes of
5 this chapter."

6 SECTION 6. Section 346C-4, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The board of trustees shall:

- 9 (1) Have and maintain a fiduciary obligation for the
10 program;
- 11 (2) Discharge their duties solely in the best interest of
12 the program;
- 13 (3) Not knowingly participate in or undertake to conceal
14 an act or omission of a trustee, when the act or
15 omission is known to be a breach of fiduciary
16 responsibility; or fail to discharge specific
17 fiduciary responsibilities in a manner that enables
18 another trustee to commit a breach; or having
19 knowledge of a breach, fail to take whatever action
20 that is reasonable and appropriate under the
21 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 7. 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 (1) Obligations of any of the following classes:

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

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

18 (C) Obligations issued or guaranteed by any federal
19 home loan bank including consolidated federal
20 home loan bank obligations, the Home Owner's Loan
21 Corporation, the Federal National Mortgage



1 Association, or the Small Business

2 Administration;

3 (2) Obligations eligible by law for purchase in the open
4 market by federal reserve banks; and

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

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



SECTION 8. 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."

SECTION 9. Section 346C-8, Hawaii Revised Statutes, is amended to read as follows:

"§346C-8 Qualified long-term care services. (a) To qualify for benefit payments for long-term care services under the program, an individual shall present to the board of trustees a certificate signed by the director of taxation, showing that the individual has met the requirements set forth in section 346C-F(a) and does not owe the State any delinquent taxes, penalties, or interest; or that the individual has entered into and is complying with an installment plan agreement



1 with the department of taxation for the payment of delinquent
2 taxes in installments.

3 ~~[(a)]~~ (b) To be eligible for benefit payments for long-
4 term care services under the program, a qualifying individual
5 shall:

6 (1) Need assistance with two or more activities of daily
7 living; or

8 (2) Be afflicted with Alzheimer's disease or dementia.

9 ~~[(b)]~~ (c) An individual qualifying for long-term care
10 services under the program shall have written certification from
11 a physician or osteopathic physician licensed under chapter 453
12 or an advanced practice registered nurse licensed under section
13 457-8.5, assigned by the board of trustees certifying that the
14 individual requires one or more long-term care services for the
15 period of time during which the individual receives the benefits
16 under the program. The written certification shall specify that
17 the individual:

18 (1) Is unable to perform, without substantial assistance
19 from another individual, at least two of six
20 activities of daily living for a period of at least
21 ninety days due to a loss of functional capacity; or



(2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.

~~[(e)]~~ (d) The written certification required by subsection ~~[(b)]~~ (c) shall be subject to approval by the board of trustees."

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 section 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.



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

3 SECTION 13. This Act shall take effect on July 1, 2050.

4



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. Effective 7/1/2050. (SD1)

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not legislation or evidence of legislative intent.*

