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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

**PART I**

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2           SECTION 1. The legislature finds that in the next twenty  
3 years, nearly one-third of the state's population will be over  
4 the age of sixty. The youngest baby boomers will become fifty  
5 years old in 2014. In Hawaii, the average person lives to age  
6 eighty-two. The number of residents sixty-five and older in  
7 Hawaii is projected to more than double from 198,094 in 2010 to  
8 403,370 in 2040, according to the latest executive office on  
9 aging projections. The demand for home-based long-term care  
10 services is quickly outpacing affordability of caring for  
11 seniors.

12           Many kupuna erroneously believe that medicare will cover  
13 the costs of nursing homes. The other option is for kupuna to  
14 surrender nearly all of their financial assets to qualify for  
15 medicaid, in which case taxpayers pick up the cost. Private  
16 nursing homes in Hawaii cost nearly fifty per cent more than  
17 anywhere else in the country, with an average price of nearly  
18 \$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 is also a financial disaster for  
17 the family and a loss of tax revenue for the State.

18 The legislature further finds that it is incumbent on the  
19 State to ease the financial burden placed on families to provide  
20 long-term care to their kupuna.



1 The purpose of this Act is to establish a long-term care  
2 surcharge on state tax as a dedicated source of funding under  
3 the long-term care financing program established under chapter  
4 346C, Hawaii Revised Statutes.

5 PART II

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

9 "§237- Long-term care surcharge on state tax. (a)  
10 Beginning , there shall be levied, assessed, and  
11 collected as provided in this section a long-term care surcharge  
12 on state tax, which shall be 0.5 per cent of all gross proceeds  
13 and gross income taxable under this chapter.

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

17 (b) The long-term care surcharge on state tax shall be  
18 imposed on the gross proceeds or gross income of all written  
19 contracts that require the passing on of the taxes imposed under  
20 this chapter; provided that if the gross proceeds or gross  
21 income is received as payments beginning in the taxable year in



1 which the taxes become effective on contracts entered into  
2 before June 30 of the year prior to the taxable year in which  
3 the taxes become effective, and the written contracts do not  
4 provide for the passing on of increased rates of taxes, the  
5 long-term care surcharge on state tax shall not be imposed on  
6 the gross proceeds or gross income covered under the written  
7 contracts. The long-term care surcharge on state tax shall be  
8 imposed on the gross proceeds or gross income from all contracts  
9 entered into on or after June 30 of the year prior to the  
10 taxable year in which the taxes become effective, regardless of  
11 whether the contract allows for the passing on of any tax or any  
12 tax increases.

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

- 15 (1) Gross income or gross proceeds taxable under this  
16 chapter at the 0.5 per cent tax rate;
- 17 (2) Gross income or gross proceeds taxable under this  
18 chapter at the 0.15 per cent tax rate; or
- 19 (3) Transactions, amounts, persons, gross income, or gross  
20 proceeds exempt from tax under this chapter.

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

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

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



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

4 "§238- Long-term care surcharge on state tax. (a)  
5 Beginning , the long-term care surcharge on state tax  
6 shall be levied, assessed, and collected as provided in this  
7 section on the value of tangible personal property, services,  
8 and contracting taxable under this chapter. The long-term care  
9 surcharge on state tax shall be 0.5 per cent of the value of  
10 tangible personal property, services, and contracting taxable  
11 under this chapter.

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

15 (b) The long-term care surcharge on state tax shall be  
16 imposed on the gross proceeds or gross income of all written  
17 contracts that require the passing on of the taxes imposed under  
18 this chapter; provided that if the gross proceeds or gross  
19 income is received as payments beginning in the taxable year in  
20 which the taxes become effective on contracts entered into  
21 before June 30 of the year prior to the taxable year in which



1 the taxes become effective, and the written contracts do not  
2 provide for the passing on of increased rates of taxes, then the  
3 long-term care surcharge on state tax shall not be imposed on  
4 the gross proceeds or gross income covered under the written  
5 contracts. The long-term care surcharge on state tax shall be  
6 imposed on the gross proceeds or gross income from all contracts  
7 entered into on or after June 30 of the year prior to the  
8 taxable year in which the taxes become effective, regardless of  
9 whether the contract allows for the passing on of any tax or any  
10 tax increases.

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

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

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

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



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

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

14       (f) All taxpayers who file on a fiscal year basis whose  
15 fiscal year ends after December 31 of the year prior to the  
16 taxable year in which the taxes become effective shall file a  
17 short period annual return for the period preceding January 1 of  
18 the taxable year in which the taxes become effective. Each  
19 fiscal year taxpayer shall also file a short period annual  
20 return for the period starting on January 1 of the taxable year





1 in which the taxes become effective and ending before January 1  
2 of the following year."

3 PART III

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

7 "§231-A Long-term care surcharge on state tax; disposition  
8 of proceeds. (a) All long-term care surcharge on state tax  
9 collected by the director of taxation shall be paid into the  
10 long-term care benefits trust fund quarterly within ten working  
11 days after collection and shall be placed by the director of  
12 finance into a special account.

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

20 §231-B Annual data; confidentiality. (a) For purposes of  
21 chapter 346C, the director of taxation shall compile annually,



1 in machine-readable files (read-only computer compact disk or  
2 other suitable media), the following information from the most  
3 recent tax return concerning each taxpayer who has filed a  
4 Hawaii resident income tax single or joint return:

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

6 (2) Filing status; and

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

8 (b) The files compiled shall be:

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

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

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

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



- 1           (C) Determining the payment status of each individual
- 2           taxpayer eligible for long-term care benefits
- 3           under chapter 346C; and
- 4           (D) Computing vesting credits gained or lost for
- 5           eligible taxpayers."

PART IV

7           SECTION 5. Chapter 346C, Hawaii Revised Statutes, is

8 amended by adding seven new sections to be appropriately

9 designated and to read as follows:

10           "§346C-A Long-term care benefits trust fund; established.

11           (a) There is established in the state treasury the long-term

12           care benefits trust fund, into which shall be deposited moneys

13           collected from the long-term care fund surcharge on state tax

14           under sections 237- and 238- . All moneys in the long-term

15           care benefits trust fund, including income and capital gains

16           earned therefrom, shall be used exclusively to pay defined

17           benefits for the purposes of chapter 346C, including

18           administrative expenses. No transfers shall be made from the

19           long-term care benefits trust fund to any other fund for any

20           purpose.



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

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

7       §346C-B Funding for program; expenditures. (a) The  
8 program shall be funded through:

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

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

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

19       §346C-C Actuarial report and actuarial opinion. (a) The  
20 board of trustees shall cause to be prepared an actuarial report  
21 and actuarial opinion, as defined by the Actuarial Standards



1 Board of the American Academy of Actuaries. The report and  
2 opinion shall be prepared by a member of the American Academy of  
3 Actuaries who is a fellow of the Society of Actuaries,  
4 certifying that the program is in actuarial balance. Costs of  
5 the actuarial report shall be deemed an administrative expense.

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

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

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

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



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

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

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

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

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

20       (e) All work products, papers, documents, and data used or  
21       prepared by the actuary in preparing the actuarial report shall



1 be subject to chapter 92F; provided that section 92F-13 shall  
2 not apply to the actuarial report or the work product, papers,  
3 documents, and data used to prepare the report.

4 §346C-D Obligations of the qualified entity to administer  
5 the program. If a qualified entity is contracted by the board  
6 of trustees to administer the program pursuant to section 346C-  
7 4(b), the qualified entity shall:

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

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

15 (3) Implement procedures to safeguard the confidentiality  
16 of information in its possession; provided that the  
17 entity may disclose information pertaining to the  
18 taxpayer's vesting status to the taxpayer, the  
19 taxpayer's spouse, or the taxpayer's designated  
20 representative as indicated by a general power of



1 attorney or a designated agent as indicated by a power  
2 of attorney for health care.

3 §346C-E Defined benefit. (a) Beginning no earlier than  
4 the day following the end of the fifth year of long-term care  
5 surcharge on state tax collections, payment of defined benefits  
6 for long-term care services shall commence. The defined benefit  
7 shall be \$70 a day up to a cumulative period of three hundred  
8 sixty-five days; provided that the daily defined benefit may be  
9 adjusted from time to time by the board of trustees.

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

18 (c) The defined benefit under the program shall be primary  
19 to private insurance and medicaid benefits. An individual shall  
20 not receive a defined benefit while the individual is receiving  
21 medicare benefits for long-term care; provided that if medicare





1 benefits are exhausted, the individual shall be required to  
2 qualify under section 346C-8.

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

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

10 **§346C-F Vesting to receive a defined benefit.** (a) Any  
11 individual who has filed a Hawaii resident income tax return for  
12 the most recent ten years shall be fully vested to receive the  
13 defined benefit.

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



1        §346C-G Rulemaking. The board of trustees shall adopt  
2 rules, pursuant to chapter 91, necessary for the purposes of  
3 this chapter."

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

6        "(a) The board of trustees shall:

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



1 prudent trustee, acting in a like capacity and  
2 familiar with similar matters would use in conducting  
3 an enterprise of similar character and purpose; [~~and~~]

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

9 [~~5~~] (6) Maintain proper books of accounts and records of  
10 the administration of the program."

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

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

20 (1) Obligations of any of the following classes:



- 1 (A) Obligations issued or guaranteed as to principal
- 2 and interest by the United States or by any state
- 3 thereof or by any municipal or political
- 4 subdivision or school district of any of the
- 5 foregoing; provided that the principal of and
- 6 interest on such obligations are payable in
- 7 currency of the United States, or sovereign debt
- 8 instruments issued by agencies of, or guaranteed
- 9 by foreign governments;
  
- 10 (B) Revenue bonds, whether or not permitted by any
- 11 other provision hereof, of the State or any
- 12 political subdivision thereof, including the
- 13 board of water supply of the city and county of
- 14 Honolulu, and street or improvement district
- 15 bonds of any district or project in the State;
- 16 and
  
- 17 (C) Obligations issued or guaranteed by any federal
- 18 home loan bank including consolidated federal
- 19 home loan bank obligations, the Home Owner's Loan
- 20 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]."~~



1 SECTION 8. Section 346C-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[+]~~ §346C-7 ~~[+]~~ Annual audits of the long-term care  
4 benefits trust fund. The auditor shall conduct an audit of the  
5 long-term care benefits trust fund annually for the first three  
6 years from the date the fund first receives deposits, and every  
7 three years thereafter; provided that the auditor may modify the  
8 time periods after the first three years as appropriate to the  
9 circumstances. The auditor shall publish a report of the  
10 results of every audit, including any recommendations."

11 SECTION 9. Section 235-116, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§235-116 Disclosure of returns unlawful; penalty. All  
14 tax returns and return information required to be filed under  
15 this chapter shall be confidential, including any copy of any  
16 portion of a federal return that may be attached to a state tax  
17 return, or any information reflected in the copy of such federal  
18 return[-], except that the director of taxation shall provide  
19 tax return information to the board of trustees of the long-term  
20 care financing program pursuant to section 231-B and to the  
21 qualified entity contracted pursuant to section 346C-4(b) to



1 administer the long-term care financing program. It shall be  
2 unlawful for any person, or any officer or employee of the  
3 State, including the auditor or the auditor's agent with regard  
4 to tax return information obtained pursuant to section 23-5(a),  
5 to make known intentionally information imparted by any income  
6 tax return or estimate made under sections 235-92, 235-94,  
7 235-95, and 235-97 or wilfully to permit any income tax return  
8 or estimate so made or copy thereof to be seen or examined by  
9 any person other than the taxpayer or the taxpayer's authorized  
10 agent, persons duly authorized by the State in connection with  
11 their official duties, the Multistate Tax Commission or the  
12 authorized representative thereof, except as otherwise provided  
13 by law. Any offense against the foregoing provisions shall be  
14 punishable as a class C felony."

15 **PART V**

16 SECTION 10. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$ or so  
18 much thereof as may be necessary for fiscal year 2015-2016 and  
19 the same sum or so much thereof as may be necessary for fiscal  
20 year 2016-2017 for start-up costs for the implementation and  
21 collection of the long-term care surcharge on state tax.



1           The sums appropriated shall be expended by the department  
2 of taxation for the purposes of this Act.

3                                       **PART VI**

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

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

10          SECTION 13. This Act shall take effect on January 1, 2017.

11





S.B. NO. 727  
S.D. 1

**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 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 1/1/17.  
(SD1)

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