
A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

1

PART I

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 executive office on aging's
9 projections. The demand for home-based long-term care services
10 is quickly outpacing affordability of caring for seniors.

11 Many kupuna erroneously believe that medicare will cover
12 the costs of nursing homes. The other option is for kupuna to
13 surrender nearly all of their financial assets to qualify for
14 medicaid, in which case taxpayers pick up the cost. Private
15 nursing homes in Hawaii cost nearly fifty per cent more than
16 anywhere else in the country, with an average price of nearly
17 \$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 if the gross proceeds or gross
13 income is received as payments beginning in the taxable year in
14 which the taxes become effective on contracts entered into
15 before June 30 of the year prior to the taxable year in which
16 the taxes become effective, and the written contracts do not
17 provide for the passing on of increased rates of taxes, the
18 long-term care surcharge on state tax shall not be imposed on
19 the gross proceeds or gross income covered under the written
20 contracts. The long-term care surcharge on state tax shall be
21 imposed on the gross proceeds or gross income from all contracts



1 entered into on or after June 30 of the year prior to the
2 taxable year in which the taxes become effective, regardless of
3 whether the contract allows for the passing on of any tax or any
4 tax increases.

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

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

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

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

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

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



1 of the amount of the surcharge and tax due on the return being
2 filed for the failure to file the schedule.

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

15 "§238- Long-term care surcharge on state tax. (a)
16 Beginning on January 1, 2018, the long-term care surcharge on
17 state tax shall be levied, assessed, and collected as provided
18 in this section on the value of tangible personal property,
19 services, and contracting taxable under this chapter. The long-
20 term care surcharge on state tax shall be 0.5 per cent of the



1 value of tangible personal property, services, and contracting
2 taxable under this chapter.

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

6 (b) The long-term care surcharge on state tax shall be
7 imposed on the gross proceeds or gross income of all written
8 contracts that require the passing on of the taxes imposed under
9 this chapter; provided that if the gross proceeds or gross
10 income is received as payments beginning in the taxable year in
11 which the taxes become effective on contracts entered into
12 before June 30 of the year prior to the taxable year in which
13 the taxes become effective, and the written contracts do not
14 provide for the passing on of increased rates of taxes, then the
15 long-term care surcharge on state tax shall not be imposed on
16 the gross proceeds or gross income covered under the written
17 contracts. The long-term care surcharge on state tax shall be
18 imposed on the gross proceeds or gross income from all contracts
19 entered into on or after June 30 of the year prior to the
20 taxable year in which the taxes become effective, regardless of



1 whether the contract allows for the passing on of any tax or any
2 tax increases.

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

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

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

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

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

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



1 of the amount of the surcharge and tax due on the return being
2 filed for the failure to file the schedule or the failure to
3 correctly report the assignment of the use tax by taxation
4 district on the schedule required under this subsection.

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

14 **PART III**

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

18 "§231-A Long-term care surcharge on state tax; disposition
19 of proceeds. (a) All long-term care surcharge on state tax
20 collected by the director of taxation shall be paid into the
21 long-term care benefits trust fund quarterly within ten working



1 days after collection and shall be placed by the director of
2 finance into a special account.

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

10 §231-B Annual data; confidentiality. (a) For purposes of
11 chapter 346C, the director of taxation shall compile annually,
12 in machine-readable files (read-only computer compact disk or
13 other suitable media), the following information from the most
14 recent tax return concerning each taxpayer who has filed a
15 Hawaii resident income tax single or joint return:

- 16 (1) Name, address, and social security number;
17 (2) Filing status; and
18 (3) Taxable year and date of filing of the tax return.
19 (b) The files compiled shall be:



- 1 (1) Transmitted to the board of trustees of the long-term
2 care financing program under chapter 346C no later
3 than December 31 of each year; and
- 4 (2) Used by the board of trustees of the long-term care
5 financing program solely for the purpose of:
- 6 (A) Determining eligibility to receive defined
7 benefits; provided that the information may be
8 accessed by a qualified entity contracted
9 pursuant to section 346C-4(b) to administer the
10 long-term care financing program;
- 11 (B) Maintaining an administrative file of taxpayers
12 eligible for long-term care benefits under
13 chapter 346C;
- 14 (C) Determining the payment status of each individual
15 taxpayer eligible for long-term care benefits
16 under chapter 346C; and
- 17 (D) Computing vesting credits gained or lost for
18 eligible taxpayers."

19

PART IV



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

4 "§346C-A Long-term care benefits trust fund; established.

5 (a) There is established in the state treasury the long-term
6 care benefits trust fund, into which shall be deposited moneys
7 collected from the long-term care fund surcharge on state tax
8 under sections 237- and 238- . All moneys in the long-term
9 care benefits trust fund, including income and capital gains
10 earned therefrom, shall be used exclusively to pay defined
11 benefits for the purposes of chapter 346C, including
12 administrative expenses. No transfers shall be made from the
13 long-term care benefits trust fund to any other fund for any
14 purpose.

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

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



1 §346C-B Funding for program; expenditures. (a) The
2 program shall be funded through:

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

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

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

13 §346C-C Actuarial report and actuarial opinion. (a) The
14 board of trustees shall cause to be prepared an actuarial report
15 and actuarial opinion, as defined by the Actuarial Standards
16 Board. The report and opinion shall be prepared by a member of
17 the American Academy of Actuaries who is a fellow of the Society
18 of Actuaries, certifying that the program is in actuarial
19 balance. Costs of the actuarial report shall be deemed an
20 administrative expense.



- 1 (b) The actuarial report under subsection (a) shall
2 contain a statement by the actuary certifying that the
3 techniques and methods used are generally accepted within the
4 actuarial profession and that the assumptions and cost estimates
5 used are reasonable. The report shall include:
- 6 (1) An estimate of the expected future income to and
7 disbursements from the Hawaii long-term care benefits
8 trust fund during each of the next ten ensuing fiscal
9 years;
- 10 (2) A projection of the tax rates necessary to keep the
11 Hawaii long-term care benefits trust fund actuarially
12 sound over the short-range and long-range future
13 periods;
- 14 (3) A statement of actuarial assumptions and methods used
15 to determine costs and a detailed explanation of any
16 change in actuarial assumptions or methods;
- 17 (4) The current and projected number of participants and
18 beneficiaries and the current and projected amounts
19 paid in taxes, defined benefits, current and permanent
20 benefit defined benefits, and the like, aggregated by
21 current and past Hawaii taxpayer status and age;



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

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

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

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

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

20 §346C-D Obligations of the qualified entity to administer
21 the program. If a qualified entity is contracted by the board



1 of trustees to administer the program pursuant to section
2 346C-4(b), the qualified entity shall:

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

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

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

18 §346C-E Defined benefit. (a) Beginning no earlier than
19 the day following the end of the fifth year of long-term care
20 surcharge on state tax collections, payment of defined benefits
21 for long-term care services shall commence. The defined benefit



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

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

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

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



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

4 §346C-F Vesting to receive a defined benefit. (a) Any
5 individual who has filed a Hawaii resident income tax return for
6 the most recent ten years shall be fully vested to receive the
7 defined benefit.

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

14 §346C-G Rulemaking. The board of trustees shall adopt
15 rules, pursuant to chapter 91, necessary for the purposes of
16 this chapter."

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

19 "§235-116 Disclosure of returns unlawful; penalty. All
20 tax returns and return information required to be filed under
21 this chapter shall be confidential, including any copy of any



1 portion of a federal return that may be attached to a state tax
2 return, or any information reflected in the copy of the federal
3 return[-], except that the director of taxation shall provide
4 tax return information to the board of trustees of the long-term
5 care financing program pursuant to section 231-B and to the
6 qualified entity contracted pursuant to section 346C-4(b) to
7 administer the long-term care financing program. It shall be
8 unlawful for any person, or any officer or employee of the
9 State, including the auditor or the auditor's agent with regard
10 to tax return information obtained pursuant to section 23-5(a),
11 to make known intentionally information imparted by any income
12 tax return or estimate made under sections 235-92, 235-94,
13 235-95, and 235-97 or wilfully to permit any income tax return
14 or estimate so made or copy thereof to be seen or examined by
15 any person other than the taxpayer or the taxpayer's authorized
16 agent, persons duly authorized by the State in connection with
17 their official duties, the Multistate Tax Commission or the
18 authorized representative thereof, except as otherwise provided
19 by law. Any offense against the foregoing provisions shall be
20 punishable as a class C felony."



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

3 "(a) The board of trustees shall:

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

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

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

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



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

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

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

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

- 17 (1) Obligations of any of the following classes:
- 18 (A) Obligations issued or guaranteed as to principal
 19 and interest by the United States or by any state
 20 thereof or by any municipal or political
 21 subdivision or school district of any of the



1 foregoing; provided that the principal of and
2 interest on such obligations are payable in
3 currency of the United States, or sovereign debt
4 instruments issued by agencies of, or guaranteed
5 by foreign governments;

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

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

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



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

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

19 "**[+]§346C-7[+]** Annual audits of the long-term care
20 **benefits trust fund.** The auditor shall conduct an audit of the
21 long-term care benefits trust fund annually for the first three



1 years from the date the fund first receives deposits, and every
2 three years thereafter; provided that the auditor may modify the
3 time periods after the first three years as appropriate to the
4 circumstances. The auditor shall publish a report of the
5 results of every audit, including any recommendations."

6 **PART V**

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

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

14 **PART VI**

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

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

21



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

2

INTRODUCED BY: Gregory Tolson

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JAN 22 2016



H.B. NO. 1885

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.

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

