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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:**

1           SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                           **"PART . LONG-TERM CARE INCOME TAX**

5           **§235-A Purpose.** The purpose of this part is to implement  
6 chapter 346C.

7           **§235-B Long-term care income tax imposed on individuals;**  
8 **rates; withholding; self-employed; exclusions; scheduled**  
9 **increases.** (a) In addition to the tax imposed under section  
10 235-51, there is hereby imposed a long-term care tax in the  
11 amount of \$120 in each taxable year beginning in the taxable  
12 year after December 31, 2008. A taxpayer who files a joint  
13 return under section 235-93, and the taxpayer's spouse shall  
14 each pay the same amount of the tax. The tax shall be imposed  
15 on the taxable income of every:

16           (1) Unmarried individual;



1 (2) Married individual who does not make a single return  
2 jointly with the individual's spouse under section  
3 235-93;

4 (3) Surviving spouse;

5 (4) Head of a household; and

6 (5) Trust; provided that the beneficiary of the trust is  
7 not also subject to the tax imposed under this  
8 section.

9 (b) Any taxpayer under subsection (a) who has wages  
10 withheld pursuant to section 235-61, shall be subject to  
11 withholding of long-term care income tax on wages.

12 (c) Any self-employed taxpayer, who is required to file a  
13 return individually or jointly under this chapter, or any other  
14 taxpayer who is either required or elects to make estimated tax  
15 payments, shall include the amount of the long-term care income  
16 tax in the amount of estimated tax payments made for the taxable  
17 year.

18 (d) The long-term care income tax shall be increased as  
19 follows:

20 For the taxable year beginning after:	The tax shall be:
21 December 31, 2009	\$144
22 December 31, 2010	\$168



1	December 31, 2011	\$192
2	December 31, 2012	\$216
3	December 31, 2013	\$240
4	December 31, 2014	\$264
5	December 31, 2015	\$276.

6 (e) For taxable years beginning after December 31, 2016,  
7 the board of trustees shall recommend to the legislature for  
8 consideration in the regular session of 2015, any adjustment to  
9 the amount of the long-term care income tax; provided that the  
10 recommendation shall be substantiated by an actuarial report and  
11 actuarial opinion similar to that required under section  
12 346C- .

13 (f) The tax under this chapter shall not be imposed on the  
14 taxable income of a taxpayer taxed pursuant to section 235-51(c)  
15 or (d) if the taxpayer's gross income is less than \$10,000, or a  
16 taxpayer taxed pursuant to section 235-51(a) or (b) if the  
17 taxpayer's gross income is less than \$16,000.

18 (g) The tax under this section shall not be imposed upon a  
19 person receiving defined benefits under section 235-F.

20 §235-C Portability; conformity to federal law. (a) A  
21 person vested to receive a defined benefit who leaves the State  
22 and is not required to file a return may continue to be vested

1 if the person makes payment to the board of trustees established  
2 under chapter 346C, in the manner and amount as determined by  
3 the board.

4 (b) Payment of defined benefits under section 235-F shall  
5 be made without regard to the place of residence, including the  
6 state or country, of the person vested under section 235-E.

7 **§235-D Withholding of long-term care income tax on wages.**

8 (a) The terms "wages", "employee", and "employer" shall have  
9 the same meaning as defined in section 235-61.

10 (b) Every employer who pays wages to employees shall  
11 deduct and withhold from those wages the amount of tax as  
12 provided in section 235-B.

13 (c) For each withholding period (whether weekly, biweekly,  
14 monthly, or otherwise) the amount of tax to be withheld shall be  
15 at a rate that, for the taxable year, will yield the tax imposed  
16 by section 235-51 and by this part upon each employee's annual  
17 wage, as estimated from the employee's current wage in any  
18 withholding period. The tax for the taxable year shall be  
19 calculated upon the assumptions contained in section 235-61(c).

20 (d) Alternatively, the employer may deduct and withhold  
21 from each employee an amount of tax determined on the basis of  
22 tables to be prepared and furnished by the department of



1 taxation, which amount of tax shall be substantially equivalent  
2 to the amount of tax provided by subsection (c).

3       **§235-E Vesting to receive a defined benefit.** (a) Any  
4 individual who has paid the long-term care income tax under  
5 section 235-B for ten years, shall be fully vested to receive  
6 the defined benefit provided under section 235-F, but shall  
7 continue to be subject to the income tax under section 235-B.

8       (b) An individual shall earn one-tenth of the defined  
9 benefit under section 235-F for each consecutive twelve-month  
10 period that the individual pays the income tax under section  
11 235-B. An individual shall be allowed twelve consecutive months  
12 of nonpayment of the income tax without penalty; provided that  
13 after the twelve consecutive months of nonpayment, the  
14 individual shall forfeit one-tenth of the defined benefit amount  
15 for each year of nonpayment.

16       (c) If an individual dies before January 1, 2012, the  
17 estate or heirs, as appropriate, of that individual may make a  
18 claim for reimbursement of the income taxes paid under section  
19 235-B by the individual.

20       **§235-F Defined benefit.** (a) Beginning January 1, 2012,  
21 payment of a defined benefit for long-term care services shall  
22 commence. The defined benefit shall be \$70 a day up to a



1 cumulative period of three hundred sixty-five days; provided  
2 that the daily defined benefit may be adjusted from time to time  
3 by the board of trustees in accordance with section 346C- (c).

4 (b) The defined benefit shall begin after the thirtieth  
5 day following the date of the approval of the written  
6 certification under section 346C-8 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 this program shall be  
13 primary to private insurance and medicaid benefits. An  
14 individual shall not receive a defined benefit while the  
15 individual is receiving medicare benefits for long-term care;  
16 provided that if medicare benefits are exhausted, the individual  
17 shall be required to qualify under section 346C-8.

18 (d) The defined benefit received under this section shall  
19 not be subject to state income tax.

20 §235-G Remittance. Each month, the director of taxation  
21 shall remit the amount of long-term care income taxes that are  
22 paid, prepaid in estimated tax payments, or deposited with the



1 department for that month to the board of trustees of the long-  
2 term care financing program for deposit into the long-term care  
3 benefits fund.

4       **§235-H Annual data.** The director of taxation shall  
5 compile in machine-readable files (read-only computer compact  
6 disk or other suitable media) annual data on taxpayers subject  
7 to the long-term care income tax, payments, and amounts of  
8 payments made. The data compiled shall be:

- 9       (1) Transmitted to the board of trustees of the long-term  
10 care financing program annually no later than three  
11 months after the date on which individual income tax  
12 returns are due; and
- 13       (2) Used by the board of trustees of the long-term care  
14 financing program solely for the purpose of:
- 15           (A) Maintaining an administrative file of taxpayers  
16 eligible for long-term care benefits under  
17 chapter 346C;
- 18           (B) Recording and updating the amount of premiums  
19 paid or unpaid;
- 20           (C) Determining the payment status of each individual  
21 taxpayer eligible for long-term care benefits  
22 under chapter 346C; and



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

3 §235-I Long-term care benefits; disbursement; benefit  
4 levels; delinquency; loss carryback; adjustment and actuarial  
5 review. (a) The proceeds of the long-term care income tax  
6 shall be deposited into the long-term care benefits trust fund  
7 created in section 346C-5. Benefit disbursements shall begin no  
8 earlier than the day following the end of the third year of  
9 long-term care income tax collections.

10 (b) The initial benefit level shall be \$70 per day for  
11 three hundred sixty-five days, subject to restrictions imposed  
12 by the required vesting period, for long-term care services as  
13 described in section 431:10H-301(c). The benefits shall  
14 increase as follows:

- 15 (1) \$72.10 per day on January 1, 2013;  
16 (2) \$74.26 per day on January 1, 2014;  
17 (3) \$76.49 per day on January 1, 2015;  
18 (4) \$78.79 per day on January 1, 2016;  
19 (5) \$81.15 per day on January 1, 2017;  
20 (6) \$83.58 per day on January 1, 2018, and thereafter.

21 (c) For any individual who is subject to the long-term  
22 care income tax and who:





1 (1) Is or has been delinquent in paying the tax; and  
 2 (2) Begins to pay overdue back taxes within three years of  
 3 the initial delinquency,  
 4 any such delinquent long-term care income tax payment may be  
 5 credited to the individual's vesting record and restore any  
 6 benefit loss up to that point.

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

11 §235-J Confidentiality. (a) For purposes of this part  
 12 and chapter 346C, the director of taxation shall provide  
 13 annually to the board of trustees of the long-term care  
 14 financing program the following information from the most recent  
 15 tax return concerning each taxpayer filing a single or a joint  
 16 return, who has paid the long-term care income tax:

- 17 (1) Name, address, social security number;
- 18 (2) Filing status;
- 19 (3) Taxable year and date of filing of the tax return; and
- 20 (4) Amount of long-term care income tax paid by the  
 21 taxpayer, indicating the total amount paid in the case  
 22 of a joint return.



1 (b) The information under subsection (a) shall be used by  
2 the board of trustees solely for the purpose of section 235-H;  
3 provided that the information may be accessed by a qualified  
4 entity contracted under section 346C-4(b).

5 (c) Disclosure of information under this section shall  
6 apply notwithstanding section 235-116."

7 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
8 amended by adding two new sections to be appropriately  
9 designated and to read as follows:

10 "§235- Long-term care benefits excluded from taxation.  
11 Notwithstanding any law to the contrary, all defined benefits  
12 paid under section 235-F shall be excluded from taxation under  
13 this chapter and need not be reported as income.

14 §235- Long-term care tax credit. (a) Each individual  
15 taxpayer who files an individual income tax return for a taxable  
16 year, and who is not claimed or is not otherwise eligible to be  
17 claimed as a dependent by another taxpayer for Hawaii state  
18 individual income tax purposes, may claim a long-term care tax  
19 credit against the taxpayer's net income tax liability for the  
20 taxable year for which the individual's income tax return is  
21 being filed; provided that an individual who has no income or no  
22 income taxable under this chapter, and who is not claimed or is



1 not otherwise eligible to be claimed as a dependent by a  
2 taxpayer for Hawaii state individual income tax purposes may  
3 claim this credit.

4 (b) Each taxpayer may claim a tax credit in an amount  
5 equal to \$120 for each taxable year beginning after December 31,  
6 2009, and ending before January 1, 2013. For taxable years  
7 beginning after December 31, 2012, and ending before January 1,  
8 2013, the tax credit shall be equal to \$180.

9 (c) If a deduction is taken under this chapter pursuant to  
10 section 213 (with respect to the deduction for long-term costs  
11 and insurance contract premiums) of the Internal Revenue Code,  
12 no tax credit shall be allowed.

13 (d) The credit shall apply to a taxpayer who has paid the  
14 long-term care income tax under section 235-B and has made  
15 premium payments during the taxable year for a long-term care  
16 insurance policy that is subject to chapter 431:10H that covers:

17 (1) The taxpayer;

18 (2) The taxpayer's dependent as defined in section 152 of  
19 the Internal Revenue Code;

20 (3) The taxpayer's spouse;

21 (4) A son or daughter of the taxpayer;

22 (5) A stepson or stepdaughter of the taxpayer;



1       (6) The father or mother of the taxpayer; or  
2       (7) A stepfather or stepmother of the taxpayer.  
3       (e) For the purpose of the credit, "net income tax  
4 liability" means net income tax liability reduced by all other  
5 credits allowed under this chapter. If the tax credits claimed  
6 by a taxpayer exceed the amount of income tax payment due from  
7 the taxpayer, the excess of credits over payments due shall be  
8 refunded to the taxpayer; provided that tax credits properly  
9 claimed by an individual who has no income tax liability shall  
10 be paid to the individual; and provided further that no refunds  
11 or payment on account of the tax credit allowed by this section  
12 shall be made for amounts less than \$1.

13       (f) All claims, including any amended claims, for tax  
14 credits under this section shall be filed on or before the end  
15 of the twelfth month following the close of the taxable year for  
16 which the credit may be claimed. Failure to comply with the  
17 foregoing provision shall constitute a waiver of the right to  
18 claim the credit."

19       SECTION 3. Chapter 346C, Hawaii Revised Statutes, is  
20 amended by adding a new section to be appropriately designated  
21 and to read as follows:



1       "§346C-       Actuarial report and actuarial opinion.   (a)  
2       The board of trustees of the long-term care financing program  
3       shall cause to be prepared an actuarial report and actuarial  
4       opinion, as defined by the Actuarial Standards Board of the  
5       American Academy of Actuaries. The report and opinion shall be  
6       prepared by a member of the American Academy of Actuaries who is  
7       a fellow of the Society of Actuaries, certifying that the  
8       program is in actuarial balance. Costs of the actuarial report  
9       shall be deemed an administrative expense under section  
10      346C-5(b) .

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

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

20       (2) A projection of the tax rates necessary to keep the  
21       Hawaii long-term care benefits trust fund actuarially

- 1           sound over the short-range and long-range future  
2           periods;
- 3           (3) A statement of actuarial assumptions and methods used  
4           to determine costs and a detailed explanation of any  
5           change in actuarial assumptions or methods;
- 6           (4) The current and projected number of participants and  
7           beneficiaries and the current and projected amount  
8           paid in taxes, defined benefits, current and permanent  
9           defined benefits, and the like, aggregated by current  
10           and past Hawaii taxpayer status and age;
- 11           (5) The current value of accumulated assets of the Hawaii  
12           long-term care financing program and the value of  
13           assets used by the actuary in any computation of the  
14           amount of required taxes; and
- 15           (6) The results of short-range and long-range actuarial  
16           sensitivity analyses.
- 17           (c) Based upon the actuarial report and actuarial opinion  
18           under subsection (a), the board of trustees may adjust the  
19           defined benefit under section 235-F.
- 20           (d) All work products, papers, documents, and data used or  
21           prepared by the actuary in preparing the actuarial report shall  
22           be subject to chapter 92F.



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

4       SECTION 4. Section 36-27, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "§36-27 Transfers from special funds for central service  
7 expenses. (a) Except as provided in this section, and  
8 notwithstanding any other law to the contrary, from time to  
9 time, the director of finance [7] shall deduct five per cent of  
10 all receipts of special funds, which deduction shall be  
11 transferred to the general fund of the State and become general  
12 realizations of the State, for the purpose of defraying the  
13 prorated estimate of central service expenses of government in  
14 relation to all special funds, except for the:

- 15       (1) Special out-of-school time instructional program fund  
16             under section 302A-1310;
- 17       (2) School cafeteria special funds of the department of  
18             education;
- 19       (3) Special funds of the University of Hawaii;
- 20       (4) State educational facilities improvement special fund;
- 21       (5) Convention center enterprise special fund under  
22             section 201B-8;



- 1 (6) Special funds established by section 206E-6;
- 2 (7) Housing loan program revenue bond special fund;
- 3 (8) Housing project bond special fund;
- 4 (9) Aloha Tower fund created by section 206J-17;
- 5 (10) Funds of the employees' retirement system created by
- 6 section 88-109;
- 7 (11) Unemployment compensation fund established under
- 8 section 383-121;
- 9 (12) Hawaii hurricane relief fund established under chapter
- 10 431P;
- 11 (13) Hawaii health systems corporation special funds;
- 12 (14) Tourism special fund established under section
- 13 201B-11;
- 14 (15) Universal service fund established under chapter 269;
- 15 (16) Integrated tax information management systems special
- 16 fund under section 231-3.2;
- 17 (17) Emergency and budget reserve fund under section
- 18 328L-3;
- 19 (18) Public schools special fees and charges fund under
- 20 section 302A-1130(f);
- 21 (19) Sport fish special fund under section 187A-9.5;
- 22 (20) Neurotrauma special fund under section 321H-4;





- 1 (21) Deposit beverage container deposit special fund under  
2 section 342G-104;
- 3 (22) Glass advance disposal fee special fund established by  
4 section 342G-82;
- 5 (23) Center for nursing special fund under section  
6 [†] 304A-2163 [†];
- 7 (24) Passenger facility charge special fund established by  
8 section 261-5.5;
- 9 (25) Solicitation of funds for charitable purposes special  
10 fund established by section 467B-15;
- 11 (26) Land conservation fund established by section 173A-5;
- 12 (27) Court interpreting services revolving fund under  
13 section 607-1.5;
- 14 (28) Trauma system special fund under section 321-22.5;
- 15 (29) Hawaii cancer research special fund;
- 16 (30) Community health centers special fund; [and]
- 17 (31) Emergency medical services special fund[†  
18 ~~shall deduct five per cent of all receipts of all other special~~  
19 ~~funds, which deduction shall be transferred to the general fund~~  
20 ~~of the State and become general realizations of the State.]; and~~
- 21 (32) Long-term care benefits trust fund established by  
22 section 346C-5.



1        (b) All officers of the State and other persons having  
2 power to allocate or disburse any special funds shall cooperate  
3 with the director in effecting these transfers.

4        (c) To determine the proper revenue base upon which the  
5 central service assessment is to be calculated, the director  
6 shall adopt rules pursuant to chapter 91 for the purpose of  
7 suspending or limiting the application of the central service  
8 assessment of any fund. No later than twenty days prior to the  
9 convening of each regular session of the legislature, the  
10 director shall report all central service assessments made  
11 during the preceding fiscal year. [†]"

12        SECTION 5. Section 36-30, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14        "(a) Each special fund[7] shall be responsible for its pro  
15 rata share of the administrative expenses incurred by the  
16 department responsible for the operations supported by the  
17 special fund concerned, except for the:

- 18            (1) Transportation use special fund established by section  
19                            261D-1;
- 20            (2) Special out-of-school time instructional program fund  
21                            under section 302A-1310;



- 1 (3) School cafeteria special funds of the department of
- 2 education;
- 3 (4) Special funds of the University of Hawaii;
- 4 (5) State educational facilities improvement special fund;
- 5 (6) Special funds established by section 206E-6;
- 6 (7) Aloha Tower fund created by section 206J-17;
- 7 (8) Funds of the employees' retirement system created by
- 8 section 88-109;
- 9 (9) Unemployment compensation fund established under
- 10 section 383-121;
- 11 (10) Hawaii hurricane relief fund established under chapter
- 12 431P;
- 13 (11) Convention center enterprise special fund established
- 14 under section 201B-8;
- 15 (12) Hawaii health systems corporation special funds;
- 16 (13) Tourism special fund established under section
- 17 201B-11;
- 18 (14) Universal service fund established under chapter 269;
- 19 (15) Integrated tax information management systems special
- 20 fund under section 231-3.2;
- 21 (16) Emergency and budget reserve fund under section
- 22 328L-3;



- 1 (17) Public schools special fees and charges fund under
- 2 section 302A-1130(f);
- 3 (18) Sport fish special fund under section 187A-9.5;
- 4 (19) Neurotrauma special fund under section 321H-4;
- 5 (20) Center for nursing special fund under section
- 6 [{}304A-2163 {}];
- 7 (21) Passenger facility charge special fund established by
- 8 section 261-5.5;
- 9 (22) Court interpreting services revolving fund under
- 10 section 607-1.5;
- 11 (23) Trauma system special fund under section 321-22.5;
- 12 (24) Hawaii cancer research special fund;
- 13 (25) Community health centers special fund; [and]
- 14 (26) Emergency medical services special fund[{}+

15 ~~shall be responsible for its pro rata share of the~~  
 16 ~~administrative expenses incurred by the department responsible~~  
 17 ~~for the operations supported by the special fund concerned.}]];~~

18 and

- 19 (27) Long-term care benefits trust fund under section
- 20 346C-5."

21 SECTION 6. Section 235-61, Hawaii Revised Statutes, is  
 22 amended by amending subsection (c) to read as follows:



1           "(c) For each withholding period (whether weekly,  
2 biweekly, monthly, or otherwise) the amount of tax to be  
3 withheld under this section shall be at a rate which, for the  
4 taxable year, will yield the tax imposed by ~~[section]~~ sections  
5 235-51 and 235-B upon each employee's annual wage, as estimated  
6 from the employee's current wage in any withholding period, but  
7 for the purposes of this subsection of the rates provided by  
8 section 235-51 the maximum to be taken into consideration shall  
9 be eight per cent ~~[+]~~ plus the tax imposed under section 235-B.  
10 The tax for the taxable year for the purposes of section 235-51  
11 shall be calculated upon the following assumptions:

- 12           (1) That the employee's annual wage, as estimated from the  
13 employee's current wage in the withholding period,  
14 will be the employee's sole income for the taxable  
15 year;
- 16           (2) That there will be no deductions therefrom in  
17 determining adjusted gross income;
- 18           (3) That in determining taxable income there shall be a  
19 standard deduction allowance which shall be an amount  
20 equal to one exemption (or more than one exemption if  
21 so prescribed by the director) unless (A) the taxpayer  
22 is married and the taxpayer's spouse is an employee



1 receiving wages subject to withholding, or (B) the  
2 taxpayer has withholding exemption certificates in  
3 effect with respect to more than one employer. For  
4 the purposes of this section, any standard deduction  
5 allowance under this paragraph shall be treated as if  
6 it were denominated a withholding exemption;

7 (4) That in determining taxable income there also will be  
8 deducted the amount of exemptions and withholding  
9 allowances granted to the employee in the computation  
10 of taxable income, as shown by a certificate to be  
11 filed with the employer as provided by subsection (f);  
12 and

13 (5) If it appears from the certificate filed pursuant to  
14 subsection (f) that the employee, under section  
15 235-93, is entitled to make a joint return, that the  
16 employee and the employee's spouse will so elect."

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

19 "[+]§346C-2[+] Long-term care financing program;  
20 establishment. There is established the long-term care  
21 financing program, which shall be placed with the department of  
22 budget and finance for administrative purposes. The purpose of



1 this program shall be to provide a universal and affordable  
2 system of providing for long-term care. The program shall be  
3 administered by a board of trustees. The program shall be  
4 implemented under part of chapter 235."

5 SECTION 8. Section 346C-4, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[~~f~~]§346C-4[~~f~~] Fiduciary and other obligations of the  
8 board of trustees[~~-~~]; obligations of the third party  
9 administrator; duties. (a) The board of trustees shall:

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



- 1 (4) Act with the care, skill, prudence, and diligence  
2 under the circumstances then prevailing, that a  
3 prudent trustee, acting in a like capacity and  
4 familiar with similar matters would use in conducting  
5 an enterprise of similar character and purpose; [and]
- 6 (5) Establish a procedure to allow individuals to  
7 voluntarily pay the long-term care income tax under  
8 section 235-B, who otherwise are not required to file  
9 a return by reason of receiving compensation in the  
10 form of pension, social security, or amounts of  
11 interest, dividends, or other income that is  
12 insufficient to require the filing of a tax return;  
13 and
- 14 (6) Maintain proper books of accounts and records of the  
15 administration of the program.
- 16 (b) The board of trustees may contract with a qualified  
17 entity to administer the program or to process claims for  
18 [~~benefit payments,~~] the defined benefit, or both[~~, provided that~~  
19 ~~the entity shall be appropriately licensed under chapter 431~~].  
20 Selection of the entity shall be subject to chapter 103D;  
21 provided that [~~the insurance commissioner shall advise the board~~  
22 ~~of trustees in selection of the entity.~~] in addition to other





1 customary duties, the entity shall insure against fraud and  
2 abuse in claims for and payment of defined benefits.

3 ~~[(e) In lieu of subsection (b), the board of trustees may~~  
4 ~~contract with a qualified entity to assume the risk of~~  
5 ~~underwriting loss under the program at a capitated rate of~~  
6 ~~payment to the entity. The entity shall be appropriately~~  
7 ~~licensed under chapter 431 and adequately capitalized.~~  
8 ~~Selection of the entity shall be subject to chapter 103D,~~  
9 ~~provided that the state insurance commissioner shall advise the~~  
10 ~~board of trustees in the selection of the entity. An entity~~  
11 ~~selected under this subsection shall perform the functions under~~  
12 ~~subsection (b), in addition to assuming the risk.]~~

13 (c) The entity contracted under subsection (b) shall  
14 implement procedures to safeguard the confidentiality of  
15 information in its possession; provided that the entity may  
16 disclose information obtained under section 235-J and  
17 information pertaining to the taxpayer's vesting status to the  
18 taxpayer, the taxpayer's spouse, or the taxpayer's designated  
19 representative as indicated by a general power of attorney or a  
20 designated agent as indicated by a power of attorney for health  
21 care.



1        (d) The board of trustees shall adopt rules for the  
2 administration of the long-term care benefits trust fund and the  
3 transaction of business."

4        SECTION 9. Section 346C-5, Hawaii Revised Statutes, is  
5 amended as follows:

6        1. By amending its title and subsections (a) and (b) to  
7 read:

8        "[+]§346C-5[+] Long-term care benefits trust fund. (a)

9 There is established in the state treasury the long-term care  
10 benefits trust fund, into which shall be deposited moneys  
11 collected as long-term care taxes. The department of budget and  
12 finance shall deposit the moneys in federally insured financial  
13 institutions in Hawaii to preserve the balance and ensure a  
14 reasonable return under prevailing interest rates. Investments  
15 of the moneys may be made subject to the requirements of this  
16 chapter.

17        (b) Expenditures from the fund shall be made solely for  
18 the purpose of [~~making benefit payments~~] paying defined benefits  
19 under section 235-F and the cost of administration."

20        2. By amending subsection (d) to read:



1           "(d) Costs for the administration of the program shall be  
2 paid from moneys in the long-term care benefits trust fund as  
3 follows:

- 4           (1) Up to four per cent of the total monthly deposit into
- 5                 the fund to cover general administrative expenses; and
- 6           (2) Up to four per cent of the total monthly amount of
- 7                 claims paid out from the fund may be used to pay for
- 8                 administrative expenses related to claims processing."

9           SECTION 10. Section 346C-6, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

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

- 18           (1) Obligations of any of the following classes:
- 19                 (A) Obligations issued or guaranteed as to principal
- 20                         and interest by the United States or by any state
- 21                         thereof or by any municipal or political
- 22                         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

21 (3) Securities and futures contracts in which in the  
22 informed opinion of the board of trustees it is



1 prudent to invest funds of the system, including  
2 currency, interest rate, bond, and stock index futures  
3 contracts and options on such contracts to hedge  
4 against anticipated changes in currencies, interest  
5 rates, and bond and stock prices that might otherwise  
6 have an adverse effect upon the value of the system's  
7 securities portfolios; covered put and call options on  
8 securities; and stock; whether or not the securities,  
9 stock, futures contracts, or options on futures are  
10 expressly authorized by or qualify under the foregoing  
11 paragraphs, and notwithstanding any limitation of any  
12 of the foregoing paragraphs [~~and~~

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

15 SECTION 11. Section 346C-7, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[+] §346C-7 [+] Annual audits of the long-term care  
18 benefits trust fund. The auditor shall conduct an audit of the  
19 long-term care benefits trust fund annually for the first three  
20 years from the date the fund first receives deposits, and every  
21 three years thereafter; provided that the auditor may modify the  
22 time periods after the first three years as appropriate to the



1 circumstances. The auditor shall publish a report of the  
2 results of every audit, including any recommendations."

3 SECTION 12. Act 245, Session Laws of Hawaii 2002, is  
4 amended by amending section 3(a) to read as follows:

5 "(a) The governor shall appoint a temporary board of  
6 trustees, pursuant to section 26-41, Hawaii Revised Statutes,  
7 [which] that shall be placed within the department of health,  
8 executive office on aging, for administrative purposes to serve  
9 beginning July 1, 2002, until [~~June 30, 2003,~~] a permanent board  
10 is appointed pursuant to section 346C-3, Hawaii Revised  
11 Statutes, to design the Hawaii long-term care financing program,  
12 based upon consideration of the actuarial report submitted to  
13 the legislature by the executive office on aging in 2002, and  
14 the report of the joint legislative committee on long term care  
15 financing of 2001, as stipulated by Senate Concurrent Resolution  
16 No. 23, C.D. 1, regular session of 2001, including:

- 17 (1) Determining the amount of and means of collection of a  
18 tax or fee;
- 19 (2) Determining the nature of and amount of benefits; and
- 20 (3) Recommending a third-party administrator."

21 SECTION 13. The long-term care benefits trust fund shall  
22 reimburse the general fund, after a period of five years from



1 July 1, 2009, for the amount of any legislative appropriation  
2 for start-up costs of the fund and for the administration of  
3 this Act, whether the appropriation is made in this Act or  
4 subsequent acts.

5 SECTION 14. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$500,000, or so much  
7 thereof as may be necessary for fiscal year 2007-2008, for  
8 start-up costs to collect the long-term care income tax.

9 The sum appropriated shall be expended by the department of  
10 taxation for the purposes of this section.

11 SECTION 15. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$400,000, or so much  
13 thereof as may be necessary for fiscal year 2007-2008, for  
14 start-up costs to administer the long-term care financing  
15 program under chapter 346C, Hawaii Revised Statutes.

16 The sum appropriated shall be expended by the department of  
17 budget and finance for the purposes of this section.

18 SECTION 16. In codifying the new sections added by  
19 section 1 of this Act and referenced throughout this Act, the  
20 revisor of statutes shall substitute appropriate section numbers  
21 for the letters used in designating the new sections in this  
22 Act.



1 SECTION 17. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 18. This Act shall take effect on July 1, 2007,  
4 and shall apply to taxable years beginning after December 31,  
5 2008.





**Report Title:**

Long-Term Care Income Tax; Long-Term Care Income Tax Credit

**Description:**

Establishes a long-term care income tax to pay for long-term care benefits; establishes long-term care income tax credit for amounts paid for purchase of long-term care insurance; clarifies that long-term care taxes are not state funds; makes appropriations. (SD1)

