

SB 2471

Measure Title: RELATING TO TAXATION.

Report Title: Taxation; Hawaii Health Insurance Exchange; Hawaii Health Connector

Description: Ensures the long-term sustainability of the Hawaii health connector by levying a tax of two-thirds of one per cent on the gross health insurance premiums derived from the sale of qualified dental plans and qualified plans by insurers in the State, with certain exemptions.

Companion: [HB2588](#)

Package: None

Current Referral: CPN, WAM

Introducer(s): BAKER, Kidani, Taniguchi



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

The Hon. Rosalyn Baker, Chair

The Hon. Brian T. Taniguchi, Vice Chair

February 5, 2014, 9:00 a.m., Room 229

**Comments: SENATE BILL 2471, RELATING TO TAXATION
SENATE BILL 3050, RELATING TO HEALTH INSURERS ASSESSMENTS**

Presented by Beth Giesting, Healthcare Transformation Coordinator, Office of the Governor

The Governor's Office appreciates the opportunity to provide comments on these two measures:

Remittance to the Connector. The process of making payments to a nonprofit corporation is unusual for the State and we continue to work with this committee to arrive at a solution that will address the Hawaii Health Connector's funding needs by January 2015. Addressing those needs may require a start-up appropriation, since establishing either a taxation or assessment process is expected to require a year or more, as noted below.

Carrying out the tax or insurer assessment. **SB 2471** assigns responsibility to the Department of Taxation for collecting a 2/3rds of 1% tax on gross premiums for sales of qualified dental and other health insurance. Alternatively, **SB 3050** imposes an assessment based on the number of individuals covered by each insurer to be collected by and in an amount prescribed by the Insurance Commissioner in response to a budget request submitted by the Connector. While arguments can be made on both sides for which agency would be most appropriate to manage these responsibilities, both estimate that it would require at least a year and up to 18 months to establish the process and collect the fees.

Whichever agency is chosen by the Legislature to carry out this program will also require additional staff and resources, an estimate for which will be developed.

We also note that a fee based on premiums would better accommodate cost inflation over time than one imposed on covered lives, which would be more static. The former strategy would need less adjustment to meet funding needs if they increase over time than the latter.

Thank you for the opportunity to comment on these measures.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, January 31, 2014
Time: 9:00 a.m.
Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2471 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 2471, but believes that the goal can be more efficiently achieved if the if the Hawaii health insurance exchange tax was collected in conjunction with the tax imposed under Chapter 431, Hawaii Revised Statutes (HRS), by the Insurance Division of the Department of Commerce and Consumer Affairs (Insurance Division).

S.B. 2471 ensures the long-term sustainability of the Hawaii health connector by levying a tax of two-thirds of one per cent on the gross health insurance premiums derived from the sale of qualified dental plans and qualified plans by insurers in the State, with certain exemptions. The measure is effective on July 1, 2014.

Currently, the Insurance Division is charged with the administration and collection matters, including audit and compliance, and any appeals therefrom, of the insurance premiums taxes levied under Chapter 431, HRS. It is the Department's understanding that the taxpayers who will be subject to the Hawaii health insurance exchange tax is the same taxpayers subject to the existing insurance premiums tax imposed under Chapter 431, HRS.

The Department currently does not the human or electronic resources required to implement a completely new tax type as currently set forth in this measure. It should be noted that the insurance premiums tax under Chapter 431, Hawaii Revised Statutes is wholly in lieu of both net income tax and general excise tax.

Furthermore, allowing the Insurance Division to administer this new tax will reduce the reporting burden on the insurance companies, who already must make periodic reports and tax payments to the Insurance Division.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:
S.B. NO. 2471, RELATING TO TAXATION.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, February 5, 2014 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
Nathan S.C. Chee Deputy Attorney General,
Randall S. Nishiyama, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments:

The federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, enabled the State of Hawaii to establish a health insurance exchange known as the Hawaii Health Connector. This bill's stated purpose is to ensure the long-term sustainability of the Hawaii Health Connector by levying a tax on the insurance premiums of qualified dental plans and qualified health benefit plans within the State.

First, in section 2 of the bill, we propose the following changes to § -2 (c) – (e) (page 3, lines 17-21, page 4, lines 1-2) to clarify the wording of the bill:

(c) The director shall deposit the ~~[taxes]~~ funds received into [a] the Hawaii health insurance exchange special fund.

(d) The director shall ~~[appropriate]~~ transfer monthly the accumulated ~~[taxes]~~ funds deposited into the Hawaii health insurance exchange special fund to the Hawaii health insurance exchange established under chapter 435H.

(e) ~~[The director shall not allocate]~~ Not more than \$15,000,000 shall be allocated to the Hawaii health insurance exchange in any calendar year.

Second, to implement the financial support of the Hawaii Health Connector, we suggest that the legislature consider statutorily designating the Hawaii Health Connector as the official State of Hawaii health insurance exchange. This action would address the constitutional

concerns raised by article VII, section 4, of the Hawaii State Constitution, that (1) prohibits the appropriation of public moneys to private parties, except for a public purpose, and that (2) no grant of public money shall be made except pursuant to standards provided by law.

We suggest that the following language be added to the bill:

SECTION . The legislature finds that the Hawaii health connector is the health insurance exchange for the State of Hawaii. The legislature also finds and declares that financial support of the Hawaii health connector is in the public interest and for the public health, safety, and general welfare of the State.

It is, therefore, the desire of the legislature that the Hawaii health connector is officially designated as the State of Hawaii health insurance exchange. This status shall be implemented through an annual appropriation from the Hawaii health insurance exchange special fund.

SECTION . The designation shall not impinge on the autonomy of the Hawaii health connector, nor imply state control over its programs or policies, except as specifically provided in this section. The comptroller and the legislative auditor shall have the authority to examine the use of state funds and shall report any findings to the legislature. The board of the Hawaii health connector shall provide an annual report not later than thirty days before the legislature convenes each regular session.

SECTION . Chapter 435H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§ 435H- Hawaii health connector. The official designation of the Hawaii health connector shall be the State of Hawaii health insurance exchange. The qualifying standards and conditions relating to the receipt of funds contained in chapter 42F shall apply to the funds received by the State of Hawaii health insurance exchange."

Third, while the bill refers to the Hawaii Health Insurance Exchange Fund, a special fund that collects the Hawaii health insurance exchange tax, the bill does not establish such as special fund. We suggest that in section 2 of the bill, a new § -3 be inserted to read as follows:

"§ -3 Hawaii health insurance exchange special fund; establishment. (a)
There is established in the state treasury the Hawaii health insurance exchange special fund, into which shall be deposited:

- (1) All revenues from the assessment of the Hawaii health insurance exchange tax; and
 - (2) Appropriations made by the legislature to the fund.
- (b) Moneys in the Hawaii health insurance exchange special fund shall be used for the following purposes:
- (1) Financial support to the Hawaii health insurance exchange, also known as the Hawaii health connector; and
 - (2) Administrative expenses of the special fund."

Fourth, the following appropriation language should be included in the bill to transfer the subject tax moneys from the Hawaii Health Insurance Exchange Special Fund to the Hawaii Health Connector:

"SECTION . There is appropriated out of the Hawaii health insurance exchange special fund the sum of \$_____ or so much thereof as may be necessary for fiscal year 2014-2015 for the Hawaii health connector. The sum appropriated shall be expended by the department of taxation for the purposes of this Act."

While we cannot guarantee that these changes will preclude potential challenges to the bill, we believe that the changes will make the bill more defensible.

We respectfully ask the Committee to consider our comments.



HAWAII HEALTH
CONNECTOR

The Honorable Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection

Re: Testimony regarding S.B. 2471, Relating to Levying a Tax on Commercial Health Insurance Premiums.

Hearing scheduled for January 31, 2014, at 9:00 a.m.

Chair Baker and members of the Committee on Commerce and Consumer Protection,

My name is Tom Matsuda, Interim Executive Director of the Hawai'i Health Connector (the "Connector"), speaking on behalf of the Connector and its Board of Directors.

The Connector Board sincerely appreciates the desire of the sponsors of SB 2471 to find an effective method to financially support the ongoing operations and sustainability of the Connector. We are grateful that members of the Legislature see the value of the Connector to provide the people of Hawai'i with an important opportunity to take advantage of changes in the health insurance marketplace, with greater access to information, enrollment, and tax credits that can make plans more affordable.

The Connector would like to be an information resource to this Committee to support the deliberations on SB 2471 so that there is a full understanding of the services we are providing to the public and the future potential of this organization to help improve healthcare in our state. In addition, we are committed to working closely with the Legislature and the State Administration to help understand the impact of the proposals in this bill on the Connector's operations, budget, and future sustainability.

We also understand that any decision on levying a tax on commercial health insurance premiums to support the Connector must be balanced against the cost impacts on consumers, businesses, issuers, and the insurance market. As part of that policy discussion, it is up to us at the Connector to improve our operations and enrollment processes, and to continually demonstrate the value of our services to the public.

Thank you for the opportunity to provide comments on this bill.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Hawaii health insurance exchange tax

BILL NUMBER: SB 2471; HB 2588 (Identical)

INTRODUCED BY: SB by Baker and 2 Democrats; HB by McKelvey, Belatti, Luke, Saiki

BRIEF SUMMARY: Adds a new chapter to the HRS to provide for the imposition of a monthly Hawaii health insurance exchange tax of two-thirds of 1% on the gross premiums derived from the sale of qualified dental plans and qualified plans by insurers beginning on July 1, 2014. Requires each insurer to pay the tax to the director of taxation who shall deposit the taxes received into a Hawaii health insurance exchange fund. This chapter shall not be applicable to: (1) Medicare supplement policies; (2) enrollees in Medicaid adult or children's health insurance programs, as determined by the department of human services under section 435H-7; and (3) the Hawaii employer-union health benefits trust fund.

Delineates requirements for the administration, payment, recordkeeping, and enforcement of the Hawaii health insurance exchange tax.

EFFECTIVE DATE: July 1, 2014

STAFF COMMENTS: While Act 205, SLH 2011, established the Hawaii Health Connector (HHC) as a nonprofit corporation, there are proposals under consideration to change the HHC into a state entity. Since the HHC is in its initial early organizational development stage, the adoption of this measure which will enact a health insurance exchange tax at this time may be premature. It should be noted that the board of directors of the HHC is currently formulating a sustainability plan for the HHC. In addition, whether the HHC becomes a state agency will also affect the amount of operational expenses necessary to keep the HHC viable.

Digested 1/30/14

**Testimony to the Senate Committee on Commerce and Consumer Protection
Friday, January, 2014 at 9:00 A.M.
State Capitol - Conference Room 229**

RE: SENATE BILL NO. 2471 RELATING TO TAXATION

Chair Baker, Vice Chair Taniguchi, and members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 2471 Relating to Taxation.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

While we understand that per federal law the Connector has to be sustainable, we would suggest that the legislature look into the operational costs of the connector before passing this bill. We are unsure that the \$15 million figure being discussed is sustainable.

Ninety percent of the cost of an employee's health care premium is paid for by the employer. Most employers would be unable to pass all of these new costs onto the consumer. Please keep in mind that this would be in addition to ACA Federal fees and taxes of 2-3%, the Connector SHOP fee of 2% and the annual inflationary increase of 7-10% each year.

Thank you for this opportunity to express our views.

HMSA



Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

January 5, 2014

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 2471 – Relating to Taxation

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2471 which would ensure the long-term sustainability of the Hawaii health connector (Connector) by levying a tax of two-thirds of one per cent on the gross health insurance premiums derived from the sale of qualified dental plans and qualified plans by insurers in the State, with certain exemptions. While HMSA appreciates the intent of this legislation, we must oppose this Bill as drafted.

HMSA concurs with the intent of this measure in creating a sustainable funding method for the Connector to continue serving a wide public interest. However, we have a concern with respect to establishing a set tax rate in statute. HMSA believes that the long-term sustainability plan for the Connector must promote efficiency in its operations and administration. Therefore, we believe that flexibility to set the fee annually is an important factor to ensuring lower costs. A set rate fixed in statute would remove the incentive to lower costs, as there would be a guaranteed income level for the Connector.

Thank you for allowing us to testify today. We look forward to working with the Committee to ensure a financially viable and efficient health insurance exchange for the people of Hawaii.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jennifer Diesman
Vice President
Government Relations

Testimony of Phyllis Dendle

Before:

Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair

January 31, 2014
9:00 am
Conference Room 229

SB 2471 RELATING TO TAXATION

Chair Baker, and committee members, thank you for this opportunity to provide testimony on SB 2471 which would ensure the long term financial sustainability of the Hawaii Health Connector by spreading the assessments for the cost of the connector over all commercial health and dental plans.

Kaiser Permanente Hawaii supports the intent of this measure but recommends some technical amendments.

If a tax will be levied, it should be levied on all commercial health insurance plans. The preamble to the bill states that a tax should be “. . . levied on all commercial health insurance premiums in the State” The bill, however, imposes the tax only on “qualified plans”, referencing the Affordable Care Act. Qualified Health Plans under the Affordable Care Act generally are plans that have been certified by an exchange. Thus, by only imposing the tax on qualified plans offering plans on the exchange, the bill only imposes a tax on plans participating in the exchange, creating an unlevel playing field, and a disincentive for health plans to participate in the exchange. (starting on Page 2 line 20 through Page 3 Line 13)

Exemptions from the tax should also be applied across the board. Exemptions are addressed in Section 2 (page 4 Line 3) and Section 3 and (pages 13-14) of the bill. Medicare Supplement plans are exempted from taxation. In addition to Medicare Supplement plans, Medicare Advantage plans should also be exempted from taxation.

Also nonprofit medical, hospital indemnity associations are also exempted from taxation . If such associations will be exempted from taxation under the bill, other tax exempt, nonprofit organizations that provide medical and hospital services, such as Kaiser Foundation Health Plan, Inc., should also be afforded an exemption from taxation under the bill so as to create a level playing field for tax purposes.

Thank you for your consideration.

SB2471

Submitted on: 1/30/2014

Testimony for CPN on Jan 31, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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