

JAN 20 2017

S.B. NO. 686

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# A BILL FOR AN ACT

RELATING TO EDUCATION FUNDING.

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

1           SECTION 1. The legislature finds that article X,  
2 section 1, of the Constitution of the State of Hawaii requires  
3 the State to provide a system of public education. Compared to  
4 other states, Hawaii is unique because the State, rather than a  
5 county or local level jurisdiction, is responsible for public  
6 education. As a result, funding for public education in Hawaii  
7 is primarily sourced from the general fund of the State.

8           The legislature further finds that public education in  
9 Hawaii is not adequately funded. Compared to school districts  
10 of similar size in other states, Hawaii ranks two hundred twenty  
11 seventh in per-pupil funding before adjusting for cost of  
12 living. At \$11,823 per child, Hawaii education spending trails  
13 major private schools, which average \$15,173 in per-pupil  
14 spending. Hawaii also ranks last nationally in capital  
15 improvement expenditures for public schools, appropriating about  
16 \$300 per pupil, compared to averages in other states of \$1,200  
17 to \$1,500.



1           The legislature additionally finds that in December 2015,  
2 the United States Congress passed the Every Student Succeeds Act  
3 (ESSA), which provides states with increased flexibility in  
4 limiting the amount of time students spend taking and preparing  
5 for standardized testing, designing teacher evaluations that  
6 support professional practice, and implementing curricula  
7 associated with individual state standards. To realize the  
8 promise of the ESSA, Hawaii's school system must be better  
9 funded. Currently, the United States Department of Education  
10 considers over seventy per cent of Hawaii's public schools to be  
11 Title I schools. A majority of public school students are now  
12 considered "high-needs" students, meaning the student qualifies  
13 for free or reduced price lunch, is an English language learner,  
14 or is a special education student. Hawaii public school  
15 facilities average sixty-one years in age, with the average  
16 school building being forty-four years old and fifty-three  
17 buildings being over one-hundred years in age. After adjusting  
18 for the high cost of living in Hawaii, teachers are faced with  
19 the lowest pay in the United States. Hawaii ranks fifty-first  
20 out of fifty states and the District of Columbia in starting and



1 median teacher salaries adjusted for cost of living, according  
2 to a 2016 study performed by WalletHub.com.

3 The legislature also finds that chronic underfunding of  
4 public schools undermines the state's goal of providing a  
5 quality education to all of Hawaii's children. Insufficient  
6 education funding results in delayed repairs to school  
7 facilities, overheated classrooms, higher class sizes, a lack of  
8 adequate classroom supplies, elimination of arts and career and  
9 technical education courses, budget cuts for special education  
10 and English language learner programs, and an increasing number  
11 of vacant teacher positions statewide. It is necessary to  
12 develop a new means of funding Hawaii's public education system  
13 to ensure that the State will be able to prepare children to  
14 meet the social and economic demands of the twenty first  
15 century.

16 The purpose of this Act is to implement a constitutional  
17 amendment permitting the legislature to establish a surcharge on  
18 visitor accommodations and residential investment properties to  
19 fund the most urgent needs of the department of education,  
20 including recruiting and retaining highly qualified teachers,  
21 lowering class sizes, improving special education staffing and



1 resources, and growing the number of career and technical  
2 education and arts courses offered statewide.

3 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is  
4 amended by adding a new part to be appropriately designated and  
5 to read as follows:

6 "PART . EDUCATION SURCHARGE ON RESIDENTIAL INVESTMENT  
7 PROPERTY AND VISITOR ACCOMMODATIONS

8 §302A-A Definitions. As used in this part:

9 "Consumer price index" means the national consumer price  
10 index average over a twelve-month period that is published  
11 monthly by the United States Department of Labor's Bureau of  
12 Labor Statistics as the "National Consumer Price Index for All  
13 Urban Consumers-United States City Average".

14 "Inflation-adjusted minimum level of funding" means the  
15 total amount of funding provided to the department in the fiscal  
16 year 2016-2017; provided that this amount shall increase by  
17 three per cent for each subsequent fiscal year.

18 "Operator" means any person, corporation, copartnership,  
19 company, or other private business entity that operates one or  
20 more visitor accommodations, whether as owner or proprietor or  
21 as lessee, sublessee, mortgagee in possession, licensee, or



1 otherwise, or engaging or continuing in any service business  
2 that involves the furnishing of visitor accommodations.

3 "Plan manager" shall have the same meaning as in section  
4 237D-1.

5 "Property" shall have the same meaning as in section 248-1.

6 "Residential investment property" means and includes all  
7 land and appurtenances thereof and the buildings, structures,  
8 fences, and improvements erected on or affixed to the same, and  
9 any fixture which is erected on or affixed to such land,  
10 buildings, structures, fences, and improvements, including all  
11 machinery and other mechanical or other allied equipment and the  
12 foundations thereof, and including apartments and condominiums,  
13 that is dedicated for residential use for which the owner does  
14 not qualify for a homeowner's exemption.

15 "Tax year" means the fiscal year beginning July 1 of each  
16 calendar year and ending June 30 of the following calendar year.

17 "Visitor accommodation" means and includes all transient  
18 accommodations pursuant to section 237D-1, resort time share  
19 vacation units pursuant to section 237D-1, and any other  
20 dwelling or lodging located in the State and let by an owner or  
21 operator for less than one hundred eighty days. Visitor



1 accommodations shall not include any facility owned or used by a  
2 government agency, school or college dormitory, homeless  
3 facility pursuant to section 346-361, or tenement home, group  
4 home, group residence, group living arrangement, boarding house,  
5 certified pursuant to section 445-94.

6           **§302A-B Education surcharges on residential investment**  
7 **property and visitor accommodations; establishment; purpose.**

8 (a) There is established an education surcharge on residential  
9 investment property and an education surcharge on visitor  
10 accommodations in the State of Hawaii. The purpose of the  
11 education surcharges is to increase funding for the department  
12 to provide a quality public education to all of Hawaii's  
13 children. Revenue generated by the education surcharges may be  
14 used for:

- 15           (1) Recruiting and retaining public school teachers;
- 16           (2) Lowering public school class sizes;
- 17           (3) Improving special education staffing and resources;
- 18           and
- 19           (4) Offering additional instruction in career and  
20           technical education, visual arts, music, theatre,



1 dance, Hawaiian and Polynesian studies, and Hawaiian  
2 language.

3 (b) Revenue generated by the education surcharges on  
4 residential investment property and visitor accommodations shall  
5 be placed in the quality education special fund and shall be in  
6 addition to all other funds appropriated for the department.  
7 Moneys budgeted for the department from sources of funding other  
8 than the quality education special fund, including for capital  
9 improvement projects, shall remain equal to or greater than the  
10 inflation-adjusted minimum level of funding, except when the  
11 consumer price index for the twelve-month period ending June 30  
12 of the preceding calendar year is less than zero.

13 **§302A-C Applicability.** (a) There shall be levied,  
14 assessed, and collected an education surcharge on residential  
15 investment property and an education surcharge on visitor  
16 accommodations as provided in this part. With respect to the  
17 surcharges, the superintendent of education shall have all the  
18 rights and powers provided under this part.

19 (b) The education surcharges on residential investment  
20 property and visitor accommodations shall be imposed statewide  
21 on all:



1 (1) Residential investment properties; and

2 (2) Visitor accommodations, regardless of occupancy.

3 (c) A corporation, copartnership, company, or other  
4 private business entity that owns or operates residential  
5 investment property or one or more visitor accommodations shall  
6 be subject to any applicable surcharge established by this part.  
7 Property of a corporation, copartnership, company, or other  
8 private businesses shall be assessed the surcharge under its  
9 corporate or firm name.

10 (d) A person or private business that is a wholly owned  
11 subsidiary or acting as an agent or on behalf of a corporation  
12 having its principal place of business outside of Hawaii shall  
13 be subject to any applicable surcharge on residential investment  
14 property established by this part.

15 (e) Every personal representative, trustee, guardian, or  
16 other fiduciary shall be responsible for the performance of all  
17 such acts required by this part with respect to any applicable  
18 surcharge on residential investment property or visitor  
19 accommodations in their fiduciary capacity and shall be liable  
20 for the payment of a surcharge on residential investment  
21 property or visitor accommodations held in the fiduciary's





1 capacity, but shall not be personally liable and may retain, out  
 2 of the money or other property which may be obtained in the  
 3 fiduciary's capacity, so much as may be necessary to pay the  
 4 surcharge, recoup the payment thereof, or recover the amount  
 5 paid from the beneficiary to whom property or visitor  
 6 accommodations subject to a surcharge pursuant to this part have  
 7 been distributed.

8 (f) No education surcharge shall be established upon any  
 9 property that is not subject to property taxation or that is  
 10 otherwise exempt under this part.

11 (g) The penalties provided by section 231-39 for failure  
 12 to file a tax return shall be imposed on the amount of the  
 13 applicable education surcharge for failure to file a return  
 14 pursuant to section 302A-D(f), failure to pay, file appropriate  
 15 documentation with regard to, or correctly report the amount of  
 16 the surcharge.

17 **§302A-D Education surcharge on residential investment**

18 **property; levy; assessment.** (a) There is levied and shall be  
 19 assessed and collected each year on all residential investment  
 20 property in the State of Hawaii a surcharge as follows:

21 Property value Surcharge per \$1,000 of total property value



1	Under \$500,000	\$3.50
2	\$500,000 under \$750,000	\$4.50
3	\$750,000 under \$1,000,000	\$5.50
4	\$1,000,000 under \$2,000,000	\$6.50
5	\$2,000,000 and over	\$7.50

6 (b) The education surcharge on residential investment  
7 property shall be imposed on the most recent valuation that is  
8 assessed by the county where the property is located for the  
9 purpose of determining the annual county property tax liability.

10 (c) For the purposes of this part, life tenants, personal  
11 representatives, trustees, guardians, or other fiduciaries may  
12 be; and persons holding government property under an agreement  
13 for the conveyance of the same to such persons shall be,  
14 considered as owners during the time any residential investment  
15 property is held or controlled by them as such, including:

- 16 (1) Lessees holding under any government lease during the  
17 time any residential investment property is held;
- 18 (2) Any tenant occupying government land for a period of  
19 one year or more;
- 20 (3) Persons holding any residential investment property  
21 under an agreement to purchase the same;



1 (4) Persons holding any residential investment property  
2 under a lease for a term to last during the lifetime  
3 of the lessee; and

4 (5) Persons bearing tax liability on the property during  
5 the time period for which an educational surcharge on  
6 the property has been assessed.

7 **§302A-E Education surcharge on residential investment**

8 **property; notice and returns.** (a) Notices of the amount of the  
9 education surcharge on residential investment property shall be  
10 transmitted by each county through the United States mail to any  
11 property owner subject to the education surcharge. Notice of  
12 the surcharge amount shall be transmitted no later than  
13 October 31 of each calendar year to the owner's last known  
14 address or place of business.

15 (b) Each county shall by ordinance permit an owner to pay  
16 the education surcharge in the same manner provided for the  
17 payment of real property taxes.

18 (c) Whenever any county director of finance finds that  
19 there is not sufficient evidence to form sound appraisal of a  
20 residential investment property, for assessment purposes, of the  
21 value of the property or properties, or portions thereof, it may



1 require an owner to file a return within thirty days.  
2 Consideration of and liability for a return, including in  
3 determining the fair market value of a property or properties,  
4 shall made in the same manner and with the same limitations as  
5 for real property tax returns in the county in which the  
6 property is located.

7 (d) All returns made under this section shall be open to  
8 inspection by the public, and shall be admissible in evidence  
9 against the owner making the return, in any state court in any  
10 action wherein the value of the residential investment property,  
11 or portion thereof, covered by the return, may be in dispute.

12 (e) No owner shall be deemed to be aggrieved by any  
13 assessment made upon the owner's property that is based upon the  
14 opinion of value set forth in the owner's return unless the  
15 owner shows lack of uniformity or inequality as set forth in  
16 section 232-3.

17 (f) Failure to file a return required under this section  
18 shall render the owner liable for payment of an additional sum  
19 equal to the sum defined in and prescribed for failure to file a  
20 tax return under section 231-39(b)(1).



1 (g) If any return is sent by United States registered or  
2 certified mail, a record authenticated by the United States  
3 Postal Service of the registration or certification shall be  
4 considered evidence that the return was delivered to the county  
5 director of finance. The date of registration or certification  
6 shall be deemed the postmarked date for filing purposes.

7 (h) Each county director of finance shall make publicly  
8 available a form for a return related to the education surcharge  
9 on residential investment property for use in collecting the  
10 education surcharge.

11 **§302A-F Education surcharge on residential investment**  
12 **property; appeals.** (a) Any owner of residential investment  
13 property who is aggrieved by an assessment used to determine the  
14 amount of the education surcharge on residential investment  
15 property for any year or by a refusal to be granted an exemption  
16 from the education surcharge may appeal from such assessment in  
17 the manner provided in the case of real property tax appeals.

18 (b) Each of the counties shall by ordinance provide for  
19 appeals from assessments used to determine the amount of the  
20 education surcharge and denial of an exemption in the same  
21 manner as provided in the case of real property tax appeals.



1 (c) Any county decision on an appeal for relief or  
2 exemption from the education surcharge may be appealed to the  
3 tax appeal court as provided in chapter 232.

4 **§302A-G Education surcharge on visitor accommodations;**  
5 **levy; assessment.** (a) There is levied and shall be assessed  
6 and collected each year on all visitor accommodations in the  
7 State of Hawaii a surcharge.

8 (b) The surcharge shall be:

9 (1) \$3 per day for each visitor accommodation furnished by  
10 an operator or plan manager at a cost of less than  
11 \$150 per day; and

12 (2) \$5 per day for each visitor accommodation furnished by  
13 an operator or plan manager at a cost of \$150 per day  
14 or greater.

15 (c) On or before the final day of each calendar month,  
16 every operator or plan manager subject to an education surcharge  
17 on visitor accommodations during the preceding calendar month  
18 shall file a sworn return with the director of finance shall  
19 prescribe together with a remittance for the amount of the  
20 surcharge required by this section.



1           (d) Notwithstanding subsection (c), the director of  
2 finance, for good cause and in writing, may permit an operator  
3 or plan manager to file a return required by this section and  
4 make payments thereon:

5           (1) On a quarterly basis during the calendar or fiscal  
6 year, the return and payment to be made on or before  
7 the final day of the calendar month after the close of  
8 each quarter; or

9           (2) On a semiannual basis during the calendar or fiscal  
10 year, the return and payment to be made no later than  
11 the final day of the calendar month after the close of  
12 each six-month period;

13 provided that the director of finance is satisfied that the  
14 grant of the permit will not unduly jeopardize the collection of  
15 the surcharge due thereon or the operator's or plan manager's  
16 total surcharge liability.

17           (e) The director of finance, for good cause and in  
18 writing, may permit an operator or plan manager to make monthly  
19 payments based on the operator's or plan manager's estimated  
20 quarterly or semiannual surcharge liability; provided that the  
21 operator or plan manager files a reconciliation return at the



1 end of each quarter or each six-month period during the calendar  
2 or fiscal year.

3 (f) If an operator or plan manager filing a return on a  
4 quarterly or semiannual basis, as provided in this section,  
5 becomes delinquent in either the filing of the return or the  
6 payment of the surcharge due thereon, or if the liability of an  
7 operator or plan manager who possesses a permit to file a return  
8 and make payments on a quarterly or semiannual basis exceeds  
9 \$5,000 during the calendar year, or if the director of finance  
10 determines that any such quarterly or semiannual filing of  
11 return would unduly jeopardize the proper administration of this  
12 part, including the assessment or collection of the education  
13 surcharge on visitor accommodations, the director of finance, at  
14 any time, may revoke an operator's or plan manager's permit, in  
15 which case the operator or plan manager shall then be required  
16 to file an immediate return and make payments thereon as  
17 provided in subsection (c).

18 (g) Payments collected by the department under this  
19 section shall be deposited into the quality education special  
20 fund established by section 302A-K.





1           §302A-H Education surcharge on residential and investment  
2 property; disposition of proceeds. (a) The education surcharge  
3 on residential investment property shall be collected by the  
4 counties in accordance with this section. All moneys collected  
5 by the counties pursuant to the establishment of the education  
6 surcharge shall be paid into each county's treasury within ten  
7 working days after collection and shall be placed by each  
8 county's director of finance in special accounts. Out of the  
9 revenues generated by the education surcharge paid into each  
10 respective county treasury special account, the director of  
11 finance of each county shall deduct five per cent of the gross  
12 proceeds of a respective county's education surcharge collection  
13 to reimburse the county for the costs of assessment, collection,  
14 and disposition of the education surcharge incurred by the  
15 county.

16           (b) The amounts deducted for costs of assessment,  
17 collection, and disposition of the education surcharge shall be  
18 withheld from payment to the State by the counties out of the  
19 revenue generated by the education surcharge for the current  
20 calendar year.



1 (c) For the purpose of this section, the costs of  
2 assessment, collection, and disposition of the education  
3 surcharge shall include any and all costs, direct or indirect,  
4 that are deemed necessary and proper to effectively administer  
5 this part.

6 (d) After the deduction and withholding of the costs under  
7 subsections (a) and (c), the director of finance of each county  
8 shall, on a quarterly basis, pay the remaining balance of  
9 revenue collected under the education surcharge to the state  
10 director of finance. The quarterly payments shall be made after  
11 the education surcharge has been paid into the county treasury  
12 special accounts and after the disposition of any appeal.

13 (e) Education surcharge payments received by the state  
14 director of finance from the counties shall be deposited into  
15 the quality education special fund established by section 302A-  
16 K.

17 **§302A-I Exemptions.** (a) This part shall not apply to:

18 (1) Property rented for an amount no greater than \$1,500  
19 per month, not including any applicable maintenance  
20 fees, utility fees, and service charges;



- 1           (2) Property rented to a person or household whose income  
2                   level would qualify the person or household for the  
3                   federal public housing program;
- 4           (3) Property rented to a person or household receiving  
5                   rental assistance through the state rent supplement  
6                   program pursuant to section 356D-151;
- 7           (4) Property rented to a resident aged sixty-five years or  
8                   older, provided that the resident's annual income is  
9                   less than \$75,000;
- 10          (5) Property leased, purchased, or otherwise obtained by a  
11                   lessee, tenant, purchaser, or homesteader under the  
12                   Hawaiian Homestead Act of 1920, or a lease of land  
13                   made for a term of nine hundred and ninety-nine years  
14                   under provisions of law which were repealed by section  
15                   3 of Joint Resolution 12, Session Laws of 1949,  
16                   ratified by the Congress of the United States by the  
17                   Act of September 1, 1950;
- 18          (6) Property rented to a person who is blind, deaf, or  
19                   totally disabled as those terms are defined in section  
20                   235-1; provided that the person's blindness, deafness,  
21                   or total disability shall be verified by a licensed



- 1           physician, ophthalmologist, optometrist, or  
2           otolaryngologist;
- 3           (7) Property rented to a totally disabled veteran;
- 4           (8) Property used exclusively for charitable purposes,  
5           including property used for church purposes and  
6           cemeteries that are maintained by a religious  
7           organization;
- 8           (9) Property used for school purposes including:
- 9           (A) Prekindergarten facilities, including any  
10           property used to administer the executive office  
11           on early learning public prekindergarten program  
12           under section 302L-7;
- 13           (B) Kindergartens, grade schools, junior high  
14           schools, and high schools, which carry on a  
15           program of instruction meeting the requirements  
16           of compulsory school attendance pursuant to  
17           section 302A-1132; and
- 18           (C) Colleges or junior colleges offering a general  
19           program of instruction;
- 20           (10) Property owned by a nonprofit corporation to which  
21           admission is restricted by corporate charter to



1 members of a labor union or government employees'  
2 association, one of the primary purposes of which is  
3 to improve employment conditions of its members;

4 (11) Property dedicated to public use by the owner, which  
5 dedication has been accepted by the State or any  
6 county, reduced to writing, and recorded in the bureau  
7 of conveyances;

8 (12) Property that has been set aside for public use for a  
9 period of not less than ten years after enactment of  
10 this section; and

11 (13) Property owned by any entity granted a transient  
12 accommodations tax exemption under section 237D-3.

13 (b) No exemption from this part shall be allowed to any  
14 corporation, copartnership, company, or other private business  
15 entity, unless otherwise specified by law.

16 (c) An exemption shall only be granted for property or a  
17 visitor accommodation for which every owner or ownership  
18 interest qualifies for one or more exemptions provided by this  
19 section.

20 **§302A-J Enforcement.** (a) The superintendent of education  
21 shall administer and enforce this part; provided that each



1 county director of finance and the state director of finance, as  
2 applicable, shall administer and enforce:

3 (1) The examinations of books and records by any person or  
4 private entity subject to the education surcharge on  
5 residential investment property or the education  
6 surcharge on visitor accommodations; and

7 (2) Procedure and powers upon failure or refusal by a  
8 person or private entity to file a return, sworn  
9 return, or proper return.

10 (b) The department may contract with any state or county  
11 department or agency for the purposes of implementing or  
12 enforcing this part.

13 (c) The superintendent of education shall adopt, amend, or  
14 repeal rules under chapter 91 to carry out this part.

15 **§302A-K Quality education special fund.** (a) There is  
16 established within the state treasury a special fund to be known  
17 as the quality education special fund to be administered by the  
18 department and into which shall be deposited:

19 (1) The proceeds of the education surcharge on residential  
20 investment property established under section 302A-D;



1           (2) The proceeds of the education surcharge on visitor  
2 accommodations established under section 302A-G;

3           (3) All other funds received by the department and legally  
4 available for the purposes of the quality education  
5 special fund; and

6           (4) Interest accrued on all amounts in the quality  
7 education special fund.

8           (b) The quality education special fund shall not be  
9 subject to sections 36-27, 36-30, and 37-53. Expenditures from  
10 the special fund shall be subject to sections 37-31, and 37-33  
11 through 37-40. Funds that are credited and transferred back to  
12 property owners from the special fund shall not be considered  
13 income and shall not be subject to state or county taxes.

14           (c) Moneys in the quality education special fund shall be  
15 allocated by the legislature through appropriations out of the  
16 special fund, in consultation with the department and the  
17 exclusive representatives of any appropriate bargaining units,  
18 for the purposes of:

19           (1) Recruiting and retaining public school teachers;

20           (2) Lowering public school class sizes;



1 (3) Improving special education staffing and resources;  
2 and

3 (4) Offering additional instruction in career and  
4 technical education, arts, music, theatre, dance,  
5 Hawaiian studies, and Hawaiian language.

6 (d) All amounts in the quality education special fund  
7 shall be exempt from all taxes and surcharges imposed by the  
8 State or the counties.

9 (e) No later than twenty days prior to the convening of  
10 each regular session, the department shall post on the  
11 department's website a report containing an accounting of the  
12 receipts of and expenditures from the quality education special  
13 fund. The legislature shall provide to the department any  
14 information necessary to complete and post the report required  
15 by this section."

16 SECTION 3. In codifying the new sections added by section  
17 2 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20 SECTION 4. This Act shall take effect upon ratification of  
21 the constitutional amendment proposed in S.B. No. , Regular





1 Session of 2017, permitting the legislature to establish a  
2 surcharge on residential investment properties and visitor  
3 accommodations to fund public education.

4

INTRODUCED BY: Michelle R. Tidoni

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*Will Eyo*

*Karl Rhoad*

*Mike Gebbard*

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# S.B. NO. 686

**Report Title:**

Education Surcharge; Residential Investment Properties; Visitor Accommodations

**Description:**

Establishes an education surcharge on residential investment properties and visitor accommodations for the purpose of funding public education.

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

