

Honolulu, Hawaii

FEB 14 2013

RE: S.B. No. 1249
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1249 entitled:

"A BILL FOR AN ACT RELATING TO THE COMPENSATION OF TRUSTEES,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify the law
relating to trustee compensation. Specifically, this measure:

- (1) Allows the trustee and beneficiaries to agree on a higher compensation without requiring the approval of the court;
- (2) Entitles corporate trustees to fees under their published fee schedules instead of the fee schedule under statute;
- (3) Establishes a tiered annual principal fee that decreases for larger estates and makes adjustments for inflation;
- (4) Clarifies who is entitled to inception and termination fees, how and when these fees are calculated, and when these fees are to be paid; and
- (5) Allows the trustee and beneficiaries to agree on special service fees without seeking court approval.



Your Committee received testimony in support of this measure from the individual attorney members serving on the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices.

Your Committee finds that many Hawaii residents have revocable living trusts to help manage their affairs if they become incapacitated and provide for the disposition of their assets at death. While the settlor of a revocable trust usually serves as trustee until incapacity or death, the trust document designates successor trustees who will then manage the assets for the settlor and the settlor's beneficiaries. Most trusts provide that the trustee is entitled to reasonable compensation but do not specify a dollar amount or other formula to determine reasonable compensation.

The compensation set forth under existing law is deemed to be reasonable. However, while the settlor and trustee may negotiate for higher compensation, the beneficiaries of an irrevocable trust are not allowed to do the same. This measure allows the trustee and beneficiaries to agree on a higher compensation without requiring the approval of the court, thereby reducing the need for court intervention.

Second, the statutory fee schedule under existing law may not be appropriate for a corporate trustee that has various departments and staff providing trust services. Because there is competition in the marketplace, the reasonableness of a corporate trustee's fees can be determined by the market where the consumer is able to use another trust company if the consumer determines that a corporate trustee's charge for services is too high. This measure entitles corporate trustees to fees under their published fee schedules instead of the fee schedule under statute.

Third, under existing law, a trustee is entitled to a one-half percent annual principal fee on all assets no matter the size of the estate and does not include an inflation provision. This measure provides a tiered annual principal fee that decreases as the estate becomes larger. The annual principal fee is also adjusted for inflation.

Fourth, existing law provides for a one percent inception fee and a one percent termination fee. There have been many disputes regarding who is entitled to these fees, how and when these fees are calculated, and when these fees are to be paid. This measure clarifies that the one percent inception fee is to be paid to the



first non-settlor trustee and to the first new trustee of any other trust created after the settlor's death or under the terms of the administrative trust in order to prevent payment of multiple inception fees to multiple successor trustees. Furthermore, this measure clarifies that the one percent termination fee is based upon the value of the trust assets as of the date the trust instrument states that the trust terminates; not as of the date the final trust distribution is made.

Lastly, existing law requires court approval of all special service fees. A trustee is entitled to extra fees for special services, such as preparing tax returns, buying or selling real estate, and handling litigation. This measure allows the trustee and beneficiaries to agree on special service fees without seeking court approval, thereby reducing the need for court intervention.

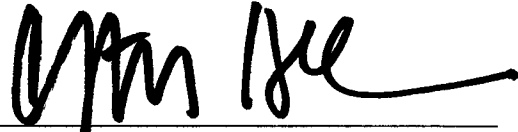
Your Committee has amended this measure by adopting the amendments proposed by the individual attorney members serving on the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices by:

- (1) Clarifying that the tiered annual principal fee schedule is in ascending order by size of the trust;
- (2) Inserting an effective date of January 1, 2014, to recognize that most trusts account on a calendar year basis; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1249, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1249, S.D. 1, and be referred to the Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 1249	Committee Referral: JDL, WAM	Date: 01-31-2013		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312				
<input checked="" type="checkbox"/> Pass, with amendments 2311				
<input type="checkbox"/> Hold 2310				
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les				✓
SLOM, Sam	✓			
TOTAL	4			1
Recommendation:				
<input checked="" type="checkbox"/> Adopted				
<input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes