Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 7, 2014, the following bill was signed into law:

SB1249 SD2 HD1 RELATING TO THE COMPENSATION OF TRUSTEES
ACT 212 (14)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii
A BILL FOR AN ACT

RELATING TO THE COMPENSATION OF TRUSTEES.

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

SECTION 1. The purpose of this Act is to clarify current state law relating to trustee compensation. Certain ambiguities in the law have caused disputes between beneficiaries and trustees, which have resulted in litigation.

The purpose of this Act is to:

(1) Clarify trustee compensation;

(2) Provide a compensation system that is predictable and fair to beneficiaries and trustees;

(3) Reduce issues that require court intervention; and

(4) Minimize the legal fees and costs connected with court intervention.

SECTION 2. Section 607-18, Hawaii Revised Statutes, is amended to read as follows:

"607-18 [Fees-and-expenses] Compensation of trustees. (a) Unless the trust instrument otherwise provides, or the settlor and trustee otherwise agree, or, after the settlor's death, all the beneficiaries and the trustee otherwise agree, the trustee shall be entitled to the compensation set forth in..."
this section and the compensation shall be deemed to be reasonable. For good cause shown, the court may also approve any other fee arrangement that it deems reasonable.

(b) Banks and trust companies serving as trustees shall be entitled to reasonable compensation, which may be set forth in their published fee schedules and may be amended from time to time; provided that advance written notice of any amendment to the fee schedule is provided to the settlor or, after the settlor's death, to all beneficiaries.

(c) Except as provided in subsection (a), individuals serving as trustees shall be entitled to the following compensation:

(1) Compensation Upon Inception of the Trust:

(A) One per cent based upon the gross fair market value of the trust assets on the date of the trustee's acceptance shall be payable to the first trustee who is not the settlor of the trust; and

(B) One per cent based upon the gross fair market value of the trust assets of the trust created under the revocable living or administrative trust on the date of the trustee's acceptance.
shall be payable to the first trustee of any
trust created under a revocable living trust
after the settlor's death or other administrative
trust; provided that the trustee shall not also
be the trustee of the revocable living trust or
administrative trust that is the source of
funding for the newly-created trust;
provided that if more than one individual serves as
trustee, then the compensation shall be divided
equally between the then-acting trustees unless
otherwise agreed by the trustees. If one or more
individuals are serving as co-trustees with a bank or
trust company, then the individual trustees shall be
entitled to fifty per cent of the compensation
provided for under this paragraph described herein,
which shall be divided among the then-serving
individual co-trustees as they may agree. A bank or
trust company serving as co-trustee shall be entitled
to the compensation described in subsection (b).

(2) Annual Compensation:

[A] Upon all moneys and other property received in
the nature of revenue or income of the [estate,]
trust, such as rents, interest, dividends, and
general profits, [trustees, except trustees of a
eharitable trust, shall be allowed as commissions
payable-out] five per cent of the income received
during each year[7] shall be payable to the
trustee, [seven per cent for the first $5,000 and
five per cent for all over $5,000 the commissions
to-be-payable] as and when the income is
received[,- but not more often than once a year.]

(B) Upon the principal [of the estate, trustees shall
be allowed as commissions one per cent on the
value at the inception of the trust payable at
the inception out of the principal, one per cent
on the value of all or any part of the estate
upon final distribution payable at the
termination out of the principal, and two and
one-half per cent upon all cash principal
received after the inception of the trust and
neither being nor representing principal upon
which the two and one-half per cent has
previously at any time been charged, payable at
the receipt out of the principal, and two and
one-half per cent upon the final payment of any cash principal prior to the termination of the trust, payable at the final payment out of the principal, and in addition thereto five tenths of one per cent on the value at the expiration of each year during the continuance of the trust payable annually out of the principal, provided that such five tenths of one per cent on the principal shall not apply to charitable trusts, nor to the extent the trustee has employed others to perform bookkeeping and clerical services at the expense of the estate as permitted by the trust document or as provided in section 554A-3.

(c) Such further allowances to trust, the trustee shall be compensated no more than once per quarter, based on the following:

(i) One-half of one per cent of the first $5,000,000;

(ii) One-third of one per cent of the next $3,000,000;

(iii) One-fifth of one per cent of the next $2,000,000; and
(iv) One-tenth of one per cent of assets in excess of $10,000,000, based upon the gross fair market value of the principal assets as of the first business day of the trust's fiscal year;

(C) Notwithstanding subparagraphs (A) and (B), a trustee shall be entitled to a minimum total annual compensation of $3,000; and

(D) The threshold dollar amounts in subparagraph (B) and the dollar amounts in subparagraph (C) shall be increased by an amount equal to (i) the dollar amount from subparagraph (B) or (C), as applicable, multiplied by (ii) a cost-of-living adjustment with changes in the Consumer Price Index (CPI) using the year 2014 as the base. The "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U); for the Honolulu area - All Items, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported,
the term means the substitute index chosen by a
court of competent jurisdiction. If any amount
as adjusted is not a multiple of $10,000, such
amount shall be rounded down to the next lowest
multiple of $10,000;

(3) Compensation Upon Termination of the Trust:
One per cent based upon the gross fair market value of
the trust assets as of the termination date of the
trust pursuant to the terms of the trust, shall be
payable to the trustee at any time after the
termination date, up to and including the date the
trust assets are finally distributed; and

(4) Special Service Fees:
Further compensation may be made as the court deems
just and reasonable for services performed in
connection with assuming the trusteeship, sales or
leases of real estate, contested or litigated claims
against the estate, the adjustment and payment of
extensive or complicated estate or inheritance taxes,
the preparation of estate and income tax returns, the
carrying on of the decedent's business pursuant to an
order of court or under the provisions of any will,
litigation in regard to the property of the estate,
and such other special services as may be necessary
for the trustee to perform, prosecute, or defend[—
All contracts between a trustee and a beneficiary
other than the creator of the trust, for higher
compensation than is allowed in this section shall be
void]; provided that if all of the beneficiaries
agree to the trustee's special service fees, then
court approval shall not be required.

(d) For purposes of any agreement between the trustee and
the beneficiaries regarding the trustee's compensation, the
agreement shall be binding upon incapacitated, minor, unborn,
and unascertained beneficiaries if the applicable provisions of
section 560:1-403(2)(B) and (C) are satisfied.

(e) The following terms, or comparable language in the
provisions of a trust, unless otherwise limited or modified,
authorize compensation to the trustee under this section:
"reasonable compensation", "compensation in accordance with
applicable law", "compensation", "reasonable compensation
commensurate with the services performed", and "statutory
compensation".
[({d}-] (f) This section shall apply as well to future accounting in existing [estates] trusts as well as to new [estates] trusts. This section shall not apply to charitable trusts."

SECTION 3. This Act shall not be construed to limit the rights of interested persons to petition the court for review under article VII of chapter 560, Hawaii Revised Statutes.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2015.

APPROVED this 7 day of JUL, 2014

[Signature]
GOVERNOR OF THE STATE OF HAWAII