June 19, 2015

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai‘i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai‘i 96813

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

This is to inform you that on June 19, 2015, the following bill was signed into law:

HB26 HD1 SD1 CD1 RELATING TO THE COMPENSATION OF TRUSTEES  
ACT 133 (15)

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai‘i
A BILL FOR AN ACT

RELATING TO THE COMPENSATION OF TRUSTEES.

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

SECTION 1. Section 607-18, Hawaii Revised Statutes, is amended to read as follows:

"§607-18 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, trust companies, and individuals who in the ordinary course of business serve as fiduciaries shall, when serving as trustees, 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 who are vested at the time of the notice.

(c) Except as provided in subsections (a) and (b), 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 trust,
such as rents, interest, dividends, and general
profits, five per cent of the income received
during [each] the year shall be payable to the
trustee, [as and when the income is received,] and paid not more than once per quarter;

(B) Upon the principal 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; and

(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) Compensation for Special [Service-Fees+] Services:
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;
provided that if all of the beneficiaries agree to the
trustee's compensation for special [service-fee+] services, then court approval shall not be
required[−].
provided that if more than one individual serves as trustee,
then the compensation due pursuant to paragraphs (1), (2), and
(3), as applicable, shall be divided equally between the then-
acting trustees, unless otherwise agreed by the trustees. If
one or more individuals are serving as trustees with a bank or
trust company, then the individual trustees shall be entitled to
fifty per cent of the compensation due pursuant to paragraphs
(1), (2), and (3), as applicable, which shall be divided among
the then-serving individual trustees as they may agree. An
individual who in the ordinary course of business serves as a
fiduciary, serving together with one or more individuals as
trustees, or a bank or trust company serving together with one
or more individuals as trustees, shall be entitled to the
compensation described in subsection (b).

(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".

(f) This section shall apply to future accounting periods of existing trusts as well as to new trusts. This section shall not apply to charitable trusts."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

APPROVED this 19 day of JUN 2015

GOVERNOR OF THE STATE OF HAWAII