**S.B. NO.** <sup>1249</sup> S.D. 2 H.D. 1

S.D. 2 H.D. 1 PROPOSED

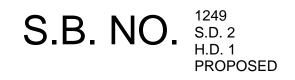
# A BILL FOR AN ACT

RELATING TO THE COMPENSATION OF TRUSTEES.

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

1	SECTION 1. The purpose of this Act is to clarify current			
2	state law relating to trustee compensation. Certain ambiguities			
3	in the law have caused disputes between beneficiaries and			
4	trustees, which have resulted in litigation.			
5	The purpose of this Act is to:			
6	(1) Clarify trustee compensation;			
7	(2) Provide a compensation system that is predictable and			
8	fair to beneficiaries and trustees;			
9	(3) Reduce issues that require court intervention; and			
10	(4) Minimize the legal fees and costs connected with court			
11	intervention.			
12	SECTION 2. Section 607-18, Hawaii Revised Statutes, is			
13	amended to read as follows:			
14	"§607-18 [ <del>Fees and expenses</del> ] <u>Compensation</u> of trustees.			
15	(a) Unless the trust instrument otherwise provides, or the			
16	settlor and trustee otherwise agree, or, after the settlor's			
17	death, all the beneficiaries and the trustee otherwise agree,			
18	the trustee shall be entitled to the compensation set forth in			
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this sect:	ion a	nd the compensation shall be deemed to be
reasonable	e. F	or good cause shown, the court may also approve
any other	fee	arrangement that it deems reasonable.
(b)	Bank	s and trust companies serving as trustees shall be
entitled t	to re	asonable compensation, which may be set forth in
their publ	lishe	d 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)	Exce	pt as provided in subsection (a), individuals
serving as trustees shall be entitled to the following		
compensation:		
(1)	Comp	ensation 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
	reasonable any other (b) entitled f their public time; proving the fee so settlor's (c) serving as compensat:	reasonable. F any other fee (b) Bank entitled to re their publishe time; provided the fee schedu settlor's deat (c) Exce serving as tru compensation: (1) Comp (A)



1		shall be payable to the first trustee of any
2		trust created under a revocable living trust
3		after the settlor's death or other administrative
4		trust; provided that the trustee shall not also
5		be the trustee of the revocable living trust or
6		administrative trust that is the source of
7		funding for the newly-created trust;
8		provided that if more than one individual serves as
9		trustee, then the compensation shall be divided
10		equally between the then-acting trustees unless
11		otherwise agreed by the trustees. If one or more
12		individuals are serving as co-trustees with a bank or
13		trust company, then the individual trustees shall be
14		entitled to fifty per cent of the compensation
15		provided for under this paragraph described herein,
16		which shall be divided among the then-serving
17		individual co-trustees as they may agree. A bank or
18		trust company serving as co-trustee shall be entitled
19		to the compensation described in subsection (b).
20	(2)	Annual Compensation:
21	[ <del>(a)</del> ]	(A) Upon all moneys and other property received in
22		the nature of revenue or income of the [ <del>estate,</del> ]



1		trust, such as rents, interest, dividends, and
2		general profits, [ <del>trustees, except trustees of a</del>
3		charitable trust, shall be allowed as commissions
4		payable out] five per cent of the income received
5		during each year[ $_{ au}$ ] shall be payable to the
6		trustee, [seven per cent for the first \$5,000 and
7		five per cent for all over \$5,000 the commissions
8		to be payable] as and when the income is
9		received[, but not more often than once a year.];
10	[ <del>(b)</del> ] <u>(B)</u>	Upon the principal [ <del>of the estate, trustees shall</del>
11		be allowed as commissions one per cent on the
12		value at the inception of the trust payable at
13		the inception out of the principal, one per cent
14		on the value of all or any part of the estate
15		upon final distribution payable at the
16		termination out of the principal, and two and
17		one-half per cent upon all cash principal
18		received after the inception of the trust and
19		neither being nor representing principal upon
20		which the two and one-half per cent has
21		previously at any time been charged, payable at
22		the receipt out of the principal, and two and



1	<del>one-</del>	half per cent upon the final payment of any
2	cash	principal prior to the termination of the
3	trus	t, payable at the final payment out of the
4	<del>prin</del>	cipal, and in addition thereto five-tenths of
5	<del>one –</del>	per cent on the value at the expiration of
6	each	year during the continuance of the trust
7	<del>paya</del>	ble annually out of the principal; provided
8	that	such five- tenths of one per cent on the
9	<del>prin</del>	cipal shall not apply to charitable trusts,
10	<del>nor</del>	to the extent the trustee has employed others
11	<del>to p</del>	erform bookkeeping and clerical services at
12	the-	expense of the estate as permitted by the
13	trus	t document or as provided in section 554A-3.
14	<del>(c)</del>	Such further allowances], the trustee shall
15	be c	ompensated no more than once per quarter,
16	base	d on the following:
17	<u>(i)</u>	One-half of one per cent of the first
18		<u>\$5,000,000;</u>
19	(ii)	One-third of one per cent of the next
20		<u>\$3,000,000;</u>
21	(iii)	One-fifth of one per cent of the next
22		\$2,000,000; and

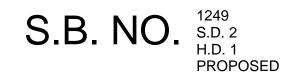


1		(iv) One-tenth of one per cent of assets in
2		excess of \$10,000,000,
3		based upon the gross fair market value of the
4		principal assets as of the first business day of
5		the trust's fiscal year;
6	(C)	Notwithstanding subparagraphs (A) and (B), a
7		trustee shall be entitled to a minimum total
8		annual compensation of \$3,000; and
9	(D)	The threshold dollar amounts in subparagraph (B)
10		and the dollar amounts in subparagraph (C) shall
11		be increased by an amount equal to (i) the dollar
12		amount from subparagraph (B) or (C), as
13		applicable, multiplied by (ii) a cost-of-living
14		adjustment with changes in the Consumer Price
15		Index (CPI) using the year 2014 as the base. The
16		"CPI" means the Consumer Price Index (Annual
17		Average) for All Urban Consumers (CPI-U); for the
18		Honolulu area - All Items, reported by the Bureau
19		of Labor Statistics, United States Department of
20		Labor or its successor or, if the index is
21		discontinued, an equivalent index reported by a
22		federal authority. If no such index is reported,



1		the term means the substitute index chosen by a
2		court of competent jurisdiction. If any amount
3		as adjusted is not a multiple of \$10,000, such
4		amount shall be rounded down to the next lowest
5		multiple of \$10,000;
6	(3)	Compensation Upon Termination of the Trust:
7		One per cent based upon the gross fair market value of
8		the trust assets as of the termination date of the
9		trust pursuant to the terms of the trust, shall be
10		payable to the trustee at any time after the
11		termination date, up to and including the date the
12		trust assets are finally distributed; and
13	(4)	Special Service Fees:
14		Further compensation may be made as the court deems
15		just and reasonable for services performed in
16		connection with <u>assuming the trusteeship,</u> sales or
17		leases of real estate, contested or litigated claims
18		against the estate, the adjustment and payment of
19		extensive or complicated estate or inheritance taxes,
20		the preparation of estate and income tax returns, the
21		carrying on of the decedent's business pursuant to an
22		order of court or under the provisions of any will,





1	litigation in regard to the property of the estate,
2	and such other special services as may be necessary
3	for the trustee to perform, prosecute, or defend[ $ au$
4	All contracts between a trustee and a beneficiary
5	other than the creator of the trust, for higher
6	compensation than is allowed in this section shall be
7	void.]; provided that if all of the beneficiaries
8	agree to the trustee's special service fees, then
9	court approval shall not be required.
10	(d) For purposes of any agreement between the trustee and
11	the beneficiaries regarding the trustee's compensation, the
12	agreement shall be binding upon incapacitated, minor, unborn,
13	and unascertained beneficiaries if the applicable provisions of
14	section 560:1-403(2)(B) and (C) are satisfied.
15	(e) The following terms, or comparable language in the
16	provisions of a trust, unless otherwise limited or modified,
17	authorize compensation to the trustee under this section:
18	"reasonable compensation", "compensation in accordance with
19	applicable law", "compensation", "reasonable compensation
20	commensurate with the services performed", and "statutory
21	compensation".

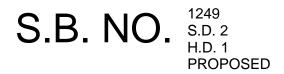


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1 [(d)] (f) This section shall apply [as well] to future 2 accounting in existing [estates] trusts as well as to new 3 [estates.] trusts. This section shall not apply to charitable 4 trusts." 5 SECTION 3. This Act shall not be construed to limit the 6 rights of interested persons to petition the court for review 7 under article VII of chapter 560, Hawaii Revised Statutes. 8 SECTION 4. This Act does not affect rights and duties that 9 matured, penalties that were incurred, and proceedings that were 10 begun before its effective date. 11 SECTION 5. Statutory material to be repealed is bracketed 12 and stricken. New statutory material is underscored. 13 SECTION 6. This Act shall take effect on January 1, 2015.





Report Title: Compensation of Trustees

#### Description:

Clarifies and updates trustee compensation by setting out several categories of fees to which trustees are entitled. Effective January 1, 2015. (PROPOSED SB1249 HD1)

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

