Bank of Hawaii

TESTIMONY ON SB 2842
RELATING TO PERMITTED TRANSFERS IN TRUST ACT

Monday, February 22, 2010, 10:00 a.m.
State Capitol, Conference Room 211

COMMITTEE ON WAYS AND MEANS

TO: The Honorable Donna Mercado Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair
Members of the Senate Committee on Ways and Means

I am Stafford Kiguchi representing the Trust Division of Bank of Hawaii. We support the intent of Senate Bill 2842. We wish, however, to provide technical changes to the language clarifying certain Sections of the bill in order to help avoid future issues that could otherwise arise during implementation of the Act.

Our recommendations are intended to:

- Make the definition of the term "permitted trustee" consistent in Sections 2 and 4.
- Include a paragraph to address trustee fees in Section 5(b) and de minimis termination provisions in Section 5(c) that were omitted in the original draft.
- Clarify liability with respect to an advisor or agent.
- Clarify that assets should be available to a creditor under certain circumstances.
- Remove confusion related to the term "perfected" which has a certain meaning under the Uniform Commercial Code and is not applicable in this situation.
- Clarify any ambiguity related to who is liable for tax upon transfer.

For your reference we have attached a red-lined version highlighting the proposed amendments. Thank you for the opportunity to testify and present these proposed recommendations.

Respectfully submitted,

Stafford Kiguchi

Stafford Kiguchi
Senior Vice President
694-8580

First Hawaiian Bank

FEB 1 9 2010

Presentation to the Senate Committee on Ways and Means
Monday, February 22, 2010, at 10:00 AM

Testimony for SB2842 Relating to the
Permitted Transfers in Trust Act

TO: The Honorable Donna M. Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair
Members of the Senate Committee on Ways and Means

My name is Paul E. DeLauro and I am here testifying in favor of SB2842 relating to the Permitted Transfers in Trust Act.

The Permitted Transfers in Trust Act will spur development in Hawaii's economic sector, will lead to direct and indirect tax revenues, and will increase tourism (wealthy individuals coming to Hawaii to visit their trusts and professionals coming to Hawaii to learn about the law).

The purpose of SB2842 is to make Hawaii more competitive in attracting assets under management from wealthy individuals throughout the United States. It allows wealthy individuals to establish trusts in Hawaii with cash and marketable securities that (a) last forever, (b) avoid some of the severe effects of the federal death tax (45% of the value of the assets transferred), and (c) are protected from the claims of creditors (with exceptions).

Wealthy individuals routinely establish trusts in states that offer the best trust laws. As businesses are often incorporated in Delaware in order to take advantage of Delaware's favorable business laws, trusts are often formed in other jurisdictions that offer superior trust laws than the state in which the wealthy individual lives.

SB2842 makes two primary changes in Hawaii law that will make Hawaii a competitor in this **multi-billion dollar** nationwide marketplace:

- First, the Act permits trusts established under the Act to last forever. Current Hawaii law states that a trust must end within 90 years or 21 years following the death of someone alive at the time the trust was drafted (whichever is longer). This law is based on a very old English common law rule known as the Rule Against Perpetuities. The Rule was of little estate planning consequence until passage of the federal Tax Reform Act of 1986.

  The Tax Reform Act of 1986 created a new tax known as the Generation Skipping Transfer Tax (GSTT). If a wealthy individual attempted to leave assets directly to grandchildren or more remote heirs at their death, then their estate would have to pay this large extra tax. The exception is that the decedent can leave assets in trust but that the trust cannot last longer than state law allows. Acting on this exception, Alaska, Delaware, South Dakota and other states abolished their Rule Against Perpetuities to allow their trusts to last forever. In effect, this allows a wealthy individual to leave assets in trust and those assets will never be charged with the GST tax.

SB2842 does not do away with Hawaii's Rule Against Perpetuities. Rather, it only abolishes it with respect to trusts established under the Act. Also, such trusts may only be funded with cash or marketable securities (not real estate) and must abide by fiduciary investment standards.

- Second, the Act allows a wealthy individual to form a trust under the Act and he/she is permitted to be a beneficiary of the trust. This means that a wealthy individual is allowed to take a portion of their estate (no more than 25%) and transfer it to a Hawaii trust that is protected against their future (unknown or unknowable) creditors. This allows a wealthy individual to establish a nest-egg for themselves with which they can start over financially if they lose everything in a frivolous lawsuit. In the litigious American society, this is highly appealing to high net worth individuals. When they pass away, the assets remain in Hawaii in trust for their heirs forever.

Wealthy individuals are looking for methods to reduce their estate tax burdens when they pass away. They are looking for ways to protect a small portion of their wealth for their own use and enjoyment against the ravages of frivolous litigation. In short, they are establishing trusts in other states (such as Delaware and Alaska) that offer more compelling trust laws than are currently offered by the state of Hawaii. Being remotely situated, Hawaii is the most geographically suited jurisdiction in the United States to establish such laws.

The Permitted Transfers in Trust Act will spur development in Hawaii's economic sector, will lead to direct and indirect tax revenues, and will increase tourism (wealthy individuals coming to Hawaii to visit their trusts and professionals coming to Hawaii to learn about the law).

Accordingly, we urge the passage of SB2842.

Presentation to the Senate Committee on Ways and Means
Monday, February 22, 2010, at 10:00 AM, Room 211

Testimony for SB2842 Relating to the
Permitted Transfers in Trust Act

FEB 19 2010

TO: The Honorable Donna Mercado Kim,
The Honorable Shan S. Tsutsui, Vice Chair
Members of the Senate Committee on Ways and Means

My name is Gaye L. Dickey, Esq. I am an attorney whose practice focuses on estate planning, and in such capacity I have counseled many clients regarding trusts, creditor protection, tax and other related issues. I testify in favor of SB2842 relating to the Permitted Transfers in Trust Act.

I believe that the Permitted Transfers in Trust Act will encourage job growth and investment activity in Hawaii, which will in turn result in increased tax revenue to the State, with little expense to or increased burden on the State of Hawaii's government resources.

The Act will help increase the focus on Hawaii as a financial asset management center and to both attract investment activity from non-Hawaii individuals, as well as helping retain investment within the State by Hawaii residents. I have assisted several individuals who each chose to establish trusts in other jurisdictions as establishing a trust in Hawaii would not be as beneficial in meeting their estate planning goals. Accordingly, this law would provide a desired trust option for Hawaii residents that prior to this law they could find only in jurisdictions outside of Hawaii.

The Act is similar in intent to statutes enacted by Delaware, Nevada and Alaska.

- The Act permits trusts established under the Act to last forever. Current Hawaii law states that a trust must end within 90 years or 21 years following the death of someone alive at the time the trust was drafted (whichever is longer). This law is based on a very old English common law rule known as the Rule Against Perpetuities. The Rule was of little estate planning consequence until passage of the federal Tax Reform Act of 1986. In effect, this allows a wealthy individual to leave assets in trust and those assets will never be charged with the Federal GST tax. As an estate planning attorney, I have assisted several clients who established trusts in other jurisdictions because they could avail themselves of a perpetual trust. This resulted in the lost of investment, management and administrative opportunities for employees in the State of Hawaii.

- Such trusts may only be funded with cash or marketable securities (not real estate) and must abide by fiduciary investment standards, so the Act does not permit the sequestration of Hawaii real estate, nor does it seek to protect real estate in other jurisdictions.

- The Act allows a wealthy individual to form a trust under the Act and he/she is permitted to be a beneficiary of the trust. This means that a wealthy individual is allowed to take a portion of their estate (no more than 25%) and put it in a Hawaii trust that is protected against their future (unknown or unknowable) creditors.

- This law does not seek to avoid creditors absolutely, but rather to motivate individuals to invest their assets in Hawaii by allowing them to preserve a portion of their assets utilizing concepts and laws that are already enacted and available in other jurisdictions. In fact, Hawaii law already provides for other methods of creditor protection, for example, "tenancy by the entirety", limited liability companies, irrevocable trusts established for the benefit of others, and individual retirement accounts, so creditor protection in this instance, where only 25% of an individual's net worth can be so protected, is relatively conservative.

- The Act provides for a 1% tax payable to the State of Hawaii, which amount will not require lengthy or complicated tax collection procedures. If the individuals do not comply, they are not able to take advantage of the creditor protection provided by the Act.

- There is little administrative cost or expense to the State after passage of this Act, and does not call for a loss of any revenue that would otherwise be payable to the State.

Accordingly, I support the enactment of the Permitted Transfers in Trust Act.

Gaye L. Dickey, Esq.