

2020 Regular Session

HOUSE BILL NO. 123

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

TRUSTS: Provides relative to the allocation of receipts and expense to income and principal

1 AN ACT

2 To amend and reenact R.S. 9:2141 through 2144, 2145(1), 2146, 2147 through 2154, and  
3 2156(A), (C), and (E), to enact R.S. 9:2151.1, 2151.2, 2156.1, 2156.2, and Subpart  
4 F of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of the Louisiana  
5 Revised Statutes of 1950, to be comprised of R.S. 9:2164, and to repeal R.S. 9:2155  
6 and 2157, relative to the administration of trusts; to provide with respect to allocation  
7 to income and principal; to provide for the apportionment and allocation of various  
8 types of receipts and expenses; to provide for the obligation to pay money; to provide  
9 for charges against income and principal; to provide for transfers from income to  
10 principal for depreciation; to provide with respect to the payment of income taxes;  
11 to provide for underproductive property; to provide for an effective date and  
12 applicability; to provide for redesignation; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 9:2141 through 2144, 2145(1), 2146, 2147 through 2154, and  
15 2156(A), (C), and (E) are hereby amended and reenacted, and R.S. 9:2151.1, 2151.2, 2156.1,  
16 2156.2, and Subpart F of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of  
17 the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2164, are hereby enacted to  
18 read as follows:

## 1 §2141. General rule

2 A trust shall be administered with due regard to the respective interests of the  
3 beneficiaries in the allocation of receipts and ~~expenditures~~ expenses.

## 4 §2142. Allocation to beneficiaries of income and principal

5 A trust receipt ~~shall be credited, or an expenditure charged, or expense shall~~  
6 be allocated to income or principal or partly to each:

7 (1) In accordance with the terms of the trust instrument, including any  
8 provision giving the trustee discretion, notwithstanding contrary provisions of this  
9 Subpart; ~~or.~~

10 (2) In accordance with the provisions of this Subpart, in the absence of  
11 contrary provisions of the trust instrument; ~~or.~~

12 (3) If no rule is provided in the trust instrument or this Subpart, ~~entirely to~~  
13 principal in accordance with what is reasonable and equitable in view of the interests  
14 of those entitled to income as well as of those entitled to principal.

## 15 Revision Comments - 2020

16 Prior law provided that a receipt or expense shall be allocated entirely to  
17 principal if no provision in the trust instrument or other provision in this Subpart  
18 provided otherwise. This revision changes the default rule in an attempt to be fair  
19 to both beneficiaries of income and beneficiaries of principal. It is consistent with  
20 other provisions in this revision. See, e.g., R.S. 9:2148, 2151, 2152(A)(4), 2153(A),  
21 and 2154(A).

## 22 §2143. Allocation to beneficiaries of usufruct and naked ownership

23 A trust is administered with due regard to the respective interests of  
24 beneficiaries of usufruct and naked ownership in the allocation of receipts and  
25 ~~expenditures if a receipt is credited or an expenditure is charged~~ expenses to the  
26 beneficiary of usufruct or the beneficiary of naked ownership or partly to each:

27 (1) In accordance with the terms of the trust instrument and the law  
28 regulating usufruct, notwithstanding contrary provisions of this Subpart; ~~.~~

29 (2) In accordance with the provisions of this Subpart, in the absence of  
30 applicable law regulating usufruct and if the trust instrument contains no provisions  
31 to the contrary; ~~.~~

1 (3) If neither of the preceding rules applies, in accordance with what is  
2 reasonable and equitable in view of the interests of those who are beneficiaries of  
3 usufruct as well as those who are beneficiaries of naked ownership, ~~and in view of~~  
4 ~~the manner in which men of ordinary prudence, discretion, and intelligence would~~  
5 ~~act in the management of their own affairs.~~

6 Revision Comments - 2020

7 This revision modifies the law in part by making minor semantic  
8 clarifications and by deleting the "prudent man" rule that existed under prior law  
9 because persons of "ordinary prudence, discretion, and intelligence" do not generally  
10 consider the interests of successor beneficiaries in managing their own affairs. See,  
11 e.g., UPIA (1997) §103, Comment. Trustees, however, should consider the interests  
12 of all beneficiaries in discharging their fiduciary obligations.

13 §2144. Income and principal distinguished

14 Receipts paid or delivered in return for the use of ~~money or~~ property forming  
15 a part of principal are income, unless this ~~Sub-part~~ Subpart expressly provides to the  
16 contrary.

17 Receipts paid or delivered ~~as the~~ in consideration for the sale or other transfer  
18 of property forming a part of principal or as the replacement of property forming a  
19 part of principal are principal unless this ~~Sub-part~~ Subpart expressly provides to the  
20 contrary.

21 §2145. When right to income arises

22 The right of an income beneficiary to income from property in trust arises at  
23 the time prescribed in the trust instrument, or, if no time is prescribed and the person  
24 receiving the right to income is the first income beneficiary to receive a right to  
25 income from the property, then:

26 (1) At the time the property becomes subject to the trust, with respect to  
27 property transferred by inter vivos disposition;

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29 §2146. Apportionment of receipts when right to income arises

30 A. In the administration of property transferred in trust:

31 (1) Receipts due but not paid when the right of the first income beneficiary  
32 to receive income from the property arises shall be treated as accruing when due;

1 (2) Receipts in the form of periodic payments, other than ~~corporate~~  
2 ~~distributions to stockholders~~ receipts on account of an interest in a juridical person  
3 or from a plan subject to R.S. 9:2151.2, not due when the right of the first income  
4 beneficiary to receive income from the property arises, shall be treated as accruing  
5 from day to day;

6 (3) Receipts in the form of ~~corporate distributions to stockholders~~ on account  
7 of an interest in a juridical person that are allocated to income under R.S. 9:2149  
8 shall be treated as accruing on the date fixed for the determination of ~~stockholders~~  
9 ~~of record~~ those entitled to distribution, or, if no date is fixed, on the date of  
10 declaration of the distribution by the ~~corporation;~~ juridical person.

11 (4) All other receipts shall be treated as accruing at the time of payment.

12 B. Receipts treated as accruing after the right of the first income beneficiary  
13 to receive income from the property arises, are income if they otherwise are income  
14 under the provisions of this ~~Sub-part~~ Subpart. Receipts treated as accruing at an  
15 earlier time are principal.

16 Revision Comments - 2020

17 This revision is consistent with prior law but expands the law to address  
18 receipts from juridical persons other than corporations. According to general  
19 principles of civil law, "[a] juridical person is an entity to which the law attributes  
20 personality, such as a corporation or a partnership." Civil Code Article 24.

21 §2147. Apportionment of receipts when right to income ceases

22 Upon the termination of an income interest, the income beneficiary whose  
23 interest is terminated, ~~(or his heirs, legatees, or assignees),~~ is entitled to receive any  
24 required distributions of or from the following:

25 (1) Income paid to the trustee but undistributed on the date of termination;

26 (2) Income due but not paid to the trustee on the date of termination;

27 (3) Income in the form of periodic payments subject to daily accrual, other  
28 than ~~corporate distributions to stockholders~~ periodic payments on account of an  
29 interest in a juridical person, not due on the date of termination, ~~accrued from day~~  
30 ~~to day;~~ but accrued prior to the date of termination.

1           (4) ~~Corporate distributions to stockholders~~ Distributions on account of an  
2           interest in a juridical person that are allocated to income under R.S. 9:2149 and that  
3           are paid as income after the termination of the interest if the date for determination  
4           of ~~stockholders of record~~ those entitled to distribution is a date before the termination  
5           of the interest, or, in the event no date is fixed, if the date of declaration of the  
6           distribution by the ~~corporation~~ juridical person is a date before termination of the  
7           interest.

Revision Comments - 2020

9           This revision is consistent with prior law but expands the law to address  
10          receipts from juridical persons other than corporations. See Civil Code Article 24.  
11          §2148. Succession receipts and expenses

12          Succession receipts ~~shall be credited~~ and ~~succession expenditures~~ expenses  
13          shall be ~~charged~~ allocated to a legacy in trust in accordance with ~~the laws regulating~~  
14          ~~donations mortis causa~~ what is reasonable and equitable in view of the interests of  
15          those entitled to income as well as of those entitled to principal.

Revision Comments - 2020

17          (a) This revision changes the law by no longer deferring to the Civil Code  
18          regarding the allocation of receipts and expenses for a legacy in trust.

19          (b) In many cases, information from a succession representative may be  
20          helpful to a trustee in making an appropriate allocation between income and principal  
21          beneficiaries. In other cases, however, it may be very difficult for a trustee to  
22          reconstruct the nature of the expense allocated to the legacy during the succession  
23          administration, thus making it impossible for the trustee to reliably allocate the  
24          expense within the trust between the income and principal beneficiaries. This  
25          provision attempts to provide the trustee with flexibility in allocating receipts and  
26          expenses and at the same time achieve consistency with the rules on successions and  
27          other provisions of the Louisiana Trust Code. See, e.g., Civil Code Article 1426 and  
28          R.S. 9:2151, 2152(A)(4), 2153(A), and 2154(A).

29          (c) The Comments that accompanied the 1964 enactment of this provision,  
30          which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.  
31          338.

32          §2149. ~~Corporate distributions~~ Receipts from interests in juridical persons

33          A. ~~Corporate distributions of shares of the distributing corporation, including~~  
34          ~~distributions in the form of a stock split or stock dividend, are principal.~~ A right to  
35          ~~subscribe to shares or other securities issued by the distributing corporation accruing~~

1       to stockholders on account of their stock ownership and the proceeds of any sale of  
2       the right are principal.

3               B. ~~Except to the extent that the corporation indicates that some part of a~~  
4       corporate distribution is a settlement of preferred or guaranteed dividends accrued  
5       since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a  
6       corporate distribution is principal if the distribution is pursuant to:

7               (1) ~~A call of shares;~~

8               (2) ~~A merger, consolidation, reorganization, or other plan by which assets~~  
9       of the corporation are acquired by another corporation; or

10              (3) ~~A total or partial liquidation of the corporation, including any distribution~~  
11       that the corporation indicates is a distribution in total or partial liquidation, or any  
12       distribution of assets, other than cash, pursuant to a court decree or final  
13       administrative order by a government agency ordering distribution of the particular  
14       assets.

15              C. ~~Distributions made from ordinary income by a regulated investment~~  
16       company or by a trust qualifying and electing to be taxed under federal law as a real  
17       estate investment trust are income. ~~All other distributions made by the company or~~  
18       trust, including distributions from capital gains, depreciation, or depletion, whether  
19       in the form of cash or an option to take new stock or cash or an option to purchase  
20       additional shares, are principal.

21              D. ~~All other corporate distributions are income, including cash dividends,~~  
22       distributions of, or rights to subscribe to, shares, securities, or obligations of  
23       corporations other than the distributing corporation, and the proceeds of the rights  
24       or of the property distributions, except as Sub-sections A, B, or C above provide  
25       otherwise.

26              E. ~~If the distributing corporation gives a stockholder an option to receive a~~  
27       distribution either in cash or in its own shares, the distribution chosen is income,  
28       except as provided in Sub-sections B and C of this section.

1           ~~F. A trustee may rely upon any statement of the distributing corporation as~~  
2           ~~to any fact relevant under any provision of this Sub-part concerning the source or~~  
3           ~~character of dividends or distributions of corporate assets.~~

4           A. Except as otherwise provided in this Section, a trustee shall allocate to  
5           income money received on account of an interest in a juridical person.

6           B. A trustee shall allocate to principal the following distributions received  
7           on account of a trustee's interest in a juridical person:

8           (1) Property other than money.

9           (2) Money received in one distribution or a series of related distributions in  
10           exchange for part or all of a trustee's interest in the juridical person.

11           (3) Money received in total or partial liquidation of the juridical person.

12           (4) Money received from a regulated investment company or a real estate  
13           investment trust if the money distributed is a capital gain dividend for federal income  
14           tax purposes.

15           C. Money is received in partial liquidation to the extent that the juridical  
16           person, at or near the time of a distribution, indicates that it is a distribution in partial  
17           liquidation. A partial liquidation also occurs if the total amount of money and  
18           property received in a distribution or series of related distributions is greater than  
19           twenty percent of the juridical person's gross assets, as shown by the juridical  
20           person's year-end financial statements immediately preceding the initial receipt.

21           D. Money is not received in partial liquidation, nor may it be taken into  
22           account under Subsection C of this Section, to the extent that it does not exceed the  
23           amount of income tax that a trustee or beneficiary must pay on taxable income of the  
24           juridical person that distributes the money.

25           E. Notwithstanding the provisions of this Section, if the receipt is one to  
26           which a more specific provision of this Subpart applies, a trustee may allocate the  
27           receipt based upon the source or character of the receipt and may rely upon a  
28           statement made by the juridical person regarding the source or character of the  
29           receipt.

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## Revision Comments - 2020

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(a) This revision is based upon Section 401 of the 1997 version of the Uniform Principal and Income Act. Prior law contained in R.S. 9:2149 and 2150 was adopted verbatim (with the exception of R.S. 9:2149(D)) from the 1962 version of the UPIA. At the time of that Act, the dominant business form was the corporation. Thus, both the UPIA of 1962 and prior Louisiana law made no mention of limited liability companies or other modern business forms. The new UPIA of 1997 retains the same basic principles as the 1962 version but broadens the types of business forms to which the law is applicable. Given the multitude of types of juridical persons, it is not feasible to continue the old schematic that listed the various types of property that would be classified as principal. The 1997 UPIA and this revision classify all non-monetary property as principal and thus include all of the prior categories of property that were classified as principal.

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(b) A cash distribution may be large (for example, more than 10% but not more than 20% of a juridical person's assets) and have characteristics that suggest it should be treated as principal rather than income. For example, a juridical person may have received cash from a source other than the conduct of its normal business operations because it sold an investment asset; or it sold a business asset other than one held for sale to customers in the normal course of business and did not replace it; or it borrowed a large sum of money and secured the repayment of the loan with a substantial asset; or a principal source of its cash was from assets such as mineral interests, 90% of which would have been allocated to principal if the trust had owned the assets directly. In such a case the trustee, after considering the total return from the portfolio as a whole and the income component of that return, may decide to exercise the power under R.S. 9:2158 to make an adjustment between income and principal.

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(c) Subsection E of this Section provides the trustee with discretion to make an allocation regarding a receipt in accordance with the other provisions of this Section or in accordance with the source of the receipt, provided a more specific rule governs the source of the receipt in this Part. For instance, if the source of the receipt is due to the trustee's interest in a limited liability company deriving funds from minerals, then the trustee may allocate the receipt in accordance with the provisions of this Section or in accordance with the provisions of R.S. 9:2152. In making the allocation, Subsection E also provides the trustee with the authority to rely upon a statement of the relevant juridical person as to the source of the receipt without requiring the trustee to otherwise ascertain its source.

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(d) The Comments that accompanied the 1964 enactment of this provision, which are superseded by the 2020 Revision Comments, appear in Acts 1964, No. 338.

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§2150. ~~Bonds~~ Obligation to pay money

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~~A. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in Sub-section B below. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.~~







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Revision Comments - 2020

This revision is based upon Section 407 of the UPIA (1997). The term "proceeds," as used in this Section, refers to the insurable benefit under the contract and does not include other payments associated with the benefit, such as interest.

§2151.2. Deferred compensation, annuities, and similar payments

A. Payments made in money or other property to a trustee over a period of years or during the life of an individual from an annuity, an individual retirement account, an employee-benefit plan, a pension plan, a profit-sharing plan, a deferred compensation plan, or any similar arrangement created pursuant to income-tax incentives to fund for retirement are allocated as follows:

(1) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(2) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. To the extent that a trustee exercises a right of withdrawal, a payment is not considered to be required to be made.

B. If, in order to qualify for a marital deduction, a trustee must allocate more of a payment to income than provided for in this Section, the trustee shall allocate to income the additional amount necessary to qualify for the marital deduction.

Revision Comments - 2020

(a) This provision is based, in part, on Section 409 of the UPIA (1997) and informed by statutes from other states that have modified Section 409 of the UPIA. See, e.g., Mass. Gen. Law. Ann. 203D-18; N. J. Stat. Ann. 3B:19B-17; N.Y. Estate, Prob. & Tr. Law 11-A-4.9; Alaska Rev. Stat. 13.38.690; Hawaii Rev. Stat. 557A-409; Ohio. Rev. Code 5812.32.

1 (b) This Section applies to amounts received by a trustee under contractual  
2 arrangements that provide for payments to a third-party beneficiary as a result of  
3 services rendered or property transferred to a payer in exchange for future payments.  
4 It applies whether the payments begin when the payment right becomes subject to  
5 the trust or are deferred until a future date, and it applies whether payments are made  
6 in cash or in kind, such as employer stock. In-kind payments usually will be made  
7 in a single distribution that will be allocated to principal under the second sentence  
8 of Paragraph (A)(2).

9 (c) Paragraph (A)(1) applies only to certain types of deferred compensation,  
10 phantom stock plans, and similar plans whose terms characterize a payment as  
11 dividends or interest. It does not apply to individual retirement accounts and similar  
12 arrangements. Paragraph (A)(2) applies to required payments from an IRA or  
13 similar arrangement.

14 (d) Paragraph (A)(2) of this Section differentiates between payments that are  
15 required to be made and all other payments. To the extent that a payment is required  
16 to be made (either under federal income tax rules, or, in the case of a plan that is not  
17 subject to those rules, under the terms of the plan), 10% of the amount received is  
18 allocated to income and the balance to principal. The right to receive payments  
19 under this Paragraph is a type of liquidating asset and therefore is treated similarly  
20 to property subject to depletion under R.S. 9:2154. All other payments are allocated  
21 to principal because they represent a change in the form of the principal asset. To  
22 that extent, this rule follows the general policy of R.S. 9:2144, which provides that  
23 property received in replacement of property shall be allocated to principal.

24 (e) Under Revenue Ruling 2006-26, the Internal Revenue Service declared  
25 that the 10% allocation provided in Section 409 of the UPIA did not qualify for the  
26 IRS's safe harbors, as 10% of a required minimum distribution is not a reasonable  
27 apportionment of the total return of the trust between income and principal. Under  
28 the ruling, the trustee is required to make available to the beneficiary the income of  
29 an IRA or defined contribution plan in order to qualify. To comply with the ruling,  
30 Section 409 of the UPIA was amended in 2008 to provide separate rules for  
31 determining the income of a marital trust that is the beneficiary of an IRA or similar  
32 arrangement. This revision simplifies the provisions of the UPIA while, at the same  
33 time, allowing the preservation of the marital deduction.

34 §2152. Proceeds of mineral interests

35 ~~A. If any part of the principal consists of a right to receive royalties or~~  
36 ~~overriding royalties, production from working interests or production payments,~~  
37 ~~proceeds from net profits interests or payments for the right to extract minerals from~~  
38 ~~immovable property, or other interests in oil, gas, and other minerals, the allocation~~  
39 ~~of the proceeds of such interests shall be made as follows:~~

40 (1) ~~If received as a delay rental on a lease, extension of payments on a lease,~~  
41 ~~shut-in royalty, or bonus for the execution of a lease, the proceeds shall be allocated~~  
42 ~~to income;~~

43 (2) ~~If received from a production payment, then to the extent of any stated~~  
44 ~~factor for interest or its equivalent, the proceeds shall be allocated to income; the~~

1 ~~balance of such proceeds shall be apportioned between principal and income by~~  
2 ~~allocating to principal the fraction thereof that the unrecovered cost of the production~~  
3 ~~payment bears to the remaining balance due upon the production payment (excluding~~  
4 ~~any factor for interest or its equivalent) and by allocating the remainder of such~~  
5 ~~proceeds to income;~~

6 ~~(3) If received from a royalty, overriding royalty, limited royalty, or working~~  
7 ~~interest, net profits interest, or from any other interest in oil, gas, or other minerals,~~  
8 ~~not specifically covered in this section, such proceeds shall be allocated to principal~~  
9 ~~until such time as the cost for such interest (including both tangible and intangible~~  
10 ~~drilling cost) has been fully recovered; thereafter, such proceeds shall be apportioned~~  
11 ~~between principal and income so that twenty-seven and one-half percent of the gross~~  
12 ~~proceeds (but not to exceed fifty percent of the net proceeds remaining after payment~~  
13 ~~of all expenses, direct and indirect, computed without allowances for depletion) shall~~  
14 ~~be allocated to a reserve for depletion to be added to principal and the balance of the~~  
15 ~~gross proceeds, after payment therefrom of all expenses, direct and indirect, shall be~~  
16 ~~allocated to income.~~

17 ~~B. This section is not applicable to timber, water, soil, sod, dirt, turf, mosses,~~  
18 ~~shells, gravel, or other natural resources.~~

19 A. To the extent that a trustee accounts for receipts from an interest in  
20 mineral rights or other interest in oil, gas, or other minerals pursuant to this Section,  
21 the trustee shall allocate them as follows:

22 (1) If received as delay rental or annual rent on a mineral lease, a receipt  
23 shall be allocated to income.

24 (2) If received from a production payment, a receipt shall be allocated to  
25 income if and to the extent that the agreement creating the production payment  
26 provides a factor for interest or its equivalent. The balance shall be allocated to  
27 principal.

28 (3) If received as a royalty, overriding royalty, shut-in payment, take-or-pay  
29 payment, or bonus, a receipt shall be allocated in accordance with what is reasonable



1 portion of oil and gas proceeds - 72.5% - to be paid out as income. Over the life of  
2 a well, the output would be depleted significantly. Allocating more to principal  
3 allows the trustee to obtain other income-producing assets that might still be  
4 productive when the minerals are exhausted. The approach adopted by this Section  
5 allows the trustee flexibility in the allocation.

6 (b) Subsection B abolishes the open mines doctrine in trust.

7 (c) Under Subsection C, the new depletion allowances are made  
8 prospectively applicable. For oil and gas interests included in a trust on the effective  
9 date of this provision, the trustee has discretion in deciding which method of  
10 depletion (i.e., the old or new law) to apply.

11 (d) Unlike the UPIA and the Texas statute, this provision does not apply to  
12 water, timber, gravel, or other natural resources. R.S. 9:2153 and 2154 provide the  
13 appropriate rules with respect to timber and other property subject to depletion.

14 (e) The Comments that accompanied the 1964 enactment of this provision,  
15 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.  
16 338.

17 §2153. Timber

18 A. If part of the principal consists of land from which timber may be  
19 removed, the receipts from taking the timber from the land shall be allocated in  
20 accordance with what is reasonable and equitable in view of the interests of those  
21 entitled to income as well as of those entitled to principal, ~~and in view of the manner~~  
22 ~~in which men of ordinary prudence, discretion, and intelligence would act in the~~  
23 ~~management of their own affairs.~~

24 B. An allocation of a receipt under this Section is presumed to be reasonable  
25 and equitable if ninety percent is allocated to principal and ten percent to income.

26 Any other allocation shall not be presumed to be unreasonable or inequitable.

27 Revision Comments - 2020

28 (a) This revision updates the language but maintains the "reasonable and  
29 equitable" standard. Like R.S. 9:2152, Subsection B adopts a safe harbor providing  
30 that an allocation of ninety percent to principal and ten percent to income is  
31 presumed to be reasonable and equitable but at the same time being clear that other  
32 allocations are not necessarily unreasonable or inequitable. It also deletes the  
33 "prudent man" rule that existing under prior law because persons of "ordinary  
34 prudence, discretion, and intelligence" do not generally consider the interests of  
35 successor beneficiaries in managing their own affairs. See, e.g., UPIA (1997) §103,  
36 Comment.

37 (b) This Section is consistent with the principles of Louisiana property law  
38 that generally treat trees as capital assets rather than fruits. In some instances,  
39 however, trees in a tree farm or in a regularly exploited forest must be treated as  
40 fruits. See, e.g., Civil Code Article 551, Comment (b).

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (c) The Comments that accompanied the 1964 enactment of this provision,  
2 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.  
3 338.

4 §2154. Other property subject to depletion

5 A. Except as provided in R.S. 9:2152 and ~~9:2153~~ 2153, if the principal  
6 consists of property subject to depletion, ~~receipts from the property not in excess of~~  
7 ~~five percent of its inventory value are income, and the balance is principal~~ the  
8 receipts shall be allocated in accordance with what is reasonable and equitable in  
9 view of the interests of those entitled to income as well as those entitled to principal.

10 B. An allocation of a receipt under this Section is presumed to be reasonable  
11 and equitable if ninety percent is allocated to principal and ten percent to income.  
12 Any other allocation shall not be presumed to be unreasonable or inequitable.

13 Revision Comments - 2020

14 (a) This revision updates the law to make the depletion allowance consistent  
15 with the "reasonable and equitable" standard in R.S. 9:2153. Like R.S. 9:2152 and  
16 2153, Subsection B adopts a safe harbor providing that an allocation of ninety  
17 percent to principal and ten percent to income is presumed to be reasonable and  
18 equitable but at the same time being clear that other allocations are not necessarily  
19 unreasonable or inequitable.

20 (b) The Comments that accompanied the 1964 enactment of this provision,  
21 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.  
22 338.

23 §2156. Charges

24 A. The following charges shall be made against income:

25 (1) Ordinary expenses incurred or accrued in connection with the  
26 administration, management, or preservation of the trust property;

27 (2) ~~A reasonable allowance for depreciation on property subject to~~  
28 ~~depreciation under generally accepted accounting principles, but no allowance shall~~  
29 ~~be made for depreciation of that portion of immovable property used by a beneficiary~~  
30 ~~as a residence;~~

31 (3) ~~One-half of court costs, attorney's~~ attorney fees, and other fees on  
32 periodic accounting, unless the court directs otherwise;



1 ~~(4)~~(3) Court costs, ~~attorney's~~ attorney fees, and other fees on other  
2 accountings or judicial proceedings if the matter primarily concerns the income  
3 interest, unless the court directs otherwise;.

4 ~~(5)~~(4) One-half of the trustee's regular compensation, whether based on a  
5 percentage of principal or income;.

6 ~~(6)~~(5) Expenses reasonably incurred by the trustee for the management and  
7 application of income;.

8 ~~(7)~~ A tax levied upon receipts defined as income under this Sub-part or the  
9 trust instrument and payable by the trustee;

10 ~~(8)~~(6) Interest accrued on an indebtedness.

11 \* \* \*

12 C. The following charges shall be made against principal:

13 (1) Extraordinary expenses incurred or accrued in connection with the  
14 administration, management, or preservation of the trust property;.

15 (2) Expenses incurred in making a capital improvement to principal,  
16 including special taxes and assessments;.

17 (3) Expenses incurred in investing and reinvesting principal;.

18 (4) One-half of court costs, ~~attorney's~~ attorney fees, and other fees on  
19 periodic accounting, unless the court directs otherwise;.

20 (5) Court costs, ~~attorney's~~ attorney fees, and other fees on other accountings  
21 or judicial proceedings if the matter primarily concerns the principal interest, unless  
22 the court directs otherwise;.

23 (6) Expenses incurred in maintaining or defending an action to construe the  
24 trust or to protect the trust or the trust property;.

25 (7) One-half of the trustee's regular compensation, whether based on a  
26 percentage of principal or income;.

27 (8) All the trustee's special compensation;.

28 ~~(9) A tax levied upon profit, gain, or other receipts allocated to principal~~  
29 ~~notwithstanding denomination of the tax as an income tax by the taxing authority;~~

1                   ~~(10)~~ The amount of an estate tax apportioned to the trust, including interest  
2           and penalties;

3                   ~~(11)~~(10) The principal of an indebtedness;

4                   ~~(12) All other expenses not chargeable to income.~~

5   \*           \*           \*

6                   E. Regularly recurring charges shall be apportioned to the same extent and  
7           in the same manner that receipts are apportioned under R.S. 9:2145 through ~~9:2147~~  
8           2147.

9   Revision Comments - 2020

10                   This Section deviates from Sections 501, 502, and 504 of the UPIA (1997).  
11           Paragraph (A)(2) of the prior law regarding depreciable property has been deleted  
12           in favor of a new provision, R.S. 9:2156.1, which is based upon Section 503 of the  
13           UPIA. Paragraphs (A)(7) and (C)(9) of the prior law regarding allocation of taxes  
14           have been deleted in favor of a new provision, R.S. 9:2156.2. Paragraph (C)(12) of  
15           the prior law, which allocated to principal all expenses not otherwise allocated to  
16           income, has also been deleted in light of the revision now contained in R.S.  
17           9:2142(3).

18           §2156.1. Transfers from income to principal for depreciation

19                   A trustee may transfer to principal a reasonable amount of the net cash  
20           receipts from a principal asset that is subject to depreciation, but may not transfer  
21           any amount for depreciation during the administration of a succession or for that  
22           portion of an immovable used or available for use by a beneficiary as a residence or  
23           of corporeal movables held or made available for the personal use or enjoyment of  
24           a beneficiary. An amount transferred to principal need not be held as a separate  
25           fund.

26   Revision Comments - 2020

27                   (a) This Section is based upon Section 503 of the UPIA (1997). Under  
28           Section 503(a) of the UPIA and this Section, the term "depreciation" means a  
29           reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a  
30           fixed asset having a useful life of more than one year.

31                   (b) Under this revision, a transfer to principal for depreciation is  
32           discretionary with the trustee. Prior law provided that a charge shall be made against  
33           income for "... a reasonable allowance for depreciation under generally accepted  
34           accounting principles..." That provision was resisted by many trustees who did not  
35           provide for depreciation for a number of reasons. One reason relied upon was that  
36           a charge for depreciation was not needed to protect the beneficiaries if the value of  
37           the land was increasing; another was that generally accepted accounting principles  
38           might not require depreciation to be taken if the property was not part of a business.

1 This revision allows the trustee more flexibility and broader discretion in taking  
2 depreciation.

3 §2156.2. Income taxes

4 A. A tax required to be paid by a trustee based on receipts allocated to  
5 income shall be paid from income.

6 B. A tax required to be paid by a trustee based on receipts allocated to  
7 principal shall be paid from principal, even if the tax is denominated an income tax  
8 by the taxing authority.

9 C. A tax required to be paid by a trustee on the trust's share of a juridical  
10 person's taxable income shall be paid as follows:

11 (1) From income to the extent that receipts from the juridical person are  
12 allocated only to income.

13 (2) From principal to the extent that receipts from the juridical person are  
14 allocated only to principal.

15 (3) Proportionately from principal and income to the extent that receipts  
16 from the juridical person are allocated to both income and principal.

17 (4) From principal to the extent that the tax exceeds the total receipts from  
18 the juridical person.

19 D. After applying the provisions of this Section, the trustee shall adjust  
20 income or principal receipts to the extent that the trust's taxes are reduced because  
21 the trust receives a deduction for payments made to a beneficiary.

22 Revision Comments - 2020

23 (a) This Section is based upon Section 505 of the UPIA (1997).

24 (b) When trust property includes an interest in a pass-through entity, such as  
25 a partnership or S corporation, the trust must report its share of the juridical person's  
26 taxable income regardless of how much the juridical person distributes to the trust.  
27 Whether the juridical person distributes more or less than the trust's tax on its share  
28 of the juridical person's taxable income, the trustee must pay the taxes and allocate  
29 them between income and principal.

30 (c) Subsection C requires the trustee to pay the taxes on its share of a  
31 juridical person's taxable income from income or principal receipts to the extent that  
32 receipts from the juridical person are allocable to each. This assures the trust a  
33 source of cash to pay some or all of the taxes on its share of the juridical person's  
34 taxable income. Subsection D recognizes that a trust normally receives a deduction  
35 for amounts distributed to a beneficiary. Accordingly, Subsection D requires the

1 trustee to increase receipts payable to a beneficiary as determined under Subsection  
2 C to the extent the trust's taxes are reduced by distributing those receipts to the  
3 beneficiary.

4 \* \* \*

5 SUBPART F. POWER TO MAKE PROPERTY PRODUCTIVE OF INCOME

6 §2164. Underproductive property

7 If a marital deduction is allowed for all or part of a trust whose assets consist  
8 substantially of property that does not provide the spouse with sufficient income  
9 from or use of the trust assets, and if the amounts that the trustee transfers from  
10 principal to income under R.S. 9:2158 and distributes to the spouse from principal  
11 pursuant to the terms of the trust are insufficient to provide the spouse an interest  
12 required to obtain the marital deduction, the spouse may require the trustee to make  
13 property productive of income, convert property within a reasonable time, or  
14 exercise the power conferred by R.S. 9:2158. The trustee may decide which action  
15 or combination of actions to take.

16 Revision Comments - 2020

17 (a) This revision is based upon Section 413(a) of the UPIA (1997).

18 (b) R.S. 9:2127 provides that "[a] trustee's investment and management  
19 decisions are to be evaluated in the context of the trust property as a whole..." The  
20 law in prior R.S. 9:2155 gave the income beneficiary a right to receive a portion of  
21 the proceeds from the sale of underproductive property as "delayed income." This  
22 provision applied on an asset-by-asset basis and not by taking into consideration the  
23 trust portfolio as a whole and thus conflicted with the basic precept in R.S. 9:2127.  
24 Moreover, in determining the amount of delayed income, the prior law did not permit  
25 the trustee to take into account the extent to which the trustee may have distributed  
26 principal to the income beneficiary, under principal invasion provisions in the terms  
27 of the trust, to compensate for insufficient income from the unproductive asset.  
28 Under R.S. 9:2158, a trustee must consider prior distributions of principal to the  
29 income beneficiary in deciding whether and to what extent to exercise the power to  
30 adjust.

31 (c) Although this revision abolishes the right to receive delayed income, it  
32 allows an income beneficiary's right to compel the trustee to make property  
33 productive of income. The duty to make property productive of income should be  
34 determined by taking into consideration the performance of the portfolio as a whole  
35 and the extent to which a trustee makes principal distributions to the income  
36 beneficiary under the terms of the trust and adjustments between principal and  
37 income under R.S. 9:2158.

38 (d) Under this revision, once the surviving spouse makes an appropriate  
39 demand that the trustee take action, the trustee must decide whether to make property  
40 productive of income, convert it, transfer funds from principal to income, or take  
41 some combination of those actions.

1 Section 2. R.S. 9:2155 and 2157 are hereby repealed in their entirety.

2 Section 3. The existing Comments to R.S. 9:2148 through 2154 are superseded by  
3 the Comments appearing beneath those Sections in this Act. The Louisiana State Law  
4 Institute is hereby directed to remove the existing Comments and to print only the Comments  
5 appearing in this Act.

6 Section 4. The Louisiana State Law Institute is hereby directed to redesignate  
7 Subpart F of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of the  
8 Louisiana Revised Statutes of 1950, entitled "THE TRUSTEE'S BOND," as Subpart G of  
9 Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of the Louisiana Revised  
10 Statutes of 1950, and to retain the heading of this Subpart.

11 Section 5. The provisions of this Act shall become effective on January 1, 2021.  
12 Except as specifically provided in this Act or in the provisions of the trust, the provisions of  
13 this Act apply to trusts existing as of the effective date of this Act.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 123 Engrossed

2020 Regular Session

Gregory Miller

**Abstract:** Provides for the allocation of receipts and expenses to income and principal in trusts.

Present law (R.S. 9:2141) provides the general rule for the allocation of receipts and expenditures in the administration of trusts.

Proposed law retains present law but makes changes in terminology.

Present law (R.S. 9:2142) provides that trust receipts and expenditures shall be allocated to income or principal in accordance with the provisions of the trust instrument or in accordance with the provisions of the Trust Code. In the absence of such provisions, present law provides that trust receipts and expenditures shall be allocated entirely to principal.

Proposed law retains present law but provides that in the absence of allocation provisions in the trust instrument or in the Trust Code, trust receipts and expenses shall be allocated in accordance with what is reasonable and equitable.

Present law (R.S. 9:2143) provides for the allocation of receipts and expenditures to the beneficiaries of usufruct and naked ownership. In the absence of provisions concerning allocation in the trust instrument or in the Trust Code, present law employs the "prudent man" standard in providing that trust receipts and expenses shall be allocated in accordance with what is reasonable and equitable.

Proposed law retains present law but makes semantic changes and removes the "prudent man" standard as inapplicable.

Present law (R.S. 9:2144) provides for the distinction between income and principal.

Proposed law retains present law but makes semantic changes.

Present law (R.S. 9:2145) provides when the right to income arises.

Proposed law retains present law but makes semantic changes.

Present law (R.S. 9:2146) provides for the apportionment of receipts when the right to income arises, including receipts in the form of periodic payments such as corporate distributions to stockholders.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms.

Present law (R.S. 9:2147) provides for the apportionment of receipts when the right to income ceases, including income in the form of periodic payments such as corporate distributions to stockholders.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms.

Present law (R.S. 9:2148) provides that succession receipts and expenses shall be allocated in accordance with the laws regulating donations mortis causa.

Proposed law changes present law by no longer deferring to the Civil Code with respect to the allocation of succession receipts and expenses and instead applying the general rule that the allocation shall be made in accordance with what is reasonable and equitable.

Present law (R.S. 9:2149) provides for the allocation of corporate distributions and categorizes the specific types of property that are classified as principal.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms. As a result, proposed law more generally classifies all non-monetary property as principal.

Present law (R.S. 9:2150) provides for the allocation of bonds or other obligations to pay money.

Proposed law changes present law to conform with uniform law by providing that the entire increase in value of discount obligations is attributable to principal when the trustee receives the proceeds from the disposition, unless the obligation, when acquired, has a maturity of less than one year.

Present law (R.S. 9:2151) provides for the allocation of proceeds and losses in the operation of a business of which the trustee is a proprietor or partner.

Proposed law changes present law by clarifying that this provision applies only to the trustee's operation of a sole proprietorship, which would not be considered a juridical person under proposed law (R.S. 9:2149). Proposed law also eliminates the "prudent man" standard as inapplicable.

Proposed law (R.S. 9:2151.1) provides for the allocation of proceeds from insurance contracts.

Proposed law (R.S. 9:2151.2) provides for the allocation of payments made from annuities, individual retirement accounts, and deferred compensation, pension, employee-benefit, or other similar plans.

Present law (R.S. 9:2152) provides for the allocation of proceeds of mineral interests and allocates the royalty payments associated with oil and gas leases in the amount of 27.5% to principal and 72.5% to income.

Proposed law changes present law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable. Proposed law also abolishes the open mines doctrine in trust.

Proposed law provides that the new depletion allowances are made prospectively applicable but clarifies that for oil and gas interests included in an existing trust, the trustee has discretion in deciding whether to apply the method of depletion under present law or proposed law.

Present law (R.S. 9:2153) provides that receipts from timber shall be allocated in accordance with what is reasonable and equitable.

Proposed law retains present law but eliminates the "prudent man" standard as inapplicable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable.

Present law (R.S. 9:2154) provides that receipts from other property subject to depletion not in excess of five percent of its inventory value are income, and the balance is principal.

Proposed law changes present law to provide that receipts from other property subject to depletion shall be allocated in accordance with what is reasonable and equitable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable.

Present law (R.S. 9:2156) provides for charges to be made against income and principal, including charges concerning depreciable property and taxes. Present law also provides that all other expenses not chargeable to income shall be charged to principal.

Proposed law retains present law but makes semantic changes and eliminates charges concerning depreciable property and taxes now included in proposed law (R.S. 9:2156.1 and 2156.2). Proposed law also eliminates the rule in present law that all other expenses not chargeable to income shall be charged to principal, since the default rule is now that receipts and expenses shall be allocated in accordance with what is reasonable and equitable, rather than entirely to principal.

Proposed law (R.S. 9:2156.1) changes present law by providing the trustee with discretion to make transfers from income to principal for property that is subject to depreciation, rather than allowing such charges against income to occur in accordance with generally accepted accounting principles.

Proposed law (R.S. 9:2156.2) provides for the payment of taxes from income based on receipts allocated to income and for the payment of taxes from principal based on receipts allocated to principal. Proposed law further provides for the payment of taxes on the trust's

share of a juridical person's taxable income from income, principal, or both proportionately and requires the trustee to adjust income or principal receipts in the event that the trust receives a deduction for payments made to a beneficiary.

Present law (R.S. 9:2157) defines the term "inventory value".

Proposed law repeals the present law definition of "inventory value", a term that is no longer used.

Present law (R.S. 9:2155) provides the income beneficiary with a right to receive a portion of the proceeds from the sale of underproductive property as "delayed income" and applies on an asset-by-asset basis.

Proposed law repeals present law.

Proposed law (R.S. 9:2164) provides the income beneficiary with the right to compel the trustee to take action to make property productive of income, convert the property within a reasonable time, transfer funds from principal to income, or take some combination of those actions.

(Amends R.S. 9:2141-2144, 2145(1), 2146, 2147-2154, and 2156(A), (C), and (E); Adds R.S. 9:2151.1, 2151.2, 2156.1, 2156.2, and 2164; Repeals R.S. 9:2155 and 2157)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.