

**TESTIMONY  
LINDA THOMAS-BUSH  
OREGON BANKERS ASSOCIATION  
TRUST COMMITTEE**

**Re: House Bill 2623  
May 3, 2017**

My name is **Linda Thomas-Bush**.

I am a **Vice President and Sr. Trust Officer** at U.S. Bank, where I have been for 39 years.

I am also a **member and past chair** of the Oregon Banker's Association Trust Committee.

HB 2623 makes changes in the Principal and Income Act, ORS chapter 129, and in the Oregon Trust Code, chapter 130.

In 2003, Oregon adopted the Uniform Income and Principal Act. That Act provides direction to Trustees on the **treatment of allocation of receipts and disbursements during trust administration**. The current rule for Trustee's fees is hard and fast: one-half of the fees are to be paid out of the income earned by the trust; the other half is to be paid out of the principal of the trust.

This bill gives the Trustee more flexibility and discretion on charging fees. If the major asset is a closely held business, there may be sufficient income to pay 100% of the fee, but if one-half has to be charged against principal, it could be very detrimental. This bill allows the Trustee to charge 100% of the fee against the income, thus allowing the **Trustee to preserve the principal assets of the trust**.

Likewise, the trust assets may earn very little income, but the trust may have sufficient principal assets to pay 100% of the fee.

In such cases as above, the Trustee should have the flexibility and discretion to depart from the customary 50/50 split in paying compensation – to take more or less out of income or principal where necessary and appropriate.

The bill also addresses ORS 130.655 in the Oregon Trust Code with regard to the Trustee's Duty of Loyalty. This statute generally requires that Trustees administer their trusts solely in the interests of the beneficiaries. Subsection (4) deals with transactions between the Trustee and a beneficiary. It states that a transaction with the beneficiary can be deemed voidable if it is done solely with the beneficiary and not with the trust. This can be problematic with Corporate Trustees who may offer the best home or car loan

available to the beneficiary, but they cannot make the loan because the bank is also serving as a Corporate Trustee.

HB 2623 corrects this problem by adding another provision that will, in most cases, allow the bank Trustee to make the loan to the trust beneficiary. The new requirement is that the loan is (a) made in the ordinary course of the Trustee's business; and (b) that it is made on terms that are not substantially less favorable to the beneficiary than the Trustee offers to similarly situated customers.

As an employee of a corporate fiduciary, **I encourage you to pass House Bill 2623.**