HB 2623 STAFF MEASURE SUMMARY **Carrier:** Sen. Thatcher

Senate Committee On Judiciary

Action Date:	05/02/17
Action:	Do pass.
Vote:	5-0-0-0
Yeas:	5 - Dembrow, Linthicum, Manning Jr, Prozanski, Thatcher
Fiscal:	No fiscal impact
Revenue:	No revenue impact
Prepared By:	Whitney Perez, Counsel

WHAT THE MEASURE DOES:

Allows trustee to charge all or part of trustee's regular compensation, or regular compensation of person providing investment advice or custodial services, from income of trust or principal of trust, if trustee determines the current requirement to pay half the compensation from principal and half from income is impracticable due to lack of sufficient cash or assets or inadvisable because of nature of assets. Allows settlor of revocable trust to direct charges of trust expenses during life of settlor. Limits voidable transactions between beneficiary and trustee to transactions outside the ordinary course of trustee's business or on terms and conditions substantially less favorable than those trustee offers similarly situated clients.

ISSUES DISCUSSED:

- Measure allows trustee flexibility for charging different percentage of fees to future and current beneficiaries when needed to preserve trust assets
- Example of why change is needed to voidability rules

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In 2003, Oregon adopted the Uniform Principal and Income Act (UPIA). The following long session, the Legislative Assembly adopted the Oregon Uniform Trust Code (UTC). Both Acts were originally promulgated by the National Conference of Commissioners on Uniform State Laws. Within the UPIA, one half of trustee or other custodial service provider fees comes from the principal of the trust and the other half from the interest earned from the trust assets. Within the UTC, Rule 802, codified in Oregon statutes as ORS 130.655, requires that trustees administer trusts solely in the interest of the beneficiaries of the trust, and goes on to identify areas in which transactions between trustees and beneficiaries are voidable. Oregon law currently allows a beneficiary to void a transaction between a trustee and a beneficiary that does not involve trust property but from which a trustee gains an advantage if the transaction occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary unless the trustee can establish that the transaction was fair to the beneficiary.

House Bill 2623 does two main things. First, it allows a trustee to charge all of the compensation for the trustee's services, or the regular compensation for investment advice or custodial services, to the principal or the income of the trust in whole, based on the reasonable judgment of the trustee. Second, it modifies the rule for voiding non-trust property transactions to add an additional element so that the rule applies to transactions that occur outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those offered by the trustee to similarly situated clients.