

# HB 2598: ESTABLISHING STEWARDSHIP TRUSTS AS AN OPTION FOR OWNERSHIP OF MISSION-DRIVEN BUSINESSES IN OREGON

*Prepared by the Office of Representative Julie Fahey · 3/13/2019*

## BACKGROUND

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When founders of a private business are ready to retire, they typically want or need to take their equity out of the business. Many also want to ensure continuity of the business's operations and to know that the business will carry on their legacy. This goal is particularly the case in mission-driven businesses that are committed to producing products or delivering services that fill a community need or address social or environmental problems (e.g. sustainability sector, social services). Finding a buyer who will ensure that the business's purpose is protected into the future can be difficult. Employees, management, and family members may not have the capital or desire to buy the business, and outside buyers may not be invested in continuing the mission.

Baby boomers who are at or near retirement age own nearly half of the nation's privately-held businesses, employing 1 in 6 workers nationwide.<sup>1</sup> In Oregon that statistic encompasses 35,000 businesses and almost 320,000 employees. While more than half of small business owners expect to retire in the next 10 years, fewer than 15% have a formal exit plan in place and many of these businesses may close due to a lack of planning or an inability to find a buyer. Alternatively, larger competitors or investors may be the only viable option, potentially leading to the loss of local jobs and/or investment in our communities.

One innovative solution would be to set up a trust that shares can be retired into, creating liquidity for owners and ensuring the business will continue operating and fulfilling its defined purpose. However, the current combination of business and trust law in Oregon does not enable for-profit businesses to structure their business and/or assets to ensure that businesses can continue operating to fulfill a specific purpose indefinitely.

### *Current business structures...*

- ✓ Allow for focus on social or environmental considerations as well as profits
- ✓ Have no limits on timeframe for existence
- ✗ Succession options are limited to family, employees or a finding a private buyer

### *Current noncharitable purpose trust law...*

- ✓ Provides some parameters for how assets can be used for a specific purpose
- ✓ Allows for a specific purpose without a specified beneficiary/person
- ✗ Offers limited guidance on how trust will operate
- ✗ Has 90-year limit before trust assets must be liquidated
- ✗ Allows court to reduce size of trust

## SOLUTION

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Businesses electing to pursue this option would continue to structure their business operations in whatever way makes sense (corporation, LLC, partnership, etc.), but changes to trust law would establish a trust structure with the specific purpose of maintaining the mission of the business.

An amended version of HB 2598 would create a new type of trust with the following provisions:

- Trust must be created for a business purpose without a specific beneficiary
- Trust would hold ownership in a business, allowing focus on priorities other than profits

- Establishes framework for trust protectors (enforce purpose and terms of the trust), trust stewardship committee (fiduciary authority), and trustee
- Provides basic safeguards for a trust created without appropriate counsel
- Outlines distribution of trust assets upon termination of the trust
- Creates an exemption for this specific type of trust from the current statutory rule against perpetuities

Solving this problem will allow Oregon businesses to use a new, innovative tool to protect their continued operation through a stewardship trust. This ownership form will ensure that as long as the business is viable, it can be operated in perpetuity to fulfill its purpose. Oregon is a leader in social-enterprise entrepreneurship – this new option will help these innovative Oregon businesses stay open and stay local.

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<sup>i</sup> Project Equity: <https://www.project-equity.org/communities/small-business-closure-crisis/>.