

Testimony before the Senate Committee on Rules
In support of SB 361
On behalf of the Oregon State Bar Sustainable Future Section
May 20, 2019

Senator Burdick, members of the Committee:

Good afternoon. My name is Sara Butcher and I am an attorney with Butcher & Smith Law in Portland. I am here today as a representative of the Sustainable Future Section of the Oregon State Bar in support of SB 361.

Oregon State Bar

The Oregon State Bar (OSB) is an instrumentality of the court with over 15,000 active members. The Oregon State Bar supports public protection for court users, the advancement of a fair, inclusive and accessible justice system, and the administration of justice and a fair and impartial judiciary. The Oregon State Bar licenses and disciplines lawyers and performs other functions to benefit the public: including lawyer referral services, modest means and veterans programs, and legal education for attorneys and members of the public. The Sustainable Future Section of the Oregon State Bar was originally formed in 2009, and today is made up of over 100 attorneys who practice in a wide range of areas.

Prudent Investor Statute

Oregon's Uniform Prudent Investor Act (UPIA), codified at ORS 130.750-775 requires trustees to manage assets both in accordance with the wishes of the trustor set forth in the trust document, and in a manner that protects the interests of trust beneficiaries by ensuring that trust resources are managed responsibly. Trustees are required to consider a range of factors including general economic conditions and tax consequences of specific investment decisions in order to maximize returns for the beneficiaries.

Oftentimes, when a trust is created, the trustor will specify that they want the trust managed based on their personal beliefs, or that they want the trustee to specifically consider specific factors in managing the trust. These sometimes include what are called Environmental, Social and Governance (ESG) Factors.

Although Oregon's Uniform Prudent Investor Act does not preclude investment strategies that consider environmental, social and governance factors, many lawyers and professional trustees would like clarity on whether a trustee may consider ESG factors, together with other factors listed in the statute, when developing investment strategies.

SB 361 would amend the prudent investor rule in the UPIA to provide protection to trustees when the settlor of the trust provides that the trustee is to consider these additional factors in managing trust assets. This may including managing the trust based not just on ESG factors but on other personal beliefs expressed by the trustor. The amended bill also provides that in cases where the trust is silent on the issue, the trustee may also take into account the personal values of the beneficiaries of the trust.

All of the changes made in this bill clarify the trustor's ability to create a trust with terms that the trustor specifies, and gives protection to the trustee to follow the trustor's instructions or comply with a beneficiary's request. This gives the trustor more authority.

This bill was modified significantly in the Senate Judiciary Committee to address concerns of additional stakeholders. We are pleased to continue working with any interested parties to update Oregon's Uniform Prudent Investor Act to ensure it works for all Oregonians.