



Tobias Read
Oregon State Treasurer

Michael Kaplan
Deputy State Treasurer

January 31, 2023

Chair Meek, Vice-Chair Boquist, and Members of the Committee,

To assist in your consideration of SB 541, I want to submit our analysis of the impacts SB 541 would have on Treasury and our investments. As a fiduciary, Treasury manages trust funds like the Oregon Public Employee Retirement Fund, (OPERF) and we take our responsibility to consider risks to the performance of our investments very seriously. These include risks related to potential human rights violations and other Environmental, Social and Governance (ESG) factors. While the goal of elevating the consideration of human rights is noble, this legislation would impose unfunded and costly new burdens on Treasury-managed funds while creating legal liabilities and disclosure requirements that are inconsistent with how Treasury engages with our investment managers.

As drafted, the bill relies on a definition of human rights impacts that is both overly broad and imprecise. Furthermore, analysis of human rights are already part of the ESG analysis framework employed by OST staff in the due diligence process involved with each investment and consistent with the OIC's Investment Management Beliefs. Like any other risk, ESG and human rights risks are part of our due diligence work but are not the sole and determinative factor because Treasury is legally required to put the financial performance of our funds above all other considerations.

This legislation requires OST to create a separate, stand-alone human rights policy based on the UN Declaration standards. This standard may differ from the standard(s) currently applied by Treasury and other institutional investors. Performing an evaluation of a "likelihood that a potential course of action will affect the human rights of any individuals" is virtually impossible.

Our investment structure is also an important consideration. To control costs and seek the best returns for the fund, Treasury outsources the management of a portion of our investments. The selection of these external managers includes an assessment of ESG capabilities and implementation. Limiting the search to only managers that can apply a standard as specific as what is described in the bill could severely limit the fund's access to the top performing managers. What's more, Treasury sometimes uses structures where managers mix our funds with those of other investors in single investment vehicles. It would not be practical to apply an individualized standard inside these structures and could violate the fiduciary duties other investors have to their



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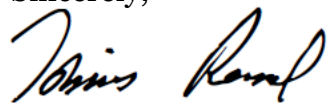
beneficiaries when we are co-mingled in a single investment vehicle. This exposes OPERF to significant new legal liabilities.

Additionally, Treasury uses passive management to invest large amounts of money efficiently and at low cost. These funds are invested in line with published indexes. Application of a human rights standard that places portions of indexes out of bounds could trigger significant deviations from the underlying index. Treasury would need to compensate for this tracking error and performance risk or customize the indexes to exclude the problematic investments. The research to identify exclusions and customization of indexes would incur significant costs on the funds.

Lastly, the bill's language mandating direct disclosure of holdings in our Treasury private markets portfolio will have a significant impact on OPERF. As a Limited Partner "LP", Treasury holds fund units, but not the underlying assets. As a result, Treasury has legal, contractual, and fiduciary restrictions on disclosing underlying holdings of these partnerships. Furthermore, if future LP Agreements must be drafted to allow the disclosure of underlying investments, it would limit our access to the most productive managers and funds, and substantially impact the performance of the portfolios. Again, we are legally required to make these investment funds as productive as possible.

Thank you for reviewing our analysis. Please don't hesitate to reach out with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tobias Read". The signature is written in a cursive, flowing style.

Tobias Read