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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 21, 2013

Ramona Line,
Chief Clerk of the House of Representatives
900 Court Street NE H271
Salem OR 97301

Re: Applicability of 3/5 Majority Requirement to HB 3477

Dear Ms. Line:

You asked whether House Bill 3477 was a bill for raising revenue that, under Article IV, section 25, of the Oregon Constitution, requires approval by a three-fifths majority vote of each house of the Legislative Assembly. Our opinion is that a simple majority is all that is required to pass HB 3477.

Only two Oregon cases have interpreted the meaning of the phrase "bills for raising revenue" as used in the supermajority clause: *Dale v. Kulongoski*¹ and *Bobo v. Kulongoski*.² In *Dale*, the Oregon Supreme Court certified the ballot title for the measure that proposed to the people the text that became Article IV, section 25 (2). The petitioner argued that the phrase "bills for raising revenue" would not be understood by voters and the court countered that the phrase would be understood to have the same meaning for three-fifths vote purposes as for purposes of Article IV, section 18, of the Oregon Constitution, which reads "Bills may originate in either house, but may be amended, or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives." (Origination clause.) In *Bobo*, the court confirmed this analysis.³

The opinions in *Dale* and *Bobo* make the body of origination clause doctrine applicable to supermajority clause analysis. In *Northern Counties Trust v. Sears*,⁴ the Oregon Supreme Court applied the main points of origination clause doctrine, as developed nationally up to that time, in holding that the power conferred by the origination clause "has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue."⁵ In an amplification of this point, the *Northern Counties Trust* court stated, "It is certain that the practical construction of the provision by congress has been to confine its operation to bills, the direct and principal object of which has been to raise revenue, and not as including bills out of which money may incidentally go into the treasury, or revenue incidentally arise."⁶

¹ 322 Or. 240 (1995).

² 338 Or. 111 (2005).

³ *Id.* at 122-23.

⁴ 30 Or. 388 (1895).

⁵ *Id.* at 402.

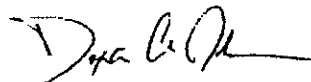
⁶ *Id.* at 402.

The basis for our conclusion that HB 3477 is not a bill for raising revenue is principally the *Northern Counties Trust* emphasis on confining the meaning of the phrase "bills for raising revenue" to only those bills that levy taxes in the strict sense of the words and excluding bills that merely incidentally raise revenue. The main purpose of HB 3477 is to eliminate the authority of foreign associations to "take, acquire, hold and enforce notes secured by mortgages or trust deeds." See ORS 713.300, which HB 3477 repeals in order to eliminate that authority. The repeal of ORS 317.057 by HB 3477 is simply a conforming change to completely achieve the elimination of a foreign association's authority to acquire or hold notes secured by mortgages, as ORS 317.057 exempts foreign associations from tax on income unrelated to property secured by mortgages while expressly subjecting income accruing to the foreign association from property secured by mortgages or the disposition thereof. Both the exemption from tax and inclusion of specified types of income into the tax base are eliminated by the repeal of ORS 317.057.

A second reason for our conclusion that HB 3477 is not a bill for raising revenue is based on a review of the revenue impact statement for the bill. The Legislative Revenue Office has estimated that HB 3477 will raise between \$100,000 and \$1 million per year. The 2013-15 estimated General Fund/Lottery Fund is about \$17 billion.⁷ Even assuming that HB 3477 would raise the maximum amount of \$1 million per biennium, that amount comprises less than 0.012 percent of the total General Fund/Lottery Fund. We believe that relatively small amount constitutes only an incidental amount of revenue and therefore does not render HB 3477 a bill for raising revenue for the purposes of requiring a supermajority vote.

Please let us know if we may be of any further assistance in this matter.

Very truly yours,



Dexter A. Johnson
Legislative Counsel

⁷ Legislative Fiscal Office 2013-15 Budget Review Statewide Summary, at 2. See <http://www.leg.state.or.us/comm/lfo/Feb22_2013files/Statewide%2013-15%20Budget%20Review.pdf>.