Dexter A. Johnson
LEGISLATIVE COUNSEL

900 COURT ST NE S101
SALEM, OREGON 97301-4065
(503) 986-1243
FAX: (503) 373-1043
www.oregonlegislature.gov/lc

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 3, 2026

Senator Kathleen Taylor
900 Court Street NE S209
Salem OR 97301

Re: Whether Senate Bill 1506-1 (2026) requires a supermajority vote

Dear Senator Taylor:

I. A. Question.

You asked whether the two components of Senate Bill 1506-1 would make the bill a bill for raising revenue:

1. Amending the Workers' Benefit Fund (WBF) assessments statute to provide a minimum amount of funding for new Bureau of Labor and Industries (BOLI) positions; and
2. Raising the maximum amount that may be collected by BOLI from the statutory fee paid by public agencies awarding public works contracts that are subject to the prevailing wage.

B. Short answer.

The short answer is likely no in both cases, but for different reasons.

II. Senate Bill 1506-1.

A. Workers' Benefit Fund assessments.

ORS 656.506 (5) currently provides:

> The Legislative Assembly intends that the [Department of Consumer and Business Services (DCBS)] set rates for the collection of assessments . . . so that at the end of the period for which the rates are effective, the balance of the Workers' Benefit Fund is an amount of not less than 12 months of projected expenditures from the fund in regard to [certain of] the department's functions and duties. . . , in a manner that minimizes the volatility of the rates assessed.[1]

Additionally, DCBS may increase the rate as "necessary to avoid unintentional program or benefit reductions" after reporting a plan for the increase to the Workers' Compensation

[1] ORS 656.506 (5).

Management-Labor Advisory Committee.[2] The assessments are paid equally by employees and employers and are computed by multiplying the rate determined by DCBS by each hour or part of an hour an employee works.[3]

Senate Bill 1506-1 would add a new subsection (6) to ORS 656.506 that parallels subsection (5) as described above. Under subsection (6) (once fully operative beginning July 1, 2031), rates would be adjusted to raise annually "at least the greater of: (A) $9.5 million; or (B) 12 months of projected expenses from the [new BOLI Expenses Fund]" for the purpose of funding certain new positions at BOLI. This amount is in addition to the amounts to be raised under subsection (5). The underlying structure—directing DCBS to set rates to meet stated goals—would not change.

B. Prevailing wage regulatory fee.

Currently, under ORS 279C.825 (1)(b), public agencies that are subject to the prevailing wage on public works contracts are assessed a fee as follows: "The commissioner [of BOLI] shall establish the fee at 0.1 percent of the contract price. However, in no event may a fee be charged and collected that is less than $250 or more than $7,500." Senate Bill 1506-1 would increase the maximum fee amount to $12,500. The statutory rate of 0.1 percent would not be increased.[4]

III. Applicable doctrine.

A. The supermajority clause.

Article IV, section 25 (2), of the Oregon Constitution (the supermajority clause), provides: "Three-fifths of all members elected to each House shall be necessary to pass bills for raising revenue." Under Article IV, section 18, of the Oregon Constitution, a bill for raising revenue must also originate in the House of Representatives (the origination clause).[5] The Oregon Supreme Court has held that the phrase "bills for raising revenue" has the same meaning for three-fifths vote purposes as for origination clause purposes.[6] Thus, judicial analysis of the phrase under either clause may be applied to the other.

B. *Bobo v. Kulongoski*, 338 Or. 111 (2005).

In *Bobo v. Kulongoski*, the Oregon Supreme Court held that "the question whether a bill is a 'bill for raising revenue' entails two issues. The first [issue] is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether the bill possesses the essential features of a bill levying a tax."[7] The case law is sparse, but in *Boquist v. Department of Revenue*, the Oregon Tax Court, after reviewing the enactment history of Article IV, section 25,

[2] *Id.*
[3] ORS 656.506 (2) and (3).
[4] Fee moneys are credited to the Prevailing Wage Education and Enforcement Account created by ORS 651.185. ORS 279C.825 (2).
[5] "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. —".
[6] *Dale v. Kulongoski*, 322 Or. 240 (1995); *Boquist v. Department of Revenue*, 23 OTR 263, 288 (2019).
[7] *Bobo v. Kulongoski*, 338 Or. 111, 122 (2005).

held that "the people certainly intended to require a supermajority for bills that 'increase tax rates or . . . impose new taxes.'"[8]

The first prong of the *Bobo* test is relatively easy to understand if not necessarily to apply. As for the second prong—whether the bill possesses the essential features of a bill levying a tax—the Oregon Tax Court has stated:

> Although no Oregon court has yet pronounced a positive definition, Oregon case law clearly excludes bills that (a) impose fees for governmental services (*Northern Counties*, 30 Or at 403); (b) primarily regulate behavior or legal relationships outside the area of taxation, imposing fines, penalties or other charges merely as an incident to regulation (*State v. Wright*, 14 Or at 374; *see also Barnum*, 5 OTR at 523-24); or (c) "regulat[e]" a tax, as by the "assessment or listing and valuation of the polls or property preliminary thereto, * * * to secure what may be deemed a just or expedient basis" for the tax (*Northern Counties*, 30 Or at 403).[9]

Finally, the Oregon Tax Court has held that the second prong of the *Bobo* test "must be construed narrowly."[10]

C. Statutory interpretation.

Interpreting the meaning of SB 1506-1 is a matter of statutory construction, "which requires an examination of the text of the statute in context, along with any relevant legislative history and canons of statutory construction."[11] We also apply ORS 174.010, which provides, "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted." Moreover, there is a longstanding presumption in Oregon "that a statute is not in conflict with the Constitution, and that all reasonable doubts must be resolved in favor of the constitutionality of the act assailed."[12]

For purposes of this opinion, we assume that SB 1506-1 has the force of law. Please note, however, that we are interpreting the current proposed text; our analysis might change if the text changes. Finally, SB 1506-1 has not been heard in committee, so there is no legislative history to consider.

IV. Analysis

A. WBF assessments.

1. The first prong of the *Bobo* test.

[8] *Boquist*, 23 OTR at 293.
[9] *Id.* at 275.
[10] *Id.*
[11] *Burke v. State ex rel. Department of Land Conservation and Development*, 352 Or. 428, 432 (2012), (*citing State v. Gaines*, 346 Or. 160, 171–173 (2009)).
[12] *Corporation of Sisters of Mercy v. Lane County*, 123 Or. 144, 163-164 (1927).

We believe that SB 1506-1's amendment of ORS 656.506 to require rates to be set in order to fund new BOLI positions at a minimum level, would not collect or bring money into the treasury under the first prong of the *Bobo* test. To begin with, the underlying structure of the assessments—directing DCBS to set rates to meet stated goals—would not change. The statute does not currently specify a rate, and SB 1506-1 does not alter this delegation of rate-setting to the agency, much less directly increase the rate.[13]

Context helps bring this into focus. Enrolled House Bill 2017 (2017) enacted a tax on wages for public transportation services as follows:

> (2) A tax is imposed at the rate of one-tenth of one percent of:
>
> (a) The wages of an employee who is:
>
> (A) A resident of this state, regardless of where services are performed.
>
> (B) Not a resident of this state, for services performed in this state.
>
> (b) The periodic payments under ORS 316.189.[14]

Enrolled House Bill 3991 (2025 special session) increased the rate from one-tenth to two-tenths of one percent.[15] These are unambiguous examples of a bill that imposes a new tax and one that increases an existing tax rate, which the Oregon Tax Court stated were the two definite examples of provisions that made a bill a bill for raising revenue in the minds of the people voting on the question of the supermajority clause in 1996.

In sharp contrast, if SB 1506-1 were enacted, no revenue would be raised as a direct result of its becoming effective. Whether the rate would go up or not as a result is speculative. Among the revenue factors DCBS considers when setting the rate for the WBF are actual revenue data from quarterly financial statements, employment, the average annual number of hours worked, investment income on moneys in the WBF and fines, penalties and other miscellaneous revenue, and among the expenditure factors DCBS considers are actual program expenditures.[16] Changes in any of these factors could mean that the rates might remain flat or even decrease.[17] For these reasons, and remembering the judicial presumption of a law's constitutionality, we believe a court would likely end the inquiry into SB 1506-1 with the first prong of the *Bobo* test.

2. <u>The second prong of the *Bobo* test.</u>

If a court held that SB 1506-1 did bring money into the treasury, it would turn to the second prong of the *Bobo* test—whether the bill possesses the essential features of a bill

[13] Altogether, the text of this direction in current subsection (5), mimicked in new subsection (6), is attenuated: "The Legislative Assembly intends that the department set rates for the collection of assessments."
[14] Section 122a (2), chapter 750, Oregon Laws 2017, codified as ORS 320.550 (2) and further amended by section 16, chapter 93, Oregon Laws 2018. The WBF assessments under ORS 656.506 and the tax on wages for public transportation services under ORS 320.550 are both required to be included on an employer's combined quarterly tax report under ORS 316.168.
[15] Section 24 (2), chapter 1, Oregon Laws 2025 (special session).
[16] Sean E. O'Day and Matt West, Department of Consumer and Business Services, "Workers' Benefit Fund," at 9, 12 (presented at the Senate Interim Committee on Labor and Business information hearing on January 13, 2026). https://olis.oregonlegislature.gov/liz/2025I1/Downloads/CommitteeMeetingDocument/311391.
[17] ORS 656.506 (5) further requires the rate setting to be done "in a manner that minimizes the volatility of the rates." And, in fact, the rate has decreased steadily since 2016. *See id.* at 8.

levying a tax. For this analysis, the court would have to consider whether the bill fell under one of the three judicial exclusions described in section III.B above. We have found in the cases no fact pattern that squares with SB 1506-1, so we are left to reason by analogy.

We do not believe that assessments payable under ORS 656.506 (5), as amended by SB 1506-1, would fall under exclusion (a) for a fee for government services. The clearest example of exclusion (a) in the case law cited by Oregon courts is a federal bill that increased the rate of postage. It was held not to be a bill for raising revenue because:

> A bill regulating postal rates for postal service, provides an equivalent for the money which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate, or he lets it alone, as he pleases, and as his own interests dictate. Revenue, beyond its cost, may or may not be derived from the service and the pay received for it, but it is only a very strained construction which would regard a bill establishing rates of postage as a bill for raising revenue, within the meaning of the constitution.[18]

Exclusion (a) does not apply to the WBF assessment because the assessment is not voluntary.

Instead, we believe a court would likely hold that the amendments fall under exclusion (b) for bills that "primarily regulate behavior or legal relationships outside the area of taxation, imposing fines, penalties or other charges merely as an incident to regulation." BOLI was established to regulate behavior and legal relationships outside the area of taxation, as shown by the commissioner's statutory duties:

> The Commissioner of the Bureau of Labor and Industries shall cause to be enforced:
>
> (1) All laws regulating the employment of adults and minors.
>
> (2) All laws established for the protection of the health, lives and limbs of persons employed in workshops, factories, mills and other places.
>
> (3) All laws enacted for the protection of employees.
>
> (4) Laws which declare it to be a misdemeanor on the part of employers to require as a condition of employment the surrender of any rights of citizenship.
>
> (5) Laws regulating and prescribing the qualifications of persons in apprenticeable trades and crafts, and similar laws.[19]

In addition, BOLI includes the Employer Assistance Division, the purpose of which "is to provide education, training and interpretive guidance, including advisory opinions, to employers to assist employers in complying with laws that are enforced by the bureau."[20] The revenue stream created by SB 1506-1 for deposit in the new BOLI Expenses Fund would be used to fund new positions to carry out the bureau's regulatory work. We believe a court would likely see those

[18] *United States v. James*, 26 F. Cas. 577, 578 (C.C.S.D.N.Y. 1875). *Quoted in part by Northern Counties Investment Trust v. Sears*, 30 Or. 388, 402 (1895).
[19] ORS 651.050.
[20] ORS 651.080.

revenues as incidental to BOLI's core mission, which is to regulate employment, on behalf of both employees and employers, who pay the assessments.

Thus, we believe a court would likely hold that SB 1506-1's amendments to ORS 656.506 would not bring money into the treasury, but even if it did, the court nonetheless would likely hold that SB 1506, as amended by the -1s, is not a bill for raising revenue.[21]

B. Prevailing wage regulatory fee.

1. The first prong of the *Bobo* test.

Here, we believe that by raising the maximum amount of the fee that may be collected under ORS 279C.825 (1)(b), SB 1506-1 would bring money into the treasury. Although the rate is not increased by the bill, collections currently are cut off at a payment of $7,500. Senate Bill 1506-1 would raise the maximum to $12,500, bringing money into the treasury by as much as $5,000 per fee.

2. The second prong of the *Bobo* test.

Under the second prong of the *Bobo* test, we believe a court would likely hold that the increase to the cap of the prevailing wage regulatory fee by SB 1506-1 would fall under exclusion (c) (see section III.B above) as a bill to regulate a tax, "as by the 'assessment or listing and valuation of the polls or property preliminary thereto, * * * to secure what may be deemed a just or expedient basis' for the tax."[22] In the case of *City of Seattle*, Enrolled Senate Bill 495 (2009) repealed property tax exemptions for certain out-of-state public entities but did not amend the underlying law. Senate Bill 495 was held to bring money into the treasury but fell under exclusion (c) and so was held not to be a bill for raising revenue.[23]

Senate Bill 1506-1 would not directly increase the statutory rate of the prevailing wage regulatory fee—0.1 percent of the contract price—but would increase collections. To illustrate, a contract with a price of $10 million would currently pay a fee of no more than $7,500, the same fee as for a contract with a price of $7.5 million. Under SB 1506-1, the fee would be $10,000. Thus, we view the current cap as exempting $2.5 million of the contract price from the fee. For purposes of the second prong of the *Bobo* test, then, we view the cap increase as removing an exemption, bringing it under exclusion (c). It might be argued that the effective rate on a $10 million contract would be increased, but as a textual matter, the nominal statutory rate would remain the same, along with all other mechanisms of the fee. Instead, the sole change would be to increase the fee cap so that an additional $5 million of contract price would no longer be exempt from the existing statutory rate. Thus, keeping in mind that the question must be construed narrowly, and the presumption in favor of the constitutionality of a law, we believe a court would likely hold that increasing the cap of the prevailing wage regulatory fee would be analogous to the facts of *City of Seattle* and that SB 1506, as amended by the -1s, is not a bill for raising revenue.

V. Summary.

[21] Exclusion (c) would plainly not apply to the amendments to ORS 656.506, as shown by the discussion below in section IV.B.2.
[22] *Boquist*, 23 OTR at 275.
[23] *City of Seattle v. Department of Revenue*, 357 Or. 718 (2015).

We believe that a court would likely hold that SB 1506, as amended by the -1s, would not be a bill for raising revenue. Under the first prong of the *Bobo* test, the change in the assessment goals under ORS 656.506 would not by itself bring money into the treasury, but even if it did, under the second prong of the test, the bill would fit under the judicial exclusion for bills that primarily regulate behavior or legal relationships outside the area of taxation, imposing charges merely as an incident to regulation. As for the prevailing wage regulatory fee, increasing the cap on collections would bring money into the treasury, but, under the second prong of the test, this change is analytically comparable to the repeal of an exemption and so falls under the judicial exclusion for bills that regulate a tax.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

Alan S Dale

By
Alan S. Dale
Senior Deputy Legislative Counsel