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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 23, 2026

Senator Kathleen Taylor
900 Court Street NE S209
Salem OR 97301

Re: Whether House Bill 4027-A (2026) requires a supermajority vote

Dear Senator Taylor:

I. A. Question.

You asked whether the following components of House Bill 4027-A would make the bill a bill for raising revenue required to originate in the House of Representatives and to receive a three-fifths majority vote in each chamber of the Legislative Assembly:

1. Amending the Workers' Benefit Fund (WBF) assessments statute to provide a minimum amount of funding for duties of the Commissioner of the Bureau of Labor and Industries (BOLI) and certain related expenses of the Director of the Department of Consumer and Business Services (DCBS); 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 to your first question is, more likely than not, no. Please note that we are aware of no cases directly on point for this question, so our conclusion cannot be free from doubt. The short answer to your second question is likely no.

II. House Bill 4027-A.

A. BOLI Expenses 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]

[1] ORS 656.506 (5).

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 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]

House Bill 4027-A would add new subsections (6) and (8) to ORS 656.506 that parallel the structure of current subsection (5) as described above. The key difference for purposes of this discussion is that new subsection (6)(a) states a minimum dollar amount for assessments while subsection (5) does not. New subsection (6)(a) would primarily fund the expenses incurred by the Commissioner of BOLI in carrying out the statutory duties of the office set forth in ORS 651.050. Once HB 4027-A is fully operative, beginning July 1, 2031, under new subsection (6)(a), the Director of DCBS would be directed to set assessment rates so that there is deposited by the end of each fiscal year in the new BOLI Expenses Fund:

> [A]t least the greater of:
> (A) $9.5 million; or
> (B) 12 months of projected expenses from the fund, including:
> (i) $9.5 million adjusted for any increase in the costs of Bureau of Labor and Industries positions; and
> (ii) The reimbursements [for related actual administrative expenses incurred by the director].

Under new subsection (6)(b), the department is further directed to set assessment rates so as to "(A) [m]inimize the volatility of the rates; and (B) [m]aintain a 12-month reserve in the fund." Under new subsection (4)(d), the assessment rates for the BOLI Expenses Fund and the Workers' Benefit Fund must be determined separately, and, under new subsection (5) of ORS 656.605, moneys in the Workers' Benefit Fund may not be transferred to the BOLI Expenses Fund to make up the minimum assessment amount in the new fund.

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." House Bill 4027-A 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

[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. —".

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,[8] but in *Boquist v. Department of Revenue*, the Oregon Tax Court, after reviewing the enactment history of Article IV, section 25, held that "the people certainly intended to require a supermajority for bills that 'increase tax rates or . . . impose new taxes.'"[9]

The first prong of the *Bobo* test may not be as straightforward as it sounds. As for the second prong—whether the bill possesses the essential features of a bill levying a tax—the Oregon Tax Court summarized the case law thus:

> 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).[10]

Finally, the Oregon Tax Court has held that the second prong of the *Bobo* test "must be construed narrowly."[11]

C. Statutory interpretation.

Interpreting the meaning of HB 4027-A 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."[12] 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."[13]

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[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).
[8] When *Bobo* was decided in 2005, the most recent substantive opinion of the Oregon Supreme Court on the issue was *Northern Counties Investment Trust v. Sears*, 30 Or. 388 from 1895—a gap of 110 years. *Boquist*, 23 OTR at 269.
[9] *Id*. at 293.
[10] *Id.* at 275.
[11] *Id.*
[12] *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)).
[13] *Corporation of Sisters of Mercy v. Lane County*, 123 Or. 144, 163-164 (1927).

Please note that we are interpreting the version of the bill passed out of the House Committee on Labor and Workforce Development; our analysis might change if the bill is amended further. Finally, because of the bill's current status, we have a limited amount of legislative history to consider, and that history might be superseded by further discussions of a later version of the bill, if any.

IV. Analysis.

A. BOLI Expenses Fund assessments.

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

The textual argument that HB 4027-A would bring money into the treasury is based on the minimum amount of $9.5 million that the new rates are intended to raise for deposit in the new BOLI Expenses Fund. This argument is bolstered by the fact that the rates for the existing DCBS assessments and the new BOLI assessments are determined separately, so the $9.5 million is intended to be in addition to whatever assessments are made for the Workers' Benefit Fund. As for legislative history, testimony on the bill in the House Committee on Labor and Workforce Development shows that the intent is to create a revenue stream to fund BOLI's regulatory duties.[14]

The textual counterargument is based on the structure of the assessment. To say that House Bill 4027-A would itself bring money into the treasury, it is necessary to elide the delegation of rate-setting to the Director of DCBS, contrary to the statutory rule of construction not to insert substantive material that has been omitted from a measure, or to omit what has been inserted.[15] As drafted, HB 4027-A would not bring money into the treasury as of its effective date; money would come into the treasury only after the director determines the rates.

Context helps bring this argument into focus. Enrolled House Bill 2017 (2017) enacted a tax on employee 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.[16]

This tax on employee wages was codified as ORS 320.550, and Enrolled House Bill 3991 (2025 special session) amended the section to increase the rate from one-tenth to two-tenths of one

[14] Public hearing on House Bill 4027 at 00:03:50, House Committee on Labor and Workforce Development, February 9, 2026 (testimony of Josh Nasbe, Legislative Director, Bureau of Labor and Industries), ("House Bill 4027 with the -1 amendments proposes to address the bureau's longterm funding challenges by providing the agency with an other-funds source to support a portion of our work."); public hearing on House Bill 4027 at 00:46:22, House Committee on Labor and Workforce Development, February 9, 2026 (Jessica Giannettino Villatoro, Deputy Labor Commissioner, Bureau of Labor and Industries), https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2026021127 (last visited February 23, 2026).
[15] ORS 174.010.
[16] 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 (emphasis added). The WBF assessments under ORS 656.506 and the tax on employee 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.

percent.[17] House Bill 2017 and the amendatory HB 3991 are unambiguous examples of a bill that imposes a new tax and one that increases an existing tax rate, respectively, which the Oregon Tax Court has stated are the two 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.[18] House Bill 2017 and HB 3991 plainly bring money into the treasury because they set forth the rates that became, or will become, law on their effective dates.[19] Under HB 4027-A, the delegation of the rate-setting contrasts sharply with the textual imposition of rates under HB 2017 and HB 3991.

There are two relevant bill-for-raising-revenue cases in which the courts held that the challenged bills brought money into the treasury although they did not impose a new tax or increase an existing tax rate. In *City of Seattle v. Department of Revenue*, Enrolled Senate Bill 495 (2009) repealed a property tax exemption for certain out-of-state municipal corporations holding property interests in a contractually stated amount of the electrical transmission capacity of the Pacific Northwest AC Intertie.[20] In *Boquist v. Department of Revenue*, Enrolled Senate Bill 1528 (2018) required that, for Oregon tax purposes, taxpayers add back to their federal taxable income the amount of a federal deduction for certain qualified business income.[21]

We believe these cases can be distinguished. Once effective, both SB 495 and SB 1528, by repealing an amendment and reversing a federal deduction, respectively, imposed an existing tax on taxable property that otherwise would have been statutorily shielded from the tax. In neither bill was the applicable tax rate in play. The rates were not delegated but set directly by legislative bodies under laws that were not amended in the bills. Thus, these bills, upon taking effect, brought money into the treasury. By contrast, on the effective date of HB 4027-A, the Director of DCBS will have a duty to set the rates to achieve the goals set forth in the statute, but money will not be brought into the treasury until after the duty is exercised. In the absence of any case law on point, we conclude a court would more likely than not hold that the connection between the assessment rate and the flow of assessment revenue is too disjunctive to say that HB 4027-A itself would bring money into the treasury.

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

If a court did hold that HB 4027-A would bring money into the treasury, it would progress to the second prong of the *Bobo* test—whether the bill possesses the essential features of a bill levying a tax. As stated above, HB 4027-A does not impose a new tax or increase the rate of an existing tax, which are the clearest examples of the essential features of a bill levying a tax. Otherwise, we have found no fact pattern in the cases that squares with HB 4027-A, so we are left to compare HB 4027-A to such fact patterns as there are.

We begin with the question of whether HB 4027-A falls under judicial exclusion (a), described in section III.B above, for fees for government services. In *Northern Counties Investment Trust, Ltd. v. Sears*, an 1893 bill and an 1895 bill amending it created fees that, among other things, required plaintiffs or moving parties in any action or proceeding to reimburse sheriffs for the costs associated with care of property in their custody under attachment, execution, etc., to pay coroners for the performance of service in an action, suit or proceeding where the sheriff

[17] Section 24 (2), chapter 1, Oregon Laws 2025 (special session).
[18] *Boquist*, 23 Or. Tax at 293.
[19] Because section 24 of HB 3991, amending ORS 320.550, is subject to the approval or rejection of the voters under Referendum Petition 2026-302, the increase in the tax under ORS 320.550 has not yet become effective.
[20] *City of Seattle*, 357 Or. 718, 721-722, 737 (2015); Enrolled Senate Bill 495 (2009) (section 1, chapter 804, Oregon Laws 2009).
[21] Enrolled Senate Bill 1528 (2018) (section 10, chapter 108, Oregon Laws 2018).

is a party and to pay to county clerks court fees for filing claims, answers, demurrers or motions.[22] The Oregon Supreme Court held that the bills were not bills for raising revenue, explaining:

> A law which requires a fee to be paid to an officer, and finally covered into the treasury, of a county, for which the party paying the fee receives some equivalent in return, other than the benefit of good government which is enjoyed by the whole community, and which the party may pay and obtain the benefits under the law, or let it alone, as he chooses, does not come within the category of an act for raising revenue . . . .[23]

The fact pattern in the *Northern Counties* case resembles HB 4027-A in that the bills at issue in the case required upfront payment by the person who benefited from the governmental system funded by the fees. The difference is that the judicial fees in *Northern Counties* are discrete, applicable only to the plaintiff's or moving party's case, whereas the administrative assessments in HB 4027-A are ongoing and spread the cost of the governmental system among all payees. Also, the BOLI administrative assessments are not voluntary, but employees and employers do receive the benefit of BOLI's enforcement of employment laws, regardless of whether an individual employee ever files a complaint with BOLI or an individual employer receives related education, training or guidance to prevent such claims from arising. And this is not a benefit of good government enjoyed by the whole community—it does not extend to independent contractors, individuals who do not work, volunteers and other individuals excluded from the definition of "employee" for purposes of determining liability for the assessments under ORS 656.506 (2).[24] Nor does it extend to employers who do not employ "employees" as defined by the applicable law.[25] Thus, key factors of exclusion (a) can be set on both sides of the scale. In our minds, the question is close enough that we cannot say definitively that HB 4027-A would or would not fall under exclusion (a).

Exclusion (b) is 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." Certainly, 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.[26]

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

[22] *Northern Counties Investment Trust v. Sears*, 30 Or. 388, 393-394 (1895).
[23] *Id.* at 403.
[24] *See* ORS 656.506 (1)(a), 656.005 (28) and 656.027.
[25] *See* ORS 656.506 (1)(b), 656.005 (13) and 656.023.
[26] ORS 651.050.

employers in complying with laws that are enforced by the bureau."[27] The revenue stream created by HB 4027-A must be used to fund the expenses incurred by the Commissioner of BOLI in carrying out these statutory duties, as well as related expenses of the Director of DCBS. Thus, we believe a court would more likely than not find that House Bill 4027-A primarily regulates the area of employment and not taxation.

The closer question is whether the BOLI assessments are charges "imposed . . . merely as an incident to regulation." A typical example was a bill regulating the sale of liquors at retail and imposing a fee for a license. The Oregon Supreme Court held, "This is not a bill to raise revenue, but an exercise of the police power of the state, for the purpose of regulating a business [i.e., an industry] . . . ."[28] House Bill 4027-A is an exercise of the police power of the state, but is the assessment an "incident" to BOLI's regulation of employment?

The pertinent dictionary definition of "incident" is "something dependent upon, appertaining or subordinate to, or accompanying something else of greater or principal importance."[29] The assessments are subordinate to the regulation of employment by BOLI, which is of principal importance, even in a bill that provides for the assessments and does not itself establish BOLI's regulatory duties. But if BOLI's duties were established and the rate-setting delegated in the same bill, a court might well conclude that the assessments were an incident to the regulatory intent of the bill. For this reason, we think that saying the answer is different because the delegation of rate-setting stands alone in HB 4027-A would be to exalt form over substance. For these reasons, we believe a court is more likely to conclude that HB 4027-A falls under exclusion (b) than exclusion (a). (Exclusion (c) is inapposite.)

In sum, HB 4027-A is not a perfect fit for exclusion (a) or (b), but these exclusions do not describe the entire universe of possible exclusions. They are merely summaries of such case law on this subject as has been decided in Oregon. There are other considerations that could be adopted by a court. For instance, both Oklahoma's origination clause and the second prong of the state's test for bills for raising revenue—whether the bill levies a tax in the strict sense of the word—are nearly the same as, or related to, Oregon's.[30] And the Oklahoma Supreme Court has recently explained, "Strictly speaking, a levy is the legislative act . . . which determines that a tax shall be laid, and fixes its amount. . . . *Levying a tax usually means the fixing of the rate at which property is to be taxed.*"[31] If adopted by Oregon courts, an exclusion based on this doctrine would likely uphold HB 4027-A against a bill-for-raising-revenue challenge.[32]

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[27] ORS 651.080.
[28] *State v. Wright*, 14 Or. 365, 374 (1887), *overruled on other grounds by Warren v. Crosby*, 24 Or. 558 (1893).
[29] *Merriam-Webster Unabridged Dictionary*, http://unabridged.merriam-webster.com/unabridged/incident (last visited February 23, 2026).
[30] Article V, section 33, Oklahoma Constitution; *Sierra Club v. State ex rel. Oklahoma Tax Commission*, 405 P.3d 691, 695 (2017). The second prong analysis in Oklahoma derives from Judge Story's *Commentaries on the Constitution of the United States*, at section 880 (1851 ed.) ("[T]he history of the origin of the power already suggested abundantly proves that it 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."). *Anderson v. Ritterbusch*, 1908 OK 250, ¶¶ 9-11, 98 P. 1002, 1006 (1908), *overruled on other grounds by Fent v. Fallin*, 2014 OK 105, ¶¶ 9-11, 345 P.3d 1113, 1116 (2014). The Oregon Supreme Court likewise based its decision in *Northern Counties* in part on this passage from Judge Story's commentaries. *See Northern Counties*, 30 Or. at 402.
[31] *Sierra Club v. State ex rel. Oklahoma Tax Commission*, 405 P.3d 691, 698 (2017) (emphasis added), *citing Olson v. Oklahoma Tax Commission*, 198 Okla. 607, 608 (1947), citing Thomas M. Cooley, *A Treatise on the Law of Taxation* (1924 ed.) §1012.
[32] In addition, several states have held that delegating taxing authority to a local government cannot be a bill for raising revenue. *See, e.g.*, *Morgan v. Murray*, 134 Mont. 92, 99 (1958). Some of the decisions are based directly on features that are specific to the relationship of the state to local governments *see, e.g.*, *Rankin v. City of Henderson*, 7 S.W. 174, 174 (Ky. 1888), but some of the doctrine relating to delegation per se is analogous to the fact pattern in HB 4027-A—"While the bill authorizes the municipal subdivision of the state to levy tax for a particular purpose, yet it does not raise revenue, and the *revenue is not raised until the municipality exercises authority granted by the bill*, hence the constitutional provision referred to has no application." *Protest of Chicago, Rock Island & Pacific Railway Co.*, 1929

Finally, we believe the application of the second prong of the *Bobo* test must be made keeping firmly in mind the Oregon Tax Court's holding that the second prong "must be construed narrowly," the reliance of the Oregon Supreme Court on Judge Story's statement that the strictures of the origination clause have been "confined to bills to levy taxes in the strict sense of the words" and the more general judicial 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."[33] From this we conclude that the applicable doctrine does not establish a default position that a bill is a bill for raising revenue unless it plainly is not one. Rather, the default is that a bill is *not* a bill for raising revenue unless it plainly *is* one. Considering exclusions (a) and (b), as well as other bases for the analysis, we cannot say that HB 4027-A is plainly a bill for raising revenue—there are reasonable doubts. Thus, we believe a court more likely than not would hold that HB 4027-A does not possess the essential features of a bill levying a tax and consequently is not a bill for raising revenue.

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), HB 4027-A would bring money into the treasury. Although the rate is not increased by the bill, collections currently are cut off at a maximum payment of $7,500. House Bill 4027-A 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 HB 4027-A 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."[34] The relevant case is *City of Seattle*, in which Enrolled Senate Bill 495 (2009) repealed a property tax exemption for certain out-of-state public entities but did not amend the underlying property tax law. Senate Bill 495 was held to bring money into the treasury but was not a bill for raising revenue: "SB 495 repeals taxpayers' tax exemption . . . . The bill does not directly levy a tax on taxpayers."[35]

House Bill 4027-A 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 $12.5 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 HB 4027-A, the fee would be $12,500. We view the current cap as exempting the $5 million difference between the contract prices from the fee. House Bill 4027-A would eliminate this exemption, bringing it under exclusion (c). It might be argued that the effective rate on a $12.5 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

OK 263, ¶ 11, 279 P. 319, 321 (1929), *citing Dickey v. State*, 1923 OK 414, ¶ 4, 217 P. 145, 146 (1923) (emphasis added). We are not aware of any cases that discuss the legislative delegation of rate-setting to an executive branch agency, but the question cannot be dismissed.

[33] *Corporation of Sisters of Mercy v. Lane County*, 123 Or. 144, 163-164 (1927).

[34] *Boquist*, 23 OTR at 275.

[35] *City of Seattle v. Department of Revenue*, 357 Or. at 737.

of a law, we believe a court would likely hold that increasing the cap of the prevailing wage regulatory fee would not make HB 4027-A a bill for raising revenue.

V. Summary.

First, by setting assessment goals for the BOLI Expenses Fund but delegating rate-setting to DCBS, HB 4027-A itself would not bring money into the treasury within the meaning of the first prong of the *Bobo* test. But even if the bill were held to bring money into the treasury, under the second prong of the test, a court would more likely than not hold that the bill falls 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. Second, increasing the cap on collections of the prevailing wage regulatory fee would bring money into the treasury, but, under the second prong of the test, a court would likely hold that this change is analytically comparable to the repeal of an exemption and so falls under the judicial exclusion for bills that regulate a tax. Overall, then, we believe that a court would more likely than not hold that HB 4027-A is not a bill for raising revenue.

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,

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Alan S Dale

By
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