



STATE OF OREGON
Legislative Counsel Committee

February 5, 2018

To: Senator Peter Courtney

From: Maureen McGee, Deputy Legislative Counsel

Subject: Revision to energy resource supplier assessment cap in Senate Bill 1519-1 amendments

In your request for the enclosed -1 amendments to Senate Bill 1519, you asked whether reducing the cap on the energy resource supplier assessment, from 0.375 percent to 0.15 percent, would be a tax vote requiring a supermajority.

The answer is no. Article IV, section 25 (2), of the Oregon Constitution, requires bills for raising revenue to receive at least a three-fifths majority vote of approval in each house of the Legislative Assembly for passage. The phrase "bill for raising revenue" is to be narrowly construed to mean a bill that levies a tax "in the strict sense of the words." *Bobo v. Kulongoski*, 338 Or. 111, 121 (2005), quoting Story, *Commentaries on the Constitution of the United States*, at 343 (1833). Basically, there are two steps to determining whether a bill is a bill for raising revenue: (1) does the bill bring money into the State Treasury; and (2) if the bill does bring money into the State Treasury, does the bill have the essential features of a bill levying a tax. *Bobo* at 122, citing *Northern Counties Trust v. Sears*, 30 Or. 388, 402 (1895).

ORS 469.421 caps the annual energy resource supplier assessment amount for an energy resource supplier based on a percentage of the supplier's gross operating revenue derived within this state in the preceding calendar year. Your amendment reduces that percentage, from 0.375 percent to 0.15 percent. That reduction, if adopted, would result in a lower amount being assessed against energy resource suppliers and, therefore, less money being brought into the State Treasury. Thus, the bill would not bring money into the State Treasury, failing the first step of the *Bobo* test.

Encl.