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May 8, 2019

Legislative Leadership
Legislative Building
401 S. Carson Street
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Dear Legislative Leadership:

You have asked this office several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

> [A]n affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2).[1]

First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

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[1] Article 4, Section 18(2) uses the inclusive phrase "taxes, fees, assessments and rates." However, for ease of discussion in this letter, we will use the term "state taxes" to serve in the place of the inclusive phrase "taxes, fees, assessments and rates."

In response to your questions, we first provide pertinent background information regarding Nevada's constitutional requirements for the final passage of bills by the Legislature. Following that, we provide a detailed and comprehensive legal discussion of the relevant authorities that support our legal opinions regarding the application of Nevada's two-thirds majority requirement to your specific legal questions. Finally, we note that the legal opinions expressed in this letter are limited solely to the application of Nevada's two-thirds majority requirement to the specific types of bills directly discussed in this letter. We do not express any other legal opinions in this letter concerning the application of Nevada's two-thirds majority requirement to any other types of bills that are not directly discussed in this letter.

BACKGROUND

1. Purpose and intent of Nevada's original constitutional majority requirement for the final passage of bills.

When the Nevada Constitution was framed in 1864, the Framers debated whether the Legislature should be authorized to pass bills by a simple majority of a quorum under the traditional parliamentary rule or whether the Legislature should be required to meet a greater threshold for the final passage of bills. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866).

Under the traditional parliamentary rule, if a quorum of members is present in a legislative house, a simple majority of the quorum is sufficient for the final passage of bills by the house, unless a constitutional provision establishes a different requirement. See Mason's Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by each House of Congress, which may pass bills by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) ("[A]t the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired."); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

The Framers of the Nevada Constitution rejected the traditional parliamentary rule by providing in Article 4, Section 18 that "*a majority of all the members elected to each House* shall be necessary to pass every bill or joint resolution." Nev. Const. art. 4, § 18 (1864) (emphasis added). The purpose and intent of the Framers in adopting this constitutional majority requirement was to ensure that the Senate and Assembly could not pass bills by a simple majority of a quorum. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866); see also Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada, at 208 (1972).

The constitutional majority requirement for the final passage of bills is now codified in Article 4, Section 18(1), and it provides that "a majority of all the members elected to each House is necessary to pass every bill," unless the bill is subject to the two-thirds majority requirement in Article 4, Section 18(2). Under the constitutional majority requirement in Article 4, Section 18(1), the Senate and Assembly may pass a bill only if a majority of the entire membership authorized by law to be elected to each House votes in favor of the bill. See Marionneaux v. Hines, 902 So. 2d 373, 377-79 (La. 2005) (holding that in constitutional provisions requiring a majority or super-majority of members elected to each house to pass a legislative measure or constitute a quorum, the terms "members elected" and "elected members" mean the entire membership authorized by law to be elected to each house); State ex rel. Garland v. Guillory, 166 So. 94, 101-02 (La. 1935); In re Majority of Legislature, 8 Haw. 595, 595-98 (1892).

Thus, under the current membership authorized by law to be elected to the Senate and Assembly, if a bill requires a constitutional majority for final passage under Article 4, Section 18(1), the Senate may pass the bill only with an affirmative vote of at least 11 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 22 of its 42 members. See Nev. Const. art. 4, § 5, art. 15, § 6 & art. 17, § 6 (directing the Legislature to establish by law the number of members of the Senate and Assembly); NRS Chapter 218B (establishing by law 21 members of the Senate and 42 members of the Assembly).

2. Purpose and intent of Nevada's two-thirds majority requirement for the final passage of bills which create, generate or increase any public revenue in any form.

At the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments to Article 4, Section 18 that were proposed by a ballot initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

> Except as otherwise provided in subsection 3, an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or joint resolution which *creates, generates, or increases any public revenue in any form*, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception in subsection 3, which provides that "*[a] majority of all of the members elected to each House* may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Under the two-thirds majority requirement, if a bill "creates, generates, or increases any public revenue in any form," the Senate may pass the bill only with an affirmative vote of at least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

When the ballot initiative adding the two-thirds majority requirement to the Nevada Constitution was presented to the voters in 1994 and 1996, one of the primary sponsors of the initiative was former Assemblyman Jim Gibbons. See Guinn v. Legislature (Guinn II), 119 Nev. 460, 471-72 (2003) (discussing the two-thirds majority requirement and describing Assemblyman Gibbons as "the initiative's prime sponsor").[2] During the 1993 Legislative Session, Assemblyman Gibbons sponsored Assembly Joint Resolution No. 21 (A.J.R. 21), which proposed adding a two-thirds majority requirement to Article 4, Section 18(2), but Assemblyman Gibbons was not successful in obtaining its passage. See Legislative History of A.J.R. 21, 67th Leg. (Nev. LCB Research Library 1993).[3] Nevertheless, because Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 provides some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement, the Nevada Supreme Court has reviewed and considered that testimony when discussing the two-thirds majority requirement that was ultimately approved by the voters in 1994 and 1996. Guinn II, 119 Nev. at 472.

In his legislative testimony on A.J.R. 21 in 1993, Assemblyman Gibbons stated that the two-thirds majority requirement was modeled on similar constitutional provisions in other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons testified that the two-thirds majority requirement would "require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes." Id. However, Assemblyman Gibbons also stated that the two-thirds majority requirement "would not impair any existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds majority requirement "would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal

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[2] In Guinn v. Legislature, the Nevada Supreme Court issued two reported opinions—Guinn I and Guinn II—that discussed the two-thirds majority requirement. Guinn v. Legislature (Guinn I), 119 Nev. 277 (2003), *opinion clarified on denial of reh'g*, Guinn v. Legislature (Guinn II), 119 Nev. 460 (2003). In 2006, the court overruled certain portions of its Guinn I opinion. Nevadans for Nev. v. Beers, 122 Nev. 930, 944 (2006). However, even though the court overruled certain portions of its Guinn I opinion, the court has not overruled any portion of its Guinn II opinion, which remains good law.

[3] Available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf.

needs" because "Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for *new revenues* was clear and convincing." Id. (emphasis added). In particular, Assemblyman Gibbons testified as follows:

> James A. Gibbons, Assembly District 25, spoke as the prime sponsor of A.J.R. 21 which proposed to amend the Nevada Constitution to *require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes*.
>
> * * *
>
> Mr. Gibbons stressed A.J.R. 21 amended the Nevada Constitution to require bills providing for a general tax increase be passed by a two-thirds majority of both houses of the legislature. The resolution would apply to property taxes, sales and use taxes, business taxes based on income, receipts, assets, capital stock or number of employees, taxes on net proceeds of mines and taxes on liquor and cigarettes.
>
> *Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states*. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.
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> * * *
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> Mr. Gibbons believed a provision requiring an extraordinary majority was a device used to hedge or protect certain laws which he believed should not be lightly changed. A.J.R. 21 would ensure greater stability and preserve certain statutes from the constant tinkering of transient majorities.
>
> Mr. Gibbons addressed some of the anticipated objections. Some will claim A.J.R. 21 would deprive the state of revenues necessary to provide essential state services. Mr. Gibbons conveyed that was not the case. A.J.R. 21 *would not impair any existing revenues*. It was not a tax rollback and did not impose rigid caps on taxes or spending. *Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for new revenues was clear and convincing*. A.J.R. 21 would not hamstring state government or prevent state government from responding to legitimate fiscal emergencies.
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> * * *
>
> Mr. Gibbons concluded by saying the measure did not propose government do less, but actually A.J.R. 21 could permit government to do more. A.J.R. 21 was a

> simple moderate measure that *would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs*. Mr. Gibbons urged the committee's approval of A.J.R. 21.

Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993) (emphasis added)).

In addition to Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993, the ballot materials presented to the voters in 1994 and 1996 also provide some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement. Guinn, 119 Nev. at 471-72. The ballot materials informed the voters that the two-thirds majority requirement would make it more difficult for the Legislature to enact bills "raising" or "increasing" taxes and that "[i]t may require state government to prioritize its spending and economize rather than turning to *new sources* of revenue." Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added). In particular, the ballot materials stated as follows:

> **ARGUMENTS FOR PASSAGE**
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> Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. *It may require state government to prioritize its spending and economize rather than turning to new sources of revenue.* The legislature, by simple majority vote, could ask for the people to vote on any increase.
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> **ARGUMENTS AGAINST PASSAGE**
>
> Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added).

Finally, based on Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, the Nevada Supreme Court has described the purpose and intent of the two-thirds majority requirement as follows:

> The supermajority requirement was intended to make it more difficult for the Legislature to pass *new* taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore *new* sources of revenue.

Guinn II, 119 Nev. at 471 (emphasis added).

With this background information in mind, we turn next to discussing your specific legal questions.

DISCUSSION

You have asked several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2). First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

To date, there are no reported cases from Nevada's appellate courts addressing these legal questions. In the absence of any controlling Nevada case law, we must address these legal questions by: (1) applying several well-established rules of construction followed by Nevada's appellate courts; (2) examining contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996; and (3) considering case law interpreting similar constitutional provisions from other jurisdictions for guidance in this area of the law.

We begin by discussing the rules of construction for constitutional provisions approved by the voters through a ballot initiative. Following that discussion, we answer each of your specific legal questions.

1. Rules of construction for constitutional provisions approved by the voters through a ballot initiative.

The Nevada Supreme Court has long held that the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the voters through a ballot initiative. See Lorton v. Jones, 130 Nev. 51, 56-57 (2014) (applying the rules of statutory construction to the constitutional term-limit provisions approved by the voters through a ballot initiative). As stated by the court:

> In construing constitutions and statutes, the first and last duty of courts is to ascertain the intention of the convention and legislature; and in doing this they must be governed by well-settled rules, applicable alike to the construction of constitutions and statutes.

State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1887). Thus, when applying the rules of construction to constitutional provisions approved by the voters through a ballot initiative, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

However, if the constitutional language is capable of "two or more reasonable but inconsistent interpretations," making it susceptible to ambiguity, uncertainty or doubt, the court will interpret the constitutional provision according to what history, reason and public policy would indicate the drafters and the voters intended. Miller, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)). Under such circumstances, the court will look "beyond the language to adopt a construction that best reflects the intent behind the provision." Sparks Nugget, Inc. v. State, Dep't of Tax'n, 124 Nev. 159, 163 (2008). Thus, if there is any ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, "[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law." State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883).

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it." Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature's power, those "[r]estrictions and limitations are not extended to include matters not covered." City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

For example, under the South Dakota Constitution, the South Dakota Legislature may pass its general appropriations bill to fund the operating expenses of state government by a majority of all the members elected to each House, but the final passage of any special appropriations bills to authorize funding for other purposes requires "a two-thirds vote of all the members of each branch of the Legislature." S.D. Const. art. III, § 18, art. XII, § 2. In interpreting this two-thirds majority requirement, the South Dakota Supreme Court has determined that the requirement must not be extended by construction or inference to include situations not clearly within its terms. Apa v. Butler, 638 N.W.2d 57, 69-70 (S.D. 2001). As further explained by the court:

> [P]etitioners strongly urged during oral argument that the challenged appropriations from the [special funds] must be special appropriations because it took a two-thirds majority vote of each House of the legislature to create the two special funds in the first instance. Petitioners correctly pointed out that allowing money from the two funds to be reappropriated in the general appropriations bill would allow the legislature to undo by a simple majority vote what it took a two-thirds majority to create. On that basis, petitioners invite this Court to read a two-thirds vote requirement into the Constitution for the amendment or repeal of any special continuing appropriations measure. This we cannot do.
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> Our Constitution must be construed by its plain meaning: "If the words and language of the provision are unambiguous, 'the language in the constitution must be applied as it reads.'" Cid v. S.D. Dep't of Social Servs., 598 N.W.2d 887, 890 (S.D. 1999). Here, the constitutional two-thirds voting requirement for appropriations measures is only imposed on the *passage* of a special appropriation. See S.D. Const. art. XII, § 2. There is no constitutional requirement for a two-thirds vote on the repeal or amendment of an existing special appropriation, not to mention a continuing special appropriation. Generally:
>
>> [s]pecial provisions in the constitution as to the number of votes required for the passage of acts of a particular nature . . . are not extended by construction or inference to include situations not clearly within their terms. Accordingly, a special provision regulating the number of votes necessary for the passage of bills of a certain character does not apply to the repeal of laws of this character, or to an act which only amends them.

Apa, 638 N.W.2d at 69-70 (quoting 82 C.J.S. Statutes § 39 (1999) (republished as 82 C.J.S. Statutes § 52 (Westlaw 2019)).

Lastly, in matters involving state constitutional law, the Nevada Supreme Court is the final arbiter or interpreter of the meaning of the Nevada Constitution. Nevadans for Nev. v. Beers, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."); Guinn II, 119 Nev. at 471 (describing the Nevada Supreme Court and its justices "as the ultimate custodians of constitutional meaning."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining Ass'n, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on an opinion of the Legislative Counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Id. at 540. For example, when the meaning of the term "midnight Pacific standard time," as formerly used in the constitutional provision limiting legislative sessions to 120 days, was subject to uncertainty, ambiguity and doubt following the 2001 Legislative Session, the Nevada Supreme Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

Consequently, in determining whether the two-thirds majority requirement applies to a particular bill, the Legislature has the power to interpret Article 4, Section 18(2), in the first instance, as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to interpret constitutional provisions governing legislative procedure). Moreover, because Article 4, Section 18(2) involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See Platz, 60 Nev. at 308 (stating that the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it."). As further explained by the Nevada Supreme Court:

> Briefly stated, legislative power is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them. This power is indeed very broad, and, except where limited by Federal or State Constitutional provisions, that power is practically absolute. Unless there are specific constitutional limitations to the contrary, statutes are to be construed in favor of the legislative power.

Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Finally, when the Legislature exercises its power to interpret Article 4, Section 18(2) in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement by following an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. With these rules of construction as our guide, we must apply them in the same manner as Nevada's appellate courts to answer each of your specific legal questions.

2. Does the two-thirds majority requirement apply to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet?

Under the rules of construction, we must start by examining the plain language of the two-thirds majority requirement in Article 4, Section 18(2), which provides in relevant part that:

> [A]n affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which *creates, generates, or increases* any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or *changes in the computation bases* for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added).

Based on its plain language, the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. 230, 234 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, we must review the normal and ordinary meanings commonly ascribed to the terms "creates, generates, or increases" in Article 4, Section 18(2). The common dictionary meaning of the term "create" is to "bring into existence" or "produce." Webster's New Collegiate Dictionary 304 (9th ed. 1991). The common dictionary meaning of the term "generate" is also to "bring into existence" or "produce." Id. at 510. Finally, the common dictionary meaning of the term "increase" is to "make greater" or "enlarge." Id. at 611.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases" as used in Article 4, Section 18(2), we believe that the two-thirds majority requirement applies to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by imposing new or increased state taxes. However, when a bill does not impose new or increased state taxes but simply maintains the existing "computation bases" currently in effect for *existing* state taxes, we do not believe that the two-thirds majority requirement applies to the bill.

Given the plain language in Article 4, Section 18(2), the two-thirds majority requirement applies to a bill which makes "changes in the *computation bases* for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). Based on its normal and ordinary meaning, a "computation base" is a formula that consists of "a number that is multiplied by a rate or [from] which a percentage or fraction is calculated." Webster's New Collegiate Dictionary 133 & 271 (9th ed. 1991) (defining the terms "computation" and "base"). In other words, a "computation base" is a formula which consists of a base number, such as an amount of money, and a number serving as a multiplier, such as a percentage or fraction, that is used to calculate the product of those two numbers.

By applying the normal and ordinary meaning of the term "computation base," we believe that the two-thirds majority requirement applies to a bill which directly changes the statutory computation bases—that is, the statutory formulas—used for calculating existing state taxes, so that the revised statutory formulas directly bring into existence, produce or enlarge public revenue in the first instance because the existing statutory base numbers or the existing statutory multipliers are changed by the bill in a manner that "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). However, when a bill does not change—but maintains—the existing statutory base numbers and the existing statutory multipliers currently in effect for the existing statutory formulas, we do not believe that the bill "creates, generates, or increases any public revenue" within the meaning, purpose and intent of the two-thirds majority requirement because the existing "computation bases" currently in effect are not changed by the bill. Id.

Accordingly, to answer your first question, we must determine whether a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes would be considered a bill which *changes* or one which *maintains* the existing computation bases currently in effect for the existing state taxes. In order to make this determination, we must consider several well-established rules of construction governing statutes that are not legally operative and binding yet.

It is well established that "[t]he existence of a law, and the time when it shall take effect, are two separate and distinct things. The law exists from the date of approval, but its operation [may be] postponed to a future day." People ex rel. Graham v. Inglis, 43 N.E. 1103, 1104 (Ill. 1896). Thus, because the Legislature has the power to postpone the operation of a statute until a later time, it may enact a statute that has both an effective date and a later operative date. 82 C.J.S. Statutes § 549 (Westlaw 2019). Under such circumstances, the effective date is the date upon which the statute becomes an existing law, but the later operative date is the date upon which the requirements of the statute will actually become legally binding. 82 C.J.S. Statutes § 549 (Westlaw 2019); Preston v. State Bd. of Equal., 19 P.3d 1148, 1167 (Cal. 2001). When a statute has both an effective date and a later operative date, the statute must be understood as speaking from its later operative date when it actually becomes legally binding and not from its earlier effective date when it becomes an existing law but does not have any legally binding requirements yet. 82 C.J.S. Statutes § 549 (Westlaw 2019); Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash. 1940). Consequently, until the statute reaches its later operative date, the statute is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions. Id.; Levinson v. City of Kansas City, 43 S.W.3d 312, 316-18 (Mo. Ct. App. 2001).

Consequently, if an existing statute provides for a future decrease in or future expiration of existing state taxes, that future decrease or expiration is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions to that future decrease or expiration. Because such a future decrease or expiration is not legally operative and binding yet, we believe that the two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—the future decrease or expiration because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

We find support for our interpretation of the plain language in Article 4, Section 18(2) from the contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996.

When interpreting constitutional provisions approved by the voters through a ballot initiative, the court may consider contemporaneous extrinsic evidence of the purpose and intent of the constitutional provisions that was available when the initiative was presented to the voters for approval. <u>See</u> 42 Am. Jur. 2d <u>Initiative & Referendum</u> § 49 (Westlaw 2019) ("To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time."). However, even though the court may consider contemporaneous extrinsic evidence of intent, the court will not consider post-enactment statements, affidavits or testimony from sponsors regarding their intent. <u>See</u> <u>A-NLV Cab Co. v. State Taxicab Auth.</u>, 108 Nev. 92, 95-96 (1992) (holding that the court will not consider post-enactment statements, affidavits or testimony from legislators as a means of establishing their legislative intent, and any such materials are inadmissible in evidence as a matter of law); <u>Alaskans for a Common Language, Inc. v. Kritz</u>, 170 P.3d 183, 193 (Alaska 2007) ("Because we must construe an initiative by looking to the materials considered by the voters themselves, we cannot rely on affidavits of the sponsors' intent."); 42 Am. Jur. 2d <u>Initiative & Referendum</u> § 49 (Westlaw 2019).

The court may find contemporaneous extrinsic evidence of intent from the legislative history surrounding the proposal and approval of the ballot measure. <u>See</u> <u>Ramsey v. City of N. Las Vegas</u>, 133 Nev. Adv. Op. 16, 392 P.3d 614, 617-19 (2017). The court also may find contemporaneous extrinsic evidence of intent from statements made by proponents and opponents of the ballot measure. <u>See</u> <u>Guinn II</u>, 119 Nev. at 471-72. Finally, the court may find contemporaneous extrinsic evidence of intent from the ballot materials provided to the voters, such as the question, explanation and arguments for and against passage included in the sample ballots sent to the voters. <u>See</u> <u>Nev. Mining Ass'n</u>, 117 Nev. at 539; <u>Pellegrini v. State</u>, 117 Nev. 860, 876-77 (2001).

As discussed previously, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is contemporaneous extrinsic evidence that the two-thirds majority requirement was intended to apply to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by raising "new taxes" or "new revenues" or by increasing "existing taxes." Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)); Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994). However, the contemporaneous extrinsic evidence also indicates that the two-thirds majority requirement was not intended to "impair any existing revenues." Id.

Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. We believe that the absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill.

Finally, we find support for our interpretation of the plain language in Article 4, Section 18(2) based on the case law interpreting similar constitutional provisions from other jurisdictions. As discussed previously, the two-thirds majority requirement in the Nevada Constitution was modeled on constitutional provisions from other states. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 12-13 (Nev. May 4, 1993)). As confirmed by Assemblyman Gibbons:

> Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Id. at 12.

Under the rules of construction, "[w]hen Nevada legislation is patterned after a federal statute or the law of another state, it is understood that 'the courts of the adopting state usually follow the construction placed on the statute in the jurisdiction of its inception.'" Advanced Sports Info. v. Novotnak, 114 Nev. 336, 340 (1998) (quoting Sec. Inv. Co. v. Donnelley, 89 Nev. 341, 347 n.6 (1973)). Thus, if a provision in the Nevada Constitution is modeled on a similar constitutional provision "from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state." State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 763 (2001) ("[S]ince Nevada relied upon the California Constitution as a basis for developing the Nevada Constitution, it is appropriate for us to look to the California Supreme Court's interpretation of the [similar] language in the California Constitution.").

Consequently, in interpreting and applying Nevada's two-thirds majority requirement, it is appropriate to consider case law from the other states where courts have interpreted the similar supermajority requirements that served as the model for Nevada's two-thirds majority requirement. Furthermore, in considering that case law, we must presume that the drafters and voters intended for Nevada's two-thirds majority requirement to be interpreted in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those other states.

In 1992, the voters of Oklahoma approved a state constitutional provision imposing a three-fourths supermajority requirement on the Oklahoma Legislature that applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In addition, Oklahoma has a state constitutional provision, known as an "Origination Clause," which provides that "[a]ll bills for raising revenue" must originate in the lower house of the Oklahoma Legislature. Id. The Oklahoma Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1158 n.35 (Okla. 2017). In relevant part, Oklahoma's constitutional provisions state:

> A. *All bills for raising revenue* shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
>
> * * *
>
> D. *Any revenue bill* originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. * * *

Okla. Const. art. V, § 33 (emphasis added).

In Fent v. Fallin, 345 P.3d 1113, 1114-15 (Okla. 2014), the petitioner claimed that Oklahoma's supermajority requirement applied to a bill which modified Oklahoma's income tax rates even though the effect of the modifications did not increase revenue. The bill included provisions "deleting expiration date of specified tax rate levy." Id. at 1116 n.6. The Oklahoma Supreme Court held that the supermajority requirement did not apply to the bill. Id. at 1115-18. In discussing the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court found that:

> [T]he ballot title reveals that the measure was aimed only at bills "intended to raise revenue" and "revenue raising bills." The plain, popular, obvious and natural meaning of "raise" in this context is "increase." This plain and popular meaning was expressed in the public theme and message of the proponents of this amendment: "No New Taxes Without a Vote of the People."
>
> Reading the ballot title and text of the provision together reveals the 1992 amendment had two primary purposes. First, the amendment has the effect of limiting the generation of State revenue to existing revenue measures. Second, the amendment requires future bills "intended to raise revenue" to be approved by either a vote of the people or a three-fourths majority in both houses of the Legislature.

Id. at 1117.

Based on the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court determined that "[n]othing in the ballot title or text of the provision reveals any intent to bar or restrict the Legislature from amending the existing revenue measures, so long as such statutory amendments do not 'raise' or increase the tax burden." Id. at 1117-18. Given that the bill at issue in Fent included provisions "deleting expiration date of specified tax rate levy," we must presume the court concluded that those provisions of the bill did not result in an increase in the tax burden that triggered the supermajority requirement even though those provisions of the bill eliminated the future expiration of existing state taxes.

In Naifeh v. State ex rel. Okla. Tax Comm'n, 400 P.3d 759, 761 (Okla. 2017), the petitioners claimed that Oklahoma's supermajority requirement applied to a bill which was intended to "generate approximately $225 million per year in new revenue for the State through a new $1.50 assessment on each pack of cigarettes." The state argued that the supermajority requirement did not apply to the cigarette-assessment bill because it was a regulatory measure, not a revenue measure. Id. at 766. In particular, the state contended that: (1) the primary purposes of the bill were to reduce the incidence of smoking and compensate the state for the harms caused by smoking; (2) any raising of revenue by the bill was merely incidental to those purposes; and (3) the bill did not levy a tax, but rather assessed a regulatory fee whose proceeds would be used to offset the costs of State-provided healthcare for those who smoke, even though most of the revenue generated by the bill was not earmarked for that purpose. Id. at 766-68.

The Oklahoma Supreme Court held that the supermajority requirement applied to the cigarette-assessment bill because the text of the bill "conclusively demonstrate[d] that the primary operation and effect of the measure [was] to raise *new* revenue to support state government." Id. at 766 (emphasis added). In reaching its holding, the court reiterated the two-part test that it uses to determine whether a bill is subject to Oklahoma's supermajority requirement for "bills for raising revenue." Id. at 765. Under the two-part test, a bill is subject to the supermajority requirement if: (1) the principal object of the bill is to raise *new* revenue for the support of state government, as opposed to a bill under which revenue may incidentally arise; and (2) the bill levies a *new* tax in the strict sense of the word. Id. In a companion case, the court stated that it invalidated the cigarette-assessment bill because:

> [T]he cigarette measure fit squarely within our century-old test for "revenue bills," in that it both had the primary purpose of raising revenue for the support of state government *and* it levied a *new* tax in the strict sense of the word.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1153 (emphasis added); accord Sierra Club v. State ex rel. Okla. Tax Comm'n, 405 P.3d 691, 694-95 (Okla. 2017).

In 1996, the voters of Oregon approved a state constitutional provision imposing a three-fifths supermajority requirement on the Oregon Legislature, which provides that "[t]hree-fifths of all members elected to each House shall be necessary to pass *bills for raising revenue*." Or. Const. art. IV, § 25 (emphasis added). In addition, Oregon has a state constitutional provision, known as an "Origination Clause," which provides that "*bills for raising revenue* shall originate in the House of Representatives." Or. Const. art. IV, § 18 (emphasis added). The Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005).

In determining the scope of Oregon's constitutional provisions for "bills for raising revenue," the Oregon Supreme Court has adopted a two-part test that is similar to the two-part test followed by the Oklahoma Supreme Court. Bobo, 107 P.3d at 24. In particular, the Oregon Supreme Court has stated:

> Considering the wording of [each constitutional provision], its history, and the case law surrounding it, we conclude that the question whether a bill is a "bill for raising revenue" entails two issues. The first 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.*

Id. (emphasis added).

In applying its two-part test in Bobo, the court observed that "not every statute that brought money into the treasury was a 'bill for raising revenue' within the meaning of [the constitutional provisions]." Bobo, 107 P.3d at 24. Instead, the court found that the constitutional provisions applied only to the specific types of bills that the framers had in mind—"bills to levy taxes and similar exactions." Id. at 23. Based on the normal and ordinary meanings commonly ascribed to the terms "raise" and "revenue" in the constitutional provisions, the court reached the following conclusions:

> We draw two tentative conclusions from those terms. First, a bill will "raise" revenue only if it "collects" or "brings in" money to the treasury. Second, not every bill that collects or brings in money to the treasury is a "bil[l] for raising revenue." Rather, the definition of "revenue" suggests that the framers had a specific type of bill in mind—*bills to levy taxes and similar exactions*.

Id. (emphasis added).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill unless it levies new or increased state taxes in the strict sense of the word or possesses the essential features of a bill that levies new or increased state taxes or similar exactions, "including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2).

Consequently, we believe that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet, because such a bill does not levy new or increased state taxes as described in the cases from Oklahoma and Oregon. Instead, because such a bill maintains the existing computation bases currently in effect for the existing state taxes, it is the opinion of this office that such a bill does not create, generate or increase any public revenue within the meaning, purpose and intent of Nevada's two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill.

3. Does the two-thirds majority requirement apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes?

As discussed previously, Article 4, Section 18(2) provides that the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or *changes in the computation bases for taxes, fees, assessments and rates*." Nev. Const. art. 4, § 18(2) (emphasis added). Based on the plain language in Article 4, Section 18(2), we do not believe that the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes because such a reduction or elimination does not change the existing computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable.

The plain language in Article 4, Section 18(2) expressly states that the two-thirds majority requirement applies to changes in "computation bases," but it is silent with regard to changes in tax exemptions or tax credits. Nev. Const. art. 4, § 18(2). Nevertheless, under long-standing legal principles, it is well established that tax exemptions or tax credits are not part of the computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable. Instead, tax exemptions or tax credits apply only after the underlying taxes have been calculated using the computation bases or statutory formulas and the taxpayer properly and timely claims the tax exemptions or tax credits as a statutory exception to liability for the amount of the taxes. See City of Largo v. AHF-Bay Fund, LLC, 215 So.3d 10, 14-15 (Fla. 2017); State v. Allred, 195 P.2d 163, 167-170 (Ariz. 1948); Rutgers Ch. of Delta Upsilon Frat. v. City of New Brunswick, 28 A.2d 759, 760-61 (N.J. 1942); Chesney v. Byram, 101 P.2d 1106, 1110-12 (Cal. 1940). As explained by the Missouri Supreme Court:

> The burden is on the taxpayer to establish that property is entitled to be exempt. An exemption from taxation can be waived. Until the exempt status is established the property is subject to taxation even though the facts would have justified the exempt status if they had been presented for a determination of that issue.

State ex rel. Council Apts., Inc. v. Leachman, 603 S.W.2d 930, 931 (Mo. 1980) (citations omitted). As a result, if the taxpayer fails to properly and timely claim the tax exemptions or tax credits, the taxpayer is liable for the amount of the taxes. See State Tax Comm'n v. Am. Home Shield of Nev., Inc., 127 Nev. 382, 386-87 (2011) (holding that a taxpayer that erroneously made tax payments on "exempt services" was not entitled to claim a refund after the 1-year statute of limitations on refund claims expired).

Accordingly, based on the plain language in Article 4, Section 18(2), we do not believe that a bill which reduces or eliminates available tax exemptions or tax credits changes the computation bases used to calculate the underlying state taxes within the meaning, purpose and intent of the two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill. Furthermore, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits. Finally, based on the case law interpreting similar constitutional provisions from other jurisdictions, courts have consistently held that similar supermajority requirements do not apply to bills which reduce or eliminate available tax exemptions or tax credits.

Unlike the supermajority requirements in other state constitutions, the Louisiana Constitution expressly provides that its supermajority requirement applies to "a repeal of an existing tax exemption." La. Const. art. VII, § 2. Specifically, the Louisiana Constitution states:

> The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

La. Const. art. VII, § 2.

In determining the scope of Louisiana's supermajority requirement, the Louisiana Court of Appeals explained that the supermajority requirement did not apply to legislation which suspended a tax exemption—but did not repeal the exemption—because "[a] suspension (which is time-limited) of an exemption is not the same thing as a permanent repeal." La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue, 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). Furthermore, the court rejected the argument that because the supermajority requirement applied to the prior legislation that enacted the underlying tax levy for which the exemption was granted, the supermajority requirement by necessary implication also had to be applied to any subsequent legislation that suspended the tax exemption. Id. In rejecting that argument, the court stated:

> The levy of the initial tax, preceding the decision to grant an exemption, is the manner in which the Legislature raises revenue. Since the tax levy raises the revenues and since the granting of the exemption does not change the underlying tax levy, we find that suspending an exemption is not a revenue raising measure.

Id. at 463.

As discussed previously, Oklahoma's supermajority requirement applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1153 (Okla. 2017), the Oklahoma Supreme Court was presented with the "question of whether a measure revoking an exemption from an *already levied* tax is a 'revenue bill' subject to Article V, Section 33's requirements." The court held that the bill was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement because: (1) the bill did not "levy a tax in the strict sense of the word"; and (2) the "removal of an exemption from an *already levied* tax is different from levying a tax in the first instance." Id. at 1153-54.

At issue in the Oklahoma case was House Bill 2433 of the 2017 legislative session, which removed a long-standing exemption from the state's sales tax for automobiles that were otherwise subject to the state's excise tax. The Oklahoma Supreme Court explained the effect of H.B. 2433 as follows:

> In 1933, the Legislature levied a sales tax on all tangible personal property—including automobiles—and that sales tax has remained part of our tax code ever since. In 1935, however, the Legislature added an exemption for automobile sales in the sales-tax provisions, so that automobiles were subject to only an automobile excise tax from that point forward. H.B. 2433 revokes part of that sales tax exemption so that sales of automobiles are once again subject to the sales tax, but only a 1.25% sales tax. Sales of automobiles remain exempt from the remainder of the sales tax levy. H.B. 2433 does not, however, levy any new sales or excise tax, as the text of the measure and related provisions demonstrate.
>
> For example, the sales tax levy can be found in 68 Okla. Stat. § 1354, imposing a tax upon "the gross receipts or gross proceeds of each sale" of tangible personal property and other specifically enumerated items. The last amendment increasing the sales tax levy was in 1989, when the rate was raised to 4.5%. Nothing in H.B. 2433 amends the sales tax levy contained in section 1354; the rate remains 4.5%. Likewise, the levy of the motor vehicle excise tax is found in 68 Okla. Stat. § 2103. That levy has not been increased since 1985, and nothing in H.B. 2433 amends the levy contained in section 2103. *Both before and after the enactment of H.B. 2433, the levy remains the same:* every new vehicle is subject to an excise tax at 3.25% of its value, and every used vehicle is subject to an excise tax of $20.00 on the first $1,500.00 or less of its value plus 3.25% of its remaining value, if any.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1154-55 (emphasis added and footnotes omitted).

In determining that H.B. 2433 was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement, the Oklahoma Supreme Court stated that:

> At bottom, Petitioners' argument is that H.B. 2433 must be a revenue bill because it causes people to have to pay more taxes. But to say that removal of an exemption from taxation causes those previously exempt from the tax to pay more taxes is merely to state the effect of removing an exemption. It does not, however, transform the removal of the exemption into the levy of a tax, and it begs the dispositive question of whether removal of an exemption is the "levy of a tax in the strict sense." . . . *Yet, despite their common effect (causing someone to have to pay a tax they previously didn't have to pay), removing an exemption and levying a new tax are distinct as a matter of fact and law. Our Constitution's restrictions on the enactment of revenue bills are aimed only at those bills that actually levy a tax.* The policy underlying those restrictions is not undercut in an instance such as this, because the original levies of the sales tax on automobile sales were subject to Article V, Section 33's restrictions.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1158 (emphasis added).

As discussed previously, the Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to Oregon's supermajority requirement and its Origination Clause. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005). In City of Seattle v. Or. Dep't of Revenue, 357 P.3d 979, 980 (Or. 2015), the plaintiff claimed that the Oregon Legislature's passage of Senate Bill 495, which eliminated a tax exemption benefitting out-of-state municipalities that had certain electric utility facilities in Oregon, violated Oregon's Origination Clause because S.B. 495 was a bill for raising revenue that did not originate in the Oregon House of Representatives. However, the Oregon Supreme Court held that S.B. 495's elimination of the tax exemption did not make it a "bill for raising revenue" that was subject to Oregon's Origination Clause. Id. at 985-88.

After applying its two-part test from Bobo, the Oregon Supreme Court determined that S.B. 495 was not a bill for raising revenue because by "declaring that a property interest held by taxpayers previously exempt from taxation is now subject to taxation, the legislature did not levy a tax." City of Seattle, 357 P.3d at 987. The court rejected the taxpayers' argument that S.B. 495 was a bill for raising revenue because "the burden of increased taxes falls solely on the newly-taxed entities." Id. at 988. Instead, the court found that:

> We think, however, taxpayers' argument misses the mark because it focuses exclusively on the revenue effect of S.B. 495. As we stated in Bobo, the revenue effect of a bill, in and of itself, does not determine if the bill is a "bill[] for raising revenue." 107 P.3d at 24 ("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."). As we have explained, S.B. 495 repeals taxpayers' tax exemption as out-of-state municipal corporations and places taxpayers on the same footing as domestic electric cooperatives. The bill does not directly levy a tax on taxpayers.

Id. (footnotes omitted).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits because such a reduction or elimination does not change the existing computation bases or statutory formulas used to calculate the underlying state taxes to which the exemptions or credits are applicable. Consequently, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

CONCLUSION

It is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet, because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

It also is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes, because such a reduction or elimination does not change the existing computation bases used to calculate the underlying state taxes to which the exemptions or credits are applicable.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

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