

LEGAL SERVICES

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MEMORANDUM

April 7, 2018

SUBJECT: Dedicated funds (CSSSHB 216();
Work Order No. 30-LS0572\L)

TO: Representative Chuck Kopp
Attn: Erick Cordero Giorgana

FROM: Hilary V. Martin *HVM*
Legislative Counsel

You have asked whether the priority list in sec. 6 of the bill could create a dedicated fund due to the percentages listed in the bill.

Section 6 of the bill creates the restorative justice account. Subsection (b) in the section provides that the legislature may appropriate amounts from the account to five listed recipients in the priority order and percentages listed in the subsection.

Under Art. IX, sec. 7, Constitution of the State of Alaska, "the proceeds of any state tax or license shall not be dedicated to any special purpose. . . ." In *Sonneman v. Hickel*, the Alaska Supreme Court stated: "The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources."¹ A requirement that the money appropriated from the restorative justice account must go to specific purposes in a specific priority order would violate the dedicated funds provision.

The legislature remains free to appropriate funds to any of the recipients in the list in any percentage or priority the legislature chooses. The legislature could also choose to appropriate the money in the account for a purpose not contemplated in the bill. If a person challenged an appropriation by the legislature for not following the priority order, I do not believe that challenge would be successful. However, you should be aware that creating a requirement that a certain percentage go towards a specific purpose can make the fund look more like a dedicated fund, carrying a greater risk that a court could find the appropriation is not intended to be discretionary.

If I may be of further assistance, please advise.

HVM:dls
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¹ 836 P.2d 936, 940 (Alaska 1992).