

LEGAL SERVICES

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MEMORANDUM

March 31, 2017

SUBJECT: Donations of dividends (CSSB 78();
Work Order No. 30-LS0534\N)

TO: Senator Click Bishop
Attn: Peter Fellman

FROM: Hilary V. Martin *Hilary Martin*
Legislative Counsel

You have asked what the difference is between the words "donation" and "contribution" in this bill, and how the changes made to draft version "N" affect the bill.

Generally, when money comes in to the state, the legislature can appropriate that money for any public purpose. A person can donate money to the state, subject to certain conditions. If the state accepts that donation, the state must spend the money in accordance with the donation.¹ The donated money would still have to be appropriated, although it would have to be appropriated for the purposes of the donation. The donation would likely be considered designated program receipts. AS 37.05.146(b)(3) states:

(b) The program receipts listed in this subsection are accounted for separately, and appropriations from these program receipts are not made from the unrestricted general fund:

...
(3) designated program receipts; in this paragraph, "designated program receipts" means money received by the state from a source other than the state or federal government that is restricted to a specific use by the terms of a gift, grant, bequest, or contract . . .

My understanding was that your intent is for the donations from the permanent fund dividend to go towards the purposes in the bill; the education endowment fund, the public education trust fund, and for an entry into the dividend lottery. In accordance with that intent, I changed the term "contribution" to "donation" in this bill draft. This is to make it clear that the donations are "designated program receipts" and cannot be appropriated for any purpose. It is unclear if a court would view these donations as restrictions on the legislature's power of appropriation, but the changes to the bill are meant to make it clear

¹ Alternatively, the state could refuse to accept the donation if the state does not want to abide by the terms of the donation.

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that the intent of the legislature is that the money be treated as donations for a specific purpose.

Previously, the bill draft grouped together all of the contributions from the dividends, those going to education (through the education endowment fund and the public education fund) and those for entry into the lottery. This draft states that a person can donate a portion of their dividend for education and a portion for entry into the lottery.

The money that is used for entry into the drawing probably cannot be earmarked for a special purpose. Therefore, that money is still subject to appropriation by the legislature. However, the donations are for education, so the draft changes the language to "the legislature shall appropriate" those donations.

If I may be of further assistance, please advise.

HVM:boo

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