

LEGAL SERVICES

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MEMORANDUM

January 12, 2017

SUBJECT: Bill transferring duties among departments in the executive branch of state government; relating to the duties of departments and commissioners in the executive branch; relating to the duties of the Office of the Governor; and relating to state boards and commissions (Work Order No. 30-LS0313\A)

TO: Representative Lance Pruitt
Attn: Dirk Craft
JB

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above. As you requested, the bill is a reintroduction of CSHB 362() from the 29th Alaska State Legislature (Work Order No. 29-LS1522\W). Most of the points and questions were provided in the memo that accompanied the bill on which this bill is based.

1. Scope of bill. The bill transfers duties and programs from the Department of Commerce, Community, and Economic Development (DCCED) to the Department of Revenue (DOR), the Department of Natural Resources (DNR), and the Office of the Governor. The bill also transfers the Board of Agriculture and Conservation, which oversees the agricultural revolving loan fund, from DNR to DOR.
2. Update. The sections in the bill have been updated with those changes made by the session laws in 2016 that change or affect the sections in the bill. These changes include an amendment of AS 21.55.430(b), a new section relating to appropriations to the new Alaska comprehensive health insurance fund. Aside from these changes, the bill does not include any new powers given to DCCED by the 2016 session laws. For example, the bill does not address the telemedicine business registry added as AS 44.33.381 by sec. 38, ch. 25, SLA 2016, that DCCED is to establish.

If you want the bill to include any new powers that DCCED has been given by the 2016 session laws, please advise. However, please be aware that determining the additions to the bill is likely to delay the production of the bill and miss its introduction on the first day.

3. DCCED funds and programs. Please note that the bill only moves the funds that you specified by telephone and e-mail last session. The bill does not include other funds or

programs, e.g., the mariculture revolving loan fund (AS 16.10.900 - 16.10.945), the commercial charter fisheries revolving loan fund (AS 16.10.801 - 16.10.840), or the municipal impact grants (authorized under AS 29.60.510).

4. Board of Agriculture and Conservation and the director of agriculture. As requested, this bill moves the Board of Agriculture and Conservation, which oversees the agricultural revolving loan fund, from DNR to DOR. However, the statutes that create the Board of Agriculture and Conservation also provide for the director of agriculture, a position within DNR, to be appointed by the Board of Agriculture and Conservation. Under AS 03.09.020(b), "[t]he director of agriculture shall be appointed to the partially exempt service by the commissioner from a list of two or more candidates submitted by the board." The bill repeals this provision and, in bill section 86 adds a new subsection with similar language to AS 44.37.030, which currently concerns the duties of DNR with respect to agriculture.

The new subsection, AS 44.37.030(b), removes board participation in the selection of the director of agriculture and provides for appointment of the director by the commissioner of natural resources. In addition, the draft amends AS 03.09.020(a), so that the commissioner of revenue, instead of the director of agriculture, will serve as director of the Board of Agriculture and Conservation.

5. Fisheries Enhancement Loan Program. Under AS 16.10.470, "each regional association levying a voluntary assessment under AS 16.10.540 shall submit an annual financial report to the Department of Commerce, Community, and Economic Development on a form to be provided by the Department of Commerce, Community, and Economic Development." Do you want this report to be submitted to the Department of Revenue?

6. Tourism duties. As requested, the bill moves the following from DCCED to the Office of the Governor: (1) the film production promotion program, currently under AS 44.33.231; (2) tourism purposes and duties, currently under AS 44.33.119 and 44.33.120, and the authority to award grants for promotion or development of visitor travel, currently under AS 44.33.135; and (3) the Alaska Tourism Marketing Board, currently under AS 44.33.136. Currently, DCCED has the authority, under AS 44.33.020(a)(36), to:

request tourism-related businesses in the state to provide data regarding occupancy levels, traffic flow and gross receipts and to participate in visitor surveys conducted by the department; data collected under this paragraph that discloses the particulars of an individual business is not a matter of public record and shall be kept confidential; however, this restriction does not prevent the department from using the data to formulate tourism economic impact information including expenditure patterns, tax receipts and fees, employment and income attributable to

tourism, and other information considered relevant to the planning, evaluation, and policy direction of tourism in the state.

Do you want to specifically grant the Office of the Governor this authority? Do you want both the Office of the Governor and DCCED to have this authority? Under AS 44.33.896(a)(3), DCCED still oversees the Alaska regional economic assistance program, and, as one of its duties related to the program, DCCED must "gather information about regional economic issues, international trade, and tourism from organizations."¹

7. Rural development. The bill repeals AS 44.33.740, which relates to DCCED's powers and duties related "to promot[ing] development of rural areas of the state," and grants these powers and duties to DOR by creating a new section, sec. 44.25.400. However, the bill does not amend or repeal AS 44.33.755 (land conveyed in trust) or AS 44.33.760 (loan information officers).

8. Bulk fuel loan program. The bill grants DOR with the authority, under a new section created by the bill, sec. 44.25.400, to "make grants to communities for bulk fuel storage facilities." In addition, the bill creates a new section, sec. 44.25.420, that establishes the bulk fuel storage facilities grant fund in DOR. However, the bill does not amend AS 46.08.040(a)(2)(H)(iii), which authorizes the commissioner of environmental conservation to transfer money from the oil and hazardous substance release prevention and response fund to DCCED for "grants to repair, improve, or replace fuel storage facilities under the bulk fuel system emergency repair and upgrade program."

9. Board membership. As requested, except as otherwise noted in this memo, the bill retains existing board members and does not alter the membership of any boards affected by this amendment. This means, however, that some boards will retain members from DCCED. For example, this amendment does not alter the membership of the Alaska Industrial Development and Export Authority (AIDEA), which means that, under AS 44.88.030, the membership of the authority will continue to consist of the commissioner of revenue and the commissioner of commerce, community, and economic development, and five public members appointed by the governor.² And under new sec. 44.19.736, which is added by this bill using the language from AS 44.33.136, "the commissioner of commerce, community, and economic development or the commissioner's designee" will continue to serve as one of 21 board members on the Alaska Tourism Marketing Board.

10. Moving duties and programs to the Office of the Governor. As requested, the bill moves the film production promotion program, the Alaska product preference program,

¹ AS 44.33.896(a)(3).

² Under AS 44.83.040, the directors of the Alaska Energy Authority are the members of AIDEA.

the Made in Alaska labeling program, and tourism duties and grants from DCCED to the Office of the Governor. However, moving these duties and programs out of a principal department and into the Office of the Governor raises an issue under the Constitution of the State of Alaska.

Article III, secs. 22,³ 25,⁴ and 26,⁵ Constitution of the State of Alaska, provide that the legislature is required to allocate powers to the principal departments in the executive branch and that the head of a principal department is subject to legislative confirmation. The legislature exercises its oversight of these departments by confirming the single executive or members of the commission or board that head the department.

The Alaska Supreme Court has not addressed whether the governor's office is a principal department. However, the legislature may not confirm the head of the Office of the Governor (the governor), and it does not appear that the Office of the Governor would be considered a principal department as contemplated by the constitution.

Moving duties and programs from a principal department into the Office of the Governor appears to violate the constitutional requirement that the legislature allocate powers, etc., to the principal departments. In addition, transferring duties and programs to the Office of the Governor removes the legislature's oversight (by its confirmation authority) of the execution and implementation of these transferred duties and programs once they are in the Office of the Governor.

If I may be of further assistance, please advise.

TLB:dls
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Attachment

³ Under art. III, sec. 22, the legislature has the authority to allocate functions, powers, and duties to departments within the executive branch, with the limitation that there be no more than 20 principal departments. Article III, sec. 24, further provides that "[e]ach principal department shall be under the supervision of the governor."

⁴ Art. III, sec. 25, requires that the head of each principal department be appointed by the governor, subject to legislative confirmation.

⁵ Art. III, sec. 26, requires that the members of a board or commission that heads a principal department or regulatory or quasi-judicial agency be appointed by the governor.