

LEGAL SERVICES

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MEMORANDUM

January 28, 2025

SUBJECT: Governor's Executive Order establishing a Department of Agriculture (Work Order No. 34-LS0380)

TO: Senator Cathy Giessel
Attn: Paige Brown

FROM: Alpheus Bullard 
Legislative Counsel

You requested a legal review of a proposed Executive Order establishing a Department of Agriculture (Department), which was provided to your office on January 23, 2025. The Executive Order establishing the Department (EO 136) has now been introduced and has been subjected to further review by our office. This memorandum is provided as a follow up, to bring to your attention a discrete number of statutory changes, identified by our office, that the legislature might consider if the legislature does not disapprove the EO. These possible changes, ordered by section number, are described below.

AS 14.40.450

This section contains a reference to the "Department of Agriculture." This should be modified to read "United States Department of Agriculture" to differentiate it from the new state department established by the EO.

AS 16.20.310(c)

This subsection requires the commissioner of Fish and Game, in developing and amending a certain game management plan, to coordinate with the "activities of the Department of Natural Resources relating to the Big Delta agricultural development project." It may be appropriate to change the reference to the Department of Natural Resources to the Department of Agriculture.

AS 27.19.030(b)

This subsection requires the commissioner of natural resources, when reviewing the reclamation plan for a mine, to consult with certain other state commissioners, as to the uses to which the land may be put after mining is completed. These uses include agricultural use. Accordingly, it may be appropriate to add the commissioner of agriculture to the list of commissioners to be consulted under the subsection.

AS 38.04.020(g)(4)

This subparagraph requires the Board of Agriculture and Conservation to be notified of certain proposed disposals of agricultural land by the Department of Natural Resources and requires that the board be given an opportunity to comment before the final disposal decision is made. The legislature may wish to substitute the commissioner, or department, of agriculture for the board under this subparagraph.

AS 38.04.030

This section requires the director of the division of lands in the Department of Natural Resources to consult with the Board of Agriculture and Conservation before conveying certain agricultural use rights. The legislature may wish to substitute the commissioner, or department, of agriculture for the board under this section.

AS 38.05.035(b)(6)

This subparagraph provides the director of the Department of Natural Resources' division of lands (director) may dispose of an interest in land limited to use for agricultural purposes by lottery after consulting with the Board of Agriculture and Conservation. The legislature may wish to change this paragraph to instead require the director to consult with the commissioner of agriculture, which would be consistent with changes made in EO 136.¹

AS 38.07.010(a)

This subsection provides that the commissioner of natural resources "shall be guided by the recommendations of the United States Department of Agriculture, Natural Resources Conservation Service" in selecting state land to be classified as agricultural, and in contracting for the land to be cleared or drained or both. Given the EO's creation of the state Department of Agriculture, the legislature may wish to change this subsection.

AS 38.07.050

This section requires the commissioner of natural resources, "guided by recommendations of the United States Department of Agriculture, Natural Resources Conservation Service, [to] adopt regulations necessary to carry out the purpose of [AS 38.07 (Clearing and Draining of Agricultural Land)]." It may be the desire of the executive branch to keep this duty with the commissioner of natural resources. The determination whether this duty should reside with the commissioner of agriculture, or the commissioner of natural resources is a matter of policy.

AS 38.09.010(a)

This subsection provides that the commissioner of natural resources "shall designate and make available for homestead entry state land, including, after consulting with the Board of Agriculture and Conservation (AS 03.09.010), land classified for agricultural use."

¹ For example, secs. 24, 25, 26, 27, and 28 of the EO change other provisions in AS 38.05 requiring that the commissioner of natural resources consult with Board of Agriculture and Conservation to instead require consultation with the commissioner of agriculture.

Senator Cathy Giessel

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While I am not aware that any land is being made available for homestead entry, it may be appropriate to change "Board of Agriculture and Conservation (AS 03.09.010)" to "commissioner of agriculture" in conformity with changes made in EO 136.

If you have questions, do not hesitate to contact me.

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