



April 14, 2025

The Honorable Cathy Giessel, Chair
Senate Resources Committee
Alaska State Capitol, Room 121
Juneau, Alaska 99801

RE: SB128 DNR Response to Senate Resources Committee April 4 Meeting

Dear Chair Giessel:

Thank you for the opportunity for the Department of Natural Resources (DNR) to answer questions on Senate Bill (SB) 128, Create Department of Agriculture, before the Senate Resources Committee on April 4, 2025. This letter responds to questions asked at that meeting.

1. Sen. Dunbar asked about ethics requirements and conflicts of interest for the commissioner of the new department, and the current Division of Agriculture.

As executive branch employees of the state, both a department commissioner and a division director are subject broadly to the Executive Branch Ethics Act (AS 39.52). As with ethics acts generally, whether or not a substantial conflict of interest exists would depend on the specific circumstances of the situation. In the context of SB 128, simply owning a farm would not automatically create a conflict of interest. Whether a conflict exists is determined by examining the standards set out in AS 39.52.110(b), which evaluates the substantiality of a conflict based upon the particular action the public officer takes and how it affects his or her interest(s). So, for example, if one's personal interests are affected as part of a large group – for example, all farms benefitting from increased market access – that may not necessarily be considered a conflict.

To support the state's ethics requirements and to further the public's ability to have knowledge of potential conflicts, public officers are also subject to annual financial disclosures (AS 39.50, Public Official Financial Disclosure). These disclosures help ensure accountability to the state's ethics act by making known public officials' financial interests.

Sen. Dunbar specifically noted a prohibition on conflicts of interest related to a commercial fishing board. Boards are treated somewhat separately under statute; while the Executive Ethics Act applies, the Legislature has sought to balance those considerations with the policy of populating many boards seats with individuals holding specific qualifications, expertise or involvement that further the purposes of the board. The Board of Agriculture and Conservation is an example; the Legislature has specifically required in statute (AS 03.10.050) that one member must be a member of a statewide agriculture promotion

organization, and that four members must be engaged in commercial production agriculture. At the same time, the Legislature proscribed additional provided distinct ethics requirements for BAC members (AS 03.09.010) to protect against conflicts of interest while ensuring the board has real experience with commercial agriculture.

2. Sen. Hughes asked about the status of the industrial hemp program and in particular whether a federal definition change was pending.

DNR's Division of Agriculture amended its regulations for the industrial hemp program in November 2023 to address loopholes created by the federal 2018 Farm Bill and ensure an industrial hemp industry that is safe for the public. DNR understands Congress is aware of the issue but does not know whether revisions are imminent. These loopholes include:

1. 0.3 percent loophole: Under federal law, all hemp products are limited to no more than 0.3 percent delta-9-THC by weight. In dried plant material that is a small amount of THC, but when applied to hemp-derived products (chocolate bar, beverages, etc.) which can weigh significantly more, 0.3 percent by weight can amount to hundreds of milligrams of THC. For example, a 50 gram chocolate bar at 0.3 percent THC would have around 150mg of THC (30 times) the standard 5mg dose established by the National Institute on Drug Abuse. A 20 ounce beverage weighing 567 grams would have around 1700 mg of THC using the 0.3 percent threshold.
2. THCA loophole: The 0.3 percent threshold specifically applies to delta-9-THC. As written, it does not include delta-9-THCA (the precursor to THC). Hemp plants produce a much greater amount of THCA than THC, and THCA readily converts to THC when smoked, heated, or combusted. Most state with medical or adult use cannabis programs define "Total THC" to capture the total intoxicating potential of cannabis by combining the amount of THC with the potential of THCA than can convert into THC. Many hemp businesses are selling "THCA hemp flower" that contains less than 0.3 percent delta-9-THC but has a total THC concentration of 15 to 20 percent.
3. Derivatives loophole: The definition of hemp also includes "all derivatives" of the cannabis plant. As a result, many hemp businesses are taking hemp-derived CBD and chemically converting it into intoxicating cannabinoids like delta-8-THC, THCO and HHC.

Chair Giessel

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Please reach out if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rena Miller", with a stylized flourish at the end.

Rena Miller

Acting Legislative Liaison

cc: Jordan Shilling, Director, Governor's Legislative Office