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MEMORANDUM

March 28, 2003

SUBJECT: Executive Order No. 108 (Work Order No. 23-GH1070A)

TO: Senator Gary Stevens
Attn: Katrina

FROM: Terri Lauterbach
Legislative Counsel



You have asked for an analysis of Executive Order No. 108 with respect to

- (1) whether it includes substantive provisions that go beyond the governor's authority to reorganize the executive branch under the constitution; and
- (2) whether there are additional statutes that need to be amended because of the executive order.

In my opinion, there are a number of substantive provisions in the order (or substantive effects that occur because of failure to make an appropriate amendment in the order) that do not simply transfer duties, and there are quite a few additional statutes that would need to be amended to change references if the executive order takes effect.

SUBSTANTIVE PROVISIONS OR EFFECTS

The areas of the statutes that have substantive effects (rather than simply being transfers of authority) are as follows:

Section 3. The new language that refers to AS 47.25.007 - 47.25.009 is narrower than the reference it is replacing [AS 14.38.100]. AS 14.38.100, which corresponds to AS 47.25.001 in this order, refers to agreements with providers of services under AS 14.38.100 - 14.38.199, which corresponds to AS 47.25.001 - 47.25.009 in this order. So the reference that should appear as underlined language in sec. 3 that would make the procurement code apply in the same way as in current law is either "AS 47.25.001" or "AS 47.25.001 - 47.25.009."

Section 21. In AS 47.35.010(a)(2) and (3), references to "certification" should be added because that word appears in AS 14.37.020, which is repealed by this order. Also, AS 47.35.010(a)(5) is not found in AS 14.37.020, so to the extent that it authorizes DHSS to accept licenses "issued by other organizations, etc." for child care facilities, this section is a substantive change.

Section 24. In AS 47.35.017(b)(5), the phrase at the end that says that the records that can be reviewed by DHSS must be relevant "to the type of license for which the application has been submitted" does not appear in AS 14.37.040(b)(5) (repealed by this order), so it is a substantive change (a new limitation) with respect to records that can be reviewed by DHSS with respect to applications for licensure of child care facilities.

In AS 47.35.017(b)(6), the new language in subparagraph (B) on page 13 does not appear in AS 14.38 (which is repealed by this order) so it is a substantive change to place it in AS 47.35.

The provision in AS 47.35.017(b)(12) does not appear in AS 14.38 (which is repealed by this order), so, to the extent that it would now apply to child care facilities, it is a substantive change.

Section 25. This section is okay, but the same provision should be enacted for AS 47.35.021 because the language of AS 47.35.021 does not appear in AS 14.38 (which is repealed by this order). Application of AS 47.35.021 to child care facilities represents a substantive change.

Similarly, the language of AS 47.35.140 does not appear in AS 14.38 (repealed by this order), so its application to child care facilities represents a substantive change.

Section 38. AS 47.37.040(20)(C) is amended to change "department" to "department staff." I'm not sure what this means in the real world since the department can only act through staff, but it is, arguably, a substantive change that should not be in an executive order. It could also be argued, I suppose, that this is just a transfer of functions from "the department" to "department staff," which is an appropriate change for an executive order.

Section 43. The deletion of the language that says "subject to the approval of the commissioner" is, arguably, a substantive change that should not be in an executive order. However, as with sec. 38, above, one could argue that this is just a transfer of duties by removing the commissioner's approval as an official step in the process.

OTHER AMENDMENTS THAT ARE NEEDED

In addition to amendments noted above that would be needed to avoid substantive effects of the executive order, there are other statutes that would need to be amended if the executive order takes effect because they contain references to laws or agencies that are repealed by the executive order. The following references will be inaccurate if the repealer in the executive order takes effect:

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Location

Citation that needs correcting

AS 11.61.195(a)(2)(B)	AS 14.37
AS 11.61.220(a)(4)(A)	AS 14.37
AS 14.43.148(h)(1)(B)(iii)	AS 14.37
AS 25.27.244(s)(2)(B)(ii)	AS 14.37
AS 28.35.032(l)	reference to div. of alcoholism & drug abuse
AS 44.66.010(a)(10)	AS 44.21.200
AS 47.24.070	AS 44.21.200
AS 47.30.016(b)(2)(D)	AS 44.21.200
AS 47.30.036(3)	AS 44.21.230(a)(10)

I hope this answers your questions fully. If I may be of further assistance, please advise.

TML:mdr
03-045.mdr