AFPC Policy Brief

Alaska Food Policy Council

DEPARTMENT OF AGRICULTURE
EXECUTIVE ORDER 136

Governor Dunleavy issued Executive Order 136 during the first week of the 34th legislative session. The Executive Order (EO) states that the Governor finds it is in the "best interests of efficient administration to establish the Department of Agriculture and transfer the functions of the Department of Natural Resources relating to agriculture to the Department of Agriculture." The activities of the state pertaining to agriculture are currently housed under the Department of Natural Resources (ADNR), within the Division of Agriculture.

The Legislature can either let it go into effect by doing nothing, or vote it down - no amendments are allowed to an Executive Order. The vehicle for discussing the EO is a piece of legislation that would take the only action available - disapproval. Those are House Special Concurrent Resolution 1 (HSCR 1) and Senate Special Concurrent Resolution 1 (SSCR 1): Disapproval of EO 136.

The EO contains changes ranging across six titles in the Alaska Statutes.

Overview of Changes In EO 136	
Current Structure	**Proposed Structure**
Agricultural activities are under the Alaska Department of Natural Resources (ADNR) and the Division of Agriculture	Those same activities currently managed by the Division of Ag are transferred to a new Department of Agriculture
Under the Alaska Lands Act, the Board of Agriculture and Conservation is required to be consulted on a series of decisions around agricultural land	The new Commissioner of Ag would be consulted on these, not the Board of Ag. The Board of Ag would still administer the agricultural revolving loan fund.
The Alaska Natural Resource Conservation and Development Board is under the Commissioner of ADNR.	The duties of the Board remain the same, but the Board is renamed the Alaska Soil and Water Conservation and Development Board and it is under the new Department of Agriculture. Recommendations are clarified to be made to the Commissioners of Ag and/or DNR as appropriate.

Background

Establishing a Department of Agriculture has been a priority called out in several Statewide reports on Alaska's food security. In fact, Alaska used to have a territorial department of agriculture. Currently, agriculture is a division within the Department of Natural Resources which manages all of Alaska's surface and subsurface resources except fish and game.

Alaska currently has fifteen departments. Each department has a Commissioner, who leads the department directly under the Governor. Nearly all Commissioners are appointed by the Governor and then confirmed by the Legislature. Of interest here is the existing Department of Natural Resources, where the Division of Agriculture currently lives, and the proposal for pulling the division out of ADNR and moving to its own Department of Agriculture (which would bring the state total to sixteen – the most departments we've ever had has been fifteen, according to the Citizen's Guide to the Alaska Constitution).

Within ADNR there are currently the following divisions: Agriculture, Forestry, Geological & Geophysical Surveys, Oil & Gas, Mining, Land, and Water, Parks & Outdoor Recreation, Support Services, and the Commissioner's Office (which includes the Mental Health Trust Land Office)

In 2011, the Legislature proposed the creation of a Department of Agriculture and Food through House Bill 191. The bill outlined a larger department, slated to include both agricultural duties from ADNR as well as food-related duties from the Alaska Department of Environmental Conservation, including the state veterinary office and food permitting activities excluding retail food establishments and fisheries/fisheries products.

This Executive Order pulls the duties and responsibilities under the Division of Agriculture into its own Department. In 2022, a similar EO split the Department of Health and Social Services into two Departments - Health and Family & Community Services. The alternative path for creating a new department is through legislation passed by the Legislature.

A Department requires the establishment of a separate budget, with the addition of a Commissioner's office. The fiscal note (or estimated costs) associated with the creation of a Department of Agriculture will be released sometime in February.

Comparison with Food Strategies Task Force Proposal

In 2024, the Legislative Food Strategy Task Force presented a white paper outlining the need for a Department of Agriculture and providing suggestions for moving it forward. On the next page, we provide a side-by-side comparison of the proposed structure for a Department of Agriculture taken from the Task Force white paper and the Governor's Department of Agriculture through Executive Order 136.

Task Force Report Proposed Structure of a Department of Agriculture (DOAg)	Executive Order 136
Administration & Support	A Commissioner is established
Move the Office of the State Veterinarian to the new DOAg	The State Vet remains with the Dept. of Environmental Conservation
Move the Board of Agriculture and Conservation to the new DOAg, Provide additional staffing for the Board of Ag	The Board of Ag is moved to the new Department as is. Some current requirements for Board of Ag consultation are removed and replaced with Commissioner of Ag consultation.
Move Division of Ag Environmental Services, including Invasive plants, pests, native plant commercialization, and soil & water conservation districts to the new DOAg	All of the existing Environmental Services under Division of Ag are moved to the new Department
Move the ADNR Division of Forestry to the new DOAg	Forestry remains within ADNR
Move dairy and meat inspections from ADEC to the new DOAg	Dairy and meat inspections remain within ADEC
Provide authority to create animal feed and pet food inspection and testing service and fertilizer inspection and testing services through statute.	No additional statutes are created
Move mariculture activities from the Alaska Department of Fish & Game to the new DOAg	Mariculture is not included in the Department of Agriculture
Establish a Division of Agriculture, Mariculture, and Forestry Development for marketing, grants, exports, and lands under the new DOAg; consider establishment of AGMI - the Alaska Grown Marketing Institute, similar to ASMI	No additional marketing authorities are established

Move the Plant Materials Center from the Division of Ag to the new DOAg and move the pesticide and herbicide program from ADEC to the new DOAg	The Plant Materials Center is moved to the new Department. The pesticide and herbicide program isn't moved and stays within ADEC.
Transfer funding for Future Farmers of America from ADNR to the new DOAg	Since FFA is under the current structure of the Division of Agriculture, we believe the EO would shift these funds to the new Department

Section-By-Section Review of the EO

Within Title 3 – Agriculture, Animals, and Food,, six chapters in this title are covered in this EO.

- Chapter 5 currently covers the 'Powers and duties of the Commissioners of Natural Resources and Environmental Conservation.'
  - The EO would shift the existing powers and duties of the Commissioner of Natural Resources under this title, to the Commissioner of Agriculture. This covers sections in this chapter from AS 03.05.010 to AS 03.05.090. (Sec. 2 - 10)
- Chapter 9 covers the Board of Agriculture and Conservation.
  - The EO changes the oversight of the Board from the Director of the Division of Agriculture (currently under ADNR) to the Commissioner of Agriculture or their designee. (Sec. 11)
- Chapter 20 covers Agricultural and Industrial Program Support.
  - The EO changes the statute reference for the registration of noncommercial giving or exchanging of seed, from AS 44.37.030(b) to AS 44.38.020(b) (which is a new statute later on in the EO which outlines the duties of the new Department of Ag). (Sec. 12)
  - The EO clarifies the agricultural forgivable loan program would be run under the Department of Agriculture. (Sec. 13)
- Chapter 22 covers the Plant Materials Center.
  - The EO shifts existing duties of ADNR to the new Department of Ag. (Sec. 14-15)
- Chapter 47 covers Bees and Beekeeping Equipment.
  - The EO shifts existing duties of ADNR to the new Department of Ag. (Sec. 16-20)
- Chapter 90 are General Provisions.

The EO shifts existing definitions of ADNR to the new Department of Ag. (Sec. 21)

Title 9 - Code of Civil Procedure has a single change under this EO.

- Chapter 45, Section 235 covers Agricultural operations as private nuisances.
  - The EO shifts existing duties of ADNR to the new Department of Ag. (Sec. 22)

Title 37 - Public Finance also has a single change under this EO.

- Chapter 5, Section 146 covers the definition of program receipts and non-general fund program receipts under the Fiscal Procedures Act. "Program receipts" are defined as "fees, charges, income earned on assets,

and other state money received by a state agency in connection with the performance of its functions."
    - The EO shifts fees collected by the activities of the current agricultural activities under ADNR to the newly created Department of Agriculture. (Sec. 23)

Title 38 - Public Land has six changes proposed under this EO. Most of them are within Chapter 5 - the Alaska Land Act.

- Chapter 5, Section 020(b) Authority and duties of the commissioner - changes consultation *from* the Board of Ag *to* the Commissioner of Agriculture on the development requirements on agricultural lands. (Sec. 24)
- Chapter 5, Section 057(c) Disposal of land by lottery - changes consultation *from* the Board of Ag *to* the Commissioner of Agriculture on adopting regulation around land lotteries when they impact agricultural purposes or lands. (Sec. 25)
- Chapter 5, Section 059 Sale of agricultural land - changes consultation *from* the Board of Ag *to* the Commissioner of Agriculture. (Sec. 26)
- Chapter 5, Section 065(h) Terms of contract of sale - changes consultation *from* the Board of Ag *to* the Commissioner of Agriculture on the provisions regarding sale of land for agricultural uses. (Sec. 27)
- Chapter 5, Section 069(a) Preference to persons for agricultural purposes - changes consultation *from* the Board of Ag *to* the Commissioner of Agriculture on related provisions. (Sec. 28)
- Chapter 7, Section 030(a). Chapter 7 covers the Clearing and draining of agricultural lands, and section 030 covers the owners and leasees included. The EO updates the language to broadly cover the agricultural policies of the state, vs. just the Division of Ag. (Sec. 29)

Title 41 - Public Resources has seven changes proposed under this EO, all of which are under Chapter 10 - Soil and Water Conservation.

- Section 040 - Natural Resource Conservation and Development Board, changes the name of the current Alaska *Natural Resource* Conservation and Development Board to the Alaska *Soil and Water* Conservation and Development Board. (Sec. 30)
- Section 045 - Executive director, clarifies that the commissioner of the Department of Agriculture would appoint the ED instead of currently the Commissioner of Natural Resources. (Sec. 31)
- Section 100 - Duties of the Board, changes references to the Commissioner of Agriculture instead of currently the Commissioner of Natural Resources or keeping as the ADNR commissioner as appropriate. (Sec. 32)
- Section 110 - Powers of the Commissioner, existing powers are clarified to be with the Commissioner of Agriculture instead of currently the Commissioner of Natural Resources. (Sec. 33)
- Section 120 - Approval of land user, clarification in reference to the Commissioner of Agriculture instead of currently the Commissioner of Natural Resources. (Sec. 34)
- Section 130 - Creation and boundaries of soil and water conservation districts, existing powers are clarified to be with the Commissioner of Agriculture instead of currently the Commissioner of Natural Resources. (Sec. 35)
- Section 140 - Definitions, changes the name of the current Alaska *Natural Resource* Conservation and Development Board to the Alaska *Soil and Water* Conservation and Development Board. (Sec. 36)

Title 44 - State Government has four sections, with three amendments and one chapter addition under the title.

- Chapter 17, Organization and Administration of Departments, Section 005 Offices and Departments, is amended to add the 17th Department of the state - the Department of Agriculture (Sec. 37)

- Chapter 37, Department of Natural Resources, Section 020 Duties of department with respect to natural resources, removes from the duties of ADNR the programs of agriculture and soil conservation. (Sec. 38)
- A NEW chapter is added, Chapter 38, which outlines the Department of Agriculture with the establishment of a commissioner, the duties of the Department, and the ability to adopt regulations for the Department. (Sec. 39)
- Chapter 62, Administrative Procedure Act, Section 330(a)(31) shifts the Alaska grain reserve program from ADNR to the Department of Agriculture. (Sec. 40)

The final sections of the EO include repealing:

- AS 03.09.020(b) which stipulates that the Director of Agriculture is appointed by the commissioner from a list submitted by the Board of Ag. This would no longer be necessary since there would no longer be a Division Director.
- AS 03.47.240(2) which defines the division, which would no longer exist (and previous language clarifies this chapter pertaining to bees and beekeeping would fall under the new Department of Ag)
- AS 44.37.030 which outlines the duties of ADNR with respect to agriculture.

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