

MEMORANDUM

(Open Session Report)

State of Alaska
Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: March 17, 2014

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for
March 27, 2014 BAC
meeting

FROM: Bob McFarlane
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PART 1: NON-CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

Legislation Update: The last day of the legislative session is April 20, 2014. The following is a status update on some of the bills of interest to the Board of Agriculture. Regular ARLF matters updates follow the legislative updates.

1. HB 207: [Changes to Board of Agriculture] A hearing on this bill was held in the House Resources Committee on Wednesday, February 5, 2014. The hearing lasted two hours and testimony centered on the losses suffered by the Agricultural Revolving Loan Fund (ARLF) over the last 30 years. There was also discussion about the losses suffered by the meat plant, the need for changes to the regulations to prevent losses in the future, and some of the other items discussed in the most recent legislative audit. The hearing was concluded and was taken up again on Friday, March 14, 2014. This hearing was held on a committee substitute for HB 207 (version R), dated March 7, 2014. This version removed the Title 41 changes relating to the soil and water conservation districts from the bill. None of the callers testifying about the bill supported this modified bill but comments from legislators seemed to favor the changes. I doubt there will be any more testimony on this bill at this point but you can continue to monitor the status at <http://www.legis.state.ak.us/basis/>.

2. HB 249: [Genetically modified Seeds and Plants] This bill was discussed briefly at the last board meeting. This bill prohibits the sale of genetically modified seeds and plants, but does not prohibit a person from using or selling a seed or plant produced with “traditional selective breeding.” As of the date of this memo there have been no hearings on this bill and none are scheduled.

3. HB 238: [Agricultural Preferences] As you may recall from the last meeting, this bill raises the agricultural preference amount from 7 percent to 12 percent. It also requires Legislative audits of compliance with AS 29.71.040 (which is the section requiring purchase of Alaska agricultural products by a municipality that receives state money). A sponsor substitute for this bill was introduced after the last BAC meeting. This substitute bill keeps the same 12 percent requirement but adds a section which requires audits of compliance with AS 36.15.050 (which is the section requiring use of local forest products). A hearing on this bill has been scheduled for March 18, 2014. I will provide a status update at the BAC meeting.

4. Mat Maid Property Sale: On February 10, 2014, John Carnahan from DEC advised us that the soil sampling draft data came back and that the results looked very good with very little in the way of contamination. The data showed some minor petroleum contamination near the north storage building area but he thought it would only require minimal spot cleanup or “housekeeping.” Also, there were some metals detected in a well near the water tower and he is hoping the EPA will sample the wells again for additional information. At this point there doesn’t seem to be any significant contamination to worry about. We will be meeting with the City of Palmer on March 25, 2014 to discuss the status the sale and we will have an update for the board at the BAC meeting.

5. Lanser v. Riddle Right to Farm Case: The Fairbanks court has scheduled a hearing for March 24, 2014 at 8:30 a.m. to hear arguments concerning the odor abatement measures that Mr. Riddle will be required to take. I assume that all options are on the table. In other words, the court could order the lagoons to be covered during the summer, waste to be stored in holding tanks, cessation of all further septage storage, or some other odor abatement remedy. It’s my understanding that Mr. Lanser and Mr. Riddle have not been able able to come up with a mutually agreeable solution to the problem. I will try to have an update for the board at the BAC meeting.

PART 2: CONFIDENTIAL MATTERS FOR EXECUTIVE SESSION

Open Meetings Act – A.S. 44.62.310(b)¹
Attorney Client Privilege - Alaska Evidence Code §503(b)²

¹ A motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session. AS §44.62.310(b).

Board of Agriculture and Conservation Statutes³
ARLF Regulations⁴

1. Legal advice regarding possible State involvement in Lanser v. Riddle litigation

² Section 503(b) of the Alaska Evidence Code states in relevant part: “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client...”

³ AS §03.09.040 authorizes the board to classify some loan and marketing information confidential.

⁴ ARLF Regulations at 11 AAC 39.061 makes most loan information confidential and 11 AAC 39.031(f) authorizes the board to meet in executive session to consider loan applications.