

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2019-01**

WHEREAS, Article IV, Section 8, of the constitution of the state of South Dakota provides that, "Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all the members of either house"; and

WHEREAS, this executive order has been submitted to the 94th Legislative Assembly on the 5th legislative day, being the 14th day of January, 2019;

IT IS, THEREFORE, BY EXECUTIVE ORDER, directed that the executive branch of state government be reorganized to comply with the following sections of this order.

GENERAL PROVISIONS

Section 1. This executive order shall be known and may be cited as the "Executive Reorganization Order 2019-01".

Section 2. Any agency not enumerated in this order, but established by law within another agency which is transferred to a principal department under this order, shall also be transferred in its current form to the same principal department and its functions shall be allocated between itself and the principal department as they are now allocated between itself and the agency within which it is established.

Section 3. "Agency" as used in this order shall mean any board, authority, commission, department, bureau, division or any other unit or organization of state government.

Section 4. "Function" as used in this order shall mean any authority, power, responsibility, duty or activity of an agency, whether or not specifically provided for by law.

Section 5. Unless otherwise provided by this order, division directors shall be appointed by the head of the department or bureau of which the division is a part, and shall be removable at the pleasure of the department or bureau head, provided, however, that both the appointment and removal of division directors shall be subject to approval by the Governor.

Section 6. It is the intent of this order not to repeal or amend any laws relating to functions performed by an agency, unless the intent is specifically expressed in this order or unless there is an irreconcilable conflict between this order and those laws.

Section 7. If a part of this order is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this order is invalid in one or more of its applications, the part remains in effect in all valid applications.

Section 8. Except when inconsistent with the other provisions of this order all rules, regulations and standards of the agencies involved in executive reorganization in effect on the effective date of this order, shall continue with full force and effect until they are specifically altered, amended, or revoked in the manner provided by law, unless the statutory authority for such rules is superseded by this order.

Section 9. It is hereby declared that the sections, clauses, sentences and parts of this executive order are severable, are not matters of mutual essential inducement, and any of them may be excised by any court of competent jurisdiction if any section, clause, sentence or part of this executive order would otherwise be unconstitutional or ineffective.

Section 10. In the event that it has been determined that a function of a transferred agency, which has not been eliminated by this order, and its associated records, personnel, equipment, facilities, unexpended balances or appropriations, allocations or other funds have not been clearly allocated to an agency, the Governor shall specify by interim procedures the allocation of the function and its associated resources. At the next legislative session following the issuance of such interim procedures, the Governor shall make recommendations concerning the proper allocation of the functions of transferred agencies which are not clearly allocated by this order. Any interim procedures issued in conjunction with this section shall be filed with the Secretary of state.

Section 11. The rights, privileges and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of this order, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by abolition of an agency in this order. The agency to which functions of another agency are transferred is substituted for that agency and succeeds to its rights and leases, indentures, and other transactions.

Section 12. No judicial or administrative suit, action or other proceeding lawfully commenced before the effective date of this order by or against any agency or any officer of the state, in his official capacity or in relation to the discharge of his official duties, shall abate or be affected by reason of the taking effect of any reorganization under the provisions of this order. The court may allow the suit, action or other proceeding to be maintained by or against the successor of any agency or any officer affected by this order.

Section 13. If any part of this order is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency or a political subdivision, that part of this order has no effect and the Governor may by executive order make necessary changes to this order to receive federal aid, and the changes will remain in effect until the last legislative day of the next legislative session or until the Legislature completes legislation addressed to the same question, whichever comes first.

Section 14. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to make the name and title changes necessary to correlate and integrate the organizational changes made by this Executive Reorganization Order into the South Dakota Codified Laws.

Section 15. Any provisions of law in conflict with this order are superseded.

Section 16. Whenever a function is transferred by this order, all personnel, records, property, unexpended balances of appropriations, allocations or other funds utilized in performing the function are also transferred by this order.

Section 17. The effective date of this Executive Reorganization Order #2019-01 shall be ninety days after its submission to the Legislature.

Office of Indian Education is Transferred to the Department of Tribal Relations

Section 18. The Office of Indian Education in the Department of Education is hereby transferred to the Department of Tribal Relations. The Secretary of the Department of Tribal Relations shall perform the functions of the Secretary of the Department of Education, relating to the Office of Indian Education.

Section 19. The functions of the Indian Education Advisory Council established pursuant to § 13-1-47 shall now be performed in relation to the Department of Tribal Relations. The Secretary of Tribal Relations shall perform the functions of the former Secretary of Education relating to the Indian Education Advisory Council.

Section 20. That § 13-1-47 be transferred to chapter 1-54 and amended to read as follows.

13-1-47. Office of Indian Education established. The Office of Indian Education is hereby established within the Department of ~~Education~~ Tribal Relations. The Office of Indian Education shall support initiatives in order that South Dakota's students and public school instructional staff become aware of and gain an appreciation of South Dakota's unique American Indian culture. The secretary of the Department of ~~Education~~ Tribal Relations shall appoint an Indian Education Advisory Council. The council shall consist of representatives of all nine tribes in South Dakota along with Native American educators from all parts of the state. The nine representatives of the tribes shall be appointed from nominations submitted by the tribal councils of each of the tribes. The

council members shall serve for three-year terms.

Section 21. That § 13-1-49 be transferred to chapter 1-54 and amended to read as follows.

13-1-49. Curriculum and coursework in South Dakota American Indian history and culture. The Department of Education, ~~in cooperation with the Indian Education Advisory Council created in § 13-1-47, shall develop course content for curriculum and coursework in South Dakota American Indian history and culture~~ shall consult with the Indian Education Advisory Council within the Department of Tribal Relations to develop and review the Oceti Sakowin Essential Understandings. The consultation process shall align with the standards revision cycle established by the Board of Education Standards pursuant to § 13-3-48.

Section 22. That § 13-1-50 be repealed.

Section 23. That § 13-14-16 be transferred to chapter 1-54 and amended to read as follows.

13-14-16. Native American achievement schools grant program established. There is hereby established the Native American achievement schools grant program to be administered by the Office of Indian Education within the Department of ~~Education~~ Tribal Relations. The purpose of the grant program is to fund the establishment of up to three Native American achievement school projects aimed at improving academic outcomes for Native American students.

Section 24. That § 13-14-17 be transferred to chapter 1-54.

Section 25. That § 13-14-18 be transferred to chapter 1-54.

Section 26. That § 13-14-19 be transferred to chapter 1-54.

Section 27. That § 13-14-20 be transferred to chapter 1-54 and amended to read as follows.

13-14-20. Determination of grant recipients and award amounts. The department, with the assistance of a group of reviewers designated by the secretary of ~~education~~ tribal relations, shall determine grant recipients and award amounts utilizing a competitive process. The group of reviewers shall include three members of the Indian Education Advisory Council established pursuant to § 13-1-47.

Section 28. That § 13-14-21 be transferred to chapter 1-54.

Section 29. That § 13-14-22 be transferred to chapter 1-54.

Section 30. That § 13-14-23 be transferred to chapter 1-54.

Section 31. That § 13-55-72 be transferred to chapter 1-54 and amended to read as follows.

13-55-72. Paraprofessional tuition assistance scholarship program established. There is hereby established the paraprofessional tuition assistance scholarship program to be administered by the Office of Indian Education within the Department of ~~Education~~ Tribal Relations. The purpose of the scholarship program is to allow the pursuit of full teacher certification by the paraprofessionals employed by qualifying schools.

Section 32. That § 13-55-73 be transferred to chapter 1-54.

Section 33. That § 13-55-74 be transferred to chapter 1-54.

Section 34. That § 13-55-75 be transferred to chapter 1-54 and amended to read as follows.

13-55-75. Maximum term of participation in program. A person is eligible to participate in the paraprofessional tuition assistance scholarship program for up to four consecutive academic years or until the attainment of a baccalaureate degree in elementary or secondary education, whichever comes first. The secretary of ~~education~~ tribal relations may grant exceptions to the continuous enrollment requirement if good cause is demonstrated.

Section 35. That § 13-55-76 be transferred to chapter 1-54.

Section 36. That § 13-55-77 be transferred to chapter 1-54.

The Value Added Finance Authority Oversight, The Rural Rehabilitation Assets and Funds, The Farm Link Program, and South Dakota Certified Beef Program be Transferred from the Department of Agriculture to the Governor's Office of Economic Development

Section 37. The Value Added Finance Authority oversight to issue tax exempt bonds and administer a direct loan program for small ag processing businesses and the Value Added Agricultural Sub Fund to provide funding for agricultural development studies pursuant to chapter 1-16E, The Rural Rehabilitation Assets and Funds pursuant to chapter 38-6, the Farm Link Program pursuant to chapter 38-1, and the South Dakota Certified Beef Program pursuant to chapter 39-24 are hereby transferred from the Department of Agriculture to the Governor's Office of Economic Development. The Commissioner of the Governor's Office of Economic Development shall perform the functions of the Secretary of the Department of Agriculture relating to the Value Added Finance Authority, The Rural Rehabilitation Assets and Funds, and the South Dakota Certified Beef Program.

Section 38. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to transfer the existing administrative rules relating to the Agriculture Enterprise Programs in Article 12:07, the Beginning Farmer

Loan program in Article 12:21, the Agribusiness Bonding and Lending Programs in Article 12:22, and the South Dakota Certified Beef Program in Article 12:79 to the Governor's Office of Economic Development.

Section 39. That § 1-16E-7(7) be amended to read as follows:

(7) Employ fiscal consultants, engineers, attorneys, and such other consultants and employees as may be required and contract with the ~~South Dakota Department of Agriculture~~ Governor's Office of Economic Development to provide staff and support services;

Section 40. That 38-1-42 be transferred to chapter 1-53 and be amended to read as follows:

38-1-42. Establishment of the farm link program. The farm link program is hereby established and shall be administered by the ~~Department of Agriculture~~ Governor's Office of Economic Development and the South Dakota Cooperative Extension Service. Under the program, the ~~department~~ Governor's Office of Economic Development shall create a directory of prospective beginning farmers and ranchers and a directory of available or potentially available farms and ranches, which shall be used in matching the two groups. The ~~department~~ Governor's Office of Economic Development may, if practicable, use the resources of the South Dakota ag enterprise program. In administering the Farm Link Program, the ~~department~~ Governor's Office of Economic Development shall attempt to cooperate with similar programs in surrounding states to provide a greater opportunity for matching the interests of entering and retiring farmers and ranchers. The ~~department~~ Governor's Office of Economic Development shall also make available information on farm lending opportunities.

Section 41. That 38-1-43 be transferred to chapter 1-53 and be amended to read as follows:

38-1-43. Rules governing the farm link program. The ~~Department of Agriculture~~ Governor's Office of Economic Development shall promulgate rules pursuant to chapter 1-26 to administer the farm link program established pursuant to § 38-1-42. The rules shall include provisions governing program eligibility and procedures for data management, applications, and program administration.

Section 42. That § 38-6-1 be transferred to chapter 1-53 and be amended to read as follows:

38-6-1. ~~Secretary of agriculture~~ Commissioner of Governor's Office of Economic Development as state official to receive trust assets. The ~~secretary of agriculture~~ commissioner of governor's office of economic development is hereby designated as the state official of the State of South Dakota to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, 81st Congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the

South Dakota Rural Rehabilitation Corporation.

Section 43. That § 38-6-3 be transferred to chapter 1-53 and be amended to read as follows:

38-6-3. Agreements for administration of trust assets by federal government. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, with the approval of the Governor, is authorized to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the State of South Dakota all or any part of such trust assets or any other funds of the State of South Dakota which may be appropriated for such uses for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

Section 44. That § 38-6-4 be transferred to chapter 1-53 and be amended to read as follows:

38-6-4. Deposit of trust assets with state treasurer--Purposes for which used. Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of § 38-6-3 shall be received by the ~~secretary of agriculture~~ commissioner of governor's office of economic development under the application made pursuant to § 38-6-1 and by him deposited with the state treasurer for use by the ~~secretary of agriculture~~ commissioner of governor's office of economic development for such of the rural rehabilitation purposes permissible under the charter of the now dissolved South Dakota Rural Rehabilitation Corporation as may from time to time be agreed upon by the ~~secretary of agriculture~~ commissioner of governor's office of economic development with the approval of the Governor and the secretary of agriculture of the United States subject to the applicable provisions of said Public Law 499, or for the purposes of § 38-6-3.

Section 45. That § 38-6-5 be transferred to chapter 1-53 and be amended to read as follows:

38-6-5. Compromise, adjustment, and collection of claims and obligations. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, with the approval of the Governor, is authorized and empowered to collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered pursuant to this chapter and, if in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

Section 46. That § 38-6-6 be transferred to chapter 1-53 and be amended to read as follows:

38-6-6. Purchase and acquisition of property securing indebtedness. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, with the approval of the Governor, is authorized and empowered to bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property upon which the ~~secretary~~ commissioner has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the ~~secretary~~ commissioner under this chapter.

Section 47. That § 38-6-7 be transferred to chapter 1-53 and be amended to read as follows:

38-6-7. Operation, lease, and disposition of property purchased or acquired. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, with the approval of the Governor, is authorized and empowered to accept title to any property purchased or acquired pursuant to § 38-6-6; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

Section 48. That § 38-6-8 be transferred to chapter 1-53 and be amended to read as follows:

38-6-8. Investment, transfer, and sale of securities and obligations--Purposes. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, with the approval of the Governor, is authorized and empowered to negotiate, renegotiate, invest, reinvest, transfer, and sell securities, notes, bonds, mortgages, and other obligations, including funds and the proceeds of trust assets, in such manner and upon such terms, conditions and for such periods of time consistent with and for carrying out the purposes of this chapter and to do any and all things necessary to effectuate and carry out the purposes permissible under the charter of the now dissolved South Dakota Rural Rehabilitation Corporation.

Section 49. That § 38-6-8.1 be transferred to chapter 1-53 and be amended to read as follows:

38-6-8.1. Rules for disposition of claims and administration of trust. The ~~secretary of agriculture~~ commissioner of governor's office of economic development, in compliance with the provisions of chapter 1-26, shall promulgate rules for disposition of claims and administration of trust assets authorized under this chapter, including all loan programs, and may adopt pursuant to chapter 1-26 such federal rules as are necessary to administer any program authorized under this chapter.

Section 50. That § 38-6-9 be transferred to chapter 1-53.

Section 51. That § 38-6-10 be transferred to chapter 1-53 and be amended to read as follows:

38-6-10. United States held free from liability. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the ~~secretary of agriculture of the State of South Dakota~~ commissioner of governor's office of economic development pursuant to this chapter.

Section 52. That § 38-6-11 be transferred to chapter 38-1.

Section 54. That § 38-6-13 be transferred to chapter 1-53

Section 55. That § 38-6-14 be transferred to chapter 1-53.

Section 56. That § 38-6-15 be transferred to chapter 1-53 and be amended to read as follows:

38-6-15. Earnings on value added agriculture subfund. Earnings on the value added agriculture subfund may be used by the ~~South Dakota Department of Agriculture~~ Governor's Office of Economic Development for the administrative costs of this program. Such earnings shall be expended in accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers approved by the ~~secretary of agriculture~~ commissioner of the governor's office of economic development. Eligible expenses may not exceed total interest earnings during the previous fiscal year prior to the deduction of loan losses for the same fiscal year.

Section 57. That § 38-6-16 be transferred to Chapter 1-53.

Section 58. That § 10-47B-149(2) be amended to read as follows:

(2) Each July transfer from the amount of motor fuel tax collected from the motor fuel used for nonhighway purposes to the value added agriculture subfund created in ~~§ 38-6-13~~ Chapter 1-53 one hundred thirty-five thousand dollars.

Section 59. That §§ 39-24-1 and 39-24-2 be transferred to chapter 1-53.

Section 60. That § 39-24-3 be transferred to chapter 1-53 and be amended to read as follows:

39-24-3. Authority of ~~Department of Agriculture~~ Governor's Office of Economic Development--Program requirements and operation. The ~~secretary~~ commissioner of the ~~Department of Agriculture~~ Governor's Office of Economic Development may establish quality protocols, guidelines, program requirements, license fees, and license requirements and operate, supervise, and control the South Dakota Certified beef program.

Section 61. That § 39-24-4 be transferred to chapter 1-53 and be amended to read as follows:

39-24-4. Use of mark, copyright, or label--Violation as felony. The use of any certification mark, trademark, service mark, copyright, or label of the South Dakota Certified beef program shall be in accordance with the terms and conditions of a valid license issued by the secretary commissioner. A violation of this section is a Class 6 felony.

Section 62. That § 39-24-5 be transferred to chapter 1-53 and be amended to read as follows:

39-24-5. Confidential information—Exception. Any data or financial information made or received by the secretary of agriculture commissioner of governor's office of economic development pursuant to this chapter is not public record and is exempt from the provisions of § 1-27-1. However, the secretary commissioner may provide information gathered pursuant to this chapter to any government agency if the information is needed for a government sponsored animal identification tracking program or for any public health or safety reason.

Section 63. That § 39-24-6 be transferred to chapter 1-53 and be amended to read as follows:

39-24-6. Promulgation of rules. The secretary of agriculture commissioner of governor's office of economic development may by rule promulgated pursuant to chapter 1-26, prescribe the following:

- (1) Qualifications or conditions for using any intellectual property right, mark, or label of the South Dakota Certified beef program;
- (2) Reasonable fees for licenses and services of the program, such fees to be reasonably commensurate with the cost of developing, administering, and marketing the program;
- (3) License application procedures, the terms and conditions of any license, and any official form the secretary deems necessary and appropriate;
- (4) Methods and means of conducting inspections, keeping records, and otherwise insuring program compliance by participants in the program; and
- (5) Provisions to maintain the confidentiality of business information provided to the secretary by participants in the program.

Section 64. That § 39-24-7 be transferred to chapter 1-53 and be amended to read as follows:

39-24-7. Enforcement by court action--Injunctive relief. In addition to any other remedy provided by law, the secretary commissioner may proceed by suit in any court of competent jurisdiction to enforce the terms and provisions of this chapter and of any license issued pursuant to this chapter. The secretary commissioner may as a part of any such suit seek injunctive relief.

Section 65. That § 39-24-8 be transferred to chapter 1-53 and be amended to read as follows:

39-24-8. Revocation of license. In addition to any other remedy provided by law, the ~~secretary~~ commissioner may revoke a license for cause pursuant to chapter 1-26.

Section 66. That §§ 39-24-9 and 39-24-10 be transferred to chapter 1-53.

Dated in Pierre, South Dakota, this 14th day of January, 2019.



Kristi Noem
Governor of South Dakota



ATTEST:



Steven Barnett
Secretary of State