

State of Alaska
FY2006 Governor's Operating Budget

Department of Law
Commercial and Fair Business
Component Budget Summary

Component: Commercial and Fair Business**Contribution to Department's Mission**

The Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws, which are aimed at protecting the public. This section also provides advice and representation to various departments and agencies of state government to assist them in the performance of their functions.

Core Services

The Commercial and Fair Business Section has one of the more diverse law practices within the Department of Law. This section exercises the Attorney General's authority to enforce state consumer protection laws and antitrust laws. The section also provides representation, defense, advice, and counsel to 15 different divisions, commissions, and corporations within the Department of Revenue, the Department of Education and Early Development, and the Department of Commerce, Community and Economic Development.

DEPARTMENT OF REVENUE:**Tax Division (non-oil and gas tax):**

- Assist in negotiation of income and excise tax settlements.
- Defend appeals of tax assessments.
- Defend tax legislation against constitutional challenges.
- Appeal adverse decisions of the office of tax appeals to the superior court.
- Defend appeals or original actions on unclaimed property and provide legal advice concerning contracts with third parties for collection of unclaimed property.
- Defend appeals or original actions in enforcement of charitable gaming.
- Assist in drafting regulations.
- Prosecute non-participating tobacco manufacturers who violate the Master Settlement statute.

Treasury Division:

- Monitor and work with outside counsel on and securities fraud litigation involving state investments

Permanent Fund Dividend Division:

- Defend appeals of dividend denials.
- Assist in drafting regulations.
- Defend division against original actions.

Permanent Fund Corporation:

- Monitor and work with outside counsel on and securities fraud litigation involving corporation investments.
- Provide legal advice on corporate matters.

Alaska State Pension Investment Board:

- Monitor and work with outside counsel on and securities fraud litigation involving pension investments.
- Provide legal advice regarding public information requests.

Alaska Housing Finance Corporation:

- Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.
- Provide legal advice relating to AHFC's mortgage lending, public housing, construction and residential energy activities.
- Represent the corporation in litigation.

DEPARTMENT OF PUBLIC SAFETY:**Alcoholic Beverage Control Board:**

- Provide legal advice regarding the issuance and renewal of alcoholic beverage licenses and on disciplinary matters relating to license holders.
- Assist the board with the drafting and adoption of regulations.

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT:

Division of Insurance:

- Provide legal advice regarding insurance enforcement matters and represent the division in administrative adjudications involving insurance licensees.
- Assist the division in drafting regulations and legislation.
- Represent the director in court proceedings including administrative appeals of director decisions and insurance company liquidation proceedings

Division of Occupational Licensing:

- Assist in negotiation of settlements or resolutions of license denials and license discipline.
- Defend appeals of license denial.
- Advise professional boards on legislative and constitutional limitations on their authority.
- Assist in drafting and repealing of regulations.
- Assist in drafting legislation
- Assist in prosecuting actions to suspend tobacco endorsements of retailers for selling tobacco to minors

Division of Investments:

- Obtain judgments on defaulted loans.
- Represent the division in admiralty cases brought in U.S. District Court.
- Provide legal advice.

Division of Banking, Securities and Corporations:

- Defend appeals of cease and desist orders against securities brokers and salespeople.
- Defend appeals of orders regarding proxy challenges.
- Provide legal advice.

Regulatory Commission of Alaska:

- Provide legal advice to the Commission about legal issues raised in filings and assist in the review of orders issued by the Commission

DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

Alaska Student Loan Corporation:

- Act as corporate counsel providing general advice on personnel, procurement, and contractual matters.
- Assist in drafting legislation and regulations.

Alaska Commission on Postsecondary Education:

- Provide legal advice relating to ACPE's student loans, collections, regulations and legislation.

Professional Teaching Practices Commission:

- Provide advice and represent staff in teacher discipline matters

FY2006 Resources Allocated to Achieve Results		
FY2006 Component Budget: \$4,336,700	Personnel:	
	Full time	32
	Part time	3
	Total	35

Key Component Challenges

Consumer Protection

Alaska is a target state for many types of consumer fraud. Under the authority of the Consumer Protection Act (AS 45.50.471 et seq.), the Commercial and Fair Business Section investigates and brings enforcement action against businesses that engage in unfair or deceptive trade practices. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, the section is still forced to turn away many legitimate cases of consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough resources for even those cases.

The department has been able to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY 2000 and increased again for FY2004. To help ensure receipt of statutory designated program receipt resources, the department needs to maintain the section's participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers. A projected shortfall in statutory designated receipts for FY 2006 has resulted in a request in this budget to replace \$300,000 of those receipts with general funds. Additional funds are also needed to increase our efforts to fight fraud, abuse, and financial exploitation of Alaska seniors.

Fraud on seniors is on the rise and often goes unreported because they are too embarrassed, fearful, or confused to report what has happened to them. Seniors are hit hard by fraud, in terms of personal dignity and financial security. Seniors are uniquely vulnerable. Because of their age, trust, and good intentions, seniors become the targets of professional scam artists, sweepstakes rip-offs, fast-talking telemarketers or paid solicitors, and home repair scams. In some scams, 80 percent or more of the victims are 65 or older. In addition, identity theft of seniors has increased by 218 percent between 2000 and 2001. Internet related fraud also is increasing. The high number of Alaska seniors who use or have access to the Internet means they will be exposed to increasing numbers and types of Internet scams. With a rapidly aging population in Alaska, we can expect senior fraud, abuse, and exploitation to be a continuing and growing problem. We must increase our efforts to combat senior fraud both through education and law enforcement. Many states have developed consumer protection programs or initiatives to address issues and problems specific to seniors. To date, Alaska has not. The section proposes to create and implement such a program or initiative statewide. The proposal will have two components: education and enforcement. The education component will involve senior education and community outreach addressing a range of issues affecting seniors including fraud, abuse, and financial exploitation. The enforcement component will put priority on consumer fraud and deception cases where Alaska seniors are victims. We anticipate a substantial increase in the section's workload arising out of this proposal. \$430,300 for the addition of two attorneys and one investigator is needed to implement the proposal and to accommodate the resulting increased workload. The attorneys will be engaged in creating and implementing the education and outreach programs and will prosecute fraud and deception cases with senior victims. The investigator will support both attorneys in outreach efforts and in investigating and preparing cases for prosecution.

In addition to consumer protection and antitrust enforcement, the section also is responsible for the annual registration of approximately 2,000 charitable organizations, paid solicitors, and telemarketers. This is a challenging process that takes substantial section resources each year to complete. Under HB 15 that became law in 2004, the department was given authority to collect a fee for each registration, which will help offset the costs of the registration process each year.

Agency Work

This section provides legal assistance to the Department of Revenue on all non-oil and gas tax types, including corporate income tax, tobacco tax, alcohol tax, motor fuel tax and an array of fish related taxes. These taxes contribute over \$100 million per year to the general fund. Effective enforcement and collection of these taxes is imperative to minimize taxpayers' efforts to evade payment of taxes. The section attorneys advising the Department Revenue spend substantial time researching and advising the department every year in its enforcement efforts. The Department of Revenue faces challenges particularly in the area of tobacco and fish related taxes, where efforts to avoid payment of taxes have recently become more pronounced. Moreover, some large corporations resist the combined apportionment method of corporate income taxation, which Alaska and many other states employ. This area of taxation generates litigation every year, which is handled by section attorneys.

This section also provides legal assistance to the Gaming Unit, within the Department of Revenue on all charitable gaming issues. The Gaming Unit is often presented with creative interpretations of the charitable gaming laws that require continuing legal analysis by section attorneys to ensure that the laws are consistently, correctly and fairly

applied to the charitable gaming public.

In addition to the Department of Revenue work, this section provides legal assistance to the state's investment funds managed by the Permanent Fund Corporation and the Alaska State Pension Investment Board. These investment funds total approximately \$48 billion. One challenge in this area is identifying when it is appropriate to actively seek recovery of funds lost to securities fraud (these funds are automatically passive members in all class action securities fraud cases in which they have losses). A section attorney developed and implemented guidelines to assist in making these decisions.

Significant Changes in Results to be Delivered in FY2006

Approval to add two attorneys and an investigator for consumer protection will allow the section to implement a statewide program aimed at better protecting Alaska seniors from fraud, abuse, and financial exploitation. Under this program, two new attorneys will conduct education programs and community outreach throughout the state that will train seniors to recognize and avoid the common forms of consumer fraud and encourage them to report scams to the Attorney General. The attorneys also will prioritize for investigation cases involving consumer fraud and deception with senior victims and will vigorously pursue prosecution of fraud perpetrators. This program will generate a substantial increase in workload, which will fully occupy the services of two attorneys. Because of this anticipated workload increase, an investigator is needed to help support the attorneys in outreach efforts and to help investigate and prepare cases for prosecution.

The anticipated results from this program will include:

- Rapid response to reports of fraud against senior citizens;
- Stepped up prosecution of scam artists who go after seniors;
- Identification of trends and new developments in consumer fraud that target seniors and quick responses to them by educating intended victims and prosecuting perpetrators; and
- An increase in the number of seniors better prepared to protect themselves from fraud, abuse, and financial exploitation as a result of participation in education and community outreach programs.

Major Component Accomplishments in 2004

- The Consumer Protection Unit processed 429 consumer complaints in FY 2004. Of the complaints filed, 146 complaints were successfully mediated resulting in direct assistance to consumers during the fiscal year. Another 35 complaints were resolved providing indirect assistance to consumers or referrals to other appropriate state and federal agencies.
- Successfully prosecuted and negotiated settlements in two related consumer protection and fraud cases against a local travel operator. 77 complaints were received and investigated, which revealed that the operator had defrauded numerous consumers across the country and small businesses here in Alaska, by accepting money for travel, lodging, and tours from consumers and then never disbursing the payments to the businesses. The operator also made unauthorized charges to consumers' credit cards, including double and in some cases even triple charging. The Consumer Protection Unit obtained injunctive relief and consumer and vendor restitution in the amount of \$48,000.
- Negotiated settlement of consumer protection/fraud/conversion case against mortgage broker, resulting in restitution for consumers and \$20,000 in civil penalties over the next two years.
- Participated in multistate settlement of consumer protection claims against H&R Block, yielding \$50,000 in statutory designated program receipts.
- Successfully prosecuted subpoena enforcement action against California debt management company. Obtained summary judgment against New Jersey entity for false advertising of "free energy" products; also obtained \$25,000 civil penalty for entity's violation of TRO issued in the case.
- Obtained Assurances of Voluntary Compliance from two paid solicitors alleged to have violated the Charitable Solicitations Act by failing to make required telephone disclosures to donors; payments made by solicitors exceeded \$30,000.
- Drafted legislation significantly amending do-not-call provisions of the Consumer Protection Act and the registration requirements under the Charitable Solicitations Act and Telephonic Solicitations Act. Legislation passed and became effective in July 2004.
- Participated in multistate settlement of consumer protection claims against Pfizer, Inc. for its off-label marketing of Neurontin, yielding \$25,000 in statutory designated program receipts. Continued participation in three other multistate settlements that will result in approximately \$500,000 in consumer restitution and \$100,000 in attorneys' fees, costs, and penalties for the state.
- Investigated \$72 million dollar merger between Crowley Marine Services and Yukon Fuel Company, who are competitors for barge-delivered petroleum products in western Alaska. Negotiated consent decree and have filed with the court for approval.
- Worked with legislature to successfully pass legislation amending the Auto Dealer Act and provisions of Alaska's Consumer Protection law dealing with negative option plans and payday loans.
- Worked with the state Department of Environmental Conservation to draft (and pass) amendments to Alaska's Food and Drug Act relating to food labeling to provide AG authority to investigate these issues under CP Act. Presented seminar to Alaska Auto Dealers on recent changes to auto related statutes, and continued work with various auto dealer associations on legislative projects.
- Worked with the DMV and Municipality of Anchorage to address issues regarding the regulation of towing companies and title branding.
- Investigated and stopped illegal negative marketing practices by local telephone providers.
- Successfully negotiated the dismissal of a lawsuit that challenged the legality of a State Board of Pharmacy regulation establishing the standards for collaborative practice agreements between pharmacists and physicians in Alaska.

- Successfully prosecuted or negotiated settlements in 13 separate occupational licensing discipline cases against health care professionals, including four physicians, 4 physician assistants, 1 registered nurse, 3 certified nurse's aide, and 1 certified direct-entry midwife. These cases resulted in revocation, suspension, or voluntary surrender of licenses, imposition of civil fines, and/or reprimands based on conduct involving convictions for forgery, theft, indecent exposure, health care fraud and mail fraud; improper or unlawful prescribing practices; alcohol abuse, patient abuse; performing services while license suspended; harassment; failure to disclose convictions and falsified license application.
- Successfully prosecuted or negotiated settlements in separate discipline cases against 3 real estate associate brokers and a salesperson resulting in suspension, revocation, or voluntary surrender of licenses based on conduct in real estate transactions that involved substantial misrepresentations, violations of dual agency disclosure statute, dishonesty, and fraud.
- Successfully defended at hearing a division of occupational licensing temporary cease and desist order issued against an architect, resulting in a permanent cease and desist order being entered, which prevents the architect from performing engineering design work because he is not registered as an engineer.
- Successfully obtained million dollar insurance coverage and defense in tort action for Alaska Housing Finance Corporation's failure to provide adequate security at a public housing property.
- Successfully defended AHFC in declaratory judgment action seeking an order requiring AHFC to review all leases in low-in housing tax credit program.
- Successfully prosecuted and negotiated settlements in corporate income tax cases that resulted in payment of \$1.3 million in taxes to the state.
- On behalf of state investment funds, commenced litigation to recover investment funds' losses in WorldCom and AOLTime Warner securities.
- Instrumental in the successful legislative effort to increase tobacco tax.
- Successfully defended a lawsuit filed by State prisoners challenging ineligibility to collect permanent fund dividends resulting in dismissal of the suit.
- Successfully negotiated settlement of a securities enforcement action involving allegations of securities fraud and the sale of unregistered securities by unregistered individuals arising out of a failed real estate development project in Juneau. The consent agreement provided for fines of \$22,000 with \$10,000 suspended if no securities violations occur in the following ten years.
- Successful prosecution of a securities enforcement action through a cease and desist order issued against a third-party administrator for 403(b) plans (retirement plans for school district employees) in Alaska. As a result of this action, the state was able to minimize the financial loss to Alaskans when the company was shut down (and placed under the control of a court-appointed special master) by an Ohio court. At the outset, the company had almost 900 participants under contract in Fairbanks and Ketchikan. At present only 4 Alaskans have balances with the company and the company has quit doing business in the state.
- Assisted in drafting legislation for the Alaska Student loan Corporation (ASLC) and the Alaska Commission on Postsecondary Education (ACPE) that allows ASLC to issue bonds on behalf of the State for purposes other than student loans and also re-established a grant program for students studying certain subjects where there is a shortage in Alaska.
- Successfully defended an appeal to the US District Court regarding the Bankruptcy Court's right to retain jurisdiction over the applicability of a settlement agreement between a debtor in bankruptcy and a creditor, which effectively bars the creditor's efforts to seek recovery of \$900,000 from the division of investments for loan payments the division received from the debtor prior to bankruptcy.

- Advised and represented the Director for the Alaska Division of Insurance and division staff in review, analysis, and hearing on Premera Blue Cross Blue Shield's proposal to convert from non-profit to a for-profit entity. The two year review process culminated in a week long hearing during FY 2004, which resulted in a decision to disapprove the proposal as not being in the best interest of the public and Premera's Alaska insureds in absence of further amendments and conditions to the proposal.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
<p>Contact: Signe Anderson, Chief Assistant Attorney General Phone: (907) 269-5100 Fax: (907) 278-4683 E-mail: Signe_Anderson@law.state.ak.us</p>

Commercial and Fair Business Component Financial Summary

All dollars shown in thousands

	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	2,735.6	2,971.0
72000 Travel	0.0	28.7	38.7
73000 Services	0.0	1,062.5	1,209.4
74000 Commodities	0.0	78.4	88.4
75000 Capital Outlay	0.0	16.2	29.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	3,921.4	4,336.7
Funding Sources:			
1004 General Fund Receipts	0.0	598.8	1,298.2
1005 General Fund/Program Receipts	0.0	50.0	50.0
1007 Inter-Agency Receipts	0.0	2,635.7	2,645.8
1108 Statutory Designated Program Receipts	0.0	636.9	342.7
Funding Totals	0.0	3,921.4	4,336.7

Estimated Revenue Collections

Description	Master Revenue Account	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	0.0	2,635.7	2,645.8
General Fund Program Receipts	51060	0.0	50.0	50.0
Statutory Designated Program Receipts	51063	0.0	636.9	342.7
Restricted Total		0.0	3,322.6	3,038.5
Total Estimated Revenues		0.0	3,322.6	3,038.5

**Summary of Component Budget Changes
From FY2005 Management Plan to FY2006 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2005 Management Plan	648.8	0.0	3,272.6	3,921.4
Adjustments which will continue current level of service:				
-FY 05 Bargaining Unit Contract Terms: GGU	0.7	0.0	3.2	3.9
-Switch Funding for Consumer Protection	300.0	0.0	-300.0	0.0
-To Timekeeping and Support to Adjust Vacancy	0.0	0.0	-17.4	-17.4
-To Office of the Attorney General to Adjust Vacancy	-8.3	0.0	0.0	-8.3
-To Legislation/Regulations to Adjust Vacancy	-30.2	0.0	0.0	-30.2
-FY06 Cost Increases for Bargaining Units and Non-Covered Employees	6.9	0.0	28.3	35.2
-Adjustments for Personal Services Working Reserve Rates and SBS	0.0	0.0	1.8	1.8
Proposed budget increases:				
-Senior Fraud Unit	430.3	0.0	0.0	430.3
FY2006 Governor	1,348.2	0.0	2,988.5	4,336.7

**Commercial and Fair Business
Personal Services Information**

Authorized Positions		Personal Services Costs		
	<u>FY2005</u>	<u>FY2006</u>		
	<u>Management</u>	<u>Governor</u>		
	<u>Plan</u>			
Full-time	31	32	Annual Salaries	2,123,513
Part-time	3	3	COLA	3,680
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	973,500
			<i>Less 0.94% Vacancy Factor</i>	(29,093)
			Lump Sum Premium Pay	0
Totals	34	35	Total Personal Services	3,071,600

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	1	0	2
Assoc Attorney II	1	0	1	0	2
Attorney III	3	0	1	0	4
Attorney IV	11	0	4	0	15
Attorney V	1	0	0	0	1
Attorney VI	1	0	0	0	1
Investigator III	1	0	0	0	1
Law Office Assistant I	4	0	0	0	4
Law Office Assistant II	2	0	1	0	3
Paralegal II	2	0	0	0	2
Totals	27	0	8	0	35