

Change Record Detail With Description
Department of Law

Scenario: FY2011 Supplementals (8842)
Component: Third Judicial District: Outside Anchorage (2279)
RDU: Criminal Division (33)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|---------------------------------|---------------|-------------|----------------------|------------|------------|-------------|----------------|---------------------|---------------|-----------|----------|----------|
| | | | | | | | | | | PFT | PPT | NP |
| FY2011 Supplementals | | | | | | | | | | | | |
| Kenai Attorney Shortfall | | | | | | | | | | | | |
| 1004 Gen Fund | Suppl | 50.0 | 50.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |
| Component Totals | | 50.0 | 50.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |

During the FY2011 budget process, funds for two prosecuting district attorneys in Kenai were approved with 75% of their funding, anticipating that it would take time to fill the positions. The department was able to fill the positions rapidly -- one on 8/2/2010 and the other on 9/1/2010.

The FY2012 budget includes full funding for these positions.

Change Record Detail With Description
Department of Law

Scenario: FY2011 Supplementals (8842)
Component: Deputy Attorney General's Office (2205)
RDU: Civil Division (35)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|--|------------|--------|-------------------|--------|----------|-------------|----------------|------------------|---------------|-----------|-----|----|
| | | | | | | | | | | PFT | PPT | NP |
| Judgments and Settlements | | | | | | | | | | | | |
| | Suppl | 241.2 | 0.0 | 0.0 | 241.2 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |
| 1004 Gen Fund | | 241.2 | | | | | | | | | | |
| The actual amount of the FY2011 Judgments and Settlements that are finalized as of January 11, 2011 is \$241,173.45: | | | | | | | | | | | | |
| Radebaugh et al v. SOA -- \$86.2 | | | | | | | | | | | | |
| Kaltag Tribal Council and Hudson/Salina Sam v. Karleen Jackson et al -- \$155.0 | | | | | | | | | | | | |
| Unanticipated Legal Actions | | | | | | | | | | | | |
| | Suppl | 705.3 | 0.0 | 0.0 | 705.3 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |
| 1004 Gen Fund | | 705.3 | | | | | | | | | | |

Election Matters: \$268.0 - The elections effort this year was extraordinary. The legal challenges to the U.S. Senate election, which involved the first successful write-in candidacy at the statewide level, included federal court litigation, a state trial court case and a state supreme court case, all requiring a team of attorneys working around the clock due to the fact that everything was done on shortened time. The department also successfully defended a case brought against the Division of Elections, challenging the state's decision to provide for viewing a list of registered write in candidates to voters who requested assistance. The department also defended a challenge to a judicial retention election. These matters as well as other related election issues have exceeded estimated amounts in the base budget. Although an amount specific to elections can't be identified in the current budget, the department would anticipate that \$200,000 would cover our efforts in most general election years. Efforts in the current year however, have exceeded \$467,963 through December 31, and the department is seeking \$267,963 to cover the extraordinary costs.

Public Records: \$122.3 - Reviewing records to identify any privileged or confidential information in them, advising the Governor's Office on disclosure of the records, redacting records as appropriate, and preparing privilege logs.

Planned Parenthood: \$200.0 - The sum of \$200,000 is requested from the general fund for the fiscal year ending June 30, 2011 by the Department of Law for counsel and expert witnesses to defend challenges to the constitutionality of the Parental Notification Act (Ballot Measure No. 2) enacted by the voters in 2010.

Nikishka Beach Road Access Legal Costs: \$40.0 - The Department of Transportation and Public Facilities (DOT&PF) contends that Offshore Systems Kenai (OSK) is illegally engaged in the obstruction, control and closure of public access to and through Nikishka Beach Road which is a public road owned and operated by DOT&PF. OSK had established a guard shack and gate to prevent access to the road and beach. The reason OSK implemented these restrictions to public access was based on a security plan they developed in response to U.S. Coast Guard requirements that they secure and protect OSK's facility from trespass, vandalism, theft, etc.

The case began in late FY2008 and went to trial on March 2, 2009. In March 2010, the Judge issued a ruling in favor of the Department of Transportation and Public Facilities. OSK filed a "Notice of Appeal," allowing the case to be heard in Superior Court. This will require the Department of Law to begin preparing a Supreme Court briefing in January 2011 on behalf of the department for the appeal that includes attorney and paralegal fees for costs incurred from now until the appeal is exhausted. In addition, work will continue at the trial court level on the original case to address unresolved survey issues.

Citation and Regulatory Changes: \$75.0 - The department requests \$75,000 of general funds to offset legal fees associated with citation and regulatory

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Department of Law

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Component: Deputy Attorney General's Office (2205)
RDU: Civil Division (35)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|---|------------|--------------|-------------------|------------|--------------|-------------|----------------|------------------|---------------|-----------|----------|----------|
| | | | | | | | | | | PFT | PPT | NP |
| <p>changes. MSCVE Commercial Vehicle Enforcement Officers are authorized to enforce safety regulations and size, weight, and permit regulations. The Department of Public Safety has issued Special Police Commissions for all officers to assure them police authority in the area of commercial vehicle enforcement. There has been a significant increase in the number of challenges being made to citations issued.</p> <p>The current litigation has arisen because a small group of individuals has challenged the sovereignty of the State to regulate them, the constitutionality of the commercial vehicle safety regulations, and how they were adopted. These cases have wound their way through the district and appellate courts with the State of Alaska, winning several key decisions reinforcing the legality of the regulations.</p> <p>MSCVE has also been periodically updating the Alaska Administrative Code and Alaska Statutes in order to be compliant with federal requirements. This has increased the cost of representation by the Department of Law.</p> <p>Additionally, MSCVE was audited recently by the U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) on the Motor Carrier Safety Assistance Program (MCSAP). The review focused on our regulatory, financial, safety, and overall program performance. During the review there were many areas of regulatory incompatibility identified that will require much unforeseen legal assistance.</p> | | | | | | | | | | | | |
| Component Totals | | 946.5 | 0.0 | 0.0 | 946.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |

Change Record Detail With Description
Department of Law

Scenario: FY2011 Supplementals (8842)
Component: Environmental Law (2092)
RDU: Civil Division (35)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|---|------------|--------------|-------------------|------------|-------------|-------------|----------------|------------------|---------------|-----------|----------|----------|
| | | | | | | | | | | PFT | PPT | NP |
| Nunamta v. State/Pebble Limited Partnership | | | | | | | | | | | | |
| | Suppl | 300.0 | 260.0 | 2.0 | 30.0 | 5.0 | 3.0 | 0.0 | 0.0 | 0 | 0 | 0 |
| 1007 I/A Rcpts | | 300.0 | | | | | | | | | | |
| <p>On July 29, 2009, Trustees for Alaska brought suit on behalf of several plaintiffs, including Nunamta Aulukestai (a nonprofit coalition of eight Native Village Corporations), Bella Hammond (former Governor Jay Hammond's wife) and Victor Fischer (former constitutional delegate), against the State, alleging several constitutional violations by the statutes and regulations used to authorize temporary land and water uses during mineral exploration activities, and specifically in the context of the Pebble project. The challenged statutes and regulations also authorize temporary land and water uses for a variety of non-mineral exploration activities throughout the state. The State is vigorously defending the claims. The case went to trial December 6 through 17, 2010, before Superior Court Judge Aarseth. Post-trial briefing and proposed decisions will be submitted in January. It is anticipated that the losing party will appeal to the Supreme Court of Alaska. It is also anticipated that Pebble Limited Partnership will apply for new exploration permits for the 2011 and that plaintiffs will bring legal challenges to those permits.</p> <p>The Department of Law is in part a chargeback agency. Legal efforts on behalf of agencies are billed out at the OMB-approved rate developed by the department's federally approved cost allocation plan. In FY2011, the department has billed to the Department of Natural Resources (DNR) matter \$410,548, for which DNR is seeking partial reimbursement. These costs borne by the Department of Law were not included in DNR's FY2011 budget.</p> <p>To partially fund the Department of Law's efforts related to this matter, a \$300,000 supplemental request increasing Interagency Receipt Authority is being requested to cover these unanticipated expenses. The department will continue to expend resources on this matter during the current fiscal year.</p> | | | | | | | | | | | | |
| Component Totals | | 300.0 | 260.0 | 2.0 | 30.0 | 5.0 | 3.0 | 0.0 | 0.0 | 0 | 0 | 0 |

Change Record Detail With Description
Department of Law

Scenario: FY2011 Supplementals (8842)
Component: Oil, Gas and Mining (2091)
RDU: Civil Division (35)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|--|------------|---------|-------------------|--------|----------|-------------|----------------|------------------|---------------|-----------|-----|----|
| | | | | | | | | | | PFT | PPT | NP |
| Oil, Gas and Mining Legal Cases | | | | | | | | | | | | |
| | Suppl | 3,870.0 | 0.0 | 0.0 | 3,870.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |
| 1004 Gen Fund | | 3,870.0 | | | | | | | | | | |

In previous years the Department of Law's Oil, Gas and Mining requests funded outside counsel costs for the department at a substantially higher level than the current year budget. However, the timing of legal cases is not dictated by the Department of Law and in prior years funds have been available for other purposes. For example, in FY2009, the department returned \$500,000 to the Governor's Office and last year, \$884,000 was re-appropriated to cover some unanticipated legal analysis costs the department incurred. Considering this, the FY2011 Oil, Gas and Mining budget request for Outside Counsel was reduced \$3,109.2 from the prior year, and included discussions that a supplemental request may be necessary.

Current cases within the Oil, Gas and Mining section have continued as scheduled. Additionally, in one case our initial budget was too low. Those cases are discussed in more detail below in support of our requested supplemental.

Strategic Reconfiguration (\$3,100.0): The Oil, Gas and Mining funding shortfall is primarily a result of the activity in the Strategic Reconfiguration litigation that is equal to (or in some instances greater than) the state's original scenario. The litigation arises from protests that the state filed, beginning in 2005, objecting to the TAPS owners' inclusion of imprudently incurred costs for the Strategic Reconfiguration Project. In 2003, the TAPS owners approved the Strategic Reconfiguration Project, an 18-month, \$250 million capital construction project to replace and update certain TAPS facilities. Seven years later, the project is still not complete. Estimates for the cost of completion exceed \$800 million, over three times the original budget.

This case is now scheduled for an eight-week hearing to begin in the second quarter of FY2012. The hearing and all pre- and post-hearing deadlines are subject to an Order by the administrative law judges with the Federal Energy Regulatory Commission and Regulatory Commission of Alaska. Thus, it will not be possible for the department to slow the case down. Unlike the economic issues that are the standard fare of tariff rate litigation, this prudence case will rely on unique and costly engineering expert testimony in the areas of pipeline design, project scheduling, and industry standards for capital investment.

When preparing the budget for this particular case, we did not anticipate the amount of document discovery we would receive from the opposing parties. We received triple the amount we anticipated, approximately 15 million pages of documents.

The original budget proposal estimated \$1,900.0 for this case in FY2011. The latest estimate for this case in the current fiscal year is \$5,000.0, resulting in the need for an additional \$3,100.0.

In addition, three other matters are proceeding on schedule and are contributing to the projected shortfall for FY2011.

Oil and gas royalty issues (\$550.0): The department initially requested \$900.0 for oil and gas royalty matters but reduced that budget to \$300.0 in order to work within the component's \$3,000.0 appropriation. Based on the development of these matters last summer, we now anticipate that we will need an additional \$550.0, for a total of \$850.0 in FY2011 for the royalty litigation. This additional amount will be used to compensate independent arbitrators in a pending royalty settlement dispute; to fund a contract with outside counsel to assist in negotiation of royalty reopeners; to fund work by our expert in a major claim worth millions of dollars in additional royalties regarding the effect of tax benefits of royalty costs; to fund another contract with outside counsel and an expert to assist in a hearing this fall over North Star production allocations; and to assist DNR in the development of a value methodology that affects the royalty valuation provision of the state's new form oil and gas lease through an analysis by our expert of ANS transactions.

Change Record Detail With Description
Department of Law

Scenario: FY2011 Supplementals (8842)
Component: Oil, Gas and Mining (2091)
RDU: Civil Division (35)

| Scenario/Change Record Title | Trans Type | Totals | Personal Services | Travel | Services | Commodities | Capital Outlay | Grants, Benefits | Miscellaneous | Positions | | |
|--|---------------|----------------|----------------------|------------|----------------|-------------|----------------|---------------------|---------------|-----------|----------|----------|
| | | | | | | | | | | PFT | PPT | NP |
| <p>TAPS property tax proceedings (\$220.0): We will need an additional \$220.0 in the current year to prepare for a scheduled eight-week trial de novo regarding the TAPS property values for 2007-2009. At issue in this litigation are Department of Revenue property tax valuations of the TAPS for tax years 2007, 2008, and 2009 in the amounts of \$4.6 billion, \$6 billion and \$9 billion, respectively.</p> <p>Funding for Oil and Gas legal issues for FY2012 was included at \$5.0 in the capital budget submission.</p> | | | | | | | | | | | | |
| Component Totals | | 3,870.0 | 0.0 | 0.0 | 3,870.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0 | 0 | 0 |