

# **State of Alaska FY2002 Governor's Operating Budget**

Department of Law  
Special Litigation  
Component

## **Component: Special Litigation**

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### **Component Mission**

Mission statement appears at the department summary and BRU levels.

### **Component Services Provided**

Defend litigation involving tort claims against the state and state employees, maritime personal injury claims, and civil rights claims under 42 U.S.C. § 1983, such as wrongful death suits against DOT&PF for vehicle accidents on state roads, claims of injury occurring at state facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway System raised by ferry employees and passengers, claims of negligence in handling of children's abuse or neglect cases, cases against the state for actions of third parties in state custody (e.g., probationers, foster children), and other claims of injury caused directly by state officials (e.g., troopers, drivers of state vehicles, etc.).

Defend controverted workers' compensation claims in which the state is the employer.

Provide legal services to the Division of Risk Management and, through it, to all state agencies.

Defend the court system and judges in personal injury lawsuits.

Defend workers' compensation cases before the Alaska Workers' Compensation Board and at the appellate level.

Provide oral advice to state adjusters and state agencies on workers' compensation issues.

Provide oral advice to state agencies on risk management/liability issues.

Provide instructors on liability issues, e.g., trooper and correctional academies.

Supervise work of and manage contracts in tort and workers' compensation matters with outside counsel retained by the Division of Risk Management or the Department of Law.

### **Component Goals and Strategies**

Provide legal defense in tort litigation cases filed against the state, state agencies, and state employees, including personal injury, property damage, and civil rights suits brought under 42 U.S.C. § 1983.

Provide legal defense in contested workers' compensation claims filed by state employees.

Litigate cases to favorable resolution, up to and including trial and appeal - or appropriate settlement.

Provide oral advice and training to reduce the state's liability exposure.

Reduce defense costs by maximizing the number of cases handled by departmental staff rather than outside, private counsel.

Successfully and thoroughly defend tort litigation against the state, and do so at a fraction of the cost that private counsel would charge to do the job.

Provide reliable in-house expertise to the gamut of state agencies, developed from years of experience in doing public sector tort litigation.

## Key Component Issues for FY2001 – 2002

See Service Changes

### Major Component Accomplishments for FY2000

Major Component Accomplishments for FY 2000

During fiscal Year 2000, the Special Litigation section has litigated at the trial court level as well as administrative hearing level and briefed a number of major cases before the Alaska Supreme Court.

Appellate Work by the Section

Two cases (filed as class action lawsuits) that arose out of the Miller's Reach Fire in 1996 are now pending before the Supreme Court after the state won their dismissal at the trial court level. They are Angnabooguk v. State and Bartek v. State. The Angnabooguk case was fully briefed during this period while the Bartek briefings are still in progress.

After winning summary judgment at the trial court level in Alpine Industries v. State, the section briefed and argued the case on appeal which deals with the issuance of a public health bulletin by the Division of Public Health.

After winning summary judgment at the trial court level in Nome, the section briefed and argued the case of Wongitillin v. State, a wrongful death lawsuit, seeking damages against the state for failing to serve a misdemeanor arrest warrant against a criminal defendant.

After winning summary judgment at the trial court level, the section briefed issues regarding the liability of the state for an aircraft accident in the case of Himsel v. State.

In a lawsuit filed by Bill Nelson, the section won summary judgment at the trial court level, and Mr. Nelson has appealed the dismissal. The case is in the early stages of the appeal.

Initial briefing has been completed by the section in the case of Hibbits and Purvis v. Sides where the section represented an Alaska State Trooper at the trial court level and won the dismissal of the lawsuit against him. Plaintiffs have appealed and the briefing is complete.

Following a successful trial in Anchorage in September, 1999, in which the state defeated the plaintiff's claims that rocks in the state's right-of-way caused his accident, the plaintiff appealed and the state has cross-appealed. The section is in the middle of briefing both the cross-appeal and the plaintiff's appeal.

The section has completed its Supreme Court brief in the challenge to the 1997 Tort Reform legislation in the case of Evans v. State. The state won summary judgment below and plaintiffs have appealed the decision. Briefing in this matter is voluminous and ongoing. The section is co-counseling the case with outside counsel.

In October, 1999, the section defended the Division of Alaska State Troopers in a wrongful death lawsuit alleging negligent search and rescue on the Denali Highway. (Kiokun v. State) The case was tried to a Bethel jury which allocated 51 percent of the fault to the troopers and 49 percent to the decedents. Both sides have appealed various issues in the case. Briefing will occur during FY 2001.

During this period, the section has additionally briefed two workers' compensation Supreme Court appeals and 8 superior court appeals in workers' compensation cases.

Additional dispositive motions won at the trial court

In a number of cases the section either won complete dismissal of lawsuits through summary judgment or won dismissal of certain claims through summary judgment. Certain of these are already referenced in the above section.

In litigation brought by the insurers of the Denali Princess Hotel and defended by the section, the court granted the state summary judgment and awarded the state \$54,000 in attorney fees and \$27,000 in costs. The insurers did not file an appeal.

The section won dismissal of defamation claims brought by three ferry workers and their spouses against the state and several legislators regarding comments made at a legislative hearing.

In a consolidated case lasting several years at the motion stage, the section successfully won summary judgment in the case of Walker et al. v. Bingham et al. These consolidated cases arose from an accident in which an ATV struck a steel cable strung across an access road by a private landowner and two passengers on the ATV died from the accident.

On remand from the Supreme Court for the second time, the section successfully defended a lawsuit alleging improper use of force by the Alaska State Troopers and Fairbanks police.

In a lawsuit involving an automobile accident with a state vehicle driven by a state employee, the section successfully won summary judgment on the plaintiffs' claim that the state and state employee were negligent in failing to equip the state vehicle with studded tires.

Following summary judgment briefing in the trial court by the section, plaintiff dismissed her wrongful death lawsuit against the Division of Family and Youth Services in which she alleged negligent licensing and supervision of a licensed day care home.

#### Other Significant Accomplishments

In a hearing before the Alaska Workers' Compensation Board in Fairbanks, the section defeated a claim that over \$100,000 in additional benefits was owed the claimant, who alleged that the state had unconstitutionally and unfairly calculated his weekly benefits by using his actual earnings rather than those later earned by his successor in the job.

The section tried three jury trials, and two non-jury trials during FY2000, as well as 30 workers' compensation hearings before the Alaska Workers' Compensation Board.

## **Statutory and Regulatory Authority**

AS 44.23.020

**Special Litigation**  
**Component Financial Summary**

All dollars in thousands

	FY2000 Actuals	FY2001 Authorized	FY2002 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	1,666.0	1,867.9	1,967.6
72000 Travel	41.9	28.1	28.5
73000 Contractual	294.7	375.5	319.3
74000 Supplies	26.0	35.7	38.9
75000 Equipment	22.1	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
<b>Expenditure Totals</b>	<b>2,050.7</b>	<b>2,307.2</b>	<b>2,354.3</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	23.1	79.7	0.0
1007 Inter-Agency Receipts	2,027.6	2,227.5	2,354.3
<b>Funding Totals</b>	<b>2,050.7</b>	<b>2,307.2</b>	<b>2,354.3</b>

**Estimated Revenue Collections**

Description	Master Revenue Account	FY2000 Actuals	FY2001 Authorized	FY2001 Cash Estimate	FY2002 Governor	FY2003 Forecast
<b>Unrestricted Revenues</b>						
None.		0.0	0.0	0.0	0.0	0.0
<b>Unrestricted Total</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Restricted Revenues</b>						
Interagency Receipts	51015	2,027.6	2,227.5	2,251.4	2,354.3	2,288.7
<b>Restricted Total</b>		<b>2,027.6</b>	<b>2,227.5</b>	<b>2,251.4</b>	<b>2,354.3</b>	<b>2,288.7</b>
<b>Total Estimated Revenues</b>		<b>2,027.6</b>	<b>2,227.5</b>	<b>2,251.4</b>	<b>2,354.3</b>	<b>2,288.7</b>

## Special Litigation

### Proposed Changes in Levels of Service for FY2002

The FY 2002 Governor's budget includes a request for an additional attorney funded part-time in the amount of \$70,900 through interagency receipts from the Department of Administration. This increment is required in FY2002 in order to keep up with a substantial increase in workload handling the state's workers compensation defense. The state is the largest employer in Alaska; the workers' compensation workload for the section is coextensively voluminous. In the past, the section had handled the entire state workers' compensation legal defense workload with only two attorneys, and one paralegal assistant. This is no longer possible due to increased briefing demands of legal issues at the hearing and appellate levels; more complicated medical issues to investigate, research, and prepare for hearing; and changes in statutes and regulations which implicate increased attorney time throughout the administrative and appellate process. For example, the passage of SCS HB 419 this last session has resulted in more litigation (and increased attorney workload) over releases to obtain documents and relevant discovery for workers' compensation claims. Revision of the workers' compensation statutes and subsequent Board decisions have increased the number of claims for rate adjustments and the value of such claims. Interpretation of 1998 changes to regulations such as 8 AAC 45.182(e) has also increased the workload concerning penalty and compensation paid.

### Summary of Component Budget Changes

#### From FY2001 Authorized to FY2002 Governor

*All dollars in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2001 Authorized</b>	79.7	0.0	2,227.5	2,307.2
<b>Adjustments which will continue current level of service:</b>				
-Year 2 Labor Costs - Net Change from FY 2001	0.0	0.0	-10.2	-10.2
-Reduce Funding - Tort Reform Carryforward	-79.7	0.0	0.0	-79.7
<b>Proposed budget increases:</b>				
-Workers Compensation Attorney Position and Funding	0.0	0.0	137.0	137.0
<b>FY2002 Governor</b>	<b>0.0</b>	<b>0.0</b>	<b>2,354.3</b>	<b>2,354.3</b>

## Special Litigation

## Personal Services Information

Authorized Positions			Personal Services Costs	
	FY2001 Authorized	FY2002 Governor		
Full-time	25	26	Annual Salaries	1,540,799
Part-time	0	0	COLA	29,498
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	448,366
			<i>Less 2.53% Vacancy Factor</i>	(51,063)
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>25</b>	<b>26</b>	<b>Total Personal Services</b>	<b>1,967,600</b>

## Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney IV	7	1	1	0	9
Attorney V	2	1	0	0	3
Attorney VI	0	0	1	0	1
Legal Secretary I	3	1	1	0	5
Legal Secretary II	1	1	0	0	2
Paralegal Asst II	3	1	1	0	5
<b>Totals</b>	<b>17</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>26</b>