

State of Alaska
FY2007 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.

Alaska State Pension Investment Board:

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

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 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 Corporations, Business, and Professional 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 and Securities:

- 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

FY2007 Resources Allocated to Achieve Results		
FY2007 Component Budget: \$4,275,900	Personnel:	
	Full time	29
	Part time	3
	Total	32

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 FY2000 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.

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. In 2004, the department was given authority to collect a fee for each registration, which helps offset the costs of the annual registration process.

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.

Another area of work for the Department of Revenue involves its Gaming Unit that deals with charitable gaming issues. This 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.

The section also has seen an increased demand for legal services from the Department of Commerce, Community, and Economic Development related to securities and insurance regulation and to the Community Development Quota Program for the allocation of fisheries in Western Alaska. Section attorneys are working hard and often balance competing priorities to meet this increased demand.

Significant Changes in Results to be Delivered in FY2007

Beginning in FY2006, a new attorney position is being funded by the Division of Insurance to handle criminal prosecution of insurance fraud cases and to assist in the civil enforcement of the insurance laws. This position represents an addition to staff that will increase the services provided to the Division of Insurance, particularly in the area of insurance fraud. As a result, we anticipate a significant increase in the number of criminal and civil enforcement actions filed and resolved through trial or settlement. This position will be shared by the criminal and civil divisions.

Also in FY2006, the Regulatory Commission of Alaska is funding a second attorney position to 1) assist in defending commission orders on appeal and representing the RCA in court as may be required; 2) assist in researching legal issues and providing legal advice to the commission with respect to adjudications under its jurisdiction; and 3) assist and advise the commission in drafting regulations and complete the legal review of regulations adopted by the commission. This addition to staff will increase the level of services provided to the commission and will enhance the commission's adjudication process.

Major Component Accomplishments in 2005

Processed 369 consumer complaints, of those, 53 were successfully mediated resulting in either direct or indirect

assistance to consumers or referral to other appropriate state and federal agencies.

Successfully completed court review and approval of the \$75 million merger between Crowley Marine Services and Yukon Fuel Company. This effort included a Petition for Review to the Alaska Supreme Court to protect confidential documents from disclosure.

Participated in five multistate antitrust matters involving pharmaceutical companies that resulted in favorable settlements for Alaska including \$280,000 in receipts for consumer protection/antitrust enforcement efforts as well as restitution to affected consumers or state agencies.

Participated in settlement of two multistate consumer protection cases in which the state obtained injunctive relief prohibiting conduct in violation of our consumer protection and antitrust statutes, restitution for consumers, and payments to the state of approximately \$18,000 for consumer protection and antitrust enforcement.

Participated in or completed four consumer education initiatives related to predatory lending practices, identity theft, senior issues, auto repair, business opportunities, antitrust issues in the petroleum industry. These initiatives were accomplished through media outreach, targeted brochures, and presentations to consumer and industry groups.

Adopted regulations implementing the Sale of Business Opportunities Act that set up a registration program for sellers of business opportunities who want to operate in the state. The regulations also set out requirements for the solicitation and sale of business opportunities and include forms for registrants.

Collected \$65,935 in fees for registration of charitable organizations, paid solicitors, and telemarketers.

Successfully prosecuted or negotiated settlements in nine separate professional discipline cases against health care professionals, including five physicians, two advanced nurse practitioners, one registered nurse, and one certified nurse's aide. These cases resulted in revocation, suspension, or voluntary surrender of licenses, imposition of civil fines, and/or a reprimand based on conduct involving a conviction for HUD fraud; improper or unlawful prescribing practices; substance abuse; unprofessional conduct; failure to disclose convictions; and false information on a renewal application.

Successfully prosecuted professional discipline cases against two real estate licensees resulting in a license suspension in one case and a license revocation in the other case. These actions were based on conduct in real estate transactions that involved misrepresentations on a renewal application and intentional misrepresentations and other unprofessional conduct in two separate sales transactions.

Successfully defended in superior court a newly adopted real estate statute from constitutional challenge. The statute relates to the damages that may be claimed for violation of statutory dual agency disclosure laws and applies retroactively to pending lawsuits. The court agreed that the statute was not unconstitutional despite its application to lawsuits pending before the statute was enacted.

Successfully defended, in 20 separate cases, challenges to suspension of a retailer's tobacco endorsement for illegal sale of tobacco to minors by prevailing at administrative hearing or by negotiated settlements.

Successfully negotiated settlements in two teacher discipline cases involving sexual misconduct with a child in one case, resulting in surrender of the teacher's certificate and the purchase of controlled substances over the internet in the other case, resulting in a formal reprimand and probation.

Successfully negotiated a settlement on behalf of the Division of Insurance in a matter involving a financial examination of a domestic insurer that is a subsidiary of one of the largest insurers in the world. The examination revealed substantial accounting irregularities arising out of amounts reported as premiums and claim payments related to various alleged insurance transactions that were later determined to be investments not insurance. The settlement resulted in amendments to previously filed financial statements and payment of a \$400,000 civil penalty.

Successfully resolved, on behalf of the Division of Banking and Securities, seven separate complaints relating to the proxy solicitation process for the 2004 annual meeting of a local native corporation.

Successfully litigated on behalf of the Division of Investments eight cases involving defaulted loans and obtained judgments totally \$1,212,009.

Successfully enforced tax lien to collect \$123,000 in fisheries business tax from sale of property owned by the taxpayer.

Successfully prosecuted and negotiated settlements in a longstanding corporate income tax case that resulted in payment of \$7 million in taxes to the state.

Successfully prosecuted 26 forcible entry and detainer actions against tenants in public housing on behalf of Alaska Housing Finance Corporation. The evictions in these cases are limited to cases where there is actual good cause.

The good cause in these cases included nonpayment of rent, breach of peaceful enjoyment or excessive noise, serious damage to property, failure to pay utilities, and public housing fraud or failure to report income and household composition.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information

Contact: Signe Andersen, Chief Assistant Attorney General
Phone: (907) 269-5100
Fax: (907) 278-4683
E-mail: Signe_Andersen@law.state.ak.us

**Commercial and Fair Business
Component Financial Summary**

All dollars shown in thousands

	FY2005 Actuals	FY2006 Management Plan	FY2007 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	2,389.8	2,785.3	2,946.4
72000 Travel	23.7	28.7	28.7
73000 Services	634.6	1,515.6	1,206.2
74000 Commodities	56.2	78.4	78.4
75000 Capital Outlay	37.2	16.2	16.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	3,141.5	4,424.2	4,275.9
Funding Sources:			
1004 General Fund Receipts	459.7	886.9	902.7
1005 General Fund/Program Receipts	0.0	50.0	50.0
1007 Inter-Agency Receipts	2,190.3	2,829.3	2,643.2
1108 Statutory Designated Program Receipts	491.5	658.0	680.0
Funding Totals	3,141.5	4,424.2	4,275.9

Estimated Revenue Collections

Description	Master Revenue Account	FY2005 Actuals	FY2006 Managem nt Plan	FY2007 Governor
<u>Unrestricted Revenues</u>				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
<u>Restricted Revenues</u>				
Interagency Receipts	51015	2,190.3	2,829.3	2,643.2
General Fund Program Receipts	51060	0.0	50.0	50.0
Statutory Designated Program Receipts	51063	491.5	658.0	680.0
Restricted Total		2,681.8	3,537.3	3,373.2
Total Estimated Revenues		2,681.8	3,537.3	3,373.2

**Summary of Component Budget Changes
From FY2006 Management Plan to FY2007 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2006 Management Plan	936.9	0.0	3,487.3	4,424.2
Adjustments which will continue current level of service:				
-I/A Receipt Authority to Labor and State Affairs	0.0	0.0	-217.0	-217.0
-I/A Receipt Authority to Natural Resources	0.0	0.0	-92.6	-92.6
-FY 07 Wage Increases for Bargaining Units and Non-Covered Employees	5.0	0.0	46.9	51.9
-FY 07 Health Insurance Cost Increases for Bargaining Units and Non-Covered Employees	0.6	0.0	4.3	4.9
-FY 07 Retirement Systems Cost Increase	9.7	0.0	89.6	99.3
Proposed budget increases:				
-Risk Management Self-Insurance Funding Increase	0.5	0.0	4.7	5.2
FY2007 Governor	952.7	0.0	3,323.2	4,275.9

**Commercial and Fair Business
Personal Services Information**

Authorized Positions		Personal Services Costs		
	<u>FY2006</u> <u>Management</u> <u>Plan</u>	<u>FY2007</u> <u>Governor</u>		
Full-time	29	29	Annual Salaries	1,967,889
Part-time	3	3	COLA	52,507
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	968,994
			<i>Less 1.44% Vacancy Factor</i>	<i>(42,990)</i>
			Lump Sum Premium Pay	0
Totals	32	32	Total Personal Services	2,946,400

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	9	0	4	0	13
Attorney V	1	0	0	0	1
Attorney VI	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	24	0	8	0	32