

State of Alaska FY2009 Governor's Operating Budget

Department of Law Statehood Defense Component Budget Summary

Component: Statehood Defense

Contribution to Department's Mission

The Statehood Defense unit of the Department of Law provides advice and representation to state agencies on issues raised by conflicts between state and federal jurisdiction.

Core Services

The Statehood Defense attorneys handle a variety of complex cases arising out of state/federal jurisdictional conflicts that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state. The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in court in several instances, including an original action in the United States Supreme Court to establish to clarify title to the tide and submerged land underlying marine waters in Southeast Alaska. We are also working cooperatively with the United States to obtain recordable disclaimers of title to submerged lands where the parties can agree.

Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The Statehood Defense group works on RS 2477 rights-of-way, access in National Forests and across other federal land, Alaska Native Claims Settlement Act (ANCSA) 17(b) and other easements, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access and other management issues. Statehood Defense attorneys also provide legal advice and assistance to the Governor's Office and state agencies on matters of federal Indian law.

The Statehood Defense unit provides ongoing legal advice to the Department of Fish and Game (ADF&G) as it works to implement dual management of subsistence resources, and closely monitors the actions of the Federal Subsistence Board. The Statehood Defense unit also works on issues arising under the Endangered Species Act, the Pacific Salmon Treaty, the Magnuson-Stevens Fishery Conservation and Management Act, and other federal laws to protect state fishery and wildlife resources and the state's role in managing them. The Statehood Defense unit frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act (ANCSA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Endangered Species Act. Statehood Defense attorneys also assist with state comments on federal proposals such as the Forest Service Roadless regulations, federal land management plans, and designation of new national monuments in Alaska. The unit also assists the Department of Natural Resources (DNR) with its efforts to secure Alaska's Statehood Act land entitlement.

FY2009 Resources Allocated to Achieve Results

FY2009 Component Budget: \$1,002,600

Personnel:

Full time	8
Part time	0
Total	8

Key Component Challenges

During FY2009, the Statehood Defense unit will work to protect and ensure access to state and private lands and on public waters across Alaska through assertions of RS 2477 rights-of-way, ANILCA access rights, and ownership of navigable waters. Statehood Defense attorneys will work with the Department of Natural Resources (DNR) and ADF&G

to file with the Bureau of Land Management (BLM) additional applications for recordable disclaimers of interest to navigable waters, and provide information to BLM that convince it to declare waterways navigable within the survey windows it is completing. The unit will continue work to secure the state's land entitlement from the federal government is fulfilled.

The Statehood Defense unit will participate in and monitor the ongoing federal actions relating to application to Alaska's Tongass and Chugach National Forests of a national Roadless Rule, and implementation of new forest management plans. The unit will participate in the Endangered Species Act (ESA) process as it relates to proposals to list polar bear, Cook Inlet beluga whale, and other species, and to management of Pacific salmon and to ensure adherence to the Pacific Salmon Treaty. The unit will continue to closely monitor the federal subsistence program, assist ADF&G in preparation of state comments, and challenge actions by the Federal Subsistence Board (FSB) when necessary. The unit will continue litigation challenging the use of claimed Federal Reserved Water Rights to expand federal subsistence jurisdiction. Attorneys will monitor actions taken under federal legislation to complete conveyances under ANCSA and ANILCA and the Alaska Native Allotment Act by 2009, and will review proposed federal public use management plans for federal lands. The unit will also continue to work on issues relating to assertions of tribal sovereignty that impact state interests.

Significant Changes in Results to be Delivered in FY2009

No changes in results delivered.

Major Component Accomplishments in 2007

The state's attorneys obtained entry of a consent decree in a case against the United States quieting title to two rights-of-way the state claimed under RS 2477 across BLM land in northern Alaska.

The state's attorneys filed a number of requests for reconsideration of decisions by the Federal Subsistence Board.

The state succeeded in persuading the FSB to reverse its customary and traditional use finding for Ninilchik in resident fish in the Kenai River.

The federal district court agreed with the state that the United States' claims of Federal Reserved Water Rights in federal subsistence regulations do not conclusively establish the rights.

The state participated in a settlement of several lawsuits challenging federal timber sales in the Tongass National Forest that allows certain sales to go forward, thus ensuring a steady timber supply.

The state continued to file new applications with the Bureau of Land Management (BLM) for recordable disclaimers of interest (RDI) for lands underlying navigable waters and has received a number of RDIs from BLM. The state's attorneys persuaded the Department of Interior to overturn an erroneous and detrimental interpretation of when a BLM navigability determination is administratively final. The state has continued to educate landowners about the public's right to use state navigable waters.

The state continued monitoring the National Park Service's efforts to develop a User's Guide to access to inholdings in Alaska's National Parks under section 1110(b) of ANILCA.

Statehood Defense attorneys continued to monitor litigation related to pacific salmon in Washington and Oregon.

Continued to monitor and comment on proposed amendments to the Magnuson-Stevens Act.

The state secured for public use permanent road access to and a boat launch on the Situk River.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information

Contact: Elizabeth Barry, Chief Assistant Attorney General
Phone: (907) 269-5100
Fax: (907) 279-2834
E-mail: elizabeth.barry@alaska.gov

**Statehood Defense
Component Financial Summary**

All dollars shown in thousands

	FY2007 Actuals	FY2008 Management Plan	FY2009 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	649.1	816.2	825.6
72000 Travel	10.3	10.3	9.2
73000 Services	173.4	475.8	135.6
74000 Commodities	11.5	34.5	29.0
75000 Capital Outlay	3.8	6.4	3.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	848.1	1,343.2	1,002.6
Funding Sources:			
1004 General Fund Receipts	848.1	1,343.2	1,002.6
Funding Totals	848.1	1,343.2	1,002.6

**Summary of Component Budget Changes
From FY2008 Management Plan to FY2009 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2008 Management Plan	1,343.2	0.0	0.0	1,343.2
Adjustments which will continue current level of service:				
-Remove Statehood Entitlement Issues Sec 48(c) CH 159 SLA 2004 P 105 L 10 (SB 283) Lapses 6/30/09	-350.0	0.0	0.0	-350.0
-FY 09 Health Insurance Increases for Exempt Employees	1.2	0.0	0.0	1.2
-FY 09 Bargaining Unit Contract Terms: General Government Unit	8.2	0.0	0.0	8.2
FY2009 Governor	1,002.6	0.0	0.0	1,002.6

**Statehood Defense
Personal Services Information**

Authorized Positions		Personal Services Costs		
<u>FY2008</u>				
<u>Management</u>		<u>FY2009</u>		
<u>Plan</u>		<u>Governor</u>		
Full-time	8	8	Annual Salaries	563,431
Part-time	0	0	COLA	7,392
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	265,222
			<i>Less 1.25% Vacancy Factor</i>	(10,445)
			Lump Sum Premium Pay	0
Totals	8	8	Total Personal Services	825,600

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney IV	4	0	0	0	4
Attorney VI	1	0	0	0	1
Law Office Assistant I	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	8	0	0	0	8