

**State of Alaska  
FY2017 Governor's Operating Budget**

**Department of Law  
Civil Division  
Results Delivery Unit Budget Summary**

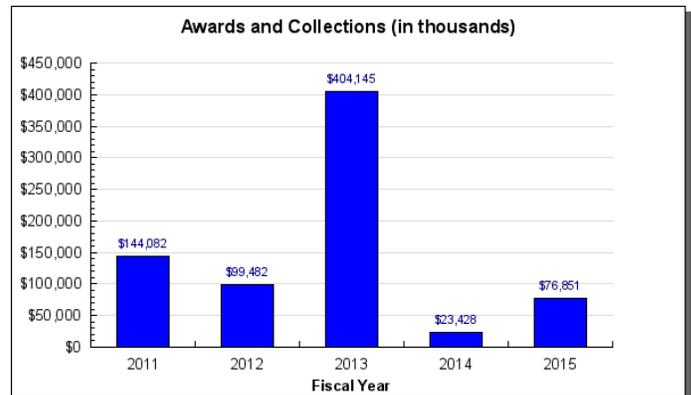
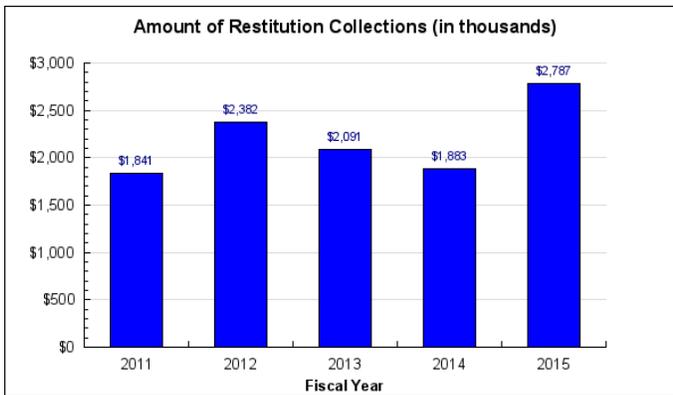
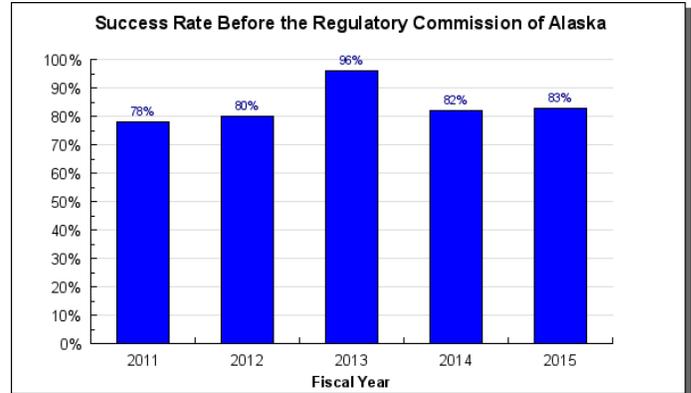
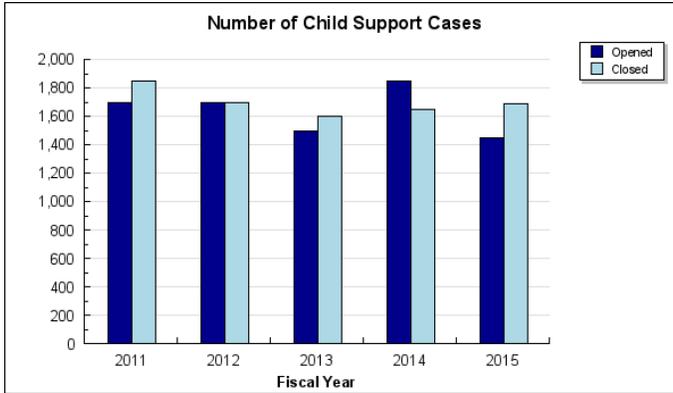
Civil Division Results Delivery Unit

Contribution to Department's Mission

The mission of the Civil Division is to protect the human, financial and natural resources of the state.

Results

(Additional performance information is available on the web at <https://omb.alaska.gov/results>.)



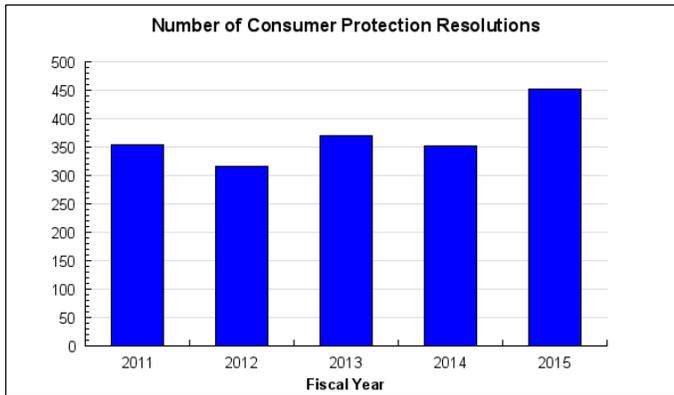
Core Services

- Protecting the Safety and Physical and Financial Well-being of Alaskans
- Economic Opportunity and Resource Development
- Protecting the Fiscal Integrity of the State of Alaska
- Promoting Good Governance

## Measures by Core Service

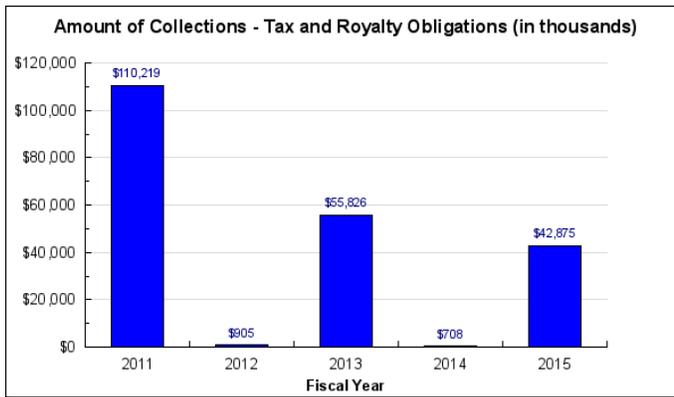
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### 1. Protecting the Safety and Physical and Financial Well-being of Alaskans

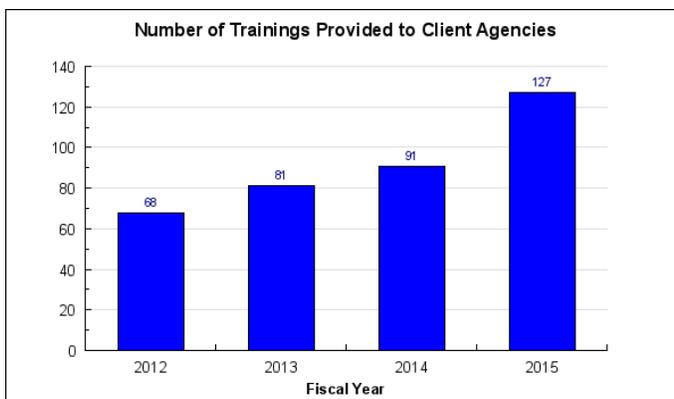


### 2. Economic Opportunity and Resource Development

### 3. Protecting the Fiscal Integrity of the State of Alaska



### 4. Promoting Good Governance



## Major RDU Accomplishments in 2015

### Protecting the Safety and Physical and Financial Well-being of Alaskans

- **Child Protection.** The Alaska Supreme Court affirmed the Office of Children's Services' [in the Department of Health and Social Services (DHSS)] in 24 appeals and reversed in one. The number of child protection cases received from DHSS for presentation in the lower courts significantly increased from prior years.

- Collections. The Collections section streamlined its processes and increased efficiency enabling it to eliminate the backlog reported in previous years of unopened cases and very significantly decrease the backlog of undisbursed victim restitution payments.
- Human Services. Handled more than 100 contested evidentiary hearings related to adult guardianships and conservatorships, mental commitments (including jury trials), and Medicaid benefits.
- Human Services. Successfully represented DHSS in sanction hearings related to Medicaid fraud, resulting in closure of assisted living homes and stopping waiver providers and individual personal care attendants who had engaged in fraud from preying on vulnerable adults and children.
- Consumer Protection. Participated in settlement of ten multi-state consumer protection cases resulting in injunctive relief prohibiting conduct violating our consumer protection and antitrust statutes, restitution for consumers, and payment of more than \$850,000 to the state for costs, attorney's fees, and consumer protection enforcement and education.
- Consumer Protection. Processed 487 consumer complaints. Of those, 452 were resolved through the informal complaint process, launching of a formal investigation, or referral to other appropriate state and federal agencies. Resolution of the remaining complaints is ongoing.
- Consumer Protection. Enhanced the terms of the 2013 consent judgment governing cruise ship port shopping programs and used funds appropriated for investigative services to augment monitoring of the major port promotion companies' compliance with the consent judgment.
- Regulatory Affairs and Public Advocacy. The section's advocacy yielded approximately \$12 million in quantifiable consumer benefits in FY2015. This quantification is based on refunds issued or the difference between the amounts requested by utilities in their respective revenue requirement proposals and the amounts ultimately awarded to them by the Regulatory Commission of Alaska (RCA).

#### **Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Alaska's Natural Resources**

- Natural Resources. Successfully challenged a borough initiative that would have limited the state's power to permit development. The Alaska Supreme Court upheld the state's position.
- Natural Resources. Advised the Department of Natural Resources (DNR) on issues related to the permitting and leasing of state land for wind power generation.
- Natural Resources. Intervened in a lawsuit that unsuccessfully challenged the Secretary of Interior's decision to deny a land exchange for the purpose of constructing a road between King Cove and Cold Bay, Alaska, through the Izembek National Wildlife Refuge. Continued to advise the state regarding other options for access through the refuge.
- Natural Resources. Intervened in a lawsuit seeking to enjoin the U.S. Environmental Protection Agency (EPA) from issuing a veto under Section 404(c) of the Clean Water Act of mining projects in southwest Alaska. The state asserted the EPA lacks authority to consider a veto before the state and other federal agencies have an opportunity to review, reject, accept, or impose mitigation conditions on a specific project proposal.
- Natural Resources. Defended a Bureau of Indian Affairs regulation that prohibits the Secretary of Interior from accepting applications to take land into trust for tribes in Alaska, on the basis that the Alaska Native Claims Settlement Act (ANCSA) prohibits the creation of new trust land. Appealed the adverse judgment of the D.C. District Court to the D.C. Circuit Court. Case is being briefed. Prepared comments on the Secretary of Interior's proposed rule removing the Alaska exception from the land-into-trust regulations.
- Natural Resources. Continued to pursue a quiet title action against the United States and 29 other defendants on six Revised Statutes (RS) 2477 rights-of-way near Chicken, Alaska, including filing an appeal with the Ninth

Circuit Court of Appeals from an unfavorable decision concerning access across Native allotments. Defended against efforts to block or limit access across other RS 2477 easements, including the historic Iditarod trail and the Klutina Lake Road.

- Natural Resources. The Ninth Circuit Court of Appeals first issued a favorable decision reinstating the Tongass exemption to the Roadless Rule then, after rehearing the case *en banc*, invalidated the exemption. Filed a petition for writ of certiorari with the U.S. Supreme Court challenging the Ninth Circuit decision. In a separate but related action, successfully appealed the D.C. District Court's dismissal of the state's challenge to the validity of the Roadless Rule affecting both the Tongass and the Chugach, allowing this challenge to the Roadless Rule to now move forward.
- Environmental. Working with multiple state agencies to analyze and track EPA's Clean Power Plant rulemaking.
- Transportation. Continued efforts to enforce statutory easements for roadways to resource-rich areas within the Tongass National Forest.

### **Protecting the Fiscal Integrity of the State**

- Oil, Gas and Mining. Corporate Income Taxes - Represented the Department of Revenue (DOR) negotiating settlements of corporate income tax, production tax and property tax disputes, yielding a total of about \$50 million in additional taxes, penalties, and interest in FY2015.
- Oil, Gas and Mining. North Slope Gas Pipeline - Continued legal support to develop a gas line to transport Alaska North Slope gas to markets in and out of Alaska. The known gas resource on Alaska's North Slope is huge but the potential gas resource on unexplored lands on the North Slope is much larger. Developing this resource is one of the most promising opportunities to strengthen and support Alaska's economic future.

### **Promoting and Defending Good Governance**

- Labor and State Affairs. Advised the Office of the Lieutenant Governor regarding the certification of four ballot measures and a referendum; successfully defended litigation over the referendum.

### **Key RDU Challenges**

#### **Protecting the Safety and Physical and Financial Well-being of Alaskans**

- 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. The department has been able to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this section. To help ensure collection of statutory designated program receipt resources, the department needs to maintain participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers.
- Human Services. The advice and litigation continues to trend up with respect to licensing, Medicaid audits, and civil litigation for public benefits. A major theme of the litigation continues to be challenges under the due process clauses of the federal and state constitutions and DHSS's ability to meet statutory requirements related to notices. Additional workload increases relate to the implementation of the Affordable Care Act (ACA) and ongoing changes to the Health Insurance Portability and Accountability Act (HIPAA).
  - Child Support. The Child Support Services Division (CSSD) of the Department of Revenue (DOR) has reduced funding available to pursue modifications to child support orders and collections of child support payments. The section does continue to advise and represent CSSD on emerging, interrelated Indian law and child support issues, including federally funded IV-D tribal child support agencies within Alaska. The federal government has approved two tribal organizations to operate tribal child support agencies in Alaska.

#### **Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Natural**

**Resources**

- Labor and State Affairs. The Alaska Industrial Development and Export Authority (AIDEA) remains involved in numerous development projects statewide, including the Interior Energy Supply Project, which is intended to bring additional sources of natural gas to interior Alaska and to expand the natural gas distribution system located there. Substantial legal assistance is expected to be required as AIDEA completes negotiations with project proposers and as AIDEA works to create a single, combined natural gas utility for the entire Fairbanks and North Pole service areas. AIDEA will also need assistance in handling its investment in the Mustang oil field, an independent oil and gas development on the North Slope that is expected to put additional oil into the Trans Alaska Pipeline System.
- Environmental Law. Working on multiple tracks to address the sulfolane groundwater contamination in North Pole including suing two companies to determine ultimate liability for the refinery contamination, working to obtain agreement to fund a piped water system to serve the properties with wells impacted by the sulfolane plume, and assisting the Department of Environmental Conservation (DEC) with its administrative review of the appropriate cleanup level.
- Natural Resources. Protecting the state's claim to title to navigable waters and the beds beneath navigable waters against the federal government and others, and its rights and obligations under the public trust doctrine. This includes challenges from private parties over the state's ownership of tidally influenced streams that the federal government failed to meander and over the public's right to use non-navigable waters for public trust purposes.
- Natural Resources. Protecting Alaska's sovereign right to manage fish and game on all lands in Alaska against federal encroachment will be a key challenge for the division.
- Natural Resources. Defending the state's interests from increasing restrictions under federal statutes and regulations continues to expand the section's caseload. Increasingly, other states (particularly western states) share these concerns and so opportunities where Alaska can join forces with other states to litigate or submit formal comments to federal agencies during the rule-making process are pursued with greater frequency.
- Natural Resources. Establishing strong legal precedent on RS 2477, a federal law that granted rights-of-way on public lands. Many of these trails are currently enjoyed by Alaskans. A key challenge is selecting routes with sufficient evidence to establish standards for width, location and maintenance, and to prove historic use.
- Natural Resources. Reviewing and commenting on new, ambitious federal land management plans. Multiple federal agencies are updating their planning documents and it will be a major challenge to stay on top of these efforts and comment effectively.
- Oil, Gas and Mining. Expending substantial efforts to monitor the TransAlaska Pipeline System (TAPS) tariffs as well as to monitor and participate, where appropriate, in state and federal regulatory oversight of the tariffs of all common carrier oil and gas pipelines operating in the state. This vigilance can earn the state millions of dollars in royalties and production taxes each year. Furthermore, as production of oil and gas from current developments declines in Alaska, the state's participation in tariff regulation is becoming more important in encouraging additional producers to invest in exploration of new areas in the state, by ensuring fair transportation rates and access to existing pipeline infrastructure for production from new fields.

**Protecting the Fiscal Integrity of the State**

- Oil, Gas and Mining. Ongoing cases involving disputes between TAPS shippers, TAPS carriers, and the state over the valuation of crude oil under the TAPS Quality Bank, which is a system for adjusting crude oil values to account for the different qualities of crude oil and refinery return streams that are commingled in the TAPS common stream. These cases concern decisions of the Federal Energy Regulatory Commission (FERC) and RCA and the section currently awaits action by FERC on remand from a decision of the United States Court of Appeals for the D.C. Circuit. The section provides legal support for and represents the Pipeline System Integrity Office (PSIO), which oversees the maintenance of facilities, equipment, and infrastructure for the sustained production and transportation of oil and natural gas resources in Alaska, in cooperation with other state and

federal agencies.

- Oil, Gas and Mining. North Slope gas pipeline-related issues are a priority for this section, including providing legal support to assist in arrangements to construct a gasline to transport Alaska North Slope gas to markets in and out of Alaska. The known gas resource on Alaska's North Slope is huge but the potential gas resource on unexplored lands on the North Slope is much larger. Developing this resource is one of the most promising opportunities to strengthen and support Alaska's economic future. The section also continues to work closely with the Governor's Office as well as the Departments of Natural Resources (DNR) and DOR to provide legal assistance in negotiating and entering into new commercial agreements with TransCanada, AGDC and the three major North Slope producers to engage in preliminary front-end engineering and design work (Pre-FEED) for an LNG project. The section provides legal support for proposed commercial and financial arrangements, matters related to fiscal certainty, confidentiality issues and analysis on constitutional and other state law issues and federal permit and licensing issues.

### Promoting and Defending Good Governance

- The department faces several key challenges concerning legal holds and discovery. One involves continuing to add civil cases and other matters to our electronic discovery system, Clearwell. Extremely large litigation matters may exceed the current capacity of the system and require a hosted solution. More assistant attorneys general and paralegals will need to be trained on how to electronically search, review, redact, and mark records. Informing users within the department and from other state agencies on how electronic discovery works and the importance of legal holds and the logistics of how to implement them is another key challenge.
- In the past when the State has faced major litigation, the Department of Law has assembled teams of lawyers based on their subject matter expertise and availability, drawing from multiple sections of the Civil Division. Yet because these sections are structured primarily around the departments of state government that they serve, large-scale or expedited litigation is not an everyday occurrence for all attorneys. These sorts of cases are generally an addition to the attorney's regular full-time caseload, so the division has often drafted attorneys from other sections—typically those with expertise in trial and/or appellate work—to assist the subject matter specialists. The best method for effectively staffing these types of cases has continuously been a challenge for the Department of Law.

### Significant Changes in Results to be Delivered in FY2017

The department is continuously assessing how it can better provide legal services to state agencies and the litigate matters in the public interest. In light of the current environment, the department has made every effort to redirect and consolidate available resources in order to ensure efficiency while preserving effectiveness. Operational changes from FY2016, such as the drawdown of using a high volume of outside counsel for oil, gas and mining litigation will carry forward into FY2017. Additional changes to be implemented in the Civil Division for FY2017 include the diffusion of oil, gas and mining issues to the Natural Resources and Regulatory Affairs and Public Advocacy sections which will result in the dissolution of the Oil, Gas and Mining section, as well as the creation of the Special Litigation section so that the Civil Division will have a formal, consolidated structure for handling large-scale, complex and specialized litigation.

#### Contact Information

**Contact:** James Cantor, Deputy Attorney General  
**Phone:** (907) 269-5100  
**Fax:** (907) 278-7022  
**E-mail:** jim.cantor@alaska.gov

**Civil Division  
RDU Financial Summary by Component**

*All dollars shown in thousands*

	FY2015 Actuals				FY2016 Management Plan				FY2017 Governor			
	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds
<b>Formula Expenditures</b> None.												
<b>Non-Formula Expenditures</b>												
Dep. Attny General's Office	2,928.7	0.0	0.0	2,928.7	461.0	0.0	0.0	461.0	461.0	10.0	0.0	471.0
Child Protection	6,505.1	1,654.5	0.0	8,159.6	4,950.5	2,107.8	0.0	7,058.3	5,163.4	2,157.8	0.0	7,321.2
Collections and Support	1,097.7	1,998.7	0.0	3,096.4	1,103.3	2,169.3	0.0	3,272.6	1,103.3	2,169.3	0.0	3,272.6
Commercial and Fair Business	894.2	3,529.1	0.0	4,423.3	1,232.6	3,608.8	0.0	4,841.4	1,139.6	3,608.8	0.0	4,748.4
Environmental Law	150.6	1,280.8	0.0	1,431.4	817.6	1,136.0	0.0	1,953.6	817.6	1,236.0	0.0	2,053.6
Human Services	1,578.3	809.4	0.0	2,387.7	1,406.5	1,451.9	0.0	2,858.4	1,406.5	1,451.9	0.0	2,858.4
Labor and State Affairs	3,056.6	5,226.3	0.0	8,282.9	2,680.0	2,799.2	0.0	5,479.2	2,440.7	2,864.2	0.0	5,304.9
Legislation/Regulations	886.2	228.2	0.0	1,114.4	864.5	232.5	0.0	1,097.0	864.5	232.5	0.0	1,097.0
Natural Resources	3,617.0	1,042.6	0.0	4,659.6	2,698.3	599.9	0.0	3,298.2	6,546.2	21,318.9	0.0	27,865.1
Oil, Gas and Mining	3,119.4	6,827.4	0.0	9,946.8	7,677.7	2,753.3	0.0	10,431.0	0.0	0.0	0.0	0.0
Opinions, Appeals and Ethics	428.3	0.0	0.0	428.3	1,371.9	744.8	0.0	2,116.7	1,181.2	757.3	0.0	1,938.5
Reg Affairs Public Advocacy	1,706.8	100.0	0.0	1,806.8	1,732.6	139.1	0.0	1,871.7	2,707.6	139.1	0.0	2,846.7
Special Litigation	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,043.4	212.5	0.0	1,255.9
Information and Project Support	791.3	900.0	0.0	1,691.3	280.6	1,823.9	0.0	2,104.5	280.6	1,833.9	0.0	2,114.5
Torts and Workers' Compensation	0.0	3,665.8	0.0	3,665.8	0.0	4,097.9	0.0	4,097.9	0.0	4,070.1	0.0	4,070.1
Transportation Section	23.5	3,042.7	0.0	3,066.2	0.0	2,170.7	0.0	2,170.7	0.0	2,170.7	0.0	2,170.7
Unallocated Reduction	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-669.3	0.0	0.0	-669.3
<b>Totals</b>	<b>26,783.7</b>	<b>30,305.5</b>	<b>0.0</b>	<b>57,089.2</b>	<b>27,277.1</b>	<b>25,835.1</b>	<b>0.0</b>	<b>53,112.2</b>	<b>24,486.3</b>	<b>44,233.0</b>	<b>0.0</b>	<b>68,719.3</b>

**Civil Division**  
**Summary of RDU Budget Changes by Component**  
**From FY2016 Management Plan to FY2017 Governor**

*All dollars shown in thousands*

	<u>Unrestricted Gen (UGF)</u>	<u>Designated Gen (DGF)</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>Total Funds</u>
<b>FY2016 Management Plan</b>	<b>24,727.1</b>	<b>2,550.0</b>	<b>25,835.1</b>	<b>0.0</b>	<b>53,112.2</b>
<b>One-time items:</b>					
-Commercial and Fair Business	0.0	0.0	-140.0	0.0	-140.0
-Oil, Gas and Mining	-5,388.6	0.0	0.0	0.0	-5,388.6
<b>Adjustments which continue current level of service:</b>					
-Dep. Attny General's Office	0.0	0.0	10.0	0.0	10.0
-Child Protection	212.9	0.0	50.0	0.0	262.9
-Commercial and Fair Business	-93.0	0.0	140.0	0.0	47.0
-Environmental Law	0.0	0.0	100.0	0.0	100.0
-Labor and State Affairs	-239.3	0.0	65.0	0.0	-174.3
-Natural Resources	797.9	0.0	2,219.0	0.0	3,016.9
-Oil, Gas and Mining	-2,289.1	0.0	-2,753.3	0.0	-5,042.4
-Opinions, Appeals and Ethics	-190.7	0.0	12.5	0.0	-178.2
-Reg Affairs Public Advocacy	0.0	600.0	0.0	0.0	600.0
-Special Litigation	1,043.4	0.0	212.5	0.0	1,255.9
-Information and Project Support	0.0	0.0	10.0	0.0	10.0
-Torts and Workers' Compensation	0.0	0.0	-27.8	0.0	-27.8
<b>Proposed budget increases:</b>					
-Natural Resources	2,825.0	225.0	18,500.0	0.0	21,550.0
-Reg Affairs Public Advocacy	375.0	0.0	0.0	0.0	375.0
<b>Proposed budget decreases:</b>					
-Unallocated Reduction	-669.3	0.0	0.0	0.0	-669.3
<b>FY2017 Governor</b>	<b>21,111.3</b>	<b>3,375.0</b>	<b>44,233.0</b>	<b>0.0</b>	<b>68,719.3</b>