

**State of Alaska
FY2004 Governor's Operating Budget**

**Department of Law
Commercial Section
Component Budget Summary**

Component: Commercial Section

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Component Mission

Mission statement appears at the department summary and BRU levels.

Component Services Provided

Provide representation, defense, advice, and counsel to the following divisions and corporations within the Departments of Revenue, Community and Economic Development, Labor and Workforce Development, Natural Resources and Law.

DEPARTMENT OF REVENUE:

Income and Excise Audit Division:

- 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.

Permanent Fund Dividend Division:

- Defend appeals of dividend denials.
- Assist in drafting regulations.
- Defend division against original actions.

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.

Alcoholic Beverage Control Board:

- Provide legal advice regarding the issuance and renewal of alcoholic beverage licenses and on disciplinary matters relating to license holders.
- Assist the board with the drafting and adoption of regulations.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT:

Division of Occupational 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

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, Securities and Corporations:

- 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.

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

Employment Security Division:

- Provide employment security tax collection activities.
- Provide legal advice relating to bankruptcy cases and defending administrative appeals.
- Assist in drafting legislation and regulations.

DEPARTMENT OF NATURAL RESOURCES:

Board of Agriculture Conservation and the Agricultural Revolving Loan Fund:

- Act as legal counsel to the Division of Agriculture on matters relating to agricultural loans and ARLF assets and disposals.

Component Goals and Strategies

Provide legal services related to state revenue and commercial matters.

Protect the integrity of the state's public finances through fair interpretation, implementation, enforcement, defense, or adoption of Alaska's revenue, permanent fund dividend, Alaska Permanent Fund Corporation, employment security, and lending statutes and regulations.

Protect public health, safety and commerce through fair interpretation, implementation, enforcement, defense, or adoption of Alaska's occupational licensing, alcoholic beverage control, and banking, securities, corporation, and charitable gaming, statutes and regulations.

Provide representation and legal advice to client agencies and boards.

Defend appeals of income and excise tax assessments.

Defend appeals of permanent fund dividend denials.

Defend appeals of occupational license denials or discipline. (The Fair Business Practices section oversees occupational licensing work in Anchorage, whereas that work is undertaken in the Commercial section in Juneau.)

Defend appeals of cease and desist orders entered by the Department of Community and Economic Development's (DCED) Division of Banking, Securities, and Corporations.

Defend appeals of decisions of made by the Alcohol Beverage Control Board relating to licensees

Collect money owed the state on defaulted investments, Alaska Housing Finance Corporation loans, agricultural loans, and student loans.

Key Component Issues for FY2003 – 2004

Team Building with Banking, Securities and Corporation Division. In 2002, the legislature funded a half-time attorney position in Juneau to provide services to DCED's Banking Securities and Corporation Division. An attorney has been hired and is in place. The legislature also funded new staff positions for the division, including an investigator position. The Commercial Section in Juneau will work with the division to build an effective team for enforcing the banking, securities and corporation laws. During FY 2003 a review of the workload will be needed to assess whether a half-time position is sufficient to handle the new workload.

Admiralty Foreclosures. The Commercial Section in Juneau assists DCED's Division of Investments in collecting on loans made to commercial fishermen. Loans made for the purchase of fishing vessels are secured by ship mortgages and commercial entry fishing permits. If the purchaser defaults, the division must file an action in the U.S. Admiralty Court to foreclose on the mortgage. The number of admiralty cases referred to the section is increasing. This trend is expected to continue in the near future due to troubles in Alaska's fishing industry and a corresponding reduction in the value of fishing permits.

Corporate Income Tax Litigation Increase. The Commercial Section in Juneau has experienced a recent increase in its tax litigation caseload. We believe that this increase is consistent with a nationwide trend in which taxpayers have become substantially more aggressive in seeking to minimize corporate income tax exposure. One of the primary issues that taxpayers have chosen to challenge in Alaska concerns whether groups of related companies are "unitary" and thus subject to combination for income tax reporting purposes. Because this issue is entirely fact-specific, and requires extensive inquiry in order to make a determination, the Department of Revenue has requested more significant involvement from the Department of Law in such cases.

Tobacco Master Settlement Issues. The Commercial Section in Juneau works with the Department of Revenue on implementation of the Master Settlement Agreement--the 1998 agreement among the major tobacco manufacturers and 46 states. The State of Alaska has enacted two sets of statutes designed to implement the MSA in Alaska. The second set of statutes (the "complementary legislation") may need revision in order to enhance our State's ability to diligently enforce the first set of statutes (the "non-participating manufacturer" legislation) and thus preserve the MSA revenue stream to Alaska. We are working on proposed legislative revisions now.

Major Component Accomplishments in 2002

- Settlement of a major charitable gaming case. Under the terms of the settlement, the manager of a charitable gaming operation and her husband had to pay \$400,000 in cash for distribution by the attorney general to charity. The suit was brought to make the defendants disgorge the money they received through violation of Alaska's charitable gaming laws. In another case, the section obtained an order from the superior court that required a professional charitable gaming operator to give back over \$180,000 with interest to the charities that would have received the money had the operator complied with the charitable gaming laws.
- Section representatives obtained a summary judgment order from the superior court dismissing a constitutional challenge to Alaska's real estate licensing laws.
- Settlement of the last of the Point Mackenzie agricultural loan cases. The settlement resolves a sixteen-year-old dispute stemming from state loans made to farmers to encourage agricultural development in the area.
- Obtaining superior court orders affirming the administrative actions of the Alaska Permanent Fund Division (Permanent Fund Denials), Division of Banking, Securities and Corporations (ANCSA Corporation Proxy Statements), State Medical Board (Discipline of Physician), Board of Certified Real Estate Appraisers (Discipline of Appraiser), and Tax Division (Corporate Income Tax Assessment).
- Brought 42 court cases against employers who failed to pay employment security taxes.

Statutory and Regulatory Authority

AS 44.23.020

Commercial Section
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	1,347.2	1,302.9	1,403.4
72000 Travel	30.3	18.3	18.3
73000 Contractual	709.1	653.0	653.0
74000 Supplies	19.2	26.7	26.7
75000 Equipment	15.4	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
Expenditure Totals	2,121.2	2,000.9	2,101.4
Funding Sources:			
1004 General Fund Receipts	284.5	314.0	347.9
1007 Inter-Agency Receipts	1,836.7	1,686.9	1,753.5
Funding Totals	2,121.2	2,000.9	2,101.4

Commercial Section

Proposed Changes in Levels of Service for FY2004

No service changes.

**Summary of Component Budget Changes
From FY2003 Authorized to FY2004 Governor**

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	314.0	0.0	1,686.9	2,000.9
Adjustments which will continue current level of service:				
-From Transportation Section to adjust vacancy by fund source ADN# 0330131	0.0	0.0	41.1	41.1
-From Timekeeping and Support to adjust vacancy by fund source ADN# 0330131	0.0	0.0	14.5	14.5
-Annualize FY2003 COLA Increase for GG/GP/SS Bargaining Units	0.0	0.0	1.4	1.4
-\$75 per Month Health Insurance Increase for Non-covered Staff	1.0	0.0	9.6	10.6
-From Fair Business Practices to adjust vacancy by fund source	26.5	0.0	0.0	26.5
-From Legislation/Regulations to adjust vacancy by fund source	6.4	0.0	0.0	6.4
FY2004 Governor	347.9	0.0	1,753.5	2,101.4

Commercial Section

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	14	16	Annual Salaries	1,129,650
Part-time	4	2	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	332,284
			<i>Less 4.00% Vacancy Factor</i>	(58,534)
			Lump Sum Premium Pay	0
Totals	18	18	Total Personal Services	1,403,400

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	0	0	1	0	1
Attorney III	1	0	0	0	1
Attorney IV	5	0	3	0	8
Attorney V	1	0	2	0	3
Law Office Assistant I	2	0	1	0	3
Law Office Assistant II	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	11	0	7	0	18