

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

**Department of Law
Special Litigation
Component Budget Summary**

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 FY2003 – 2004

No key issues.

Major Component Accomplishments in 2002

During fiscal year 2002, the Special Litigation Section litigated many cases at the trial court level, handled workers' compensation matters at the administrative hearing level and processed appeals before the Alaska Supreme Court.

Appellate Work by the Section of Particular Note:

- The Alaska Supreme Court affirmed the state's summary judgment in *Lexington Insurance v. State*, which sought to hold the Fire Marshal's office responsible for \$20,000,000 in damages for a hotel fire.
- The Supreme Court affirmed the state's summary judgment in *Evans v. State*, upholding the constitutionality of the 1997 Tort Reform Act.
- Briefing was completed in *Kiokun v. State*, the wrongful death lawsuit alleging negligent search and rescue by the Alaska State Troopers on the Denali Highway. A Bethel jury allocated 51 percent of the fault to the troopers and 49 percent to the decedents. Both sides have appealed various issues in the case. We are waiting for the Supreme Court's decision on state trooper liability.
- The Supreme Court affirmed the state's summary judgment in *Wells v. State*, holding that DOT/PF was not required to upgrade roads to current design standards, and could not be sued for failure to install guardrails.
- The Supreme Court affirmed the state's summary judgment in *Wongatillin v. State*, holding that the State Troopers are not responsible for harm done that would have been prevented with earlier service of an arrest warrant.
- The Ninth Circuit Court of Appeals and then the United States Supreme Court left in place the state's summary judgment in *Bijan v. Schindler, et. al.*, a federal civil rights action brought against two Department of Law attorneys, two public defenders, and two state district court judges.
- The Alaska Supreme Court held in the worker's compensation field that a state employee's misuse of prescription drugs, even if flowing in part from job stress, might not be compensable.

Additional dispositive motions of particular note won by the Section at the trial court:

- State troopers and municipal officers from Palmer and Wasilla, making up the state-wide Special Emergency Response Team (SERT) were granted summary judgment in a case alleging excessive force.
- The Alaska Railroad was granted summary judgment in a wrongful death action arising out of a collision at a railroad crossing.
- The Department of Corrections was granted summary judgment in a suit brought by victim who had been assaulted by a probationer after his release from prison.
- State prosecutors and law enforcement officers were dismissed from a federal court action brought by bounty hunters who had been prosecuted in state court for assault and kidnap for conduct arising out of their bounty hunter activities.
- The Division of Worker's Compensation was granted summary judgment in a suit brought by the estate of a woman who was killed allegedly while working for an employer who was not carrying worker's compensation insurance.

The state was able to resolve all scheduled trials except one by summary judgment or negotiation. In that trial the state prevailed and judgment was entered in its favor.

Statutory and Regulatory Authority

AS 44.23.020

Special Litigation
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	1,901.3	2,034.5	2,053.1
72000 Travel	56.5	28.5	28.5
73000 Contractual	274.5	319.3	319.3
74000 Supplies	25.8	38.9	38.9
75000 Equipment	26.7	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	2,284.8	2,421.2	2,439.8
Funding Sources:			
1003 General Fund Match	0.0	2.7	0.0
1007 Inter-Agency Receipts	2,284.8	2,418.5	2,439.8
Funding Totals	2,284.8	2,421.2	2,439.8

Special Litigation

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	2.7	0.0	2,418.5	2,421.2
Adjustments which will continue current level of service:				
-Consolidate funding sources within Civil Division BRU ADN# 0330085	-2.7	0.0	0.0	-2.7
-Annualize FY2003 COLA Increase for GG/GP/SS Bargaining Units	0.0	0.0	9.2	9.2
-\$75 per Month Health Insurance Increase for Non-covered Staff	0.0	0.0	12.1	12.1
FY2004 Governor	0.0	0.0	2,439.8	2,439.8

Special Litigation

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	26	26	Annual Salaries	1,663,929
Part-time	1	1	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	496,447
			<i>Less 4.97% Vacancy Factor</i>	(107,300)
			Lump Sum Premium Pay	0
Totals	27	27	Total Personal Services	2,053,076

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	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
Law Office Assistant I	3	1	1	0	5
Law Office Assistant II	1	1	0	0	2
Paralegal II	3	1	1	0	5
Totals	18	5	4	0	27