

State of Alaska FY2006 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 clear title to the tide and submerged land underlying marine waters in Southeast Alaska.

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, ANCSA 17(b) and other easements, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access 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 (ANSCA), 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 Initiative, and designation of new national monuments in Alaska.

FY2006 Resources Allocated to Achieve Results

FY2006 Component Budget: \$890,400	Personnel:	
	Full time	8
	Part time	0
	Total	8

Key Component Challenges

During FY2006, the Statehood Defense unit will continue representing the state in the case before the United States Supreme Court to quiet title to the submerged lands underlying the marine waters of the Tongass National Forest and Glacier Bay National Park. We have briefed exceptions to the Special Master's recommended decision on summary judgment, and will have oral argument before the Court in 2005. The 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 Statehood Defense unit will monitor the ongoing federal rulemaking relating to application to Alaska's Tongass and Chugach National Forests of the national Roadless Rule. The unit will participate in the ESA process as it relates to Pacific salmon and 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 when necessary. Attorneys will review and comment on proposed 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 FY2006

No changes in results delivered.

Major Component Accomplishments in 2004

- The state's attorneys have drafted and filed briefing before the United States Supreme Court on the issue of title to the submerged lands in Glacier Bay National Park.
- The state requested the Federal Subsistence Board to reconsider regulations authorizing state-wide and largely unrestricted cash sales of subsistence-taken fish.
- The state successfully opposed extension of extraterritorial jurisdiction by the Secretary of the Interior to state-managed fisheries in state waters. The state's attorneys obtained summary judgement in superior court upholding two out of three scoring regulations for Tier II subsistence hunting permits.
- The state filed 8 new applications with the Bureau of Land Management for recordable disclaimers of interest for lands underlying navigable waters. The state has now filed a total of 13 applications to BLM for 31 waterbodies.
- The state has continued to educate landowners about the public's right to use state navigable waters.
- Attorneys assisted in briefing the issue of whether Alaska Native allotments and townsite lots are Indian Country.
- The state is working with the National Park Service to develop a User's Guide to access to inholdings in Alaska's National Parks under section 1110(b) of ANILCA.
- The Department of Law helped ADF&G intervene in the FERC proceedings on relicensing the Priest Rapids Hydroelectric Project on the mid-Columbia River, which impacts Southeast Alaska salmon stocks.
- The Department of Law helped ADF&G draft a series of letters opposing the evolving proposals by the Bonneville Power Authority to reduce summer spills at Federal Columbia River Power Dams.
- The Department helped ADF&G in its role as a cooperating agency in the preparation of the final programmatic EIS for coastwide Pacific Salmon harvest, which addresses the management of Alaska's salmon fisheries in Southeast Alaska.
- The state received a favorable decision denying a Native allotment application for lands located within Kachemak Bay State Park

Statutory and Regulatory Authority

AS 44.23.020

Contact Information

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**Statehood Defense
Component Financial Summary**

All dollars shown in thousands

	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	458.1	704.1	714.4
72000 Travel	3.8	9.2	9.2
73000 Services	262.3	670.9	134.6
74000 Commodities	8.3	29.0	29.0
75000 Capital Outlay	1.5	3.2	3.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	734.0	1,416.4	890.4
Funding Sources:			
1004 General Fund Receipts	734.0	1,416.4	890.4
Funding Totals	734.0	1,416.4	890.4

**Summary of Component Budget Changes
From FY2005 Management Plan to FY2006 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2005 Management Plan	1,416.4	0.0	0.0	1,416.4
Adjustments which will continue current level of service:				
-FY 05 Bargaining Unit Contract Terms: GGU	1.4	0.0	0.0	1.4
-Statehood Defense Issues	-536.3	0.0	0.0	-536.3
-FY06 Cost Increases for Bargaining Units and Non-Covered Employees	8.9	0.0	0.0	8.9
FY2006 Governor	890.4	0.0	0.0	890.4

**Statehood Defense
Personal Services Information**

Authorized Positions		Personal Services Costs		
	<u>FY2005</u>	<u>FY2006</u>		
	<u>Management</u>	<u>Governor</u>		
	<u>Plan</u>			
Full-time	8	8	Annual Salaries	517,423
Part-time	0	0	COLA	1,432
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	238,994
			<i>Less 2.32% Vacancy Factor</i>	<i>(17,549)</i>
			Lump Sum Premium Pay	0
Totals	8	8	Total Personal Services	740,300

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	2	0	0	0	2
Attorney IV	2	0	0	0	2
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