

**State of Alaska
FY2006 Governor's Operating Budget**

**Department of Law
Torts & Workers' Compensation
Component Budget Summary**

Component: Torts & Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation section provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the State as employer before the Workers Compensation Board.

Core Services

Attorneys in the Torts and Workers' Compensation section defend tort claims, maritime personal injury claims, and civil rights claims for damages under 42 USC §1983 filed in both state and federal court, and in both the trial courts and appellate courts. Examples of the types of lawsuits defended by the section include: wrongful death claims, claims of injury occurring on state or state maintained facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway system, claims of negligence in the 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, inmates), and other claims of injury alleged against state officials (e.g. Alaska State Troopers, drivers of state vehicles, etc.). Attorneys in the section represent state agencies in Workers Compensation claims filed by state employees where the state is the employer. They advocate on behalf of the state at hearings before the Workers' Compensation Board, and represent the state in appeals from the Board taken to the superior and Alaska Supreme Court.

Attorneys in the Torts and Workers' Compensation section provide oral advice and training to state agencies on risk management, workers' compensation, and liability issues and provide oral advice to state adjusters on workers' compensation issues.

FY2006 Resources Allocated to Achieve Results		
FY2006 Component Budget: \$2,671,900	Personnel:	
	Full time	27
	Part time	1
	Total	28

Key Component Challenges

As the cost of Worker Compensation payments and medical costs continue to accelerate for the state, the Torts and Workers Compensation Section faces the challenge of litigating these claims and costs to a fair resolution. As the availability of state infrastructure resources decrease, it is anticipated that tort claims arising out of the delivery of state services may increase. Both of these challenges may increase the caseload of the section. The section will be faced with addressing increased caseload with its existing staffing levels as well as turnover in attorney staff within the section.

Significant Changes in Results to be Delivered in FY2006

In tort litigation, the section will increase its use of early Offers of Judgment and Motions for Summary Judgment to achieve fair resolution of cases. In appropriate tort cases, the section will utilize Alternate Dispute Resolution in the early stages of the claim or litigation to resolve cases. In its defense of state workers compensation claims, the section will lodge appropriate challenges to rulings of the Board in order to achieve consistency and predictability. The section's caseload is increasing as a result of litigation of issues arising out of AS 09.17.020(j)(allocation of punitive damage awards to the state).

Major Component Accomplishments in 2004

Appellate Work of the Section of Particular Note:

The Ninth Circuit affirmed dismissal of a lawsuit filed against several state employees alleging defamation and violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973.

In addition, the section has several appellate matters of note currently on appeal with the Alaska Supreme Court which involved significant briefing during FY 2004:

A personal injury lawsuit brought against the State involving allegations of negligence arising out of the construction of the A/C couplet in Anchorage. The State is the appellee having successfully defended against these allegations at the trial court level and entry of summary judgment in the state's favor. *Guerrero v. State*

The Alaska Supreme Court accepted the State's Petitions for Review in two separate cases (*C.J. and Cowles*), which seek to re-examine and overturn the *Neakok* case (decided in 1986) which addressed actionable tort duties by the Department of Corrections in parole supervision.

A personal injury lawsuit brought against the State (Office of Public Advocacy) involving allegations that court appointed conservators owe an actionable tort duty to take additional steps beyond the court ordered conservatorship. The State is the appellee having successfully defended against these allegations at the trial court level and entry of summary judgment in the state's favor. *Trapp v. Office of Public Advocacy*.

Jury trials Defended by the Section of Particular Note:

Although many cases were prepared for defense at jury trial, those that were not dismissed through summary judgment, were resolved shortly before trial as reflected in the Judgment Bill for 2004.

In a hearing before the Alaska Workers Compensation Board, the section successfully defended against a request for additional medical benefits brought by a state employee. The state had already paid for 13 months of total disability compensation based upon an earlier claim of injury, but an independent medical examination showed that the additional injuries claimed by the employee were not caused by the state employee's work.

Dispositive Motions of Particular Note Won by the Section in the Trial Court:

An Anchorage superior court judge granted summary judgment to the Office of Public Advocacy in a case alleging that an appointed conservator has actionable tort duties beyond the conservator statutes and appointment order.

Several lawsuits filed by inmates alleging medical malpractice were summarily dismissed by the trial court based on the inmate's failure to demonstrate a failure of care including a case where two individually sued health providers were granted summary judgment for allegations of medical malpractice and alleged failure to make reports to the Department of Health, Division of Senior Services.

Other matters handled by the Section

Attorneys in the section worked closely on two pieces of legislation introduced by the Governor during the session. In CSSB 338(STA) am H, a certification process was enacted that substitutes the state for individually sued state employees who are sued in civil lawsuits for actions taken within the scope of the employee's office or employment. The section also provided legal support for proposed legislation addressing the state workers' compensation system.

Attorneys in the section successfully obtained a number of third party reimbursements on state workers' compensation liens. Attorneys in the section were also involved in the recovery of the state's allocation of punitive damage awards including defending challenges to AS 09.17.020(j).

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information

Contact: Gail Voigtlander, Chief, Assistant Attorney General
Phone: (907) 269-5100
Fax: (907) 258-0760
E-mail: gail_voigtlander@law.state.ak.us

Torts & Workers' Compensation Component Financial Summary

All dollars shown in thousands

	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	0.0	2,218.0	2,260.4
72000 Travel	0.0	28.5	28.5
73000 Services	0.0	344.1	344.1
74000 Commodities	0.0	38.9	38.9
75000 Capital Outlay	0.0	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	0.0	2,629.5	2,671.9
Funding Sources:			
1004 General Fund Receipts	0.0	44.3	44.3
1007 Inter-Agency Receipts	0.0	2,585.2	2,627.6
Funding Totals	0.0	2,629.5	2,671.9

Estimated Revenue Collections

Description	Master Revenue Account	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	0.0	2,585.2	2,627.6
Restricted Total		0.0	2,585.2	2,627.6
Total Estimated Revenues		0.0	2,585.2	2,627.6

**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	44.3	0.0	2,585.2	2,629.5
Adjustments which will continue current level of service:				
-FY 05 Bargaining Unit Contract Terms: GGU	0.0	0.0	6.8	6.8
-FY06 Cost Increases for Bargaining Units and Non-Covered Employees	0.0	0.0	35.6	35.6
FY2006 Governor	44.3	0.0	2,627.6	2,671.9

**Torts & Workers' Compensation
Personal Services Information**

Authorized Positions		Personal Services Costs		
	<u>FY2005</u> <u>Management</u> <u>Plan</u>	<u>FY2006</u> <u>Governor</u>		
Full-time	27	27	Annual Salaries	1,662,836
Part-time	1	1	COLA	7,797
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	782,590
			<i>Less 4.56% Vacancy Factor</i>	(111,823)
			Lump Sum Premium Pay	0
Totals	28	28	Total Personal Services	2,341,400

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	8	0	1	0	9
Attorney V	1	1	1	0	3
Attorney VI	1	0	0	0	1
Law Office Assistant I	4	1	0	0	5
Law Office Assistant II	1	1	1	0	3
Paralegal II	3	1	1	0	5
Totals	20	4	4	0	28