

**State of Alaska
FY2009 Governor's Operating Budget**

**Department of Law
Commercial and Fair Business
Component Budget Summary**

Component: Commercial and Fair Business

Contribution to Department's Mission

The Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws, which are aimed at protecting the public. This section also provides advice and representation to various departments and agencies of state government to assist them in the performance of their functions.

Core Services

The Commercial and Fair Business Section has one of the more diverse law practices within the Department of Law. This section exercises the Attorney General's authority to enforce state consumer protection laws and antitrust laws. The section also provides representation, defense, advice, and counsel to 15 different divisions, commissions, and corporations within the Department of Revenue, the Department of Education and Early Development, and the Department of Commerce, Community, and Economic Development.

DEPARTMENT OF REVENUE:

Tax Division (non-oil and gas tax):

- 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 (AHFC):

- 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.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT:

Division of Insurance:

- Provide legal advice regarding insurance enforcement matters and represent the division in administrative adjudications involving insurance licensees.
- Assist the division in drafting regulations and legislation.
- Represent the director in court proceedings including administrative appeals of director decisions and insurance company liquidation proceedings.

Division of Corporations, Business, and Professional 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.
- Assist in prosecuting actions to suspend tobacco endorsements of retailers for selling tobacco to minors.

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 and Securities:
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 (ACPE):
Provide legal advice relating to ACPE's student loans, collections, regulations and legislation.

Professional Teaching Practices Commission:
Provide advice and represent staff in teacher discipline matters.

FY2009 Resources Allocated to Achieve Results		
FY2009 Component Budget: \$4,416,700	Personnel:	
	Full time	26
	Part time	3
	Total	29

Key Component Challenges

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. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, the section is still forced to turn away many legitimate cases of consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough resources for even those cases.

The department has been able to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY2000 and increased again for FY2004. To help ensure receipt of statutory designated program receipt resources, the department needs to maintain the section's participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers.

In addition to consumer protection and antitrust enforcement, the section also is responsible for the annual registration of approximately 2,000 charitable organizations, paid solicitors, and telemarketers. This is a challenging process that takes substantial section resources each year to complete. In 2004, the department was given authority to collect a fee for each registration, which helps offset the costs of the annual registration process.

Agency Work

This section provides legal assistance to the Department of Revenue on all non-oil and gas tax types, including corporate income tax, tobacco tax, alcohol tax, motor fuel tax and an array of fish related taxes. These taxes contribute over \$100 million per year to the general fund. Effective enforcement and collection of these taxes is imperative to minimize taxpayers' efforts to evade payment of taxes. The section attorneys advising the Department Revenue spend substantial time researching and advising the department every year in its enforcement efforts. The Department of Revenue faces challenges particularly in the area of tobacco and fish related taxes, where efforts to avoid payment of taxes have recently become more pronounced. Moreover, some large corporations resist the combined apportionment method of corporate income taxation, which Alaska and many other states employ. This area of taxation generates litigation every year, which is handled by section attorneys.

Another area of work for the Department of Revenue involves its Gaming Unit that deals with charitable gaming issues. This unit is often presented with creative interpretations of the charitable gaming laws that require continuing legal analysis by section attorneys to ensure that the laws are consistently, correctly and fairly applied to the charitable gaming public.

In the past two years, the section has seen an increased demand for legal services from the Department of Commerce, Community, and Economic Development (DCCED) related to securities, insurance regulation, and various grants administered or issued by the department and from the Regulatory Commission of Alaska (RCA). In response to this increase demand, two new attorney positions were added in FY2006. One position is funded by the Division of Insurance and is assigned to handle criminal prosecution of insurance fraud cases and to assist in the civil enforcement of the insurance laws. The second position is funded by the RCA and is assigned to assist in defending RCA orders on appeal, in giving legal advice to the commission with respect to adjudications and in drafting agency regulations. In FY2008 and FY2009, the section expects a further increase in the demand for legal services by DCCED because of HB 162, which passed in 2007 and requires the licensing and regulation of mortgage brokers and lenders. DCCED will need substantial legal services to help implement this bill and Law anticipates that DCCED will increase funding to Law to cover this work.

Significant Changes in Results to be Delivered in FY2009

The section anticipates an increase in services to be delivered to the Department of Revenue as a result of the Cruise Ship Initiative that passed in 2006. This initiative increases the case load for Revenue's tax division by creating a new excise or head tax and making cruise ship income subject to the state's corporate income tax. The initiative also makes certain cruise ship gaming revenues taxable. Revenue will have to develop new regulations to flesh out the method for collecting the head and income taxes. The Commercial and Fair Business Section is involved in the development of these regulations. The section also will be called on to help Revenue deal with audits and administrative hearings regarding the collection and enforcement of head taxes and corporate income taxes. Because of the international nature of the cruise ship companies their tax appeals will be very complex. And there may be litigation over how the head tax proceeds are spent, which may involve substantial attorney time. The tax on gaming proceeds also will lead to additional audits and tax appeals and, therefore, increased section work. A new attorney position will be added to the section to deal with the work associated with the Cruise Ship Initiative. A budget increment in the amount of \$197,800 in general funds was added in FY2008 to pay for these services.

The section also anticipates an increase in services to be delivered to the Department of Commerce, Community and Economic Development (DCCED) related to HB 162 that was passed in 2007. This legislation requires the licensing and regulation of persons originating, lending, or brokering mortgage loans and becomes effective July 1, 2008. In the fiscal note for the bill, DCCED provided for increased contractual costs to Law to help draft legal documents, to represent the division at administrative hearings resulting from licensing, revocation, or disciplinary action, and to enforce orders resulting from investigations. Law anticipates increased funding from DCCED to cover this work.

Major Component Accomplishments in 2007

Processed 341 consumer complaints, of those, 172 were resolved through the informal complaint process resulting in either direct or indirect assistance to consumers or referral to other appropriate state and federal agencies.

Successfully investigated, prosecuted, and negotiated settlements in seven separate consumer protection matters that involved five auto dealers and a state-wide athletic club and that involved violations of state consumer protection laws. In addition to obtaining injunctive relief and/or restitution to consumers in these matters, the state collected \$552,500 for consumer protection enforcement. The largest recovery (\$500,000) came from a matter involving a state-wide auto dealer that had engaged in illegal sales practices and impacted hundreds of consumers.

Participated in settlement of six multi-state consumer protection cases in which the state obtained injunctive relief prohibiting conduct in violation of our consumer protection and antitrust statutes, restitution for consumers, and payments to the state of approximately \$320,000 for costs, attorneys fees and consumer protection enforcement.

Participated in or completed 13 consumer education events related to, identity theft, consumer scams and frauds, auto fraud, investment fraud, and telemarketing fraud. These events were accomplished through media outreach, targeted brochures, and presentations to consumer and industry groups. The Consumer Protection Unit also issued 10 consumer education press releases including a public service announcement on foreign lottery fraud and posted six consumer alerts on the Consumer Protection web page containing warnings of scams and other relevant consumer information.

Collected \$85,270 in fees for registration of charitable organizations, paid solicitors, and telemarketers.

Successfully prosecuted or negotiated settlements in 12 separate professional discipline and license denial cases, involving two real estate licensees, a certified nurse's aide, a nurse, an engineer, a physician's assistant, an acupuncturist, a marine pilot, a landscape contractor, a psychologist, a psychiatrist, and a big game guide. These cases resulted in revocation, suspension, voluntary surrender, or denial of licenses, imposition of civil fines, and/or a reprimand based on felony convictions, performing services without a license, false statements on license or renewal applications, failure to prove fitness for a license, violation of professional standards, substance abuse, and unprofessional conduct.

Successfully defended on appeal to superior court and federal district court four administrative decisions of state agencies. The superior court affirmed a decision of the Real Estate Commission to suspend for 60 days the license of a real estate broker and to impose a civil fine because he falsely denied on his license renewal form that he had been named in a lawsuit for dishonesty, fraud, and conversion of funds. In another case, the superior court affirmed a decision of the Architects, Engineers, and Land Surveyors Board that denied the request of an engineer to waive examination for a license based on his years of experience because he failed to provide the third party verification of his experience as required by the board's regulations. In two other cases, the superior court and the federal district court affirmed decisions of the Regulatory Commission or Alaska. The superior court case affirmed the RCA's decision to deny intervention to a telephone association in a network dispute between Interior Telephone Company and certain long distance carriers. The federal district court, which had jurisdiction to hear the appeal under the federal Telecommunications Act of 1996, affirmed the RCA's order setting final rates and terms of an interconnection agreement between GCI and ACS. None of these cases were appealed further.

Successfully defended on appeal to the Alaska Supreme Court three administrative decisions of state agencies. These appeals involved a challenge to Revenue's issuance of a gaming permit to a non-profit corporation, Revenue's denial of a PFD, and the Real Estate Commission's decision to grant a surety fund claim.

Successfully prosecuted four insurance fraud cases through negotiated plea agreements resulting in felony convictions and, in two cases, orders for restitution of fraudulently obtained claim payments. These cases arose out of investigations by the Division of Insurance and involved auto claim fraud, agent fraud, and claims for benefits under a workers' compensation insurance policy and a long term disability policy.

Successfully litigated on behalf of the Division of Investments cases involving defaulted loans and obtained judgments totaling \$1,265,842.02 of which \$477,145.68 has been collected. Also, successfully collected \$59,800 on behalf of the Division of Investments in vessel foreclosure matters from 11 permanent fund dividend garnishments or assignments and two wage garnishments.

Successfully litigated or obtained settlements on behalf of the Department of Revenue that resulted in payment of \$8,448,050 in unpaid corporate income taxes. The section also successfully defended eight cases before the Office of Administrative Hearings involving challenges to excise taxes assessed by Revenue, resulting in the affirmance of \$179,821 in taxes, penalties, and interest.

Successfully prosecuted 31 forcible entry and detainer actions against tenants in public housing on behalf of AHFC. The evictions in these cases are limited to cases where there is actual good cause. The good cause in these cases included nonpayment of rent, breach of peaceful enjoyment or excessive noise, failure to pay utilities, and public housing fraud or failure to report income and household composition. The section also continued to defend and represent AHFC in five Housing and Urban Development (HUD) Fair Housing Complaints one of which resulted in settlement, three 601 Administrative Agency appeals, which are still pending resolution, and three Superior Court cases requesting declaratory judgment.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
<p>Contact: Signe Andersen, Chief Assistant Attorney General Phone: (907) 269-5100 Fax: (907) 278-4683 E-mail: signe.andersen@alaska.gov</p>

**Commercial and Fair Business
Component Financial Summary**

All dollars shown in thousands

	FY2007 Actuals	FY2008 Management Plan	FY2009 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	3,080.2	2,829.8	2,839.9
72000 Travel	37.6	30.2	30.2
73000 Services	1,206.9	1,437.3	1,437.3
74000 Commodities	55.2	83.9	83.9
75000 Capital Outlay	18.0	25.4	25.4
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	4,397.9	4,406.6	4,416.7
Funding Sources:			
1004 General Fund Receipts	960.7	901.9	892.9
1005 General Fund/Program Receipts	0.0	50.0	50.0
1007 Inter-Agency Receipts	3,006.4	2,552.2	2,570.6
1108 Statutory Designated Program Receipts	430.8	902.5	903.2
Funding Totals	4,397.9	4,406.6	4,416.7

Estimated Revenue Collections

Description	Master Revenue Account	FY2007 Actuals	FY2008 Management Plan	FY2009 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	3,006.4	2,552.2	2,570.6
General Fund Program Receipts	51060	0.0	50.0	50.0
Statutory Designated Program Receipts	51063	430.8	902.5	903.2
Restricted Total		3,437.2	3,504.7	3,523.8
Total Estimated Revenues		3,437.2	3,504.7	3,523.8

**Summary of Component Budget Changes
From FY2008 Management Plan to FY2009 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2008 Management Plan	951.9	0.0	3,454.7	4,406.6
Adjustments which will continue current level of service:				
-Transfer of funds to Timekeeping and Litigation Support to adjust personal services vacancy factor	-10.0	0.0	0.0	-10.0
-FY 09 Health Insurance Increases for Exempt Employees	1.0	0.0	3.1	4.1
-FY 09 Bargaining Unit Contract Terms: General Government Unit	0.0	0.0	16.0	16.0
FY2009 Governor	942.9	0.0	3,473.8	4,416.7

**Commercial and Fair Business
Personal Services Information**

Authorized Positions		Personal Services Costs		
	<u>FY2008</u> <u>Management</u> <u>Plan</u>	<u>FY2009</u> <u>Governor</u>		
Full-time	26	26	Annual Salaries	1,949,167
Part-time	3	3	COLA	14,226
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	898,971
			<i>Less 0.78% Vacancy Factor</i>	(22,464)
			Lump Sum Premium Pay	0
Totals	29	29	Total Personal Services	2,839,900

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	1	0	2
Assoc Attorney II	1	0	0	0	1
Attorney III	2	0	0	0	2
Attorney IV	8	0	4	0	12
Attorney V	2	0	2	0	4
Attorney VI	1	0	0	0	1
Law Office Assistant I	3	0	0	0	3
Law Office Assistant II	1	0	1	0	2
Paralegal I	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	21	0	8	0	29