

State of Alaska FY2010 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

- Statehood Defense attorneys handle complex cases arising out of state/federal jurisdictional conflicts which profoundly affect management of Alaska's natural resources. Issues include title navigability, RS 2477 rights-of-way, access across and within federal lands pursuant to Alaska National Interest Lands Conservation Act (ANILCA), Alaska Native Claims Settlement Act (ANCSA) 17(b) easements, subsistence, Endangered Species Act (ESA), and management issues.
- Statehood Defense attorneys also provide legal advice and assistance to the Governor's Office and state agencies on matters of federal Indian law.

FY2010 Resources Allocated to Achieve Results

| | | |
|---|-------------------|----------|
| FY2010 Component Budget: \$1,066,800 | Personnel: | |
| | Full time | 7 |
| | Part time | 0 |
| | Total | 7 |

Key Component Challenges

During FY 2009, the Statehood Defense 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 the Alaska Department of Fish and Game (ADF&G) to file with the Bureau of Land Management (BLM) additional applications for recordable disclaimers of interest for navigable waters, and provide information to BLM to convince it to declare waterways navigable within the survey windows it is completing. The unit will continue work to insure the state's land entitlement from the federal government is fulfilled.

The Statehood Defense unit will participate in and monitor the ongoing federal actions relating to application to Alaska's Tongass and Chugach National Forests of a national Roadless Rule, and implementation of new forest management plans. The unit will participate in the Endangered Species Act (ESA) process as it relates to decisions or proposals to list polar bear, Cook Inlet beluga whale, and other species, and to management of Pacific salmon and to 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 (FSB) when necessary. The unit will continue litigation challenging the use of claimed Federal Reserved Water Rights to expand federal subsistence jurisdiction. Attorneys will monitor actions taken under 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, including an attempt by several tribes to invalidate a regulatory ban on taking land into trust in Alaska.

Significant Changes in Results to be Delivered in FY2010

No changes in results delivered.

Major Component Accomplishments in 2008

The section represented the state in litigation regarding the Secretary of the Interior's authority to take land into trust in Alaska for the benefit of Alaska tribes.

Section staff attended numerous Federal Subsistence Board meetings and meetings of the North Pacific Fishery Management Council to assist ADF&G with issues impacting state fish and wildlife management.

The section filed a number of requests for reconsideration of decisions by the Federal Subsistence Board, including customary and traditional use findings and rural determinations on the Kenai Peninsula.

With ADF&G, the section persuaded the Federal Subsistence Board to reject a proposal to impose gear limitations on state fisheries in the Yukon River.

Briefed the "which waters" phase of the federal district court case challenging the United States' claims of Federal Reserved Water Rights in federal subsistence regulations.

With ADF&G, the section developed comments on numerous proposed listings under the Endangered Species Act, including on the proposals for polar bear and Cook Inlet beluga whales.

With ADF&G, the section persuaded the National Oceanic and Atmospheric Administration (NOAA) not to list Lynn Canal herring under the Endangered Species Act.

Prepared for litigation and obtained outside counsel to assist with a challenge to the listing of polar bear as threatened under the ESA.

The section advised ADF&G on regulations prohibiting the transport, harboring or releasing of invasive rats by vessels operating in and outside of state waters.

The section intervened in administrative appeals of the revised Tongass National Forest Land Management Plan before the U.S. Forest Service.

The section assisted DNR and ADF&G with new and existing applications to the Bureau of Land Management (BLM) for recordable disclaimers of interest (RDI) for lands underlying navigable waters. The state has received a number of RDIs from BLM. The state has continued to educate landowners about the public's right to use state navigable waters.

The section continued to monitor litigation related to pacific salmon in Washington and Oregon.

The section provided legal advice to ADF&G in support of renegotiating certain chapters of the Pacific Salmon Treaty.

The section continued to monitor and comment on proposed amendments to the Magnuson-Stevens Act, the Marine Mammals Protection Act, and other federal legislation.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information

Contact: Elizabeth Barry, Chief Assistant Attorney General

Phone: (907) 269-5100

Fax: (907) 279-2834

E-mail: elizabeth.barry@alaska.gov

**Statehood Defense
Component Financial Summary**

All dollars shown in thousands

| | FY2008 Actuals | FY2009 Management Plan | FY2010 Governor |
|--------------------------------|----------------|---------------------------|-----------------|
| Non-Formula Program: | | | |
| Component Expenditures: | | | |
| 71000 Personal Services | 626.6 | 809.9 | 889.8 |
| 72000 Travel | 10.0 | 10.3 | 9.2 |
| 73000 Services | 211.8 | 325.8 | 135.6 |
| 74000 Commodities | 12.6 | 34.5 | 29.0 |
| 75000 Capital Outlay | 8.0 | 6.4 | 3.2 |
| 77000 Grants, Benefits | 0.0 | 0.0 | 0.0 |
| 78000 Miscellaneous | 0.0 | 0.0 | 0.0 |
| Expenditure Totals | 869.0 | 1,186.9 | 1,066.8 |
| Funding Sources: | | | |
| 1004 General Fund Receipts | 869.0 | 1,186.9 | 1,066.8 |
| Funding Totals | 869.0 | 1,186.9 | 1,066.8 |

**Summary of Component Budget Changes
From FY2009 Management Plan to FY2010 Governor**

All dollars shown in thousands

| | <u>General Funds</u> | <u>Federal Funds</u> | <u>Other Funds</u> | <u>Total Funds</u> |
|---|----------------------|----------------------|--------------------|--------------------|
| FY2009 Management Plan | 1,186.9 | 0.0 | 0.0 | 1,186.9 |
| Adjustments which will continue current level of service: | | | | |
| -FY2010 Wage and Health Insurance Increases for Bargaining Units with Existing Agreements | 31.6 | 0.0 | 0.0 | 31.6 |
| -Transfer PCN 03-0195 with Funding to Commercial and Fair Business | -138.7 | 0.0 | 0.0 | -138.7 |
| -Remove Statehood Entitlement Issues Sec 48(c) CH 159 SLA 2004 P 105 L 10 (SB 283) Lapses 6/30/09 | -200.0 | 0.0 | 0.0 | -200.0 |
| Proposed budget increases: | | | | |
| -Replace Statehood Defense Funding | 187.0 | 0.0 | 0.0 | 187.0 |
| FY2010 Governor | 1,066.8 | 0.0 | 0.0 | 1,066.8 |

**Statehood Defense
Personal Services Information**

| Authorized Positions | | | Personal Services Costs | |
|-----------------------------|---------------------------------------|----------------------------|----------------------------------|----------------|
| | FY2009 Management Plan | FY2010 Governor | | |
| Full-time | 7 | 7 | Annual Salaries | 598,494 |
| Part-time | 0 | 0 | COLA | 23,694 |
| Nonpermanent | 0 | 0 | Premium Pay | 0 |
| | | | Annual Benefits | 274,738 |
| | | | <i>Less 0.79% Vacancy Factor</i> | (7,126) |
| | | | Lump Sum Premium Pay | 0 |
| Totals | 7 | 7 | Total Personal Services | 889,800 |

Position Classification Summary

| Job Class Title | Anchorage | Fairbanks | Juneau | Others | Total |
|------------------------|------------------|------------------|---------------|---------------|--------------|
| Assoc Attorney I | 1 | 0 | 0 | 0 | 1 |
| Attorney IV | 4 | 0 | 0 | 0 | 4 |
| Attorney VI | 1 | 0 | 0 | 0 | 1 |
| Law Office Assistant I | 1 | 0 | 0 | 0 | 1 |
| Totals | 7 | 0 | 0 | 0 | 7 |