

State of Alaska
FY2010 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 Departments of Revenue, Education and Early Development, and Commerce, Community, and Economic Development.
- The section protects the public by enforcing state consumer protection and anti-trust laws and through its work with the agencies, boards, and commissions governing professional licenses, tobacco sales, and certified teachers. The section also protects the public by providing legal services to agencies that monitor insurance companies and other insurance licensees, charitable gaming, public utilities, banks, securities, corporations, mortgage brokers, and payday lenders.
- In addition to protecting the public, the section helps protect the integrity of the state's public finances through fair interpretation, implementation, enforcement, and adoption of statutes and regulations governing state revenue and taxation, the Permanent Fund dividend, and various state lending programs.

FY2010 Resources Allocated to Achieve Results

FY2010 Component Budget: \$4,734,400

Personnel:

Full time	27
Part time	2
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 FY 2000 and increased again for FY 2004. 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.

Over the past three 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 increased demand, two new attorney positions were added in 2006. 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 2008 and 2009, the section saw 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 has needed substantial legal services to help implement this bill and DCCED has increased funding to Law to cover this work.

Significant Changes in Results to be Delivered in FY2010

The section anticipates a continued increase in the number of consumer complaints received and processed through the Consumer Protection Unit. Because of this increase, the section will need to add staffing at the associate attorney level to effectively and efficiently resolve complaints. The division anticipates that a portion of the appropriated Statutory Designated Program Receipt (SDPR) monies will be used to fund an addition to staff to cover this work.

With respect to agency work, 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 has developed new regulations to flush 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. Additionally, 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 part-time attorney position was 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 FY 2008 to pay for these services.

The section also anticipates a continued 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 became 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 2008

The section processed 411 consumer complaints, of those, 232 were resolved through the informal complaint process resulting in either direct or indirect assistance to consumers, launching of a formal investigation, or referral to other appropriate state and federal agencies.

With the assistance of outside counsel, the section successfully investigated, prosecuted, and settled the largest consumer protection action in Alaska history that was brought against a major pharmaceutical company for violations of Alaska's Consumer Protection Act. The state achieved a record setting settlement of \$15 million for damages and penalties.

The section 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 \$1,944,137.86 for costs, attorney's fees and consumer protection enforcement and education.

The section participated in, or completed 12 consumer education events related to identity theft, counterfeit Native art, 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 seven consumer education press releases and posted 10 consumer alerts on the Consumer Protection web page containing warnings of scams and other relevant consumer information.

The section proposed the introduction, and helped facilitate the passage of, legislation banning the use of promotional checks in Alaska to protect consumers from deceptive solicitations for the purchase of goods and services through the use of promotional checks.

The section collected \$94,835 in fees for registration of charitable organizations, paid solicitors, telemarketers, and sellers of business opportunities.

The section successfully prosecuted or negotiated settlements in nine separate professional discipline and license denial cases, involving two real estate licensees, a nurse, a big game guide, two veterinarians, and a psychology associate. These cases resulted in revocation, conditions on, or denial of licenses, imposition of civil fines, and/or a reprimand based on license actions in other states, failure to prove fitness for a license, violation of professional standards, substance abuse, and unprofessional conduct.

The section successfully defended on appeal to superior court nine administrative decisions of state agencies. The superior court affirmed decisions of the 1) Regulatory Commission or Alaska granting a utility's petition for suspension or modification of duties imposed on it by the Telecommunications Act of 1996; 2) Alaska Commission on Post Secondary Education (ACPE) denying request for a medical cancellation of a student loan; 3) Professional Teaching Practices Commission reprimanding a teacher for disclosing confidential student records without a compelling professional purpose; 4) Board of Dental Examiners disciplining a dentist for unprofessional conduct; 5) Division of Corporations, Business, and Professional Licensing deciding not to take enforcement action against a native shareholder under proxy solicitation regulations; 6) Gaming Division of Revenue banning the use of electronic devices that alter the basic nature of the game of bingo; and 7) – 9) the Permanent Fund Division denying permanent fund dividends in three separate cases. With the exception of the ACPE and Dental Board cases, these cases were not appealed further.

The section successfully defended a lawsuit filed in Anchorage Superior court against the Division of Corporations, Business and Professional Licensing that challenged the division's practice of allowing access to an occupational license holder's address of record through a search of the division's on-line database of license holders, claiming that it violated the license holder's constitutional right to privacy. The superior court granted summary judgment to the division upholding the division's practice and finding that there was no violation of privacy rights.

The section successfully defended on appeal to the Alaska Supreme Court five administrative decisions of state agencies. These appeals involved challenges to the Department of Revenue's discretion to determine who can conduct charitable gaming, the Division of Insurance's interpretation of the credit scoring and retaliatory tax statutes under the insurance code, the Board of Nursing's denial of a nurse's license application based on felony convictions even if the sentences for those convictions had been set aside, and the Division of Corporations, Business, and Professional Licensing's suspension of a retailer's tobacco endorsement following an employee's conviction for selling tobacco products to a minor.

The section successfully prosecuted four insurance fraud cases through negotiated plea agreements resulting in misdemeanor convictions. These cases arose out of investigations by the Division of Insurance and involved auto claim fraud, an exaggerated claim for benefits under a long term disability policy, and forgery of an insurance certificate.

The section successfully litigated on behalf of the Division of Investments cases involving defaulted loans and obtained two judgments totaling \$110,698, of which \$ 8,862 has been collected.

The section assisted the Department of Revenue in resolving multi-million dollar corporate income tax claims. The section also successfully litigated or obtained settlements in six cases before the Office of Administrative Hearings involving challenges to excise taxes assessed by Revenue, resulting in the affirmance of \$51,783 in taxes, penalties, and interest.

The section successfully prosecuted 41 forcible entry and detainer actions against tenants in public housing on behalf of the Alaska Housing Finance Corporation (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. One case involved criminal and drug related activity while another case involved use or discharge of a firearm. Of the 41 cases prosecuted, we obtained 17 judgments in a total amount of \$38,004.83 that AHFC will be able to collect.

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information
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**Commercial and Fair Business
Component Financial Summary**

All dollars shown in thousands

	FY2008 Actuals	FY2009 Management Plan	FY2010 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	3,086.5	3,049.9	3,307.6
72000 Travel	50.1	30.2	30.2
73000 Services	743.8	1,287.3	1,287.3
74000 Commodities	60.7	83.9	83.9
75000 Capital Outlay	38.8	25.4	25.4
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	3,979.9	4,476.7	4,734.4
Funding Sources:			
1004 General Fund Receipts	1,185.2	1,208.7	1,381.3
1005 General Fund/Program Receipts	0.0	50.0	50.0
1007 Inter-Agency Receipts	2,364.7	2,787.7	2,866.0
1108 Statutory Designated Program Receipts	430.0	430.3	437.1
Funding Totals	3,979.9	4,476.7	4,734.4

Estimated Revenue Collections

Description	Master Revenue Account	FY2008 Actuals	FY2009 Management Plan	FY2010 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	2,364.7	2,787.7	2,866.0
General Fund Program Receipts	51060	0.0	50.0	50.0
Statutory Designated Program Receipts	51063	430.0	430.3	437.1
Restricted Total		2,794.7	3,268.0	3,353.1
Total Estimated Revenues		2,794.7	3,268.0	3,353.1

**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	1,258.7	0.0	3,218.0	4,476.7
Adjustments which will continue current level of service:				
-FY2010 Wage and Health Insurance Increases for Bargaining Units with Existing Agreements	33.9	0.0	85.1	119.0
-Transfer PCN 03-0195 with Funding from Statehood Defense	138.7	0.0	0.0	138.7
FY2010 Governor	1,431.3	0.0	3,303.1	4,734.4

**Commercial and Fair Business
Personal Services Information**

Authorized Positions			Personal Services Costs	
	<u>FY2009</u> <u>Management</u> <u>Plan</u>	<u>FY2010</u> <u>Governor</u>		
Full-time	26	27	Annual Salaries	2,212,554
Part-time	2	2	COLA	87,424
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	1,027,045
			<i>Less 0.58% Vacancy Factor</i>	(19,423)
			Lump Sum Premium Pay	0
Totals	28	29	Total Personal Services	3,307,600

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	1	0	1	0	2
Attorney IV	9	0	4	0	13
Attorney V	3	0	1	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 II	1	0	0	0	1
Totals	21	0	8	0	29