

State of Alaska FY2010 Governor's Operating Budget

Department of Law

Department of Law

Mission

The mission of the Department of Law is to provide legal services to state government and to prosecute crime.

Core Services

- The Office of the Attorney General provides overall management of the Department of Law. The Attorney General, as the principal executive officer of the department, is responsible for both the legal and the administrative aspects of the department's operations. The Attorney General works closely with the Governor and immediate staff providing legal counsel and advice as the Governor addresses priorities and conducts state affairs.
- The Attorney General serves as a trustee on the Exxon Valdez Trustee Council and represents the Department of Law on a number of interdepartmental efforts.
- The Criminal Division seeks to assure safe and healthy communities by prosecuting and convicting criminal offenders in urban and rural Alaska, by upholding those convictions on appeal, and by providing legal services supporting the efforts of criminal justice agencies. The Division prosecutes violations of state criminal law.
- The Criminal Division provides focused and specialized prosecution in a number of areas.
- The Criminal Division provides assistance to victims and witnesses of crimes and ensures that victims are kept informed of important events in their cases and that their constitutional and statutory rights are protected.
- The Criminal Division supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial, and conviction, by litigating all criminal appellate proceedings and state and federal post-conviction and habeas corpus proceedings. The Division also handles civil litigation challenging statutes related to criminal justice, such as sex offender registration, DNA databank, victims' rights and provides general legal services to criminal justice agencies.
- The Civil Division protects the human, financial, and natural resources of the state. The Division serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil actions by defending and prosecuting all civil litigation to which the state is a party.
- The Civil Division handles legal matters for, and provides legal advice to the Governor, executive branch agencies, and -- upon request -- the legislative and judicial branches; reviews regulations prepared by executive agencies; drafts legislation for introduction by the Governor; and reviews all legislation before it is acted upon by the Governor.
- Activities of the Civil Division help protect the financial and natural resources of the state, defend Alaskans' access to the state's land and natural resources, and ensure that the laws and regulations that govern businesses, individuals, and government agencies are constitutional.
- The Civil Division takes action to protect children from abuse and neglect, enforce child support obligations, guarantee that state programs are administered fairly and that money owed to the state is collected, defends the state's interests relative to the federal government, and defends the state from unreasonable demands for payment of costs of lawsuits, personnel actions, and personal injuries.
- The Administrative Services Division provides the core administrative services that are essential to the day-to-day operation of the Department of Law and to managing the resources of the department. These include budgeting, procurement, accounting, computer and network services, database administration, timekeeping and billing, and monitoring and forecasting departmental expenses.

| End Result | Strategies to Achieve End Result |
|--|---|
| <p>A: Improve Public Protection and Effectiveness of Legal Services</p> <p>Target #1: Increase to 75% the number of cases on which the State prevailed on the merits at final</p> | <p>A1: Improving Public Safety against Serious Assault</p> <p>Target #1: Reduce the rate of violent crime reported in Alaska by 1% per year.</p> <p>Status #1: In FY 2007 the number of violent crimes was</p> |

| | |
|--|---|
| <p>resolution. <u>Status #1:</u> The data for this target is not readily available.</p> | <p>2,645 reflecting an increase of 8% over the previous year. It appears the FY 2006 increase that was flat may have been an anomaly however, the two year growth rate is still only 8% compared to 16% for the two year period 2003-2005.</p> <p>A2: Enhance the welfare of children</p> <p><u>Target #1:</u> Reduce the number of children in foster care in Alaska by 5%. <u>Status #1:</u> Neither the Department of Law nor the Office of Children's Services have control over the number of children in foster care so a new measure has been established and is discussed further in the analysis.</p> <p><u>Target #2:</u> Increase the amount of support received by families through the Child Support Services Division (CSSD) by 1% each year. <u>Status #2:</u> The amount of support received by families through CSSD increased by nearly 6%.</p> <p><u>Target #3:</u> Reduce the number of child sexual abuse cases by 5%. <u>Status #3:</u> In 2007 the number of child sexual abuse cases was 265 reflecting an increase of 2% over the previous year. It appears the 2006 14% decrease is more reflective of the 5 year trend that reflects a 19% decrease.</p> <p>A3: Enhance Consumer Protection in Alaska</p> <p><u>Target #1:</u> Increase effective consumer protection enforcement through successful resolution of consumer complaints, enforcement actions and consumer education. <u>Status #1:</u> Consumer protection enforcement effectively resolved or provided additional education in 294 situations, an increase of over 2% when compared to the prior year.</p> <p>A4: Improve Agency Decision Making</p> <p><u>Target #1:</u> 5% reduction per year in legal challenges to final agency decisions in which the state does not prevail. <u>Status #1:</u> The number of final agency decisions that the state did not prevail dropped 25% from the previous year.</p> |
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FY2010 Resources Allocated to Achieve Results

FY2010 Department Budget: \$80,472,400

Personnel:

| | |
|--------------|------------|
| Full time | 552 |
| Part time | 7 |
| Total | 559 |

Performance

A: Result - Improve Public Protection and Effectiveness of Legal Services

Target #1: Increase to 75% the number of cases on which the State prevailed on the merits at final resolution.

Status #1: The data for this target is not readily available.

A1: Strategy - Improving Public Safety against Serious Assault

Target #1: Reduce the rate of violent crime reported in Alaska by 1% per year.

Status #1: In FY 2007 the number of violent crimes was 2,645 reflecting an increase of 8% over the previous year. It appears the FY 2006 increase that was flat may have been an anomaly however, the two year growth rate is still only 8% compared to 16% for the two year period 2003-2005.

| Year | YTD Total | Target | Variance |
|------|-----------|--------|----------|
| 2007 | 2,645 | 2,449 | (196) |
| 2006 | 2,449 | 2,452 | 3 |
| 2005 | 2,452 | 2,268 | (184) |
| 2004 | 2,268 | 2,105 | (163) |
| 2003 | 2,105 | NA | NA |

A2: Strategy - Enhance the welfare of children

Target #1: Reduce the number of children in foster care in Alaska by 5%.

Status #1: Neither the Department of Law nor the Office of Children's Services have control over the number of children in foster care so a new measure has been established and is discussed further in the analysis.

Analysis of results and challenges: Neither the Department of Law nor the Office of Children's Services really have control over the number of children in foster care. In fact, recent statistics from the Office of Children's Services show that the number of children in foster care increased by 12.58% from 1,876 in October 2005 to 2,112 in October 2006. However, the Department of Law established this as a strategy because attorneys in the department are responsible for filing petitions to terminate parental rights or petitions for guardianship. If a child is adopted or placed in a guardianship, they are released from state custody, thereby reducing the number of children in foster care. To accomplish this, we set a goal of increasing the numbers of petitions for termination or guardianship that are finalized.

Target #2: Increase the amount of support received by families through the Child Support Services Division (CSSD) by 1% each year.

Status #2: The amount of support received by families through CSSD increased by nearly 6%.

| Year | YTD Total |
|------|--------------------|
| 2008 | 97,684.1 +5.69% |
| 2007 | 92,429.0 |

Target #3: Reduce the number of child sexual abuse cases by 5%.

Status #3: In 2007 the number of child sexual abuse cases was 265 reflecting an increase of 2% over the previous year. It appears the 2006 14% decrease is more reflective of the 5 year trend that reflects a 19% decrease.

| Year | YTD Total | Target | Variance |
|------|-----------|--------|----------|
| 2007 | 265 | 259 | (7) |
| 2006 | 259 | 300 | 41 |
| 2005 | 300 | 299 | (1) |
| 2004 | 299 | 326 | 27 |
| 2003 | 326 | NA | NA |

A3: Strategy - Enhance Consumer Protection in Alaska

Target #1: Increase effective consumer protection enforcement through successful resolution of consumer complaints, enforcement actions and consumer education.

Status #1: Consumer protection enforcement effectively resolved or provided additional education in 294 situations, an increase of over 2% when compared to the prior year.

| Year | Education Events | Invest/Prosecutions | Antitrust Matters | Complaint Resolutions | YTD Total |
|------|------------------|---------------------|-------------------|-----------------------|----------------|
| 2008 | 7 +75% | 47 -29.85% | 8 0% | 232 +11% | 294 +2.08% |
| 2007 | 4 0% | 67 +81.08% | 8 -20% | 209 +2.96% | 288 +13.39% |
| 2006 | 4 | 37 | 10 | 203 | 254 |

A4: Strategy - Improve Agency Decision Making

Target #1: 5% reduction per year in legal challenges to final agency decisions in which the state does not prevail.

Status #1: The number of final agency decisions that the state did not prevail dropped 25% from the previous year.

Appeals in Which the State Did Not Prevail

| Year | YTD Total |
|------|-----------|
| 2008 | 6 |
| 2007 | 8 |

Methodology: 3 of the 6 cases included a mixed decision, where the state won on some issues and lost on some issues.

Analysis of results and challenges: Three out of the six FY 2008 cases were split decisions, where the state prevailed on some parts of the decision.

Key Department Challenges

STATEWIDE

RECRUITMENT AND RETENTION

Attracting attorneys willing to serve the public as state prosecutors and Assistant Attorneys General (AAG) in both urban and rural Alaska is a continuing challenge. The high caseload is only one of the factors that contributes to high attorney turnover and makes private practice more attractive to both entry-level and especially, experienced attorneys. Attracting qualified attorneys to rural locations such as Bethel, Kotzebue and Barrow has long been a challenge but we are also experiencing difficulties with recruiting and retaining attorneys in our urban locations. The primary reason for this serious problem is that the state's salaries for attorneys are not competitive with similar jobs in both the private and public sector. Law school graduates often have large student loans and cannot afford to take state legal positions when other public and private sector employers pay higher entry salaries. We are also losing experienced attorneys with many years of state service to jobs with higher pay in other public and private offices.

The Department of Law believes a comprehensive solution needs to be found to address this problem. Attorneys are paid according to the current statutorily mandated pay scale used for all partially exempt positions. There is a significant disconnect between the statutory pay schedule used for all partially exempt employees and actual market rates of pay for attorneys at other public and private offices. The hiring and retention of qualified, skilled attorneys directly impacts the State's ability to achieve results beneficial to the state.

TECHNOLOGY UPGRADE

The Department has embarked upon a multi-year several-tiered project to enhance the organization and efficiency of legal work through the use of technology. In the spring of 2005, a consultant was hired to review off-the-shelf applications that are available to the legal community to improve timekeeping and billing, provide full-blown case management and document management as well as potentially replace and unify the beleaguered collections and restitution databases. The consultant recommended the implementation of ProLaw to provide a unified solution. The project is well underway at this point but will create challenges as we go forward with implementation. In addition to the implementation of this major case management system, the Department has added numerous ancillary discovery and document management systems over the last few years. While these systems all combine to provide the resources the Department needs to meet the ever growing external demands for information, it has resulted in a deficiency in staffing who are expert in the use of these systems.

The Criminal Division's case management system, CRIMES, was implemented ten years ago and needs to be upgraded. The Case Management System has reached a critical point as both the software and hardware have become seriously out of date. After a review of the Pro Law case management system, the Division decided to upgrade CRIMES in part because of needed functionality not available in Pro Law. The Department received \$200,000 to upgrade the software as well as migrate it from Oracle to Microsoft SQL and replace the existing servers that are over eight years old. Although staff turnover has delayed this project, we anticipate it will be in full swing in FY 2010.

CRIMINAL DIVISION

The large caseload each prosecutor carries is a problem across the state. While some locations are worse than others, the number of prosecutors statewide is fewer than the defense and fewer than the judicial bench. On average prosecutors are outnumbered 1.2 to 1 by judges and magistrates.

The Kenai District Attorney's (DA's) office is facing the situation of having more judges/magistrates than there are prosecuting attorneys. In addition, the in-progress expansion of the court house will soon make it possible for more trials to be scheduled than there are DA's to attend court. Kenai's case load has increased from a new referral level of 3,414 cases in 2005 to 4,222 new cases referred in 2007.

The Bethel District Attorney's Office presently has 6 attorneys and services an area of 56 villages, an area that is larger than many states. The attorneys in this office sometimes cannot appear in court because the number of judges in the region is greater than the number of assistant district attorneys. There are more courtrooms in operation than Assistant District Attorney's (ADA's) to staff them. According to *Crimes in the United States, 2006*, the annual FBI compilation of crime statistics, Alaska has a rate of sexual assault of 76 per 100,000. This is over

twice the national average. Forty-eight percent of these sexual assaults are handled by C Detachment, Division of the Alaska State Troopers located in Bethel. In 2005, the number of reported rapes in Bethel was the same as Anchorage. Sexual Assault cases are the most time consuming, complicated and have the greatest emotional toll on victims, their families and the prosecutors who appear with them in court.

CIVIL DIVISION

Collection and Child Support: The primary challenge for the child support unit will be addressing the emergence of federally funded IV-D tribal child support agencies within Alaska. In March 2007, the federal Office of Child Support approved the Tlingit and Haida Indian Tribes application to operate an IV-D child support agency. It is anticipated the federal government will approve the Aleutian Pribilof Islands Association, Inc.'s application to operate an IV-D tribal child support agency beginning October 2008. Due to the unique legal landscape in Alaska concerning native law, the child support unit is providing additional assistance to the Alaska Child Support Services Division (CSSD) to address legal issues related to tribal child support agencies.

Adult restitution cases have increased from 800 in 2002 to 4,000 in 2007. Only one Associate Attorney handles all 4,000 of these cases. This caseload only accounts for cases entered into our database. We currently have a back log of approximately 1,500 restitution cases that have not been entered into our database. We frequently have to bring in temporary help to prevent the growth of the back log of cases and to assure restitution payments are sent to victims in a timely manner. It takes the collections unit over two months to forward the payment request to fiscal.

Commercial and Fair Business: 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.

Environmental Law: The Environmental Law Section will investigate and pursue appropriate legal actions to hold British Petroleum (BP) and others accountable for oil spills from pipeline corrosion and the resulting partial shutdown of the Prudhoe Bay field. The section hopes to resolve the Exxon Valdez oil spill re-opener issue.

The section will partner with the Department of Environmental Conservation (DEC) to develop a program and detailed regulations to implement provisions of Ballot Measure 2 (the "Cruise Ship Initiative") approved by the voters in the August 2006 primary elections.

Human Services and Child Protection: Statutory changes at the state and federal level have necessitated changes in how long children may remain in the child protection legal system. These changes move cases to conclusion faster to ensure that when reunification with the family is not in the child's best interest the child can be made legally eligible for placement in a permanent home more quickly. The changes also mandate additional court proceedings in order to ensure that the department is quickly moving to achieve a permanent plan for the child. The accelerated schedules, additional hearings, and appropriate document preparation mean that each attorney carries a significant caseload. Statewide, attorneys continue to prosecute approximately 3,000 ongoing Child-In-Need-Of-Aid (CINA) cases, carrying an average of 141 plus cases, significantly higher than the 100 cases per full time attorney suggested by the U.S. Department of Health and Human Services, Administration for Children and Families.

One AAG is located in Kenai and carries a caseload of 214 children. In addition, there are up to 70 children's cases in Homer that would be logically serviced out of Kenai, but are now handled out of Anchorage as a stopgap measure to alleviate the heavy caseload in Kenai. This case transfer comes at a sacrifice to costs (primarily travel) and effectiveness (it is more difficult to talk to witnesses and other relevant individuals). Thus there are a total of up to 284 children that either are, or should be serviced out of Kenai. Federal guidelines say that the caseload should be 100 cases per attorney. Our statewide average is currently 141 per attorney and is increasing. Last year's average was 125 cases per attorney.

Labor and State Affairs: The section will continue to represent the state in two education cases with potentially significant budget impacts. The first case involves a claim that the state discriminated against rural school districts in the manner used to fund school facilities. This case also involves claims that the state breached fiduciary

obligations when it changed the public school trust from a land-based trust to a money-based trust. The second education case is a challenge under the Alaska Constitution that public education is inadequately funded and seeks significant additional funds for education. The court issued its decision in the second case in FY 2007, and the state prevailed on most issues. The court retained jurisdiction on one issue - the sufficiency of state oversight of the school districts - and conducted a hearing on this issue in FY 2009. The section will need to support the Department of Education and Early Development's efforts to expand oversight of the school districts in response to the court's action. In addition, an appeal requiring additional legal services is anticipated.

The section will need to address the increased demand for litigation support to respond to electronic discovery requests. These require time consuming searches and reviews of electronic files responsive to the request.

The section will need to address an increase in the workload concerning Alaska's public official and legislative financial disclosure, campaign finance, and lobbying laws that the Alaska Public Offices Commission administers. It will need to support the commission's efforts to change its regulations to implement legislative changes in recent years and to collect unpaid penalty assessments.

The division will pursue an action on behalf of the state and the benefit trust funds concerning the breach of the professional duties of the state's former actuary.

Natural Resources: The section advises the Alaska Department of Fish and Game (ADF&G) regarding Endangered Species Act (ESA) issues and the North Pacific Fisheries Management Council. The section anticipates that legal work in the area of ESA application will increase significantly.

The section will continue to be involved in litigation concerning Alaska's right to charge nonresidents higher annual fees to participate in the state's commercial fisheries. Plaintiffs in the case are seeking millions of dollars in refunds and interest. The Alaska Supreme Court ruled that the state must calculate the permissible differential on an individual basis.

Oil, Gas and Mining: Matters of significance for this section include:

Oil and Gas Pipeline Related Matters - The Oil, Gas, and Mining section will continue to expend substantial efforts to monitor the TransAlaska Pipeline System (TAPS) tariffs and to monitor and participate where appropriate in state and federal regulatory oversight of the tariffs of all common carrier oil and gas pipelines operating in the state. This vigilance can earn the state millions of dollars in royalties and production taxes each year. Further, as production of oil and gas from current developments declines in Alaska, the state's participation in tariff regulation is becoming more important in encouraging additional producers to invest in exploration of new areas in the state, by ensuring fair transportation rates and access to existing pipeline infrastructure for production from new fields.

During FY 2010 the Oil, Gas and Mining section will be briefing and participating in post-hearing proceedings and appeals stemming from the decision by the Federal Energy Regulatory Commission (FERC) on the TAPS 2005 and 2006 tariffs, and continue the litigation process in protest of the 2007 and 2008 TAPS tariffs. The State will also examine the TAPS carriers' proposed 2010 tariffs and consider whether we will file a protest. The State will continue renegotiation efforts on the TAPS Interstate and Intrastate Settlement Agreements that were executed in 1985 and expire by their terms in 2011. Finally, the State's protest of expenditures by the TAPS' carriers on the Strategic Reconfiguration project will proceed through discovery and hearing processes at the FERC through FY 2010.

North Slope Gas Pipeline-Related Issues - The section will continue to assist in arrangements to construct a gasline to transport Alaska North Slope gas to market. The known gas resource on Alaska's North Slope is huge. The potential gas resource on unexplored lands on the North Slope is much larger. Developing this resource is one of the most promising opportunities to strengthen and support Alaska's economic future. This section will continue to work closely with the Governor's Office and the Departments of Natural Resources and Revenue to provide legal assistance in implementation of the Alaska Gasline Inducement Act (AGIA) license, including providing analysis on relevant constitutional and other state law issues.

Tax Cases - The section is pursuing millions of dollars in past-due taxes and interest that are owed by oil and gas producers to the state. In some cases, hundreds of thousands of documents are being examined, many potential witnesses must be interviewed or deposed, and experts retained in order to prepare for hearing. These hearings can last for several weeks. At this time, there is a major corporate income tax case and a number of smaller tax cases

before the Office of Administrative Hearings. A major production tax case, which is at the informal conference stage, is an appeal of the Department of Revenue's decision to aggregate properties within the Prudhoe Bay Unit for purposes of determining the Economic Limit Factor (ELF). The ELF appeal stems from a January 2005 decision by the Department of Revenue to aggregate six satellite producing areas with the Prudhoe Bay producing areas for purposes of calculating the ELF. The effect of this decision was to increase North Slope production taxes significantly. The impact of this decision was limited to a total of 14 months because the ELF was repealed by the amendments made to the state's production tax laws in 2006.

The section also provides support and represents the Department of Revenue in appeals from the annual oil and gas property tax assessments, including the valuation of TAPS for taxes due. The section is representing the Department of Revenue in a trial before the Alaska superior court over the State Assessment Review Board's 2006 and 2007 property tax valuation of TAPS. The trial is scheduled for February 2009.

Opinions, Appeals and Ethics: Indian law issues continue to impact virtually every area of state government's responsibilities. This section is working to provide advice on a wide variety of issues including civil and criminal jurisdiction and authority, Indian gaming, waivers of sovereign immunity, Indian country, tribal status, the Indian Child Welfare Act, Public Law 280, and many more. We anticipate this area of law and legal services to be a continuing challenge for the section.

Statehood Defense: This component provides funding for the Natural Resources Section for Statehood Defense. Section staff will participate in the Endangered Species process as it relates to decisions or proposals to polar bears, Cook Inlet beluga whales, other species and management of Pacific salmon and to ensure adherence to the Pacific Salmon Treaty. Included in the FY 2010 budget is a \$187.0 increment to maintain the same staffing level as FY 2009. The FY 2006 budget reduced the Department's general fund budget because carry-forward funding was available to fund a position. This request will re-establish the funding for the position in the operating budget.

Significant Changes in Results to be Delivered in FY2010

Please see discussion of individual section's expectations in the component level summaries.

Major Department Accomplishments in 2008

CRIMINAL DIVISION:

Trial Advocacy Training: In 2007 the division provided the first ever Trial Advocacy Training in Alaska for 25 of our newest attorneys. In 2008 the division followed up that training with a Trial Advocacy Training II course for the same 25 people. The week long training was provided by instructors from the National Advocacy Center and took place in Fairbanks. Funding was provided by a grant the division requested and was awarded from the U.S. Department of Justice.

Sexual Assault Case Training: The division provided a three day training for all attorneys and paralegals employed in district attorney's offices across the state. The focus of the training was on handling sexual assault cases. Funding was provided through a grant from the U.S. Department of Justice, Office on Violence Against Women.

Passage of Significant Criminal Legislation: The Criminal Division, Office of the Governor, and the Legislature worked cooperatively in making changes to criminal law in order to better protect the public. SB 265 was an omnibus bill which made several small changes to the criminal law in order to make a big leap in crime prevention. The law makes bootlegging a class C felony for smaller amounts of alcohol if the defendant has two or more convictions for bootlegging in the preceding 15 years; adopts mandatory minimum terms for bootlegging that are similar to the mandatory minimum terms for drunk driving and refusal; creates a new crime of criminally negligent burning in the first degree, a class C felony, if the defendant has two or more convictions of criminally negligent burning or arson in the preceding 10 years and the former crime becomes criminally negligent burning in the second degree, a class A misdemeanor; clarifies that a judicial officer may issue a search warrant for evidence located both within and outside the state; allows a judicial officer to issue a search warrant based on telephonic testimony; makes changes in the treatment of persons found incompetent to be tried for a crime and requires notice to prosecutors before release of incompetent persons; and requires a sex offender or child kidnapper to be current with his or her sex offender registration obligations before receiving a permanent fund dividend.

HB 307 raises what otherwise would be misdemeanor injury assault to third degree assault (class C felony) if the defendant has been convicted on two or more prior occasions in the preceding 10 years of crimes against a person and raises animal cruelty to a class C felony if the defendant has been convicted of animal cruelty on two occasions in the preceding 10 years.

Division Policy Manual Updated: Through a grant provided by the U.S. Department of Justice, the Criminal Division District Attorneys and Office Chiefs were able to convene in Fairbanks for two days to discuss, revise, and update the division's policy manual. Several key policies were revised and new policies created. A revised manual was distributed to every attorney in the division.

Osborne Appeal Accepted by the U.S. Supreme Court: The United States Supreme Court granted the State of Alaska's petition for a writ of certiorari in the Osborne case and briefing has begun. This case was heard twice in the Alaska Court of Appeals and twice has had hearings before the trial court on the issue of post conviction relief. Osborne, not prevailing in state court, filed a 1983 action in federal court where the federal judge summarily ordered post conviction DNA testing. Alaska appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit Court ruled in favor of Mr. Osborne. Their decision implicated multiple issues of national concern which compelled Alaska to seek certiorari.

Security Updates - The Sitka District Attorney's Office was remodeled to better fit the needs, and provide better security, of the prosecutor and staff. A contract has been signed to do the same for the Dillingham office.

CIVIL DIVISION:

Collections and Support: The Collections and Support Section collected over \$6.8 million in FY 2008, an increase of over \$1 million from FY 2007. These collections included criminal fines, cost of appointed counsel, cost of imprisonment, civil judgments owed to the State of Alaska, and victim restitution. Of this amount, the unit collected and disbursed to victims over \$2 million in restitution. The section resolved and closed over 1,500 child support files in FY 2008.

Commercial and Fair Business: The Commercial and Fair Business 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 \$1.9 million for costs, attorney's fees and consumer protection enforcement and education.

Environmental Law: In FY 2008 the Environmental Law component recovered approximately \$7.9 million for state costs and penalties related to violations of state environmental laws and obtained cleanup agreements with polluters with an estimated value of over \$57.6 million for a total benefit to the state of approximately \$65.5 million.

The state intervened in a court challenge by environmental groups to the federal permits for tailings disposal at the Kensington Mine. The federal District Court upheld the permits, but on appeal the Ninth Circuit Court of Appeals reversed, invalidating the permits and halting further construction at the mine. Both the state and Coeur Alaska, Inc., owner of the mine, petitioned the U.S. Supreme Court for certiorari review, and the Court granted those petitions in June 2008. The case is now in the briefing stage and will be argued on January 12, 2009.

The component assisted DEC in the continuing investigation of the 2006 BP pipeline spills and shutdowns due to corrosion.

Child Protection Section: The Child Protection Section continued to prosecute approximately three thousand ongoing child-in-need-of-aid (CINA) cases statewide, moving toward the goal of achieving permanency for children, whether it is reunification with their parents or other permanent placements, such as adoption or guardianship.

The section represented the Department of Health and Social Services (DHSS), Office of Children's Services (OCS), in a lawsuit filed by four Alaska Native villages alleging violations of the Indian Child Welfare Act, the Multi-Ethnic Placement Act, and the Adoption and Safe Families Act.

The section also represented DHSS, OCS in a lawsuit filed by four other Alaska Native villages challenging the advice given to OCS in a 2004 Attorney General's Opinion regarding tribal jurisdiction over child protection cases.

The section represented DHSS, OCS in a lawsuit filed in federal court by the Native Village of Kaltag and two individuals. The main issue raised by the case is whether tribal courts of Alaska Native villages without reservations have the legal authority to initiate child protection cases that can lead to the termination of parental rights and to issue adoption orders entitled to be given full faith and credit by the state.

Labor and State Affairs: The Labor and State Affairs Section prevailed in a constitutional challenge to a law expanding a property tax exemption to non-secular educational institutions.

The Section continued to represent the Department of Education and Early Development in court proceedings (including mediation) in *Moore v. State*, in which a number of school districts and individuals challenged the adequacy of educational services under the state constitution.

Natural Resources: The Natural Resources Section continued to successfully defend the state's predator control program.

The section assisted the Board of Agriculture and Conservation in collections, foreclosures, and management of fund assets including Mt. McKinley Meat & Sausage and Matanuska Maid Dairy.

The section successfully defended the University lands bill in superior court.

The section successfully defended the State's ownership and control of the Alaska Grown logo.

Oil, Gas and Mining: The Oil, Gas and Mining Section assisted the Governor's office and the Departments of Natural Resources and Revenue in implementing the Alaska Gas Inducement Act (AGIA). The section assisted the departments with reviewing license applications for compliance with AGIA and the Request for Applications, developing the Commissioners' Findings and Determination, and obtaining legislative approval to issue the AGIA license. Also in FY 2008, section attorneys began considering the legal issues that will be involved in implementing the license.

The section represented the Department of Natural Resources (DNR) in court proceedings which affirmed key components of the agency decisions for Point Thomson Unit and assisted in remand proceedings to the agency for additional consideration of remedy. The section assisted in the DNR decisions on remand. During the period Lessees paid the state \$20 million for failure to drill and will relinquish approximately 29,000 acres of leases. The section also testified before the Alaska Oil and Gas Conservation Commission (AOGCC) on behalf of the Department of Natural Resources and filed a motion to dismiss ExxonMobil's application for compulsory unitization.

The FERC issued a final Opinion and Order in the TAPS interstate tariff litigation. The Department of Revenue estimates that the resulting refunds will benefit the State in an amount exceeding \$200 million.

The section assisted the Department of Revenue in negotiating a settlement with a major oil and gas producer that resulted in the producer paying over \$379 million in additional corporate income tax and interest to the state.

The section assisted the Department of Revenue in property tax hearings before the State Assessment Review Board that resulted in the owners of the TransAlaska Pipeline System owing \$127 million in additional oil and gas property tax, of which the state would receive \$58.7 million and the municipalities and unincorporated boroughs throughout the state would receive the remainder.

Opinions, Appeals and Ethics: The Opinions, Appeals and Ethics Section provided legal advice on over 380 ethics issues, provided nearly 40 ethics trainings, rendered several ethics opinions and memoranda of advise on topics such as outside employment, post-state employment, gifts, contracts and investigations.

In FY 2008, the section had 21 Children In Need of Aid (CINA) appeals pending before the Alaska Supreme Court. The section prevailed on 14, had six dismissed and lost one.

Regulatory Affairs and Public Advocacy: The Regulatory Affairs and Public Advocacy (RAPA) Section, on behalf of the Attorney General (AG), issued three "Public Advocate Advisories" and on behalf of the Attorney General the section filed comments or briefs in 13 dockets and pre-filed 16 sets of direct testimony in 12 dockets: two electric utility rate cases, five water/sewer utility rate cases, a refuse utility rate case, two statewide natural gas utility cases, a gas pipeline rate case, and one local exchange carrier telecommunications rate case. RAPA also participated in five evidentiary rulemaking and consumer input hearings, and two public workshops.

Some examples of notable actions in support of rate payers include:

Anchorage Water and Wastewater Utility (AWWU): The RAPA filed expert testimony analyzing the revenue requirement and rates of AWWU's second rate case filing in as many years. The parties entered into a stipulation in which the municipal water utility agreed to a 7% rate increase, as opposed to its proposed 14.5% rate increase. Similarly, the sewer utility agreed to a rate increase of 9.5%, reduced from its proposed 13% rate increase.

Bethel Utilities Corporation (BUC): The electric utility filed for a 9.8% rate increase. RAPA's analysis and pre-filed testimony identified a smaller rate increase of 3.74%. The parties settled on a rate increase of 5.48% which resulted in refunds to ratepayers.

Statehood Defense: This component provides funding for the Natural Resources Section for Statehood Defense. Section members 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.

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

Transportation: The section assisted with development of infrastructure projects such as prison construction and expansion projects in the Mat-Su Borough and Seward, Knik Arm Crossing, Anchorage and Fairbanks International Airports concourse and airfield renovations, parking garages in downtown Anchorage and Juneau, the new Kenai River Bridge, Juneau Access, Fairbanks and Anchorage fish hatcheries, the Department of Public Safety Crime Laboratory, and a DHSS McLaughlin Youth Center Expansion as well as acquisition of property for roadways around the state.

Prioritization of Agency Programs

(Statutory Reference AS 37.07.050(a)(13))

Prosecuting crime and providing legal services to state government are the top priorities of the Department of Law.

The Civil Division (RDU) protects the human, financial and natural resources of the State, including such diverse duties as defending Alaskans' access to the State's land and natural resources and protecting children from abuse and neglect. The Division ensures that laws and regulations that govern businesses, individuals, and government agencies are constitutional and are followed.

The Criminal Division (RDU) protects the public by prosecuting violations of state criminal law committed by adults and juveniles, placing the offenders under appropriate controls and complying with Constitutional or statutory provisions requiring communication to crime victims.

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Department Budget Summary by RDU

All dollars shown in thousands

| | FY2008 Actuals | | | | FY2009 Management Plan | | | | FY2010 Governor | | | |
|--------------------------------------|-----------------|----------------|-----------------|-----------------|------------------------|----------------|-----------------|-----------------|-----------------|----------------|-----------------|-----------------|
| | General Funds | Federal Funds | Other Funds | Total Funds | General Funds | Federal Funds | Other Funds | Total Funds | General Funds | Federal Funds | Other Funds | Total Funds |
| Formula Expenditures None. | | | | | | | | | | | | |
| Non-Formula Expenditures | | | | | | | | | | | | |
| Criminal Division | 20,735.2 | 2,215.7 | 2,181.6 | 25,132.5 | 22,911.6 | 3,928.8 | 1,755.1 | 28,595.5 | 24,028.7 | 3,101.3 | 1,821.8 | 28,951.8 |
| Civil Division | 20,329.0 | 0.0 | 22,900.2 | 43,229.2 | 25,784.0 | 0.0 | 21,348.0 | 47,132.0 | 25,967.6 | 0.0 | 22,161.2 | 48,128.8 |
| Administration and Support | 2,069.8 | 29.7 | 918.4 | 3,017.9 | 2,143.7 | 130.8 | 950.2 | 3,224.7 | 2,178.0 | 132.4 | 1,081.4 | 3,391.8 |
| BP Corrosion | 0.0 | 0.0 | 0.0 | 0.0 | 4,700.0 | 0.0 | 0.0 | 4,700.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Totals | 43,134.0 | 2,245.4 | 26,000.2 | 71,379.6 | 55,539.3 | 4,059.6 | 24,053.3 | 83,652.2 | 52,174.3 | 3,233.7 | 25,064.4 | 80,472.4 |

| Funding Source Summary | | | |
|---|---------------------------|---------------------------------------|------------------------|
| <i>All dollars in thousands</i> | | | |
| Funding Sources | FY2008 Actuals | FY2009 Management Plan | FY2010 Governor |
| 1002 Federal Receipts | 2,245.4 | 4,059.6 | 3,233.7 |
| 1003 General Fund Match | 167.8 | 172.0 | 177.8 |
| 1004 General Fund Receipts | 42,574.9 | 54,660.5 | 51,273.5 |
| 1005 General Fund/Program Receipts | 391.3 | 625.1 | 638.5 |
| 1007 Inter-Agency Receipts | 21,989.5 | 19,907.8 | 20,744.5 |
| 1037 General Fund / Mental Health | | 81.7 | 84.5 |
| 1055 Inter-agency/Oil & Hazardous Waste | 450.0 | 532.3 | 532.3 |
| 1061 Capital Improvement Project Receipts | 326.3 | | 104.1 |
| 1092 Mental Health Trust Authority Authorized Receipts | | | 25.0 |
| 1105 Alaska Permanent Fund Corporation Receipts | 1,477.0 | 1,477.0 | 1,477.0 |
| 1108 Statutory Designated Program Receipts | 430.0 | 637.9 | 644.7 |
| 1141 RCA Receipts | 1,327.4 | 1,498.3 | 1,536.8 |
| Totals | 71,379.6 | 83,652.2 | 80,472.4 |

| Position Summary | | |
|-------------------------|---------------------------------------|------------------------|
| Funding Sources | FY2009 Management Plan | FY2010 Governor |
| Permanent Full Time | 551 | 552 |
| Permanent Part Time | 8 | 7 |
| Non Permanent | 0 | 0 |
| Totals | 559 | 559 |

Summary of Department Budget Changes by RDU

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 | 55,539.3 | 4,059.6 | 24,053.3 | 83,652.2 |
| Adjustments which will continue current level of service: | | | | |
| -Criminal Division | 765.9 | -827.5 | 41.7 | -19.9 |
| -Civil Division | -6,602.1 | 0.0 | 573.7 | -6,028.4 |
| -Administration and Support | 34.3 | 1.6 | 30.0 | 65.9 |
| -BP Corrosion | -4,700.0 | 0.0 | 0.0 | -4,700.0 |
| Proposed budget increases: | | | | |
| -Criminal Division | 351.2 | 0.0 | 25.0 | 376.2 |
| -Civil Division | 6,785.7 | 0.0 | 239.5 | 7,025.2 |
| -Administration and Support | 0.0 | 0.0 | 101.2 | 101.2 |
| FY2010 Governor | 52,174.3 | 3,233.7 | 25,064.4 | 80,472.4 |