

State of Alaska FY2012 Governor's Operating Budget

Department of Law Civil Division Results Delivery Unit Budget Summary

Civil Division Results Delivery Unit

Contribution to Department's Mission

The mission of the Civil Division is to protect the human, financial and natural resources of the state.

Core Services

- Protecting the Safety and Physical and Financial Well-being of Alaskans.
- Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Our Natural Resources.
- Protecting the Fiscal Integrity of the State.
- Promoting and Defending Good Governance.

Results at a Glance

(Additional performance information is available on the web at <http://omb.alaska.gov/results>.)

END RESULT A: Improve Client-Agency Decision Making

- Of the 97 FY 2010 challenges, 10 were reversed, compared to 8 challenges in FY 2009.

Status of Strategies to Achieve End Result

- The Department provided various trainings 68 times to agencies throughout the year.
- The Department exceeded their target for reviewing agency regulations for clarity and statutory consistency again in FY 2010.
- The Department performed legal reviews of agency approved regulations delivered within the mutually agreed upon timelines 98% of the time.
- The Department frequently provides information on the agency regulations adoption process to state agencies, state boards and commissions, legislative committees as well as the general public.
- The ethics attorney conducted ten ethics trainings in FY 2010 compared to nine in FY 2009.
- We are increasingly asked to provide advice, via email about the application of Ethics Act to the receipt of gifts, outside employment, post-state employment, conflict of interest and other issues. 100% of the responses were delivered within mutually agreed timeframes.
- Proposed amendments providing guidance on certain topics were published for comment in December 2009; adoption pending following revision and further public comment period.
- Two of the ballot initiatives certified by the Lieutenant Governor on recommendation of the Department of Law were challenged in FY 2010. The first challenge was to the “parental notice for minor abortion” initiative, 09PIMA. We prevailed in defending against this challenge with one exception – the ballot language for 09PIMA was re-written, in part. The second challenge was to the “personhood” initiative (09LPHB). A superior court decision is pending. In FY 2009, there were no challenges to ballot initiatives certified on recommendation of the Department.

END RESULT B: Enhance the Welfare of Children

- Full implementation of the division's new case management system, anticipated by the end of CY 2011, should enable tracking of the percentage of permanent legal resolution cases obtained for children in the custody of the Department of Health and Social Services.
- The Department has consistently been achieving their goal of maximizing the Title IV E of the Social Security Act funding available.
- In FY 2010, over 1,800 support cases were opened and over 1,600 were closed. In FY 2009, over 1,600 support cases were opened and over 1,600 were closed.

Status of Strategies to Achieve End Result

- New attorneys coming to the section receive training on the requirements of timely filing. OCS has received formal training on the timeliness of filings during their SKILS training. The Child Protection Section Chief or another experienced attorney conducts a legal training which includes this topic for incoming social workers approximately every six weeks.
- The information related to the filing of petitions for Termination of Parental Rights within statutorily mandated

timeframes is not currently available. It is hoped that our new case management system, ProLaw, will produce this kind of information.

- Based on narrative information we have, action was taken on 90% of modification files within 30 days of receipt.
- While formal training sessions weren't conducted for establishment and modification personnel at the Child Services Support Division in FY 2010, each assistant attorney general provided informal training to caseworkers and supervisors on specific issues that arose in individual cases.
- In FY 2010 the Collections and Support Section provided the Department of Revenue's Child Services Support Division (CSSD) with 5 reports summarizing Supreme Court decisions related to child support and recommending changes to CSSD regulations, policies, or procedures as a result of those decisions.
- Child Support Services Division referred 22 cases to the Department for review for complex civil enforcement remedies in FY 2010. In FY 2009, 15 cases were referred.

END RESULT C: Enhance the Protection of Victims of Crimes and Delinquent Acts

- In FY 2010, the Department had one complaint forwarded from the Office of Victims Rights, the Attorney General's Office, the State Ombudsman, or the Office of the Governor. The complaint was resolved by explaining procedure and providing additional case related information.

Status of Strategies to Achieve End Result

- In FY 2010, the amount (\$1.2 million) in total restitution collections decreased 55% compared to the amount collected in FY 2009. This decrease was expected; the primary collection tool is garnishment of the PFD and the PFD decreased by 60% in FY 2010.

END RESULT D: Enhance Consumer Protection in Alaska

- The consumer protection unit met its target strategies for enhancing consumer protection for FY 2010.

Status of Strategies to Achieve End Result

- Seven consumer education initiatives were completed in FY 2010.
- The Consumer Protection (CP) unit proposed five legislative initiatives relating to consumer protection and antitrust matters.
- The number of consumer protection investigations and prosecutions decreased in FY 2010 over the prior fiscal year, but the amount of consumer protection recoveries almost doubled in FY 2010, reaching a total of over \$5.5 million.
- In FY 2010, the state completed a comprehensive rural fuel pricing investigation and a feasibility study regarding a fuel storage facility at the Port of Anchorage.
- In FY 2010, all charitable organization, paid solicitor, telephonic solicitation and business opportunity registrations were reviewed in a timely matter.
- There was a substantial increase in the number of complaints received and a substantial increase in the number resolved through the informal complaint process.

END RESULT E: Improve Regulatory Advocacy On Behalf Of The Public

- The Department has experienced an 88% success rate in representing the public interest before the RCA. In FY 2010, the approximate value to ratepayers of readily quantifiable instances of rate case advocacy by the Public Advocate is \$3.1 million.

Status of Strategies to Achieve End Result

- In FY 2010, the training target was not achieved for all Assistant Attorneys General and Regulatory Affairs and Public Advocacy analyst staff.
- Two Advisories were issued in FY 2010 by Regulatory Affairs and Public Advocacy (RAPA), successfully meeting the target.

END RESULT F: Enhance State Revenue From Mineral Resources

- The Department successfully defended the permits for the operation of the Kensington Mine before the U.S. Supreme Court, preserving hundreds of jobs. The department is defending three cases brought to stop the Pebble Mine.
- The Department provided legal advice and engaged in litigation on behalf of the State against the federal government as it relates to the Endangered Species Act matters that affect development of mineral resources. The Attorney General established an ESA working group under the National Association of Attorneys General to focus attention on the interplay between ESA litigation and natural resource development.

Status of Strategies to Achieve End Result

- The Alaska Gasline Inducement Act (AGIA) license received approval for issuance to TransCanada Alaska. The TransCanada project schedule anticipates conducting an open season by 2010 and shipping initial gas in the pipeline by 2017. A competing project, the Denali project, appears to be gearing up for permit approvals. The Denali project anticipates conducting an open season in 2010 and shipping initial gas by 2017.
- The State prevailed at the Federal Energy Regulatory Commission (FERC) hearing on the 2005 and 2006 TAPS interstate tariffs. The case is presently on appeal before the U.S. Court of Appeals for the D.C. Circuit. The TAPS Carriers filed new serial interstate tariffs at the FERC in 2008, 2009 and 2010, and new intrastate tariffs at the RCA in 2009. The State protested each of those tariff filings, reached settlement on the 2008 FERC rate filings, and continues to litigate the 2009 and 2010 filings. In addition, the State has protested the inclusion in rate base of \$100's of millions of capital investments made in TAPS from 2006 to 2010, which will be the subject of an eight-week hearing before FERC in FY2012.
- The State participated in all lawsuits affecting Alaska involving mineral development and exploration, including several lawsuits challenging lease sales and plans for exploratory drilling in the Outer Continental Shelf and a lawsuit challenging new federal mining claim rules that will affect the mining industry in Alaska.
- Settlements and awards from cases related to oil and gas taxes, tariffs, and royalties generated \$54.7 million for the State.

Key RDU Challenges**A. Protecting the Safety and Physical and Financial Well-being of Alaskans**

Child Protection in the Mat-Su valley. The Mat-Su valley continues to grow rapidly and so does our CINA caseload. According to the Division's case management system ProLaw, as of June 30, 2010 there were 263 open cases in the Mat-Su area. As of June 30, 2009 there were 204 open cases. Based on those numbers, caseloads have increased approximately 28.9% in the past fiscal year.

Collections. For the collections unit, the primary challenge will be effectively using its new database to efficiently increase money collected for the state and victims of crimes as well as expand the types of judgments upon which the unit can collect. In July 2009, the unit converted to one consolidated database, replacing its three, inefficient databases. The unit is focusing on working through the backlog of work incurred under the three former databases. Additionally, adult restitution cases have increased from 800 in 2002 to 6,400 in 2010. Only one associate attorney handles all of these cases. Due to resource limitations, we currently have a backlog of cases that need to be entered into the database. The unit's goal is to be able to move forward with more aggressive collection action, particularly in cases where the defendant's failure to pay is egregious.

B. Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Our Natural Resources

Environmental Section. Litigate civil case against BP Exploration (Alaska) Inc. to recover civil assessments, penalties, costs, and damages to the State, including lost revenues, as a result of the 2006 oil spills from pipeline corrosion and the resulting 2006-08 partial shutdown of the Prudhoe Bay field.

Natural Resources. The Department of Law anticipates ESA-related legal work to continue to increase over the next three years. This increase will occur due to recent listing decisions and designation of critical habitat for species occurring in Alaska. Adverse ESA decisions would adversely affect the State's ability to develop and manage Alaska resources.

Oil, Gas and Mining. The Department will continue to assist in arrangements to construct a gas line 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. The 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 AGIA license, including providing analysis on relevant constitutional and other state law issues.

Protecting the Fiscal Integrity of the State

Oil, Gas and Mining (Strategic Reconfiguration (SR)). In FY2012, the section will be involved in litigation challenging the inclusion of hundreds of millions of dollars in imprudent capital expenditures in the TAPS' rate base for the Strategic Reconfiguration Project. The Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska (RCA) have scheduled concurrent hearings for four weeks in Anchorage followed by four weeks in Washington D.C., beginning November 1, 2011.

Oil, Gas and Mining (North Slope Pipeline-Related Issues). The section will continue to assist in arrangements to construct a gas line 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. The 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.

C. Promoting and Defending Good Governance

Labor and State Affairs. Public records and discovery obligations, particularly those involving electronic records have increased exponentially over the last two years. It is a challenge to advise all agencies regarding retention and production requirements, coordinate responses to large public records requests and represent the state in proceedings related to document retention and production. The division is developing expertise regarding the State's management of electronically stored and non-electronically stored information. This expertise will be of substantial importance to the State to keep track of information the State is legally required to maintain and to avoid potential litigation related losses from, for example, adverse inferences.

Opinions Appeals and Ethics: Indian law issues continue to impact virtually every area of state government's responsibilities. The Division 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.

Significant Changes in Results to be Delivered in FY2012

No significant changes in the delivery of services are anticipated for FY2012.

Major RDU Accomplishments in 2010

A. Protecting the Safety and Physical and Financial Well-being of Alaskans

Child Protection. During fiscal year 2010, three appeals were settled or dismissed, 11 appeals resulted in published opinions, four appeals resulted in unpublished decisions and two petitions for review were denied. All cases were resolved in the state's favor (the Alaska Supreme Court remanded one case to the superior court to make a required finding that the court had neglected to make). As of July 1, 2010, 13 appeals or petitions remained pending in the Alaska Supreme Court, all of which were filed during fiscal year 2010.

Collections. In FY 2010, the unit collected \$7.3 million. Of that amount, about \$6 million resulted from garnishment of the debtor's PFD funds that most likely would not have been recovered but for the effort of the collections unit. The unit collects monies for the general fund, Department of Corrections and the Office of the Public Defender. Since 2002, after authorization by the legislature, the collections unit also collects victim restitution and sends the money to victims harmed by crimes.

Child Support. The child support unit handled over 1,800 child support files in FY 2010, a 12% increase from FY 2009.

Commercial and Fair Business. The section participated in settlement of 10 multi-state and four local consumer protection cases in which the state obtained injunctive relief prohibiting conduct in violation of the state's consumer protection and antitrust statutes, and collected in excess of \$5.5 million in payments to the state for costs, attorney's fees, and consumer protection enforcement and education and in restitution for consumers. To obtain these benefits for Alaska the section expended \$1,038,378.

Environmental. Department lawyers played a key role with DEC in developing a program and an extensive regulation project as part of the state's application to the U.S. Environmental Protection Agency (EPA) for primacy of the NPDES Program under the Clean Water Act. The Department assisted with legislation needed to meet program requirements for federal approval. State primacy in this area will result in faster permitting decisions that are more accurately based on local conditions.

Labor and State Affairs. The section brought an action against the state retirement system's former actuary, Mercer, and sought recovery based upon alleged negligence and fraud in the performance of its actuarial services to the state. The case settled in FY 2010, and the PERS and TRS trust funds recovered a net of \$403 million.

Regulatory Affairs Public Advocacy. The Department's work in regulatory affairs benefits the state's citizens by ensuring that matters before the Regulatory Commission of Alaska, such as utility rate changes or changes in service practices, conform to the public interest. The approximate value to ratepayers of readily quantifiable instances of rate case advocacy by the Public Advocate in FY 2010 is \$3.1 million. In addition to rate cases, the section participated in a gas utility case that resulted in a one-time \$5.7 million refund to customers due to the utility's billing errors over a number of years. To achieve these results the Department spent about \$1.5 million.

B. Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Our Natural Resources

Natural Resources. The Natural Resources section successfully defended a challenge in federal district court to regulations for salmon fishing in Upper Cook Inlet based on alleged violations of the Takings Clause of the U.S. Constitution. This was subsequently briefed in a 9th Circuit appeal.

The department 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. The department also assisted with preparation of state comments on several bills in Congress to address land into trust issues.

C. Protecting the Fiscal Integrity of the State

Oil, Gas and Mining (Alaska Gasline Inducement Act (AGIA)). The Department of Law continued to assist in the State's implementation of the AGIA license for a gas pipeline project from the North Slope to markets. The AGIA licensee, TransCanada Alaska, held an open season in 2010 that successfully attracted gas capacity bids for North Slope gas, thereby assuring that the AGIA pipeline project will continue to move forward with TransCanada and the bidders negotiating the terms of precedent agreements through the end of this year. According to the State's findings, when completed, TransCanada Alaska's AGIA gas pipeline project would result in an estimated cash flow to the State of \$261.5 billion, with an estimated NPV of \$66.1 billion (with a 5% discount rate). The project is estimated at its construction peak to directly create 15,000 jobs, with an average over 10 years of 3,800 jobs (this is the same for both the AGIA and Denali pipelines).

The section worked with the Department of Revenue and the Department of Natural Resources to develop and adopt two regulation packages relating to AGIA production tax inducements and AGIA royalty inducements available to shippers who commit during the first binding open season for pipeline capacity.

Oil, Gas and Mining (Regulations). The section provided substantial legal assistance to the Department of Revenue in its development and adoption of three major regulation projects stemming from enactment of production tax legislation, Alaska's Clear and Equitable Share (ACES). These regulations addressed significant issues representing millions of dollars of potential tax revenue and included establishment of a reasonable transportation cost deduction, categories of allowable leave expenditures, and deductible exploration costs.

D. Promoting and Defending Good Governance

Labor and State Affairs. The section settled in mediation a Federal Voting Rights Act case (*Nick v. Bethel et.al.*). This case, brought as a civil rights action under the Federal Voting Rights Act minority language provisions, challenged the Yup'ik language assistance provided by the state division of elections. The case has been dismissed, with prejudice, with the court approving the settlement, and retaining limited jurisdiction for the purpose of enforcing the settlement agreement which provided for certain elements of Yup'ik language assistance to voters be provided by the division of elections.

Legislation and Regulations. During FY 2010, the section conducted regulation training classes in Juneau and Anchorage. Over 150 state employees attended. The classes were the largest in state history. In December 2009, the section conducted legislative training classes in Juneau and Anchorage on legislative procedures.

Contact Information

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Civil Division
RDU Financial Summary by Component

All dollars shown in thousands

	FY2010 Actuals				FY2011 Management Plan				FY2012 Governor			
	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds
Formula Expenditures												
None.												
Non-Formula Expenditures												
Dep. Attny General's Office	84,195.9	2,308.5	0.0	86,504.4	711.9	206.0	0.0	917.9	619.0	206.0	0.0	825.0
Child Protection Collections and Support	0.0 502.8	0.0 1,630.2	0.0 0.0	0.0 2,133.0	4,482.9 933.9	845.6 1,784.8	0.0 0.0	5,328.5 2,718.7	4,673.4 1,274.9	845.6 1,763.3	0.0 0.0	5,519.0 3,038.2
Commercial and Fair Business	1,399.5	3,145.4	0.0	4,544.9	1,506.4	3,354.9	0.0	4,861.3	1,495.2	3,730.3	0.0	5,225.5
Environmental Law	146.7	1,013.4	0.0	1,160.1	1,162.8	1,105.7	0.0	2,268.5	1,405.7	1,092.9	0.0	2,498.6
Human Services	0.0 5,556.6	0.0 2,038.4	0.0 0.0	0.0 7,595.0	1,046.4 0.0	690.0 0.0	0.0 0.0	1,736.4 0.0	1,109.1 0.0	1,203.4 0.0	0.0 0.0	2,312.5 0.0
Human Services/Child Protection												
Labor and State Affairs	3,173.3	2,363.9	0.0	5,537.2	2,507.6	3,418.5	0.0	5,926.1	2,859.3	3,169.6	0.0	6,028.9
Legislation/Regulations	571.8	194.1	0.0	765.9	660.7	197.7	0.0	858.4	689.6	215.0	0.0	904.6
Natural Resources	3,872.5	328.1	0.0	4,200.6	3,038.1	260.0	0.0	3,298.1	3,111.6	257.3	0.0	3,368.9
Oil, Gas and Mining	7,992.0	2,429.5	0.0	10,421.5	9,174.7	1,477.6	0.0	10,652.3	6,478.3	1,477.6	0.0	7,955.9
Opinions, Appeals and Ethics	355.5	9.6	0.0	365.1	1,388.3	608.6	0.0	1,996.9	1,494.0	604.2	0.0	2,098.2
Reg Affairs Public Advocacy	1,537.3	0.0	0.0	1,537.3	1,573.3	0.0	0.0	1,573.3	1,658.0	0.0	0.0	1,658.0
Timekeeping & Litigation Support	167.4	655.6	0.0	823.0	358.8	1,267.4	0.0	1,626.2	436.0	1,458.3	0.0	1,894.3
Torts and	0.0	3,332.5	0.0	3,332.5	94.0	3,522.0	0.0	3,616.0	242.9	3,565.1	0.0	3,808.0

Civil Division
RDU Financial Summary by Component

All dollars shown in thousands

	FY2010 Actuals				FY2011 Management Plan				FY2012 Governor			
	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds	UGF+DGF Funds	Other Funds	Federal Funds	Total Funds
Workers' Compensation Transportation Section	0.7	1,710.3	0.0	1,711.0	257.7	2,241.6	0.0	2,499.3	144.8	2,184.2	0.0	2,329.0
Totals	109,472.0	21,159.5	0.0	130,631.5	28,897.5	20,980.4	0.0	49,877.9	27,691.8	21,772.8	0.0	49,464.6

Civil Division Summary of RDU Budget Changes by Component From FY2011 Management Plan to FY2012 Governor					
	<i>All dollars shown in thousands</i>				
	<u>Unrestricted Gen (UGF)</u>	<u>Designated Gen (DGF)</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>Total Funds</u>
FY2011 Management Plan	26,575.4	2,322.1	20,980.4	0.0	49,877.9
Adjustments which will continue current level of service:					
-Dep. Attny General's Office	-92.9	0.0	0.0	0.0	-92.9
-Child Protection	190.5	0.0	0.0	0.0	190.5
-Collections and Support	186.4	14.6	-21.5	0.0	179.5
-Commercial and Fair Business	-11.3	-164.9	-28.5	0.0	-204.7
-Environmental Law	67.9	0.0	-12.8	0.0	55.1
-Human Services	62.7	0.0	132.4	0.0	195.1
-Labor and State Affairs	351.7	0.0	-248.9	0.0	102.8
-Legislation/Regulations	28.9	0.0	17.3	0.0	46.2
-Natural Resources	73.5	0.0	-2.7	0.0	70.8
-Oil, Gas and Mining	-5,396.4	0.0	0.0	0.0	-5,396.4
-Opinions, Appeals and Ethics	105.7	0.0	-4.4	0.0	101.3
-Reg Affairs Public Advocacy	0.0	34.7	0.0	0.0	34.7
-Timekeeping & Litigation Support	-132.8	0.0	-6.1	0.0	-138.9
-Torts and Workers' Compensation	148.9	0.0	43.1	0.0	192.0
-Transportation Section	-112.9	0.0	-57.4	0.0	-170.3
Proposed budget increases:					
-Collections and Support	0.0	140.0	0.0	0.0	140.0
-Commercial and Fair Business	0.0	165.0	403.9	0.0	568.9
-Environmental Law	175.0	0.0	0.0	0.0	175.0
-Human Services	0.0	0.0	381.0	0.0	381.0
-Oil, Gas and Mining	2,700.0	0.0	0.0	0.0	2,700.0
-Reg Affairs Public Advocacy	0.0	50.0	0.0	0.0	50.0
-Timekeeping & Litigation Support	210.0	0.0	197.0	0.0	407.0
FY2012 Governor	25,130.3	2,561.5	21,772.8	0.0	49,464.6