

State of Alaska
FY2020 Governor's Operating Budget

Department of Law
Torts & Workers' Compensation
Component Budget Summary

Component: Torts & Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation section provides legal defense and advice in a wide range of tort lawsuits filed against state agencies and state employees, including personal injury, wrongful death, professional malpractice, property damage, and civil rights claims. It also provides advice and training to state agencies and represents the state as an employer before the Alaska Workers' Compensation Board (AWCB) and the Alaska Workers' Compensation Appeals Commission (AWCAC).

Core Services

- Attorneys in the Torts and Workers' Compensation section defend tort claims and civil rights claims for damages under 42 USC §1983 filed in state and federal court, and in both the trial courts and appellate courts.
- Attorneys in the section represent state agencies in workers' compensation claims filed by state employees where the State of Alaska is the employer. They advocate on behalf of the state at hearings before the AWCB and represent the state as the employer in appeals from board decisions taken to the AWCAC and to the Alaska Supreme Court.
- Attorneys in the Torts and Workers' Compensation section provide advice and training to state agencies on risk management, workers' compensation, and liability issues and provide advice to state adjusters on workers' compensation issues.

Major Component Accomplishments in 2018

On behalf of the self-insured Division of Risk Management (DRM) in the Department of Administration, the section pursues aggressive motion practice, trial, or negotiation to contain the ultimate costs of tort cases filed against the State of Alaska and its employees and of workers' compensation matters involving state employees.

- Investigated and referred a workers' compensation case to the AWCB's fraud investigation unit, leading to a jury conviction of a former employee for defrauding the state out of more than \$250,000 in workers' compensation benefits and a two-year jail sentence. The fraud petition filed by the section with the AWCB is stayed pending appeal of the criminal felony fraud conviction and sentence.
- Defended the State of Alaska as employer in numerous hearings before the AWCB, and in appeals before the AWCAC, and participated in reemployment benefits hearings.
- Won an appeal in the Ninth Circuit Court of Appeals, affirming summary judgment and dismissal of civil rights claims in a federal court case regarding the state taking emergency custody of a baby born under the influence of opiates.
- After years of briefing and remand from the Alaska Supreme Court, won dismissal of the third party allocation of fault claim against the state for alleged sexual assault of a minor; the case is on appeal to the Alaska Supreme Court.
- In 2016, the section won summary judgment of all claims against the state in an Alaska State Trooper excessive force/false arrest case in federal district court. In 2017, the Ninth Circuit affirmed dismissal of all claims except for the First Amendment retaliatory arrest claim. The United States Supreme Court recently granted the state's petition for writ of certiorari and will hear this case during the Court's current session.
- Won summary judgment and dismissal of a protracted construction contract dispute in a federal court case about the state's refusal to pay additional money for an asbestos abatement project in 2007; the case is on appeal to the Ninth Circuit.
- Won summary judgment and dismissal of several medical and dental malpractice cases.

- Briefed significant issues regarding the state's liability under theories of aided in agency and non-delegable duty in a lawsuit filed against the Department of Health and Social Services, Office of Children's Services. The section also briefed significant issues regarding the scope of discovery of confidential child protection, mental health, medical, and other records of third parties not directly involved in litigation, and protection of privacy interests.
- Prevailed on dispositive motions to dismiss or for summary judgment in a number of other cases, and obtained attorney fee awards as prevailing party. In addition, motions filed by the section assisted in settlement negotiations and in resolving cases on favorable terms. The section also succeeded in obtaining voluntary dismissal of numerous tort cases, in which the state paid nothing and each side assumed its own expenses.
- Provided training on civil law and liability to multiple training academies for correctional officers and probation officers. The section also provided training for the state's workers' compensation adjusters, and section attorneys presented an in-house legal training on expert depositions for Civil Division attorneys.

Key Component Challenges

One key component challenge stems from the Alaska standard for summary judgment. Summary judgment is a useful tool for concluding civil litigation short of trial. However, Alaska law precludes the grant of summary judgment if there are any material issues in dispute. The court may not evaluate the overwhelming weight of the evidence in support of the motion, nor may it make credibility judgments even when the plaintiff's assertions as to material facts are unsubstantiated. The result is that where summary judgment is denied or not available, the section must consider the substantial cost of taking the case to trial in determining whether a settlement might be a more economical use of state resources.

Another continuing key challenge involves defending lawsuits brought by unrepresented plaintiffs. A disproportionate amount of the section's resources is channeled to defending these lawsuits.

The section continues to deal with a high volume of matters referred for legal assistance from the Third-Party Administrator (TPA) for the workers' compensation program of DRM. Keeping up with the workers' compensation caseload will likely remain a challenge.

Significant Changes in Results to be Delivered in FY2020

No significant changes are anticipated in the next fiscal year.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information
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**Torts & Workers' Compensation
Personal Services Information**

Authorized Positions			Personal Services Costs	
	<u>FY2019</u> <u>Management</u> <u>Plan</u>	<u>FY2020</u> <u>Governor</u>		
Full-time	30	30	Annual Salaries	2,597,391
Part-time	0	0	COLA	22,023
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	1,425,399
			<i>Less 3.84% Vacancy Factor</i>	<i>(155,313)</i>
			Lump Sum Premium Pay	0
Totals	30	30	Total Personal Services	3,889,500

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney IV	8	0	1	0	9
Attorney V	4	1	0	0	5
Attorney VI	1	0	0	0	1
Law Office Assistant I	4	1	0	0	5
Law Office Assistant II	2	0	1	0	3
Paralegal II	4	1	1	0	6
Totals	24	3	3	0	30

Component Detail All Funds
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Non-Formula Component

	FY2018 Actuals	FY2019 Conference Committee	FY2019 Authorized	FY2019 Management Plan	FY2020 Governor	FY2019 Management Plan vs FY2020 Governor	
71000 Personal Services	3,197.4	3,903.7	3,903.7	3,853.7	3,889.5	35.8	0.9%
72000 Travel	20.3	26.9	26.9	26.9	26.9	0.0	0.0%
73000 Services	663.3	243.7	243.7	243.7	243.7	0.0	0.0%
74000 Commodities	46.7	33.6	33.6	33.6	33.6	0.0	0.0%
75000 Capital Outlay	3.7	0.0	0.0	0.0	0.0	0.0	0.0%
77000 Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
78000 Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Totals	3,931.4	4,207.9	4,207.9	4,157.9	4,193.7	35.8	0.9%
Fund Sources:							
1004 Gen Fund (UGF)	62.4	0.0	0.0	0.0	0.0	0.0	0.0%
1007 I/A Rcpts (Other)	3,869.0	4,207.9	4,207.9	4,157.9	4,193.7	35.8	0.9%
Unrestricted General (UGF)	62.4	0.0	0.0	0.0	0.0	0.0	0.0%
Designated General (DGF)	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Other Funds	3,869.0	4,207.9	4,207.9	4,157.9	4,193.7	35.8	0.9%
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0	0.0%
Positions:							
Permanent Full Time	31	30	30	30	30	0	0.0%
Permanent Part Time	0	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0	0.0%

Change Record Detail - Multiple Scenarios with Descriptions
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		NP
										PFT	PPT	
***** Changes From FY2019 Conference Committee To FY2019 Authorized *****												
FY2019 Conference Committee												
ConfCom		4,207.9	3,903.7	26.9	243.7	33.6	0.0	0.0	0.0	30	0	0
1007 I/A Rcpts		4,207.9										
Subtotal		4,207.9	3,903.7	26.9	243.7	33.6	0.0	0.0	0.0	30	0	0
***** Changes From FY2019 Authorized To FY2019 Management Plan *****												
Transfer Attorney IV (03-0082) to Commercial and Fair Business for Required Legal Expertise												
Trout		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0	0
Transfer Attorney IV (03-0082) to the Commercial and Fair Business component to keep pace with the required level of legal expertise needed within the section. The position is located in Fairbanks.												
Department of Law attorney positions are partially exempt and flexibly-ranged positions. Attorneys I-VI are transferred in accordance with attorney salary placement, allowing positions to be sub-filled at lower levels. Positions are also transferred to accommodate promotions. Because of constant movement of positions to keep up with demand, funding is not always transferred with the position. Budget authority is evaluated and aligned between components as needed.												
Transfer Attorney V (03-1038) from Commercial and Fair Business for Required Legal Expertise												
Trin		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Transfer Attorney V (03-1038) from the Commercial and Fair Business V component to keep pace with the required level of legal expertise needed within the section. The position is located in Fairbanks.												
Department of Law attorney positions are partially exempt and flexibly-ranged positions. Attorneys I-VI are transferred in accordance with attorney salary placement, allowing positions to be sub-filled at lower levels. Positions are also transferred to accommodate promotions. Because of constant movement of positions to keep up with demand, funding is not always transferred with the position. Budget authority is evaluated and aligned between components as needed.												
Transfer Law Office Assistant II (03-1047) from Transportation to Address Workload Demands												
Trin		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Transfer Law Office Assistant II (03-1047) from Transportation to accommodate the workload and office demands.												
Transfer Law Office Assistant I (03-0217) to Transportation to Address Workload Demands												
Trout		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0	0
Transfer Law Office Assistant I (03-0217) to Transportation to accommodate the workload and office demands.												
Transfer to Transportation to Comply with Vacancy Factor Guidelines												
Trout		-50.0	-50.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1007 I/A Rcpts		-50.0										

Change Record Detail - Multiple Scenarios with Descriptions
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		NP
										PFT	PPT	
Transfer budget authority to the Transportation component to align authority with anticipated expenditure levels for personal services. There are no impacts on services associated with this transfer.												
Subtotal		4,157.9	3,853.7	26.9	243.7	33.6	0.0	0.0	0.0	30	0	0
***** Changes From FY2019 Management Plan To FY2020 Governor *****												
Transfer Paralegal II (03-0288) to Human Services to Address Workload Demands												
Trout		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-1	0	0
Transfer Paralegal II (03-0288) to Human Services to accommodate the workload and office demands.												
Reverse Supervisory Unit Furlough Contract Terms												
1007 I/A Rcpts	SalAdj	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
The Alaska Public Employees Association (representing the supervisory unit) contractually required 15 hours of furlough for each permanent full-time employee in each year from July 1, 2016, to June 30, 2019. The furlough requirement was removed from the contract in FY2020.												
Transfer Paralegal II (03-0132) from Commercial and Fair Business to Address Workload Demands												
Trin		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1	0	0
Transfer Paralegal II (03-0132) from Commercial and Fair Business to accommodate the workload and office demands. This position was transferred to Torts and Workers' Compensation and then split with the Transportation component. The position is counted in Torts and Workers' Compensation component.												
FY2020 Salary Adjustments - GGU, CEA, TEAME												
1007 I/A Rcpts	SalAdj	34.3	34.3	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
FY2020 Salary Adjustments - GGU, CEA, TEAME: \$34.3												
FY2020 GGU HI from \$1432 to \$1530: \$11.9												
FY2020 GGU 3% COLA: \$22.4												
Reverse Alaska State Employees Association (GGU) 15 Hour Furlough												
1007 I/A Rcpts	SalAdj	1.3	1.3	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
The Alaska State Employees Association (representing the general government unit) contractually required 15 hours of furlough for each permanent full-time employee in each year from July 1, 2016, to June 30, 2019. The furlough requirement was removed from the contract in FY2020.												

Change Record Detail - Multiple Scenarios with Descriptions
Department of Law

Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		
										PFT	PPT	NP
	Totals	4,193.7	3,889.5	26.9	243.7	33.6	0.0	0.0	0.0	30	0	0

Personal Services Expenditure Detail
Department of Law

Scenario: FY2020 Governor (15610)
Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range / Step	Comp Months	Split / Count	Annual Salaries	COLA	Premium Pay	Annual Benefits	Total Costs	UGF Amount
03-0030	Attorney IV	FT	A	XE	Juneau	N05	24M	12.0		127,020	0	0	62,076	189,096	0
03-0043	Attorney V	FT	A	XE	Anchorage	99	25P / Q	12.0		148,417	0	0	68,434	216,851	0
03-0089	Attorney VI	FT	A	XE	Anchorage	N00	26P	12.0		148,260	0	0	68,390	216,650	0
03-0127	Law Office Assistant I	FT	A	GP	Anchorage	200	11D / E	12.0		40,003	1,610	0	32,155	73,768	0
03-0132	Paralegal II	FT	A	GP	Fairbanks	203	16J	6.0	**	33,429	1,346	0	20,665	55,440	0
03-0201	Law Office Assistant I	FT	A	GP	Anchorage	200	11C / D	12.0		38,415	1,546	0	31,613	71,574	0
03-0204	Law Office Assistant I	FT	A	GP	Fairbanks	203	11G	6.0	**	22,314	898	0	16,868	40,080	0
03-0214	Paralegal II	FT	A	GG	Anchorage	99	16Q / R	12.0		83,583	3,364	0	47,042	133,989	0
03-0218	Paralegal II	FT	A	GP	Anchorage	200	16J	12.0		63,960	2,574	0	40,339	106,873	0
03-0230	Attorney IV	FT	A	XE	Anchorage	99	24M / N	12.0		126,173	0	0	61,787	187,960	0
03-0238	Attorney IV	FT	A	XE	Anchorage	99	24O	12.0		131,496	0	0	63,605	195,101	0
03-0241	Attorney V	FT	A	XE	Anchorage	N00	25F	12.0		114,420	0	0	57,772	172,192	0
03-0248	Law Office Assistant II	FT	A	SS	Anchorage	600	13F / J	12.0		53,400	0	0	37,072	90,472	0
03-0255	Attorney IV	FT	A	XE	Anchorage	N00	24K	12.0		113,484	0	0	57,452	170,936	0
03-0286	Attorney IV	FT	A	XE	Anchorage	N00	24F	12.0		106,452	0	0	55,050	161,502	0
03-0287	Law Office Assistant II	FT	A	SS	Anchorage	600	13K / L	12.0		56,840	0	0	38,247	95,087	0
03-0292	Paralegal II	FT	A	GP	Juneau	205	16J	12.0		67,164	2,703	0	41,434	111,301	0
03-0297	Law Office Assistant I	FT	A	GP	Anchorage	200	11G	12.0		43,332	1,744	0	33,293	78,369	0
03-0300	Attorney IV	FT	A	XE	Anchorage	N00	24F	12.0		106,452	0	0	55,050	161,502	0
03-0315	Attorney V	FT	A	XE	Anchorage	99	25O	12.0		138,619	0	0	65,688	204,307	0
03-0346	Paralegal II	FT	A	GP	Anchorage	200	16G	12.0		61,416	2,472	0	39,470	103,358	0
03-0347	Law Office Assistant I	FT	A	GP	Anchorage	200	11D	12.0		39,288	1,581	0	31,911	72,780	0
03-0364	Attorney V	FT	A	XE	Anchorage	N00	25F	12.0		114,420	0	0	57,772	172,192	0
03-0375	Attorney IV	FT	A	XE	Anchorage	N00	24J	12.0		109,908	0	0	56,231	166,139	0
03-0376	Assoc Attorney I	FT	A	XE	Anchorage	N00	17F / J	12.0		68,310	0	0	42,021	110,331	0
03-0384	Attorney IV	FT	A	XE	Anchorage	N00	24B / C	12.0		94,512	0	0	50,972	145,484	0
03-0397	Paralegal II	FT	A	GP	Anchorage	200	16C / D	12.0		54,294	2,185	0	37,037	93,516	0
03-1038	Attorney V	FT	A	XE	Fairbanks	N03	25L / M	12.0		131,124	0	0	63,478	194,602	0
03-1047	Law Office Assistant II	FT	A	SS	Juneau	605	13C / D	12.0		50,582	0	0	36,109	86,691	0
06-0517	Attorney IV	FT	A	XE	Anchorage	N00	25E	12.0		110,304	0	0	56,366	166,670	0

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column. [No valid job title] appearing in the Job Class Title indicates that the PCN has an invalid class code or invalid range for the class code effective date of this scenario.

Personal Services Expenditure Detail
Department of Law

Scenario: FY2020 Governor (15610)
Component: Torts & Workers' Compensation (2719)
RDU: Civil Division (35)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range / Step	Comp Months	Split / Count	Annual Salaries	COLA	Premium Pay	Annual Benefits	Total Costs	UGF Amount
		Total Positions	New	Deleted										Total Salary Costs:	2,597,391
														Total COLA:	22,023
	Full Time Positions:	30	0	0										Total Premium Pay::	0
	Part Time Positions:	0	0	0										Total Benefits:	1,425,399
	Non Permanent Positions:	0	0	0											
	Positions in Component:	30	0	0										Total Pre-Vacancy:	4,044,813
														Minus Vacancy Adjustment of 3.84%:	(155,313)
														Total Post-Vacancy:	3,889,500
	Total Component Months:	348.0												Plus Lump Sum Premium Pay:	0
														Personal Services Line 100:	3,889,500

PCN Funding Sources:	Pre-Vacancy	Post-Vacancy	Percent
1007 Interagency Receipts	4,044,813	3,889,500	100.00%
Total PCN Funding:	4,044,813	3,889,500	100.00%

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column. [No valid job title] appearing in the Job Class Title indicates that the PCN has an invalid class code or invalid range for the class code effective date of this scenario.

Line Item Detail (1676)
Department of Law
Travel

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2018 Actuals	FY2019 Management Plan
2000	Travel		20.3	26.9
Object Class	Servicing Agency	Explanation	FY2018 Actuals	FY2019 Management Plan
2000 Travel Detail Totals			20.3	26.9
2000	In-State Employee Travel	Travel for attorneys to interview witnesses and attend court proceedings, as well as for necessary training for both attorneys and paraprofessionals. Includes travel for management purposes.	7.6	10.6
2001	In-State Non-Employee Travel	Travel costs for witnesses to testify in court.	0.9	1.9
2002	Out of State Employee Travel	Travel costs and expenses for out-of-state travel for conferences, training, etc.	4.4	5.4
2006	Other Travel Costs	Travel cost transfers.	7.4	9.0

Line Item Detail (1676)
Department of Law
Services

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2018 Actuals	FY2019 Management Plan
3000	Services		663.3	243.7
Object Class	Servicing Agency	Explanation	FY2018 Actuals	FY2019 Management Plan
3000 Services Detail Totals			663.3	243.7
3000	Education Services	Conferences, training and memberships.	1.7	0.4
3002	Legal and Judicial Services	Depositions, research costs, expert witness and consultant fees.	121.6	2.5
3006	Delivery Services	Freight, courier, postage, and transportation of trial exhibit materials.	0.9	0.8
3011	Other Services	Cost transfers and miscellaneous items within the services line (commissions, etc.).	539.1	240.0

Line Item Detail (1676)
Department of Law
Commodities

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2018 Actuals	FY2019 Management Plan
4000	Commodities		46.7	33.6
Object Class	Servicing Agency	Explanation	FY2018 Actuals	FY2019 Management Plan
4000 Commodities Detail Totals			46.7	33.6
4022	Commodity Transfer	Commodity cost transfers.	46.7	33.6

Line Item Detail (1676)

**Department of Law
Capital Outlay**

Component: Torts & Workers' Compensation (2719)

Line Number	Line Name		FY2018 Actuals	FY2019 Management Plan
5000	Capital Outlay		3.7	0.0
Object Class	Servicing Agency	Explanation	FY2018 Actuals	FY2019 Management Plan
5000 Capital Outlay Detail Totals			3.7	0.0
5009	Capital Outlay Transfer	Capital cost transfers.	3.7	0.0

Revenue Detail (1681)
Department of Law

Component: Torts & Workers' Compensation (2719)

Revenue Type (OMB Fund Code) Revenue Source	Component	Comment	FY2018 Actuals	FY2019 Management Plan
5007 I/A Rcpts (1007 I/A Rcpts)			3,869.0	4,157.9
5301 Inter-Agency Receipts	Admin - Department-wide	RSA Administration, Risk Management - legal services regarding personal injury litigation. Program code: CV03214539.	3,644.0	3,932.9
5301 Inter-Agency Receipts	Correct - Department-wide	RSA Corrections, Department-wide - legal services. Program code: CV03214550.	225.0	225.0