

State of Alaska
FY2021 Governor's Operating Budget

Department of Law
Civil Division
Results Delivery Unit Budget Summary

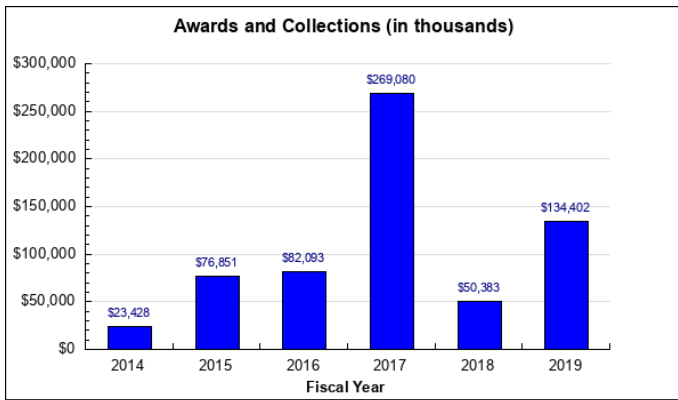
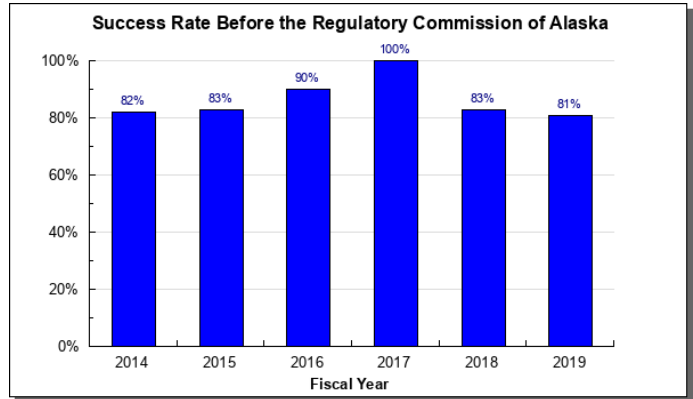
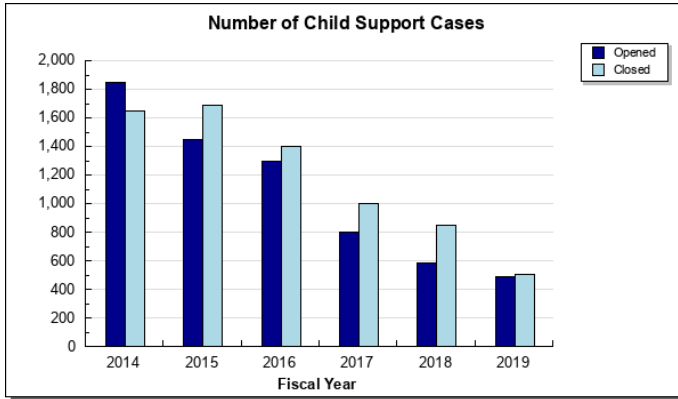
Civil Division Results Delivery Unit

Contribution to Department's Mission

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

Results

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



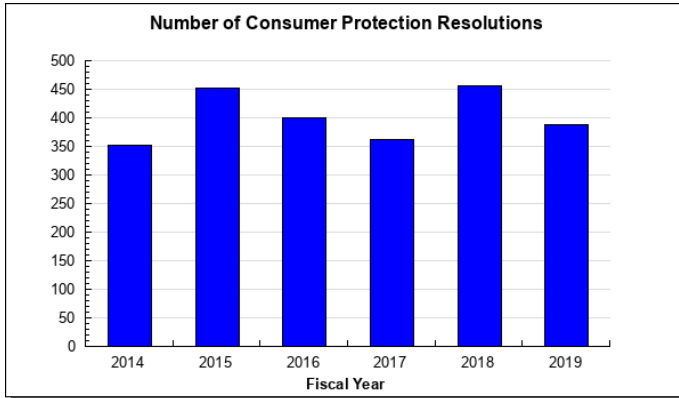
Core Services

- Protecting the safety and physical and financial well-being of Alaskans
- Maximize tax and royalty claims
- Promoting good governance

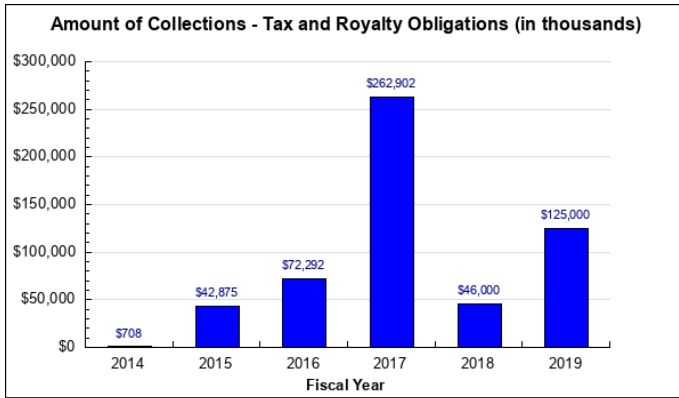
Measures by Core Service

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

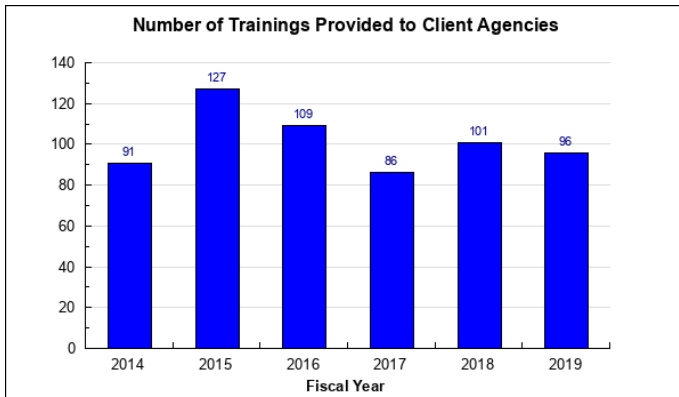
1. Protecting the safety and physical and financial well-being of Alaskans



2. Maximize tax and royalty claims



3. Promoting good governance



Major RDU Accomplishments in 2019

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

- Child Protection. Section members managed very substantial Child-In-Need-of-Aid caseloads while working to improve the child protection system and foster state-tribal relations to better protect children. The section primarily litigates cases at the trial court level with 25 attorneys to handle approximately 3,000 individual cases.

- Human Services. The section continued to advise the Department of Health and Social Services on the implementation of Senate Bill (SB) 74 Medicaid Reform (CH 25 SLA 2016), including the implementation of the 1115 Waiver to transform the behavioral health system in Alaska, which is estimated to save the state millions of general fund dollars in the coming fiscal years. The section also continued to work collaboratively with the Medicaid Fraud Control Unit and the Medicaid Program Integrity Unit to stop Medicaid fraud.
- Human Services. The section continued to provide legal services that directly protect public health and safety by prosecuting licensing actions related to facilities for those in need. The section advised state agencies in numerous investigations related to those licensed facilities, many that resulted in suspensions and/or revocations of the facilities' licenses, requiring administrative review.
- Commercial and Fair Business Practices. The section processed 395 consumer complaints. Of these, 389 were resolved through an informal complaint process, launching a formal investigation, or referral to other appropriate state and federal agencies. In addition to this activity, the section registered 4,797 charitable organizations and 36 paid solicitors and telemarketers, collecting more than \$199,000 in registration fees. The section also assisted the Child Support Services Division in the Department of Revenue, opening or re-opening 489 child support matters in FY2019.
- Regulatory Affairs and Public Advocacy (RAPA). The section's advocacy yielded approximately \$17 million in quantifiable consumer benefits through RAPA advocacy in FY2019. This number is based on the difference between the amounts that utilities requested in their revenue requirement proposals and the amounts that the Regulatory Commission of Alaska (RCA) ultimately awarded to them. To achieve these results in FY2019, the department spent about \$1.6 million in RCA regulatory cost charge receipts.
- Environmental Law. In October 2019, the section completed a three-week trial in *Alaska v. Williams Alaska Petroleum, Inc.* in Fairbanks concerning contamination of groundwater wells and groundwater with the industrial solvent sulfolane.
- Special Litigation. The section continued to manage a variety of cases against pharmaceutical companies — both multistate cases involving anti-trust violations and the state's consumer protection complaints against opioid manufacturers and distributors.

Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Alaska's Natural Resources

- Labor and State Affairs. The section assisted the Alaska Industrial Development and Export Authority in closing a complex restructuring of its investment in the development of an oil processing facility for the Mustang oil field on the North Slope, which is intended to allow additional private investment into the field to sustain and expand oil production.
- Natural Resources. Section members litigated against federal agencies to challenge regulations adopted by the National Park Service and the U.S. Fish and Wildlife Service that prohibit the state from exercising its full authority to manage fish and game within federal parks and refuges.
- Natural Resources. Section members defended and prosecuted the state's interests by handling 15 quiet title actions involving access, trespass, and accretion or reliction issues. In addition to these actions, the section prosecuted and defended multiple actions involving the Tongass National Forest, including the Roadless Rule and the Tongass Land Management Plan.
- Environmental Law. In FY2019, the section recovered \$2,482,697 for state costs and penalties related to violations of state environmental laws. Costs associated with operating the section totaled less than \$867,000 for all fund sources, providing the state with significant value for the work performed.
- Transportation. Section members were involved in right-of-way acquisitions for major projects on the Parks, Glenn, Seward, and Richardson Highways, and in planning and construction issues related to the Marine Highways System's newest ferries.

Protecting the Fiscal Integrity of the State

- Torts and Workers' Compensation. On behalf of the self-insured Division of Risk Management in the Department of Administration, the section pursued 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.
- Natural Resources. The section represented the Department of Revenue in negotiating settlement of several corporate income tax, production tax and property tax disputes. The section also advised the Department of Natural Resources on decisions involving oil and gas leases and development, including leasing, unitization, termination, assignments, and amendments. In FY2019, the section's work resulted in the collection of over \$125 million in additional tax and royalty payments, and attorney's fees.
- Labor and State Affairs. The section's attorneys provided extensive legal advice and representation to the Department of Administration's Division of Retirement and Benefits, in numerous health and benefits appeals and coverage issues under the state's health care plans, and on proposed health and pension plan changes.
- Labor and State Affairs. The section also represented the Division of Retirement and Benefits in significant and ongoing litigation that will further define the constitutional framework under which the state's retiree health plans must operate. It began assisting the division with the implementation of new third-party administrator agreements, dual retiree dental plans, and modernization of the retiree medical plan.
- Transportation. Section attorneys provided legal support for the Department of Transportation and Public Facilities (DOTPF) land acquisition for highway and airport projects throughout Alaska, and defended multiple contractor claims filed against DOTPF. Included among the larger cases were claims arising from road construction and airport projects in DOTPF's Central and Southcoast regions, and a claim pertaining to the M/V Columbia.
- Human Services. The section assisted the Department of Health and Social Services in recovering Medicaid money through subrogation, estate recovery, trust recovery, and Medicaid audits of providers. This work includes legal representation in administrative hearings and superior court appeals. Since January 2019, the section collected over \$2.7 million through the Medicaid subrogation, estate and trust recovery claims. The section has recovered or had administrative decisions issued that identify the recovery of over \$3.2 million through the Medicaid audit process.

Promoting and Defending Good Governance

- Labor and State Affairs. Section attorneys provided legal advice to the Governor's Office, the Office of Boards and Commissions, and executive branch agencies on personnel matters and other legal issues relating to gubernatorial transition and boards and commissions appointments.
- Opinions, Appeals and Ethics. Section attorneys prevailed in two cases before the U.S. Supreme Court, which overturned adverse Ninth Circuit decisions: *Sturgeon v. Frost*, addressing the extent of federal authority over navigable waters in Alaska, and *Nieves et al. v. Bartlett*, defending Alaska State Troopers from damages claims arising out of reasonable arrest.
- Opinions, Appeals and Ethics. Section attorneys filed three amicus briefs in support of cert. petitions to the U.S. Supreme Court on cases raising important issues for the state: *Our Lady of Guadalupe School v. Morrissey-Berru* and *Stephen Wise Temple v. Su*, cases in which the state is supporting a religious school's First Amendment rights in selecting faculty; and *Guerin v. Fowler*, where the state is fighting a Ninth Circuit decision that exposes the state pension systems to class-action claims.
- Legislation and Regulations. Section attorneys coordinated and drafted legislative bills on behalf of the administration for the 31st legislative session and two special sessions. The section drafted approximately 40 bills related to the administration's policy of reduced government footprint. Due to the emphasis on budget matters, the section provided significant assistance to the Office of Management and Budget in FY2019.

- Special Litigation. The section is representing the Governor in two lawsuits relating to education funding: one involving the constitutionality of forward appropriations enacted in 2018 to fund public schools in FY2020 and the other challenging the distribution of FY2019 supplemental funding for schools in June 2019.

Key RDU Challenges

The department is actively working with the Division of Personnel and Labor Relations in the Department of Administration on multiple efforts to address the ongoing challenge of recruitment and retention.

- Child Protection. Rural connectivity issues slow the functions of the ProLaw electronic case management system, which, in turn, creates productivity challenges for staff. Attorney turnover and depressed resources create morale and retention problems that negatively impact the section's ability to deliver client services.
- Consumer Protection. Alaska is a target state for many types of consumer fraud. Under the authority of the Consumer Protection Act (AS 45.50.471 et seq.), the section investigates and brings enforcement action against businesses that engage in unfair or deceptive trade practices. Because of vacancies, the department's consumer protection enforcement capacity has been significantly limited in the last few years. Collaboration between the Commercial and Fair Business section and the Special Litigation section to increase its consumer protection enforcement functions began in FY2019.
- Environmental Law. A lack of staff resources has reduced the section's cost recovery of Department of Environmental Conservation oversight and cleanup costs of spill response and contaminated sites, and diminished the section's ability to pursue cleanup of "lingering contaminated sites" where no responsible party is undertaking a cleanup.
- Human Services. The section anticipates a significant increase in the number and complexity of regulation projects designed to assist in creating additional efficiencies in the administration of all Department of Health and Social Services programs. These projects are expected to generate litigation as change to programs and funding streams are implemented in the coming fiscal year. Further, attorney caseloads continue to increase each year, mainly because Alaska has one of the fastest growing aging populations in the nation.
- Human Services. Advising the Department of Health and Social Services in the management and administration of the Alaska Psychiatric Institute will continue to be a challenge for the section. The section will continue working on contracts and other matters related to the hiring of an outside consultant/manager to assist in the day-to-day management of the facility, as well as handling major areas of litigation related to the hiring of an outside consultant/manager and uses related to the bed capacity at the Alaska Psychiatric Institute.
- Labor and State Affairs. The section will take on an increasing amount of work to address technical labor relations issues. Workflow in this area is likely to increase significantly in the coming year as the section continues to advise the Department of Administration and the Governor's Office on personnel and collective bargaining questions involving Administrative Order 312, and takes on an expanded role in labor relations negotiations with each of the state's eleven public sector unions.
- Legislation/Regulations. The number of regulation projects continues to increase, straining the section's ability to perform a timely review of regulations. As required by statute, the section reviews adopted regulations for legality, constitutionality and clarity. Whenever major program and policy changes are implemented, the section strives to meet the increased need for assistance in order to save costs and increase efficiency and effectiveness in the provision of state services by assisting with timely changes to statutes, regulations, or a combination of both.
- Natural Resources. Continuing challenges include protecting the state's claim to its statehood entitlement lands and its title to the beds underlying navigable waters against the federal government and others; asserting and protecting access across Alaska granted under Revised Statute 2477 (commonly known as RS 2477), a federal law that granted rights-of-way on public lands; and advising on the state's rights and obligations under the public trust doctrine.
- Natural Resources. The section will continue to focus on representing the Department of Natural Resources in royalty disputes and working with the department in royalty negotiations to ensure that the state receives its fair

share of royalties and net profit share from production of Alaska oil and gas resources. This work includes handling related development and production sharing disputes.

Significant Changes in Results to be Delivered in FY2021

The division is continuously assessing how it can better provide legal services to state agencies and litigate matters in the public interest. The division makes every effort to prioritize and direct limited available resources in order to ensure efficiency while preserving effectiveness.

| Contact Information |
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**Civil Division
RDU Financial Summary by Component**

All dollars shown in thousands

| | FY2019 Actuals | | | | FY2020 Management Plan | | | | FY2021 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 | 4,471.9 | 0.0 | 0.0 | 4,471.9 | 275.4 | 10.0 | 0.0 | 285.4 | 275.4 | 10.0 | 0.0 | 285.4 |
| Child Protection | 6,216.6 | 3,126.8 | 0.0 | 9,343.4 | 5,183.4 | 2,289.8 | 0.0 | 7,473.2 | 5,205.5 | 2,291.4 | 0.0 | 7,496.9 |
| Commercial and Fair Business | 631.2 | 3,941.1 | 0.0 | 4,572.3 | 849.3 | 4,868.2 | 0.0 | 5,717.5 | 829.4 | 4,874.1 | 0.0 | 5,703.5 |
| Environmental Law | 29.9 | 836.5 | 0.0 | 866.4 | 698.5 | 1,224.4 | 0.0 | 1,922.9 | 700.8 | 1,225.2 | 0.0 | 1,926.0 |
| Human Services | 1,793.2 | 1,501.3 | 0.0 | 3,294.5 | 1,625.5 | 1,636.8 | 0.0 | 3,262.3 | 1,628.8 | 1,642.3 | 0.0 | 3,271.1 |
| Labor and State Affairs | 2,551.4 | 2,997.9 | 0.0 | 5,549.3 | 2,106.7 | 2,879.3 | 0.0 | 4,986.0 | 2,107.7 | 2,880.0 | 0.0 | 4,987.7 |
| Legislation/Regulations | 758.1 | 183.0 | 0.0 | 941.1 | 988.6 | 476.2 | 0.0 | 1,464.8 | 988.9 | 321.6 | 0.0 | 1,310.5 |
| Natural Resources | 2,607.1 | 4,887.4 | 0.0 | 7,494.5 | 4,682.2 | 4,138.7 | 0.0 | 8,820.9 | 3,975.6 | 3,841.7 | 0.0 | 7,817.3 |
| Opinions, Appeals and Ethics | 508.1 | 0.0 | 0.0 | 508.1 | 1,300.8 | 1,097.4 | 0.0 | 2,398.2 | 1,301.8 | 1,097.4 | 0.0 | 2,399.2 |
| Reg Affairs Public Advocacy | 1,601.8 | 0.0 | 0.0 | 1,601.8 | 2,839.2 | 0.0 | 0.0 | 2,839.2 | 2,847.5 | 0.0 | 0.0 | 2,847.5 |
| Special Litigation | 107.7 | 4.2 | 0.0 | 111.9 | 1,215.2 | 371.4 | 0.0 | 1,586.6 | 1,216.0 | 371.4 | 0.0 | 1,587.4 |
| Information and Project Support | 128.8 | 2,433.1 | 0.0 | 2,561.9 | 431.9 | 1,581.3 | 0.0 | 2,013.2 | 433.0 | 1,588.7 | 0.0 | 2,021.7 |
| Torts and Workers' Compensation | 92.6 | 3,751.5 | 0.0 | 3,844.1 | 0.0 | 4,134.0 | 0.0 | 4,134.0 | 0.0 | 4,142.4 | 0.0 | 4,142.4 |
| Transportation Section | 0.0 | 2,612.1 | 0.0 | 2,612.1 | 0.0 | 2,627.1 | 0.0 | 2,627.1 | 0.0 | 2,631.4 | 0.0 | 2,631.4 |
| Totals | 21,498.4 | 26,274.9 | 0.0 | 47,773.3 | 22,196.7 | 27,334.6 | 0.0 | 49,531.3 | 21,510.4 | 26,917.6 | 0.0 | 48,428.0 |

Civil Division
Summary of RDU Budget Changes by Component
From FY2020 Management Plan to FY2021 Governor

All dollars shown in thousands

| | <u>Unrestricted</u> <u>Gen (UGF)</u> | <u>Designated</u> <u>Gen (DGF)</u> | <u>Other Funds</u> | <u>Federal</u> <u>Funds</u> | <u>Total Funds</u> |
|---|---|---------------------------------------|--------------------|--------------------------------|--------------------|
| FY2020 Management Plan | 19,319.0 | 2,877.7 | 27,334.6 | 0.0 | 49,531.3 |
| One-time items: | | | | | |
| -Natural Resources | -482.6 | 0.0 | 0.0 | 0.0 | -482.6 |
| Adjustments which continue current level of service: | | | | | |
| -Child Protection | 22.1 | 0.0 | 1.6 | 0.0 | 23.7 |
| -Commercial and Fair Business | 0.1 | -20.0 | 5.9 | 0.0 | -14.0 |
| -Environmental Law | 2.3 | 0.0 | 0.8 | 0.0 | 3.1 |
| -Human Services | 3.3 | 0.0 | 5.5 | 0.0 | 8.8 |
| -Labor and State Affairs | 1.0 | 0.0 | 0.7 | 0.0 | 1.7 |
| -Legislation/Regulations | 0.3 | 0.0 | -154.6 | 0.0 | -154.3 |
| -Natural Resources | 0.8 | 0.0 | -297.0 | 0.0 | -296.2 |
| -Opinions, Appeals and Ethics | 1.0 | 0.0 | 0.0 | 0.0 | 1.0 |
| -Reg Affairs Public Advocacy | 0.2 | 8.1 | 0.0 | 0.0 | 8.3 |
| -Special Litigation | 0.8 | 0.0 | 0.0 | 0.0 | 0.8 |
| -Information and Project Support | 1.1 | 0.0 | 7.4 | 0.0 | 8.5 |
| -Torts and Workers' Compensation | 0.0 | 0.0 | 8.4 | 0.0 | 8.4 |
| -Transportation Section | 0.0 | 0.0 | 4.3 | 0.0 | 4.3 |
| Proposed budget decreases: | | | | | |
| -Natural Resources | 0.0 | -224.8 | 0.0 | 0.0 | -224.8 |
| FY2021 Governor | 18,869.4 | 2,641.0 | 26,917.6 | 0.0 | 48,428.0 |