

SENATE BILL NO. 88**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****Introduced: 2/3/93**
Referred: CRA, FIN**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to grants to municipalities, named recipients, and unincorporated
2 communities; establishing capital project matching grant programs for municipalities
3 and unincorporated communities; establishing a local share requirement for capital
4 project grants to municipalities, named recipients, and unincorporated communities;
5 and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * Section 1. PURPOSE. (a) The legislature recognizes the continued need for state-
8 funded capital projects (1) that are of regional or statewide significance, (2) that meet basic
9 needs, such as educational facility projects constructed under AS 14.11 and village safe water
10 projects, or (3) for which costs will exceed the amount available to a municipality or a
11 community under the capital project matching grant program. The legislature also recognizes
12 the continued need for legislatively directed funding of other capital projects.

13 (b) It is the purpose of this Act to

1 (1) provide a capital project funding system that is equitable to municipalities,
2 unincorporated communities, and named grant recipients throughout the state;

3 (2) enhance the role of communities in initiating and prioritizing the
4 construction of capital projects;

5 (3) encourage a sense of local ownership in capital projects by requiring local
6 participation in the funding of those projects; and

7 (4) improve the process for making grants for capital projects by providing a
8 more orderly and thoughtful planning process that involves the local community, the executive
9 branch, and the legislature.

10 * Sec. 2. AS 36.10.180(a) is amended to read:

11 (a) The preferences established in AS 36.10.150 - 36.10.175 apply to work
12 performed

13 (1) under a contract for construction, repair, preliminary surveys,
14 engineering studies, consulting, maintenance work, or any other retention of services
15 necessary to complete a given project that is let by the state or an agency of the state,
16 a department, office, state board, commission, public corporation, or other
17 organizational unit of or created under the executive, legislative, or judicial branch of
18 state government, including the University of Alaska and the Alaska Railroad
19 Corporation, or by a political subdivision of the state including a regional school board
20 with respect to an educational facility under AS 14.11.020;

21 (2) on a public works project under a grant to a municipality under
22 AS 37.05.315 or AS 37.06.010;

23 (3) on a public works project under a grant to a named recipient under
24 AS 37.05.316;

25 (4) on a public works project under a grant to an unincorporated
26 community under AS 37.05.317 or AS 37.06.020; and

27 (5) on any other public works project or construction project that is
28 funded in whole or in part by state money.

29 * Sec. 3. AS 37.05.315(a) is amended to read:

30 (a) When an amount is appropriated or allocated as a grant to a municipality,
31 the Department of Administration shall promptly notify the municipality of the

1 availability of the grant. When the Department of Administration receives an
2 agreement executed by the municipality which provides that the municipality (1) will
3 spend the grant for the purposes specified in the appropriation or allocation; (2) will
4 allow, on request, an audit by the state of the uses made of the grant; and (3) assures
5 that, to the extent consistent with the purpose of the appropriation or allocation, the
6 facilities and services provided with the grant will be available for the use of the
7 general public, the Department of Administration shall pay the grant directly to the
8 municipality. The agreement executed by a municipality under this section shall be
9 on a form furnished by the Department of Administration and shall be executed within
10 60 days after the effective date of the appropriation or allocation. As provided in
11 AS 37.06.030, for each grant to a municipality under this section for a capital
12 project, as defined in AS 37.07.120, the municipality shall contribute a local share
13 of the cost of the capital project for which the grant is made.

14 • Sec. 4. AS 37.05.316(a) is amended to read:

15 (a) When an amount is appropriated or allocated to a department as a grant for
16 a named recipient that is not a municipality, the department to which the appropriation
17 or allocation is made shall promptly notify the named recipient of the availability of
18 the grant and request the named recipient to submit a proposal to provide the goods
19 or services specified in the appropriation act for which the appropriation or allocation
20 is made. At the same time, the department may issue a request for proposals from
21 other qualified persons to provide the same goods or services in the same area. The
22 department shall award the grant to the named recipient unless the Office of the
23 Governor, with due regard for the local expertise or experience of those making
24 proposals, determines that an award to a different party would better serve the public
25 interest. If the grant is awarded to a party other than that named by the legislature,
26 the basis of that action shall be stated in writing at the time the grant is issued and a
27 copy of the written statement shall be sent to the Legislative Budget and Audit
28 Committee. A grant agreement must be executed within 60 days after the effective
29 date of the appropriation or allocation. As provided in AS 37.06.030, for each grant
30 made under this section for a capital project, as defined in AS 37.07.120, the
31 named grant recipient shall contribute a local share of the cost of the capital

1 project for which the grant is made.

2 * Sec. 5. AS 37.05.317(a) is amended to read:

3 (a) When an amount is appropriated or allocated as a grant under this section
4 to an unincorporated community, it shall be disbursed as follows:

5 (1) Within 45 days after the effective date of the appropriation or
6 allocation, the Department of Community and Regional Affairs shall notify the
7 governing body of the unincorporated community, if any, that a grant is available.

8 (2) The Department of Community and Regional Affairs shall
9 determine if there is a qualified incorporated entity in the community area that will
10 agree to receive the grant and administer it, subject to terms generally applicable to
11 private grantees. If there is more than one such entity, the Department of Community
12 and Regional Affairs shall select the most qualified and the grant shall be awarded to
13 that incorporated entity for the purposes specified in the appropriation act. However,
14 the Department of Community and Regional Affairs shall give preference to a
15 nonprofit corporation organized by a community for receipt of the grant.

16 (3) If there is no incorporated entity qualified to receive the grant, the
17 grant may not be awarded [DEPARTMENT OF COMMUNITY AND REGIONAL
18 AFFAIRS SHALL ADMINISTER THE PROGRAM AS SPECIFIED IN THE
19 APPROPRIATION ACT DIRECTLY OR THROUGH AGENTS OR CONTRACTORS
20 WITH WHOM IT MAY CONTRACT IN THE COMMUNITY AREA].

21 * Sec. 6. AS 37.05.317 is amended by adding a new subsection to read:

22 (c) As provided in AS 37.06.030, for each grant to an unincorporated
23 community under this section for a capital project, as defined in AS 37.07.120, the
24 incorporated entity to whom the grant is awarded shall contribute a local share of the
25 cost of the capital project for which the grant is made.

26 * Sec. 7. AS 37.05.318 is repealed and reenacted to read:

27 Sec. 37.05.318. ADOPTION OF REGULATIONS. (a) The Department of
28 Administration for grants under AS 37.05.315, the Department of Community and
29 Regional Affairs for grants under AS 37.05.317, and a department that administers a
30 grant under AS 37.05.316

31 (1) may adopt regulations that impose additional requirements or

1 procedures to implement, interpret, make specific, or otherwise carry out the applicable
2 provisions of AS 37.05.315 - 37.05.317 for grants administered by the department;

3 (2) shall adopt regulations providing for periodic audits of the use of
4 money for grants administered by the department, including audit of the department's
5 determination of the value of, and adequacy of the verification of the actual use of,
6 locally funded or contributed labor under AS 37.06.030 on capital projects funded
7 under AS 37.05.315 - 37.05.317.

8 • Sec. 8. AS 37 is amended by adding a new chapter to read:

9 CHAPTER 06. CAPITAL PROJECT MATCHING GRANT PROGRAMS.

10 Sec. 37.06.010. MUNICIPAL CAPITAL PROJECT MATCHING GRANT
11 PROGRAM. (a) The municipal capital project matching grant program is established
12 in the department. Grants to municipalities under this program shall be administered
13 as provided in this section.

14 (b) The municipal capital project matching grant fund is established in the
15 department and consists of appropriations to the fund. Appropriations to the fund do
16 not lapse except as provided in (f) of this section. The money in the fund is held by
17 the department in custody under this subsection for each municipality. The department
18 shall establish, for each municipality, an individual grant account within the fund. As
19 provided in this subsection, each fiscal year the department shall allocate, to the
20 individual grant accounts, appropriations to the fund. The department shall credit
21 interest earned on money in an individual grant account to that account. Except as
22 provided in (c) of this section, the amount allocated under this subsection to an
23 individual grant account in a fiscal year is determined by multiplying the total amount
24 appropriated to the fund during that fiscal year by a fraction,

25 (1) the numerator of which equals

26 (A) for a municipality with a population under 1,000, the
27 amount equal to that population multiplied by 1.5;

28 (B) for a municipality with a population of at least 1,000 but
29 less than 5,000, the amount equal to that population multiplied by 1.4;

30 (C) for a municipality with a population of at least 5,000 but
31 not greater than 10,000, the amount equal to that population multiplied by 1.2;

1 (D) for a municipality with a population of over 10,000, the
2 amount equal to that population; and

3 (2) the denominator of which equals the sum of the numerators
4 calculated for all municipalities under (1)(A) - (D) of this subsection.

5 (c) A minimum of \$25,000 shall be allocated to each municipality's individual
6 grant account each fiscal year under (b) of this section. The department shall reduce
7 allocations under (b) of this section on a pro rata basis, based upon the population of
8 the municipalities, if necessary to fund the minimum amount for each municipality.
9 If appropriations are not sufficient to fully fund the minimum amount for each
10 municipality, the amount appropriated shall be allocated equally among the
11 municipality individual grant accounts.

12 (d) By October 1 of each fiscal year, each municipality shall submit to the
13 governor a prioritized list of capital projects and estimated costs to be financed with
14 money from the municipality's individual grant account established under (b) of this
15 section. The list must include the amount and source of the local share required by
16 AS 37.06.030. The governor shall include in the capital improvements program
17 presented to the legislature under AS 37.07.060 the projects submitted by each
18 municipality that the governor recommends for funding. If, in the capital
19 improvements program, the governor includes projects in other than the priority order
20 submitted by a municipality, the governor shall provide the legislature with a written
21 statement of the reasons for that action.

22 (e) The legislature may make appropriations, from a municipality's individual
23 grant account established under (b) of this section, to the municipality for capital
24 projects under this section. Subject to appropriations under this subsection and to the
25 local share requirements of AS 37.06.030, each municipality may draw amounts from
26 its individual grant account for planning, design, and construction of a capital project,
27 in accordance with an appropriation for that project. In accepting a draw, the
28 municipality covenants with the state that it will operate and maintain the capital
29 project for which the draw is used for the practical life of the project, and that the
30 municipality will not rely on the state to operate or maintain the capital project or pay
31 for its operation or maintenance. This requirement does not apply to use of money

1 from a draw for repair or improvement of an existing facility that is operated or
2 maintained by the state at the time that the draw is made if the repair or improvement
3 for which the draw is used will not substantially increase the operating or maintenance
4 costs to the state. The municipality, and its agents, contractors, and subcontractors
5 shall comply with the hiring preferences under AS 36.10 in hiring employees to be
6 paid wholly or in part with money from a draw.

7 (f) A municipality shall repay to the department money drawn from its
8 individual grant account if substantial, ongoing work on the capital project is not
9 started within five years after the effective date of the appropriation from which the
10 draw is funded. Money repaid shall be deposited into the general fund. Money from
11 an allocation to a municipality's individual grant account that has not been drawn out
12 by the municipality within five years after the effective date of the appropriation from
13 which the allocation is funded lapses into the general fund.

14 (g) For purposes of this section, in calculating the population of a borough the
15 population of each city in the borough is excluded. The determination of population
16 shall be based upon data used by the Department of Community and Regional Affairs
17 under AS 14.17.140, AS 29.45.110, and AS 29.60.140 - 29.60.150.

18 (h) The provisions of AS 37.05.321 apply to a grant and draws made under
19 this section, and to earnings from the grant and draws.

20 (i) In this section, unless specified otherwise, "department" means the
21 Department of Administration.

22 **Sec. 37.06.020. UNINCORPORATED COMMUNITY CAPITAL PROJECT**
23 **MATCHING GRANT PROGRAM.** (a) The unincorporated community capital project
24 matching grant program is established in the department. Grants to unincorporated
25 communities under the program shall be administered as provided in this section.

26 (b) The unincorporated community capital project matching grant fund is
27 established in the department and consists of appropriations to the fund.
28 Appropriations to the fund do not lapse except as provided in (h) of this section. The
29 money in the fund is held by the department in custody under this subsection for each
30 unincorporated community eligible for an allocation under this subsection. The
31 department shall establish an individual grant account within the fund for each

1 unincorporated community that was entitled to receive state aid under AS 29.60.140
2 during the preceding fiscal year. As provided in this subsection, each fiscal year the
3 department shall allocate, to the individual grant accounts, appropriations to the fund.
4 An unincorporated community is eligible for an allocation in a fiscal year if the
5 community was eligible to receive state aid under AS 29.60.140 during the preceding
6 fiscal year. The department shall credit interest earned on money in an individual
7 grant account to that account. Except as provided in (c) of this section, the amount
8 allocated under this subsection to an individual grant account in a fiscal year is
9 determined by dividing the total amount appropriated to the fund during that fiscal year
10 by the number of unincorporated communities eligible for an allocation during that
11 fiscal year.

12 (c) A minimum of \$25,000 shall be allocated to each eligible unincorporated
13 community's grant account each fiscal year under (b) of this section. If appropriations
14 are not sufficient to fully fund the minimum amount for each eligible unincorporated
15 community, the amount appropriated shall be allocated equally among the eligible
16 unincorporated communities.

17 (d) The department shall designate, in each eligible unincorporated community,
18 an incorporated nonprofit entity or a Native village council that agrees to receive and
19 spend grant money allocated to the unincorporated community's individual grant
20 account under (b) of this section. If there is more than one qualified entity in a
21 community, the department shall designate the entity that the department finds most
22 qualified to make draws from that unincorporated community's individual grant
23 account and spend the money. If there is no qualified incorporated nonprofit entity or
24 Native village council in an unincorporated community that will agree to receive and
25 spend money allocated to the community under (b) of this section, draws may not be
26 made from the unincorporated community's individual grant account and the amount
27 allocated to the account lapses into the general fund.

28 (e) By October 1 of each fiscal year, the incorporated nonprofit entity or
29 Native village council designated by the department under (d) of this section shall
30 submit to the governor a prioritized list of capital projects and estimated costs to be
31 financed with money from the community's individual grant account established under

1 (b) of this section. The list must include the amount and source of the local share
2 required by AS 37.06.030. The governor shall include in the capital improvements
3 program presented to the legislature under AS 37.07.060 the projects submitted by
4 designated entities under this subsection that the governor recommends for funding.
5 If, in the capital improvements program, the governor includes projects in other than
6 the priority order submitted by a designated entity, the governor shall provide the
7 legislature with a written statement of the reasons for that action.

8 (f) The legislature may make appropriations, from an unincorporated
9 community's individual grant account established under (b) of this section, for the
10 unincorporated community for capital projects under this section. Subject to
11 appropriations under this subsection and to the local share requirements of
12 AS 37.06.030, an entity designated by the department under (d) of this section may
13 draw, on behalf of the unincorporated community, amounts from that community's
14 individual grant account for planning, design, and construction of a capital project, in
15 accordance with an appropriation for that project. In accepting a draw, an entity
16 designated by the department under (d) of this section acknowledges that the state is
17 not responsible for operating or maintaining a capital project for which the draw is
18 used, or for paying for its operation or maintenance. The acknowledgment does not
19 apply to use of money from a draw for repair or improvement of an existing facility
20 that is operated or maintained by the state at the time that the draw is made if the
21 repair or improvement for which the draw is used will not substantially increase the
22 operating or maintenance costs to the state. The designated entity, and its agents,
23 contractors, and subcontractors shall comply with the hiring preferences under
24 AS 36.10 in hiring employees to be paid wholly or in part with money from a draw.

25 (g) An entity designated by the department under (d) of this section that is a
26 Native village council may not draw money from an unincorporated community's
27 individual grant account unless the council waives immunity from suit for claims
28 arising out of activities of the council related to the draw. A waiver of immunity from
29 suit under this subsection must be on a form provided by the Department of Law.
30 Neither this subsection nor any action taken under it enlarges or diminishes the
31 governmental authority or jurisdiction of a Native village council.

1 (h) An entity designated by the department under (d) of this section shall repay
2 to the department money it has drawn from an unincorporated community's individual
3 grant account if substantial, ongoing work on the project is not started within five
4 years after the effective date of the appropriation from which the draw is funded.
5 Money repaid shall be deposited into the general fund. Money from an allocation to
6 an unincorporated community's individual grant account that has not been drawn out
7 by a designated entity within five years after the effective date of the appropriation
8 from which the allocation is funded lapses into the general fund.

9 (i) The limitations of AS 44.47.140 do not apply to a grant made under this
10 section.

11 (j) The provisions of AS 37.05.321 apply to a grant and draws made under this
12 section, and to earnings from the grant and draws.

13 (k) In this section, unless specified otherwise, "department" means the
14 Department of Community and Regional Affairs.

15 Sec. 37.06.030. LOCAL SHARE REQUIREMENTS. (a) For each capital
16 project grant for a municipality under AS 37.05.315, each draw made by a
17 municipality under AS 37.06.010, and each grant made to a named grant recipient
18 under AS 37.05.316, the municipality or named grant recipient shall contribute a local
19 share to the cost of the capital project for which the grant or draw is made. The
20 amount of the local share equals the local share percentage as calculated under (1) or
21 (2) of this subsection, divided by the state share percentage as calculated under (3) of
22 this subsection, multiplied by the amount of the grant or draw. For purposes of this
23 subsection,

24 (1) if the effective date of the appropriation from which the grant or
25 draw is funded is no later than July 1, 1994, the local share percentage is

26 (A) 30 percent for a municipality with, or a named grant
27 recipient located in a municipality with, a population of 5,000 or more;

28 (B) 15 percent for a municipality with, or a named grant
29 recipient located in a municipality with, a population of 1,000 - 4,999;

30 (C) five percent for a municipality with, or a named grant
31 recipient located in a municipality with, a population of under 1,000;

- 1 (D) five percent for a named grant recipient located in an
2 unincorporated community;
- 3 (2) if the effective date of the appropriation from which the grant or
4 draw is funded is after July 1, 1994, the local share percentage is
- 5 (A) 50 percent for a municipality with, or a named grant
6 recipient located in a municipality with, a population of 5,000 or more;
- 7 (B) 25 percent for a municipality with, or a named grant
8 recipient located in a municipality with, a population of 1,000 - 4,999;
- 9 (C) eight percent for a municipality with, or a named grant
10 recipient located in a municipality with, a population of under 1,000;
- 11 (D) eight percent for a named grant recipient located in an
12 unincorporated community;
- 13 (3) the state share percentage equals one minus the local share
14 percentage;
- 15 (4) the local share to be contributed by a municipality may be satisfied
16 with (A) federal, municipal, or local money; (B) labor used directly in the construction
17 of the project, land, materials, or equipment; the department shall determine the value
18 of a contribution under this subparagraph; (C) money from another nonstate source;
19 (D) money received by the municipality under AS 29.60.010 - 29.60.375; (E) state
20 taxes refunded or reimbursed to the municipality whose use for the purposes of this
21 subsection is not prohibited; and (F) allocations of state aid for the costs of school
22 construction debt under AS 14.11.100; except as provided in this paragraph, the local
23 share may not be satisfied with money from, or with the portion of an asset that was
24 obtained with money from, an appropriation, allocation, entitlement, grant, or other
25 payment from the state;
- 26 (5) the local share to be contributed by a named grant recipient may
27 be satisfied from (A) federal, municipal, or local money; (B) labor used directly in the
28 construction of the project, land, materials, or equipment; the department shall
29 determine the value of a contribution under this subparagraph; or (C) money from
30 another nonstate source; the local share may not be satisfied with money from, or with
31 the portion of an asset that was obtained with money from, an appropriation,

1 allocation, entitlement, grant, or other payment from the state;

2 (b) For each grant to an unincorporated community under AS 37.05.317 and
3 each draw made under AS 37.06.020, the incorporated entity or Native village council
4 that receives the grant or makes the draw shall contribute a local share of the cost of
5 the capital project for which the grant or draw is made. The amount of the local share
6 equals the local share percentage as calculated under (1) of this subsection, divided by
7 the state share percentage as calculated under (2) of this subsection, multiplied by the
8 amount of the grant or draw. For purposes of this subsection,

9 (1) the local share percentage is 5 percent if the effective date of the
10 appropriation from which the grant or draw is funded is no later than July 1, 1994, and
11 8 percent if the effective date is after July 1, 1994;

12 (2) the state share percentage equals one minus the local share
13 percentage;

14 (3) the local share may be satisfied from (A) federal or local money;
15 (B) locally funded or contributed labor used directly in the construction of the project,
16 land, materials, or equipment; the department shall determine the value of a
17 contribution under this subparagraph; (C) money from another nonstate source; or (D)
18 money received by the unincorporated community under AS 29.60.010 - 29.60.375;
19 except for money received under AS 29.60.010 - 29.60.375, the local share may not
20 be satisfied with money from, or with the portion of an asset that was obtained with
21 money from, an appropriation, allocation, entitlement, grant, or other payment from the
22 state.

23 (c) For purposes of (a) of this section, in calculating the population of a
24 borough the population of each city in the borough is excluded. The determination of
25 population shall be based upon data used by the Department of Community and
26 Regional Affairs under AS 14.17.140, AS 29.45.110, and AS 29.60.140 - 29.60.150.

27 **Sec. 37.06.080. ADOPTION OF REGULATIONS.** (a) The Department of
28 Administration for grants under AS 37.06.010 and the Department of Community and
29 Regional Affairs for grants under AS 37.06.020

30 (1) may adopt regulations that impose additional requirements or
31 procedures to implement, interpret, make specific, or otherwise carry out the applicable

1 provisions of this chapter for grants administered by the department;
2 (2) shall adopt regulations providing for periodic audits of the use of
3 money for grants administered by the department under this chapter, including audit
4 of the department's determination of the value of, and adequacy of the verification of
5 the actual use of, locally funded or contributed labor on projects funded by a grant
6 under this chapter.

7 Sec. 37.06.090. DEFINITION. In this chapter, "capital project" means the
8 same as in AS 37.07.120.

9 * Sec. 9. TRANSITION. Notwithstanding the date set out in AS 37.06.010(d), enacted by
10 sec. 8 of this Act, for capital project grants under AS 37.06.010 for fiscal year 1994 each
11 municipality shall submit to the governor its prioritized list by March 1, 1993, or by the
12 effective date of this Act, whichever is later. Notwithstanding the date set out in
13 AS 37.06.020(e), enacted by sec. 8 of this Act, for capital project grants under AS 37.06.020
14 for fiscal year 1994 the incorporated entity or Native village council designated by the
15 Department of Community and Regional Affairs for each unincorporated community shall
16 submit to the governor its prioritized list by March 1, 1993, or by the effective date of this
17 Act, whichever is later.

18 * Sec. 10. IMPLEMENTATION; APPLICABILITY. (a) Notwithstanding sec. 11 of this
19 Act, a grant for a capital project may not be disbursed or drawn upon under AS 37.05.315 -
20 37.05.317 or AS 37.06, as amended or enacted by this Act, until after June 30, 1993.

21 (b) The changes made by this Act do not apply to a grant awarded under AS 37.05
22 before the effective date of this Act.

23 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).