

S B

298

Changes from SB 298 to the work draft CS SB 298 (CRA) dated 4/29/92:

1. Section 1 - Work draft adds a new subsection (f) to AS 37.05.315 allowing the Department of Administration to award a grant to another person if the municipality declines to accept a grant made available under this section. This amendment was at the request of AML.
2. Section 1 - Work draft adds a new subsection (g) to AS 37.05.315 allowing the Department of Administration to adopt limited regulations necessary to implement this section. SB 298 repealed and reenacted AS 37.05.318 to provide for this authority.
3. Section 2 - Work draft adds a new subsection (c) to AS 37.05.316 allowing the Office of the Governor to adopt limited regulations to carry out the provisions of this section. SB 298 allowed all departments who have statutory authority to administer grants to adopt regulations under this section.
4. Section 3 - Work draft adds a new subsection (c) to AS 37.05.317 allowing the Department of Community and Regional Affairs to adopt limited regulations to carry out the provisions of this section.
5. Section 4 - Work draft repeals AS 37.05.018.
6. Section 5 - Effective date of July 1, 1992.

**CS FOR SENATE BILL NO. 298 (CRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to grants to municipalities, named recipients, and unincorporated  
2 communities; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 37.05.315 is amended by adding new subsections to read:

5 (f) If a municipality declines to accept a grant made available under this section, the  
6 Department of Administration may issue a request for proposals from other qualified persons to  
7 provide the same goods or services in the same area. After considering the proposals submitted,  
8 if the department determines that an award of the grant to a person other than the municipality  
9 would serve the public interest, it may award the grant subject to substantially the same terms  
10 required under this section for a grant awarded to a municipality. The department shall state the  
11 basis of its action in awarding the grant under this subsection at the time the grant is issued and  
12 a copy of the written statement shall be sent to the Legislative Budget and Audit Committee.

13 (g) The Department of Administration may adopt regulations necessary to implement this  
14 section only if the regulations

- 1 (1) are required by the federal government for participation in a federal program;  
2 (2) identify allowable costs, including indirect costs, of a project that may be paid  
3 for with grant money;  
4 (3) establish site requirements for a project to be paid for with grant money;  
5 (4) establish reporting requirements relating to the administration of a grant; or  
6 (5) define "substantial, ongoing work" for purposes of (b) of this section.

7 \* Sec. 2. AS 37.05.316 is amended by adding a new subsection to read:

8 (c) Only the Office of the Governor may adopt regulations necessary to implement the  
9 provisions of this section and only if the regulations

- 10 (1) are required by the federal government for participation in a federal program;  
11 (2) identify allowable costs, including indirect costs, of a project that may be paid  
12 for with grant money;

- 13 (3) establish site requirements for a project to be paid for with grant money; or  
14 (4) establish reporting requirements relating to the administration of a grant.

15 \* Sec. 3. AS 37.05.317 is amended by adding a new subsection to read:

16 (c) The Department of Community and Regional Affairs may adopt regulations necessary  
17 to implement this section only if the regulations

- 18 (1) are required by the federal government for participation in a federal program;  
19 (2) identify allowable costs, including indirect costs, of a project that may be paid  
20 for with grant money;

- 21 (3) establish site requirements for a project to be paid for with grant money; or  
22 (4) establish reporting requirements relating to the administration of a grant.


23 \* Sec. 4. AS 37.05.318 is repealed.


24 \* Sec. 5. This Act takes effect July 1, 1992.



April 20, 1992

TO: Kevin Brooks, Department of Administration  
Sandra Wicks, Department of Community and Regional Affairs

FROM:  Scott A. Burgess, Executive Director

RE:  HB 298 - Authority for regulation of grants to municipalities,  
named recipients, and unincorporated communities

Per your discussion with Chrystal Smith last week, and subsequent discussion of the issue by members of the AML Legislative Committee, I would like to offer the following comments on HB 298 and the issues surrounding grants made under AS 37.05. As you know, the League position is not to oppose all regulation, but to ask that the authority to impose regulation on the AS 37.05 grants, specifically those to municipalities under AS 37.05.315, be limited to specific areas. Our position and response to the issues raised by the departments are addressed in the enclosed memorandum from Judith Slajer, Chair, AML Taxation & Finance Subcommittee.

In addition to these issues, there are several other questions about grants made under AS 37.05 that should be dealt with if legislation amending that portion of statute is going to move this session.

Among these are:

- Is it appropriate and desirable to make municipal "pass-through" grants (under AS 37.05.315) to nonprofit corporations and other named recipients and nonprofits?

The League would prefer that grants to named recipients be made directly to those entities to perform specific functions or for specific capital improvements. When a grant is made under AS 37.05.315, the municipality is obligated to covenant that it will operate and maintain the facility for its practical life. In some instances, projects for which grants are made under this section are either low on the list of municipal priorities or even opposed by the municipality, and the municipality may wish to decline the grant.

As the AML position is discussed in the *Policy Statement*: "The League encourages the legislature to make appropriations to nonprofit corporations and other named recipients under the provisions of AS 37.05.316 rather than making such grants to municipalities as 'pass-through' grants under AS 37.05.315." (92 Policy Statement, I.B.6)

Kevin Brooks/Sandra Wicks  
April 20, 1992  
page 2

- What happens to "pass-through" grants that are rejected by a municipality because of its unwillingness to take responsibility for the project or because it does not have the power to perform the function indicated?

As the *Policy Statement* continues, "The League further encourages the legislature to amend AS 37.05 to permit grants that municipalities reject for lack of power or other reasons to be processed as grants under AS 37.05.316, which would allow the state to make the grants directly to a qualified nonprofit organization." (92 Policy Statement, I.B.6, continued)

Pass-through grants should either be made under AS 37.05.316 or the statutes should be amended to provide a mechanism under AS 37.05.315 that would permit the Department of Administration to convert section .315 grants that are declined by a municipality to section .316 grants. Such a system would increase the efficiency of the grant system because it would eliminate the expenses associated with having to pass such grants through a municipal "middleman" when the grants were, in fact, intended for a nonprofit organization.

As noted, other issues raised by your two departments have been addressed in the enclosed memorandum from Judith Slajer. Please note Ms. Slajer's recommendation that if regulations are to be written to govern grants under AS 37.05.315, .316, and .317, only one set of regulations should be written to provide standard operating procedures and uniform guidance on all of the grants made under this section.

Please call if you have questions or comments on these issues. Senator Frank's staff will be able to have a CS drafted to address the items we agree should be put before the committee for consideration.

Enclosure

cc: Eric Swanson, Department of Administration  
Sarah Fischer, Senator Frank's Office

April 16, 1992

TO: Chrystal Smith

Alaska Municipal League  
217 Second Street, Suite 200  
Juneau, AK. 99801

FROM: Judith Slajer, Chair, AML Taxation & Finance Subcommittee  
Fairbanks North Star Borough

RE: SB 298 - Relating to grants to municipalities, named recipients, and unincorporated communities

The following are the Committee recommendations regarding SB 293:

The bill, as written, provides authority to the Department of Administration (DOA) to write regulations for incorporated municipalities. The Department of Community & Regional Affairs (DCRA) is to write regulations for unincorporated communities and any state agency may write regulations for grants to named recipients. Recommendation: One state agency, or the DOA in cooperation with DCRA, should write the regulations for all grants. This would provide uniform guidance on all grants and delete a duplication of efforts.

In regard to specific areas of regulation, we submit the following acceptable limits and suggestions:

Substantial and Ongoing: Regulation would not be required if AS Sec. 37.05.315 (b) was amended. The paragraph regarding "substantial and ongoing work". Alternatively, AS Sec. 37.05.325. "Definitions..." could be amended to include the definition of substantial and ongoing.

Indirect: The regulation should be limited to the State's right to approve the indirect rate charged by the grantee and establish guidelines on acceptable indirect cost allocations. Also a list of allowable indirect costs should be provided. The State's regulations could reference the Federal OMB Circular A-87 "Cost Principles for State and Local Governments" for guidance. Regulations must not be implemented that would be contradictory to the Federal guidelines. The indirect cost to a grant being administered by a large organization would be greater than a grant being administered by a Director and a Clerk. Setting a ceiling limit does not address individual cases.

Offsetting or Withholding Payments: We agree that the State should be able to recover costs that were spent inappropriately against a grant. We do not agree with taking future grant funds to recover these costs. Regulation in this area should be limited to the State's ability to withhold final payments (maybe 10% of the grant) until

compliance can be determined. The proposed regulation should also set up an appeals process for the grantee.

Forgiveness in Hardship Situations: The State's current Administrative procedure sounds like a reasonable due process before writing off a bad debt. If the State is to consider forgiveness, then strict, equitable guidelines would be required.

Financial Reporting Guidelines: The Alaska Administrative Code (AAC) already includes some financial reporting guidelines. Establishing uniform reporting requirements would be acceptable.

Program Reporting Guidelines: Uniform guidelines for grantees program reporting need to be established.

Allowable Cost Guidelines: A list of allowable grant expenditures is recommended. Again, the State's regulations could reference the Federal OMB Circular A-87 "Cost Principles for State and Local Governments" for guidance. Regulations must not be implemented that would be contradictory to the Federal guidelines.

Federal Pass Thru Grants: Regulations providing guidance to the State and the grantee on how the grantee is to show compliance with federal regulation is suggested.

**CS FOR SENATE BILL NO. 298 (CRA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to grants to municipalities, named recipients, and unincorporated  
2 communities; and providing for an effective date."**

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

**4 \* Section 1. AS 37.05.315 is amended by adding new subsections to read:**

**5 (f) If a municipality declines to accept a grant made available under this section, the  
6 Department of Administration may issue a request for proposals from other qualified persons to  
7 provide the same goods or services in the same area. If the department determines that an award  
8 of the grant to a person other than the municipality would serve the public interest, it may award  
9 the grant subject to substantially the same terms required under this section for a grant awarded  
10 to a municipality. The department shall state the basis of its action in awarding the grant under  
11 this subsection at the time the grant is issued and a copy of the written statement shall be sent  
12 to the Legislative Budget and Audit Committee.**

**13 (g) The Department of Administration may adopt regulations necessary to implement,  
14 interpret, make specific, or otherwise carry out the provisions of this section.**

1 \* Sec. 2. AS 37.05.316 is amended by adding a new subsection to read:

2 (c) The Office of the Governor may adopt regulations necessary to implement, interpret,  
3 make specific, or otherwise carry out the provisions of this section.

4 \* Sec. 3. AS 37.05.317 is amended by adding a new subsection to read:

5 (c) The Department of Community and Regional Affairs may adopt regulations necessary  
6 to implement, interpret, make specific, or otherwise carry out the provisions of this section.

7 \* Sec. 4. AS 37.05.318 is repealed.

8 \* Sec. 5. This Act takes effect July 1, 1992.

Regulations adopted under the authority of this subjection may include, but are not limited to, the following areas:

Indirect costs  
Site Control  
Administrative and Reporting Requirements  
Allowable costs  
Recovery of misspent funds

Federal pass through

Forgiveness

Standards & terms used  
to grant forgiveness

SENATE BILL 298  
REGULATIONS FOR LEGISLATIVE GRANTS

Areas of Possible Regulations

1. A ceiling on the percentage of grant money that may be used to pay for indirect or overhead by the grantee.

eg. Fairbanks Native Assn. 19.3% indirect rate or \$11,454 out of a grant total of \$70,800

eg. Maniilaq Assn. 16.0% indirect rate or \$13,325 out of \$96,600 grant total

Believe that high indirect cost rates take funds away from the program purposes and would rather see such rates limited to allow more money to be used to serve the clients of the grantees.

Might develop a limit on the rates of 10% -15%.

2. Offsetting or withholding of payment by an agency if a grantee improperly spends money or fails to submit required reports.

1982 Attorney General's opinion stated that agencies cannot withhold funds or offset future grants for past debts against municipalities unless specifically allowed by statute or regulation.

Regulation in this area would allow agencies to attempt to recover misappropriated funds from future grants -- probably would have to limit to future grants for similar projects.

3. Establishing criteria for forgiveness in hardship situations.

There are currently no formal procedures for forgiveness of debts of disallowed or undocumented costs. Could result in situations in which a community is penalized through restrictive grant conditions if forgiveness is not made.

Current administrative procedures require sending a series of demand letters for repayment and then requesting involvement of Dept. of Law, before amounts can be formally written off as an Account Receivable.

SENATE BILL 298  
REGULATIONS FOR LEGISLATIVE GRANTS

Need for Regulations

1. Would give agencies greater authority for the enforcement of requirements - regulations carry the force and effect of law - regulations would probably have greater weight than grant agreement provisions in any litigation - regulations would also provide greater authority in negotiating grant terms.
2. Would provide some protection to grantees in receiving fair and consistent treatment from agencies - regulation development would have to be consistent between agencies for designated grants.
3. Would provide greater public input into agency policy and procedure making, as regulations must be adopted under the Administrative Procedures Act, which requires public hearings on the contents of the regulations - current grant agreement requirements and administrative procedures are not subject to such public input.

1324F



The Honorable Steve Frank

-2-

April 9, 1992

These are some of the major areas that we have encountered problems with in the past. The department currently does not have regulations drafted that it would propose if this bill becomes law. This bill would allow us more flexibility in dealing with grantees and more clearly define the rules and requirements of the program.

The department recommends that a technical amendment to the bill be made in section 1 (3) by deleting the word "other". This section as currently drafted could restrict the Departments of Administration and Community and Regional Affairs from adopting regulations on named recipient grants under AS 37.05.316.

If you have any questions or require additional information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Brooks".

Kevin Brooks  
Director


cc: Paul Fuhs  
Legislative Liaison  
Office of the Governor



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325 Fax (907) 463-5480

April 9, 1992

TO: Senator Steve Frank, Chair  
and Members, Senate Community and Regional Affairs Committee

FROM:  Scott A. Burgess, Executive Director

RE: SB 298 - Relating to grants to municipalities, named recipients, and unincorporated communities

The Alaska Municipal League has some concerns with the broad authority given by SB 298 to the Departments of Administration and Community and Regional Affairs, as well as other departments, to adopt regulations relating to grants. The League and its members understand that regulation may be necessary to ensure fiscal accountability, but, as stated in the *1992 Alaska Municipal League Policy Statement*, would only support "legislation that would limit the authority to adopt regulations to specific areas, for instance defining 'substantial on-going work' or establishing 'criteria for forgiveness in hardship situations'" (Part I, B.5).

To quote further from the same section of the *Policy Statement*, "The League supports simple and standardized grant and entitlement programs and opposes the addition of special conditions or regulations to grants and entitlement programs by the state when such conditions are not contained in the appropriation or the authorizing legislation for the grant or entitlement program." The imposition of numerous restrictions on grants to municipalities is not only unnecessary but causes municipalities to make wasteful expenditures for unproductive activities that do not contribute to the accomplishment of the purpose of the grant.

As noted above, municipalities understand the need for limited regulations to ensure accountability for the expenditure of state funds, but the provisions of SB 298 give broad authority to adopt regulations that could become burdensome.

c92leg:sb298.409

WALTER J. HICKEL  
GOVERNOR



298

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

May 16, 1991

The Honorable Richard I. Eliason  
President of the Senate  
P.O. Box V  
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to regulation of grants to municipalities, named recipients, and unincorporated communities.

This bill proposes to repeal and reenact AS 37.05.318, to allow the Department of Administration to adopt regulations governing grants to municipalities under AS 37.05.315, the Department of Community and Regional Affairs to adopt regulations for grants to unincorporated communities under AS 37.05.317, and other departments to adopt regulations for administering grants to named recipients under AS 37.05.316. Currently, AS 37.05.318 prohibits a state agency from adopting regulations or imposing additional requirements or procedures for grants awarded under AS 37.05.315 - 37.05.317 unless required by the federal government for participation in federal programs.

It has been the experience of the state that regulation is needed in the area of grants awarded under AS 37.05.315 - 37.05.317. For example, regulation is needed for municipal grants for construction of public facilities, to define "substantial, ongoing work on the project" under AS 37.05.315, with respect to the potential lapse of grant money for those municipal projects that cannot demonstrate substantial ongoing work in five years. The state also is in need of regulations specifying certain allowable actions, such as establishing a ceiling on the percentage of grant money that may be used to pay for indirect costs or overhead by a grantee; offsetting or withholding of

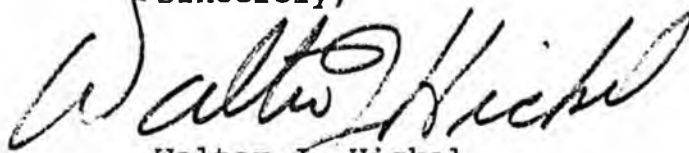
5/16/91 Transmittal letter

The Honorable Richard Eliason - 2 -

payment by an agency if a grantee improperly spends money or fails to submit required reports; and establishing criteria for forgiveness in hardship situations.

The bill provides for an effective date of July 1, 1991. I urge your support.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel  
Governor

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 298

Revision Date: \_\_\_\_\_  
Title: An act relating to grants to municipalities  
Sponsor: Rules  
Requestor: Governor

Department Affected: Administration  
BRU: Administrative Services  
Component: Administrative Services

Expenditures/Revenues: (Thousands of Dollars) COMPONENT SERIAL NO. 

0	0	4	6
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OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONNEL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
No additional costs will be incurred.

Prepared by: Eric Swanson  
Division: Administrative Services

Phone: 465-2290  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear User  
Agency Administration

Date: 4/6/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 298

Revision Date: \_\_\_\_\_  
 Title: "...relating to grants to municipalities, named recipients, and unincorporated communities..."  
 Sponsor: (S) Rules by Request of Governor  
 Requestor: (S) CRA

Department Affected: Community and Regional Affairs  
 BRU: Administration & Support  
 Component: Designated Grants

COMPONENT SERIAL NO. 

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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						

REVENUE						
FUND SOURCE:						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 Regulations, when prepared, will be drafted by existing staff.

Prepared By: *Remond Henderson*  
 Division: Administrative Services Division

Phone: 465-4708  
 Date: 4/8/92

Approved by Commissioner: *Earl Bern*  
 Agency: Department of Community and Regional Affairs

Date: 4-8-92 /

**Sec. 37.05.280. State insurance catastrophe reserve account.**  
 (a) There is established in the general fund a state insurance catastrophe reserve account consisting of assets appropriated to it by the legislature and assets allocated to the account by the Department of Administration as provided in (b) of this section. Assets of the account may be used to obtain insurance, to establish reserves for the self-insurance program, and to satisfy claims or judgments arising under the program. Interest earned on money in the account shall be remitted to the Department of Revenue in accordance with AS 37.10.050.

(b) The Department of Administration may allocate to the state insurance catastrophe reserve account, from the appropriations to all state agencies for insurance-related purposes, an amount that the commissioner of administration determines to be necessary to provide an adequate insurance program for the operations of state government. Money remaining in the account at the end of a fiscal year is not a one-year appropriation under AS 37.25.010 and does not lapse, except for amounts determined by the commissioner of administration to be unnecessary to maintain this account at an appropriate level and not to exceed \$5,000,000. If the amount necessary to satisfy claims or judgments for which payment may be due under the state insurance program in a fiscal year exceeds the unexpended balance of the amounts allocated to the account, the department may charge an additional amount from the unencumbered balance of any appropriation that is determined by the commissioner of administration to be available for lapse at the end of the fiscal year. (§ 1 ch 28 SLA 1987)

*Sec. 37.05.290. Purpose of chapter. [Repealed, § 67 ch 106 SLA 1986.]*

*Sec. 37.05.300. [Renumbered as AS 37.05.900.]*

*Sec. 37.05.305. [Renumbered as AS 37.05.910.]*

*Sec. 37.05.310. [Renumbered as AS 37.05.920.]*

**Article 5. Administration of Grants.**

<b>Section</b>	<b>Section</b>
315. Grants to municipalities	318. Further regulations prohibited
316. Grants to named recipients	321. Restriction on use
317. Grants to unincorporated communities	325. Definitions for AS 37.05.316 — 37.05.317

**Sec. 37.05.315. Grants to municipalities.** (a) When an amount is appropriated or allocated as a grant to a municipality, the Department of Administration shall promptly notify the municipality of the availability of the grant. When the Department of Administration receives an agreement executed by the municipality which provides that the municipality (1) will spend the grant for the purposes specified in the appropriation or allocation; (2) will allow, on request, an audit by the state of the uses made of the grant; and (3) assures that, to the extent consistent with the purpose of the appropriation or allocation, the facilities and services provided with the grant will be available for the use of the general public, the Department of Administration shall pay the grant directly to the municipality. The agreement executed by a municipality under this section shall be on a form furnished by the Department of Administration and shall be executed within 60 days after the effective date of the appropriation or allocation.

(b) An appropriation or allocation for a grant to a municipality for construction of a public facility lapses if substantial, ongoing work on the project has not begun within five years after the effective date of the appropriation or allocation.

(c) In accepting a grant of money for construction of a public facility, a municipality covenants with the state that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the state to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant of money for repair or improvement of an existing facility operated or maintained by the state at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the state.

(d) Not less than 20 percent of a grant shall be paid to a municipality within 10 days of the effective date of the agreement under (a) of this section. The remainder of the grant shall be paid either in monthly installments equal to the amount of grant money the municipality expended in the previous month or in a lump sum as determined by the Department of Administration.

(e) The Department of Labor shall require a municipality awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 — 36.10.175 for employment generated by the grant. (§ 1 ch 156 SLA 1980; am § 1 ch 4 SLA 1982; am § 7 ch 33 SLA 1986)

**Cross references.** — For applicability of subsection (e) to contracts entered into before May 25, 1986, see sec. 10, ch. 33, SLA 1986 in the Temporary and Special Acts. **Effect of amendments.** — The 1986 amendment added subsection (e).

AS 37.05.315 - 37.05.318

## NOTES TO DECISIONS

Municipality has no duty to purchase third party's property or liability. — A third party owning property that a municipality expressed an interest in buying is at most an incidental beneficiary of any contract between the municipality and the state, assuming, without deciding, that the contractual concept of third party beneficiary rights can apply in

the legislative grant situation; there is not a statutory duty for the municipality to purchase the property but discretion to spend or not to spend funds within the parameters set by the legislature; and there is no intentional interference with prospective economic advantage. *Ellis v. City of Valdez*, Sup. Ct. Op. No. 2844 (File No. 8-32), 686 P.2d 700 (1984).

**Sec. 37.05.316. Grants to named recipients.** (a) When an amount is appropriated or allocated to a department as a grant for a named recipient that is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services in the same area. The department shall award the grant to the named recipient unless the Office of the Governor, with due regard for the local expertise or experience of those making proposals, determines that an award to a different party would better serve the public interest. If the grant is awarded to a party other than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A grant agreement must be executed within 60 days after the effective date of the appropriation or allocation.

(b) The Department of Labor shall require a recipient awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 — 36.10.175 for employment generated by the grant. (§ 2 ch 4 SLA 1982; am § 8 ch 33 SLA 1986; am § 39 ch 106 SLA 1986)

**Cross references.** — For applicability of subsection (b) to contracts entered into before May 25, 1986, see sec. 10, ch. 33, SLA 1986 in the Temporary and Special Acts.

**Effect of amendments.** — The first 1986 amendment added subsection (b).

The second 1986 amendment, in subsection (a), deleted "or both" following "appropriation act" in the first sentence, deleted "or both" following "goods or services" in the second sentence, substituted

"award the grant to" for "contract with" near the beginning of the third sentence, substituted "grant" for "contract" near the beginning of the fourth sentence, substituted "grant agreement must" for "contract shall" near the beginning of the fifth sentence, deleted the former sixth sentence which read, "The purchase of the goods or services, or both, shall be in accordance with AS 37.05.230(1)(D)," and made related grammatical and technical changes.

**Sec. 37.05.317. Grants to unincorporated communities.** (a) When an amount is appropriated or allocated as a grant under this section to an unincorporated community, it shall be disbursed as follows:

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

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

(3) If there is no incorporated entity qualified to receive the grant, the Department of Community and Regional Affairs shall administer the program as specified in the appropriation act directly or through agents or contractors with whom it may contract in the community area.

(b) The Department of Labor shall require the qualified incorporated entity awarded a grant or agents or contractors with whom the Department of Community and Regional Affairs contracts under (a) of this section to comply with the requirements of AS 36.10.150 — 36.10.175 for employment generated by the grant or contract if the grant or contract is for a public works project. (§ 2 ch 4 SLA 1982; am § 9 ch 33 SLA 1986)

**Cross references.** — For applicability of subsection (b) to contracts entered into before May 25, 1986, see sec. 10, ch. 33, SLA 1986 in the Temporary and Special Acts.

**Effect of amendments.** — The 1986 amendment added subsection (b).

**Sec. 37.05.318. Further regulations prohibited.** Notwithstanding the Administrative Procedure Act (AS 44.62), the Fiscal Procedures Act (AS 37.05), and the Executive Budget Act (AS 37.07), a state agency may not adopt regulations or impose additional requirements or procedures to implement, interpret, make specific, or otherwise carry out the provisions of AS 37.05.315 — 37.05.317 unless required by the federal government for participation in federal programs. (§ 2 ch 4 SLA 1982)