

SB

28

0-LS0217F
Cook
2/18/98

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 28 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATOR TORGERSON**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the unincorporated community capital project matching grant
2 program; and providing for an effective date."

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

4 * **Section 1.** AS 37.06.020(b) is amended to read:

5 (b) The unincorporated community capital project matching grant fund is
6 established in the department and consists of appropriations to the fund. Appropriations
7 to the fund do not lapse except as provided in (h) of this section. The money in the
8 fund is held by the department in custody under this subsection for each
9 unincorporated community eligible for an allocation under this subsection. The
10 department shall establish an individual grant account within the fund for each eligible
11 unincorporated community [THAT WAS ENTITLED TO RECEIVE STATE AID
12 UNDER AS 29.60.140 DURING THE PRECEDING FISCAL YEAR]. As provided
13 in this subsection, each fiscal year the department shall allocate, to the individual grant
14 accounts, appropriations to the fund. An unincorporated community is eligible for an

1 grant account and spend the money. If there is no qualified incorporated nonprofit
2 entity or Native village council in an unincorporated community that will agree to
3 receive and spend money allocated to the community under (b) of this section, draws
4 may not be made from the unincorporated community's individual grant account and
5 the amount allocated to the account lapses into the general fund.

6 * Sec. 4. AS 37.06.020(e) is amended to read:

7 (e) By October 1 of each fiscal year, the incorporated nonprofit entity or
8 Native village council designated by the department under (d) of this section shall
9 submit to the department [GOVERNOR] a prioritized list of capital projects and
10 estimated costs to be financed with money from the community's individual grant
11 account established under (b) of this section. The list must include the amount and
12 source of the local share required by AS 37.06.030. If the community is located in
13 a borough or unified municipality, the list is subject to approval of the assembly
14 and must be accompanied by written evidence of that approval. The department
15 shall rank all of the projects listed in order of state priority based on health and
16 safety considerations, and the governor shall include in the capital improvements
17 program presented to the legislature under AS 37.07.060 the amount [PROJECTS
18 SUBMITTED BY DESIGNATED ENTITIES UNDER THIS SUBSECTION] that the
19 governor recommends for funding the unincorporated community capital project
20 matching grant programs. If the state's priority ranking of [, IN THE CAPITAL
21 IMPROVEMENTS PROGRAM, THE GOVERNOR INCLUDES] projects for a
22 community is in other than the priority order submitted by a designated entity, the
23 governor shall provide the legislature with a written statement of the reasons for that
24 action.

25 * Sec. 5. AS 37.06.020(h) is amended to read:

26 (h) An entity designated by the department under (d) of this section shall repay
27 to the department money it has drawn from an unincorporated community's individual
28 grant account if substantial, ongoing work on the project is not started within four
29 [FIVE] years after the effective date of the appropriation from which the draw is
30 funded. Money repaid shall be deposited into the general fund. Money from an
31 allocation to an unincorporated community's individual grant account that has not been

1 allocation in a fiscal year if the requirements of (d) are met and the community was
2 a place in the state in which 25 or more individuals resided as a social unit
3 [ELIGIBLE TO RECEIVE STATE AID UNDER AS 29.60.140] during the preceding
4 fiscal year. The department shall credit interest earned on money in an individual
5 grant account to that account. Except as provided in (c) of this section, the amount
6 allocated under this subsection to an individual grant account in a fiscal year is the
7 amount needed to fund the projects presented to the legislature in the order of
8 state priority established by the department under (e) of this section subject to
9 [DETERMINED BY DIVIDING] the total amount appropriated to the fund during that
10 fiscal year [BY THE NUMBER OF UNINCORPORATED COMMUNITIES
11 ELIGIBLE FOR AN ALLOCATION DURING THAT FISCAL YEAR].

12 * Sec. 2. AS 37.06.020(c) is amended to read:

13 (c) A maximum [MINIMUM] of \$25,000 may [SHALL] be allocated to an
14 [EACH] eligible unincorporated community's grant account each fiscal year under (b)
15 of this section. If appropriations exceed the amount necessary to fully fund the
16 amount for each eligible unincorporated community, the excess amount lapses into
17 the general fund. If appropriations are not sufficient to fully fund the [MINIMUM]
18 amount for each eligible unincorporated community, the amount appropriated shall be
19 allocated [EQUALLY] among the eligible unincorporated communities in the order
20 of the state priority for projects ranked by the department under (e) of this
21 section.

22 * Sec. 3. AS 37.06.020(d) is amended to read:

23 (d) The department shall designate, in each eligible unincorporated community,
24 an incorporated nonprofit entity or a Native village council that agrees to receive and
25 spend grant money allocated to the unincorporated community's individual grant
26 account under (b) of this section. If the community is located in a borough or a
27 unified municipality, the department may only designate the entity that has been
28 approved by the assembly and the department must have written evidence of that
29 approval. If there is more than one qualified entity in a community in the
30 unorganized borough, the department shall designate the entity that the department
31 finds most qualified to make draws from that unincorporated community's individual

1 drawn out by a designated entity within four [FIVE] years after the effective date of
2 the appropriation from which the allocation is funded lapses into the general fund.

3 * Sec. 6. AS 37.06.030(b) is amended to read:

4 (b) For each draw made by an entity or council under AS 37.06.020, the
5 incorporated entity or Native village council that makes the draw shall contribute a
6 local share of the cost of the capital project for which the draw is made. The amount
7 of the local share for an unincorporated community in a borough or unified
8 municipality is the amount of the local share for that borough or unified
9 municipality as calculated under (a) of this section. The amount of the local share
10 for an unincorporated community in the unorganized borough equals the local
11 share percentage as calculated under (1) of this subsection, divided by the state share
12 percentage as calculated under (2) of this subsection, multiplied by the amount of the
13 draw. For purposes of this subsection,

14 (1) the local share percentage is five percent;

15 (2) the state share percentage equals one minus the local share
16 percentage;

17 (3) the local share may be satisfied from (A) federal or local money;
18 (B) labor, materials, or equipment used directly in the construction of the project, or
19 land, including land transferred by the state; the department shall determine the value
20 of a contribution under this subparagraph; (C) money from another nonstate source;
21 (D) money received by the unincorporated community under AS 29.60.010 -
22 29.60.375; or (E) money obtained from the sale or lease of land or other assets
23 transferred by the state; except as provided in this paragraph, the local share may not
24 be satisfied with money from, or with the portion of an asset that was obtained with
25 money from, an appropriation, allocation, entitlement, grant, or other payment from the
26 state.

27 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

Participating Communities in the Un		Communities in the Organized Boroughs		
Community	Current Amount	Community	Estimated Amount	Borough
Senate District A				
Hyder	25,000			
Metlakatla	25,000			
Subtotal				
Senate District C				
Deltana	25,000	Covenant Life	Not Elig.	Haines
Edna Bay	25,000	Lutak		Haines
Elfin Cove	25,000	Mosquito Lake		Haines
Gustavus	25,000	Chiniak		Kodiak
Hollis	25,000	Karluk		Kodiak
Klukwan	25,000	Kodiak Station	Not Elig.	Kodiak
Naukatl Bay	25,000	Womens Bay	Not Elig.	Kodiak
Point Baker	25,000			
Port Protection	25,000			
Whale Pass	25,000			
Subtotal			53,544	
Senate District D				
		Anchor Point		Kenai
		Clam Gulch		Kenai
		Cohoe		Kenai
		Cooper Landing		Kenai
		Crown Point		Kenai
		Fox River		Kenai
		Fritz Creek	Not Elig.	Kenai
		Halibut Cove		Kenai
		Happy Valley		Kenai
		Hope		Kenai
		Jakolof Bay		Kenai
		Kalifonsky		Kenai
		Kasilof		Kenai
		Moose Pass		Kenai
		Nanwalek		Kenai
		Nikolaevsk		Kenai
		Ninilchik		Kenai
		Port Graham		Kenai
		Primrose		Kenai
		Ridgeway	Not Elig.	Kenai
		Sterling	Not Elig.	Kenai
Subtotal				
Senate District E				
		Nikiski	Not Elig.	Kenai
		Salamatof		Kenai
Subtotal				

Evansville	25,000				
Gakona	25,000				
Glennallen	25,000				
Gulkana	25,000				
Healy Lake	25,000				
Kenny Lake	25,000				
Lake Minchumina	25,000				
Lime Village	25,000				
Manley Hot Springs	25,000				
Mentasta Lake	25,000				
Minto	25,000				
Nelchina/Mendaltna	25,000				
Senate District R (continued)					
Northway	25,000				
Paxon	25,000				
Rampart	25,000				
Red Devil	25,000				
Slana	25,000				
Sleetmute	25,000				
Stevens Village	25,000				
Stony River	25,000				
Takotna	25,000				
Tanacross	25,000				
Tatitlek	25,000				
Tazlina	25,000				
Tetlin	25,000				
Tok	25,000				
Venetie	25,000				
Wiseman	25,000				
Senate District S					
Pitka's point	25,000	Deadhorse	Not Elig.	North Slope	
		Point Lay		North Slope	
		Prudhoe Bay	Not Elig.	North Slope	
		Noatak		NWest Artic	
Senate District T					
Akiachak	25,000	Nelson Lagoon		Aleutians E.	
Kipnuk	25,000	King Salmon		Bristol Bay	
Kollganek	25,000	Naknek		Bristol Bay	
Kongiganak	25,000	South Naknek		Bristol Bay	
Kwigillingok	25,000	Chignik Lagoon		Lake & Pen	
Nikolski	25,000	Chignik Lake		Lake & Pen	
Oscarville	25,000	Egegik		Lake & Pen	
Slana	25,000	Igiugig	Not Elig.	Lake & Pen	
Tuntutuliak	25,000	Iliamna		Lake & Pen	

Twin Hills	25,000		Ivanof Bay		Lake & Pen
			Kokhanok		Lake & Pen
			Levelock		Lake & Pen
			Pedro Bay		Lake & Pen
			Perryville		Lake & Pen
			Port Alsworth		Lake & Pen
<u>Subtotal</u>					
<i>Four Mile Rd Comr</i>	<i>25,000</i>				
<i>Silvers Springs</i>	<i>25,000</i>				
<i>Tolsona</i>	<i>25,000</i>				

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 7, 1997

SUBJECT: Native sovereignty (SB 28)

TO: Senator Jerry Mackie

FROM: Tamara Brandt Cook
Director TBC

The unincorporated community capital project matching grant program currently makes grants available to Native village councils. Senate Bill 28 would amend the program so that Native village councils could no longer qualify for grants. In connection with this bill you ask

"(1) Is the state's waiver of sovereign immunity requirement a sufficient protection against adverse claims in court actions?" The waiver provided for in AS 37.06.020(g) only has to do with suit against the Native village council "for claims arising out of the activities of the council related to the draw [of grant money]." The United States Supreme Court has found that sovereign immunity of a tribe may, indeed, be waived, although it has also held that the waiver must be unequivocally expressed and may not be implied. (Santa Clara Pueblo v. Martinez, 436 US 49, 56 L.Ed2d 106 (1978)) The Alaska State Supreme Court has also held that, if a Native group enjoys sovereign immunity, that immunity may be waived. (Hydaberg Co-op v. Hydaburg Fisheries, 826 P.2d 751 (Alaska 1992); Nenana Fuel v. Native Village of Venetie, 834 P.2d 1229 (Alaska 1992)) Our state court has gone so far as to hold that sovereign immunity may be waived by implication, at least where the Native entity agrees to contract terms that are inconsistent with immunity. (Native Village of Eyak v. GC Contractors, 658 P.2d 756 (Alaska 1983))

"(2) Are there other provisions that would offer better protection while still allowing Native organizations' participation?" None that occur to me.

"(3) In what manner or tenet of law would the state's legal stance in contests of sovereignty be improved by eliminating at this time Native organization participation in state's local government programs?" I have no basis to speculate upon what types of arguments might be made in attempts in legal forums to resolve questions involving the legal status of Native groups in Alaska or how the state's treatment of those groups under benefit programs could

Senator Jerry Mackie

February 7, 1997

Page 2

influence those arguments. With respect to sovereign immunity waiver provision in the municipal capital project matching grant program, however, note that AS 37.06.030(g) contains the following disclaimer: "Neither this subsection nor any action taken under it enlarges or diminishes the governmental authority or jurisdiction of a Native village council."

TBC:glc
97-071.glc

Alaska State Legislature



Committee Membership

Senate Finance
Senate Resources
Senate Rules
Legislative Budget & Audit

Senator John Torgerson

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SB28 - S(CRA) Packet

2/18/98: 1:30pm

- ◆ Sponsor Statement
- ◆ Comparison of Current Program with SB 28
- ◆ 19 AAC 010.0920 - Determination of Community
- ◆ 19 AAC 030.0055 - Standards for Payments of State Aid to Unincorporated Communities
- ◆ Community List

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Committee Membership

Senate Finance
Senate Resources
Senate Rules
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Sponsor Statement - SB 28 Unincorporated Community Matching Grants

The purpose of the capital project matching grant program is to:

- (1) provide a capital project funding system that is equitable to municipalities and unincorporated communities throughout the state;
- (2) enhance the role of communities in initiating and prioritizing the construction of capital projects;
- (3) encourage a sense of local ownership in capital projects by requiring local participation; and
- (4) improve the process for making grants for capital projects by providing a more orderly and thoughtful planning process that involves the local community, the executive branch, and the legislature.

SB 28 revises the Unincorporated Community Capital Project Matching Grant Program by:

- Expanding the program to include unincorporated communities within boroughs and unified municipalities
- Changing the grant amount from an automatic minimum of \$25,000 per year to a maximum of \$25,000 per year, based on approved projects;
- Requiring borough assembly approval of an unincorporated community's nonprofit entity and its list of requested project;
- Revising the timeline of grants from automatically receiving funds and then applying for grants to first applying for a grant and then receiving funds for approved projects; and
- Maintaining local share requirements of 5 percent for unincorporated communities in the unorganized borough but requiring that unincorporated communities within boroughs provide the same local share percentage as their borough; and
- Changing the time in which unexpended and unobligated funds are spent from five years to four years.

Comparison of the Unincorporated community Project Matching Grant Program with Changes made by SB 28

CURRENT PROGRAM

SB 28

Participants

Unincorporated communities in the unorganized borough who were eligible to participate in the revenue sharing program the preceding year

Any unincorporated community in the state that meets the definition of a social unit of 25 or more and have a qualifying entity to administer the funds

Funding

One appropriation divided evenly among all eligible participants regardless of whether they have requested a project. Minimum allocation is \$25,000.

One appropriation allocated to individual communities based upon the amount of the project requested, up to a maximum of \$25,000 per year.

Entity Qualifications

Nonprofit entity or Native village council that meets the standards currently in regulation for the revenue sharing program.

Same qualifications except that the basic qualifications are in statute. DCRA has the ability to adopt regulations to further clarify them.

DCRA determines the entity's eligibility. The department determines the most qualified if there is more than one in a community.

DCRA determines the eligibility. Communities within boroughs must also obtain the assembly's written designation and approval.

Grant Request Procedure

Unincorporated community submits prioritized list of projects including estimated costs and source of local share.

Same procedure, except that communities within boroughs must obtain written assembly approval of the list of projects.

Allocation of Funds

Money is allocated to a community account regardless of whether there is a project requested or if the requested project requires less funding than the allocation.

Money is allocated to a community based upon their grant request. It is then subject to approval by the legislature of the Governor's submittals in the Unincorporated Community Matching Grant Program. If a project is not requested or approved and then submitted by the Governor, the community receives no funds.

Communities may keep the excess funds in their accounts for up to five years.

Local Contribution Required

The percentage used for calculating the required local contribution is 5 percent.

No change for communities in the unorganized borough. Communities within boroughs are calculated using the borough's percentage (normally 30 percent).

DETERMINATION OF COMMUNITY.

(a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people

(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community or social unit if

(1) public access to or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

History -

Eff. 7/31/92, Register 123

Authority -

Alaska Const. art. X, sec. 12

AS 44.47.567

AS 44.47.980

19 AAC 030.0055

STANDARDS FOR PAYMENTS OF STATE AID TO INCORPORATED COMMUNITIES.

An applicant that is an entity qualified to receive an entitlement under AS 29.60.140 must meet the following standards to receive payment:

(1) the applicant must agree to irrevocably dedicate for a public purpose the payment that the applicant receives under AS 29.60.140;

(2) the applicant must be providing the residents of the unincorporated community with a public facility or service as of October 1 of the computation year;

(3) the applicant must have held a public meeting to give residents the opportunity to express their ideas and preferences for the use of money received under AS 29.60.140 and must have posted notice of the meeting in three public and prominent places in the community for at least 15 days before the meeting; and

(4) the applicant must agree to make a service or facility provided with the money received under AS 29.60.140 available to every person in the community regardless of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or political affiliation.

History -

Eff. 10/18/87, Register 104; am 8/19/88, Register 107

Authority -

AS 29.60.130

AS 29.60.180

AS 44.47.050

AS 44.47.980

SB 28 Community Information

<u>Current in Unorg Borough</u>	<u>Cur #s</u>		<u>New in Org Boroughs</u>	<u>New #s</u>	
		Current Amount			Borough
Current Community			New Community		
Senate District A			Senate District A		
Hyder		25,000		0	
Sub-Total	1				
Senate District C			Senate District C		
Metlakalla		25,000	Covenant Life	?Eligible	Haines
Edna Bay		25,000	Lutak		Haines
Elfin Cove		25,000	Mosquito Lake		Haines
Gustavus		25,000	Chiniak		Kodiak
Hollis		25,000	Karuk		Kodiak
Klukwan		25,000	Kodiak Station	?Eligible	Kodiak
Naukati Bay		25,000	Womens Bay	?Eligible	Kodiak
Point Baker		25,000			
Port Protection		25,000			
Whale Pass		25,000			
Sub-total	10			4	
Senate District D			Senate District D		
			Anchor Point		Kenai
			Clam Gulch		Kenai
			Cohoe		Kenai
			Cooper Landing		Kenai
			Crown Point		Kenai
			Fox River		Kenai
			Fritz Creek	?Eligible	Kenai
			Halibut Cove		Kenai
			Happy Valley		Kenai
			Hope		Kenai
			Jakolof Bay		Kenai
			Kalifonsky		Kenai
			Kasilof		Kenai
			Moose Pass		Kenai
			Nanwalek		Kenai
			Nikolaevsk		Kenai
			Ninilchik		Kenai
			Pcrt Graham		Kenai
			Primrose		Kenai
			Ridgeway	?Eligible	Kenai
			Sterling	?Eligible	Kenai
Subtotal				21	
Senate District E			Senate District E		
			Nikiski	?Eligible	Kenai
			Salamatof		Kenai
Subtotal				1	
Senate District M			Senate District M		
			Eklutna	?Eligible	Anchorage
Senate District N			Senate District N		
			Alexander Creek		Mat-Su
			Big Lake		Mat-Su

SB 28 Community Information

Manley Hot Springs		25,000			
Mentasta Lake		25,000			
Minto		25,000			
Nelchina/Mendaltna		25,000			
Northway		25,000			
Paxon		25,000			
Rampart		25,000			
Red Devil		25,000			
Silvers Springs		25,000			
Slana		25,000			
Sleetmute		25,000			
Stevens Village		25,000			
Stony River		25,000			
Takotna		25,000			
Tanacross		25,000			
Tatitlek		25,000			
Tazlina		25,000			
Tetlin		25,000			
Tok		25,000			
Tolsona		25,000			
Venetie		25,000			
Wiseman		25,000			
Sub-Total		46		1	
Senate District S					
Pitka's point		25,000			
Sub-Total		1		2	
Senate District T					
Akiachak		25,000			
Kipnuk		25,000			
Koliganek		25,000			
Kongiganak		25,000			
Kwigillingok		25,000			
Nikolski		25,000			
Oscarville		25,000			
Slana		25,000			
Tuntutullak		25,000			
Twin Hills		25,000			
Subtotal		10		14	
Current/New #'s		68		62	
FY 98: \$1.8 million					