

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4572 HHS HB 487 - HB 491

person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous, the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub.L. 99-499, Title III, § 325, Oct. 17, 1986, 100 Stat. 1753.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

Library References

Health and Environment ⇐ 38.
C.J.S. Health and Environment §§ 49, 50, 134
to 139, 151 to 156.

§ 11046. Civil actions

(a) Authority to bring civil actions

(1) **Citizen suits.**—Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under section 11023(g) of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044 of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) **State or local suits**

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(e) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) of this section or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this chapter with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the

Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub.L. 99-499, Title III, § 326, Oct. 17, 1986, 100 Stat. 1755.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

Library References

Health and Environment ☉38.
U.S. Health and Environment §§ 49, 50, 134 to 139, 151 to 156.

§ 11047. Exemption

Except as provided in section 11004 of this title this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub.L. 99-499, Title III, § 327, Oct. 17, 1986, 100 Stat. 1757.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

§ 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub.L. 99-499, Title III, § 328, Oct. 17, 1986, 100 Stat. 1757.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

§ 11049. Definitions

For purposes of this chapter—

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of Title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term "toxic chemical" means a substance on the list described in section 11023 of this title.

(Pub.L. 99-499, Title III, § 329, Oct. 17, 1986, 100 Stat. 1757.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

§ 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub.L. 99-499, Title III, § 330, Oct. 17, 1986, 100 Stat. 1758.)

Effective Date. Section effective Oct. 17, 1986, see section 4 of Pub.L. 99-499, set out as a note under section 9601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 99-499, see 1986 U.S. Code Cong. and Adm. News, p. 2835.

CHAPTER 117—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES [NEW]

Sec.

Sec.

11101. Findings.

SUBCHAPTER II—REPORTING OF INFORMATION

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

11111. Professional review.

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- (a) In general.
- (b) Exception.
- (c) Treatment under State laws.

- (a) In general.
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- (c) Sanctions for failure to report.
- (d) Report on treatment of small payments.

11112. Standards for professional review actions.

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- (c) Adequate procedures in investigations or health emergencies.

- (a) In general.
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11133. Reporting of certain professional review actions taken by health care entities.

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- (a) In general.
- (b) Scope of clinical privileges.
- (c) Treatment of nurses and other practitioners.

- (a) Reporting by health care entities.
- (b) Reporting by Board of Medical Examiners.
- (c) Sanctions.

11115. Construction.

- (d) Treatment of patient malpractice claims.

- (d) References to Board of Medical Examiners.

Sec.

11134. Form of reporting.

Sec.

11137. Miscellaneous provisions.

- (a) Timing and form.
- (b) To whom reported.
- (c) Reporting to State licensing boards.

- (b) Confidentiality of information.
- (c) Relief from liability for reporting.
- (d) Interpretation of information.

11135. Duty of hospitals to obtain information.

- (a) In general.
- (b) Failure to obtain information.
- (c) Reliance on information provided.

SUBCHAPTER III—DEFINITIONS AND REPORTS

11151. Definitions.

11152. Reports and memoranda of understanding.

11136. Disclosure and correction of information.

11137. Miscellaneous provisions.

- (a) Providing licensing boards and other health care entities with access to

- (a) Annual reports to Congress.
- (b) Memoranda of understanding.
- (c) Memorandum of understanding with drug enforcement administration.

§ 11101. Findings

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

(Pub.L. 99-660, Title IV, § 402, Nov. 14, 1986, 100 Stat. 3784.)

Short Title. Section 401 of Pub.L. 99-660 provided that: "This title [enacting this chapter] may be cited as the 'Health Care Quality Improvement Act of 1986'."

Legislative History. For legislative history and purpose of Pub.L. 99-660, see 1986 U.S. Code Cong. and Adm. News, p. 6287.

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

§ 11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review action (as defined in section 11151(9) of this title) of a professional review body meets all the standards specified in section 11112(a) of this title, except as provided in subsection (b) of this section—

- (A) the professional review body,
- (B) any person acting as a member or staff to the body,
- (C) any person under a contract or other formal agreement with the body, and
- (D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. and the Civil Rights Act, 42 U.S.C. 1981 et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 4C of the Clayton Act, 15 U.S.C. § 15C [15 U.S.C.A. § 15c], where such an action is otherwise authorized.



Alaska State Legislature

④ HB 487

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

TO: Rep. Henry Springer, Chairman HCRA
FROM: David C. Harrison, P. A., HCRA
Date: February 29, 1988
Subject: BILL REVIEW - HB 487
"An Act relating to warning placards and municipal reporting programs for hazardous materials and hazardous wastes."
[Gruenberg, Barnes, Pearce]

*Section 1. AS 18.70.310(b) is amended to read:

(b) The department of Public Safety, division of fire prevention shall the specifications set out in the National Fire Protection Association 704 M system of [UNITED STATES DEPARTMENT OF TRANSPORTATION] warning placards for hazardous materials and hazardous wastes.

COMMENT: Intent of this section is to replace the U.S. Dept. of Transportation warning placards by adopting NFPA 704 M system. File Item #2 enclosed provides for the 1985 Edition of NFPA 704 which is basically the same as the 1986 Edition of NFPA 704 M which is considered a standard system for the identification and placarding of fire hazardous material. Scope and application herein provides a basic system of readily recognizable and simple markings which should give some idea of inherent hazards of any material and the order of the severity of these hazards as they relate to fire prevention.

Deleted in this section was the permissive cooperation between the municipality and the Dept. of Public Safety, Division of Fire Prevention, to adopt and use an alternative design for warning placards.

*Sec. 2. AS 29.35.500 is amended by adding a new subsection to read:

(h) Notwithstanding other provisions of this section, a home rule municipality that establishes or amends a program for the reporting of hazardous materials and hazardous wastes may adopt, in place of the requirements of this section, requirements that are consistent with 42 U.S.C. 11001 - 11050 (Title III, Superfund Amendments and Reauthorization Act of 1986,). L. 99-499).

COMMENTS: Deletes adopted warning placards of the U. S. Transportation Department and permits adoption by a home rule municipality, which includes home rule unified municipalities. The attempt here is to develop a consistency of programs relating to hazardous material placarding and reporting standards by the State of Alaska and the



STATE OF ALASKA
OFFICE OF THE GOVERNOR (5) HB 487

BILL ANALYSIS

DEPARTMENT DEC	DIVISION Environmental Quality	BILL NUMBER HB 487	SPONSOR Gruenberg
SHORT TITLE OF BILL Relating to warning placards and municipal reporting for hazardous wastes			
DEPARTMENT POSITION DEC supports this bill			
PREPARED BY Amy D. Kyle <i>adkyle</i>	DATE 2/23/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/23/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Public Safety	CONSTITUENT GROUPS AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The bill would allow use of National Fire Protection Association markings in lieu of U.S. DOT markings for identification of buildings where hazardous materials are stored and would allow emergency response plans consistent with Title III of the federal Superfund program to satisfy the requirements for local hazardous materials plans.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill would resolve the problem with the existing statute's requirement that municipalities use U.S. DOT markings in that the federal DOT does not allow use of their placards on buildings. The second section would eliminate the conflict between state and federal laws related to local emergency response planning. (It should be noted that the existing requirements are stronger in some cases than those of Title III.)

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

6 HB 487

BILL NO: House Bill 487

DATE: February 19, 1988

TITLE: An act relating to warning placards and municipal reporting programs for hazardous materials and hazardous wastes.

CONTACT: Gordon Brunton 465-4331

DEPARTMENT OF PUBLIC SAFETY

This bill amends AS 18.70.310 (b) to change the placarding system for facilities handling hazardous materials and hazardous wastes from the U. S. Department of Transportation to the National Fire Protection Association (NFPA) 704 M.

Since passage of Ch. 108 SLA 1986, most municipalities have expressed an intent to use the National Fire Protection Association (NFPA) 704 M system. The NFPA placard system is most familiar to the fire service and provides more information to emergency first responders than the US DOT system, such as toxicity (health), reactivity, and flammability information.

Current law requires the Department of Public Safety, Division of Fire Prevention to adopt the U.S. Department of Transportation's placarding system, but allows the division to authorize a different placarding system in municipalities.

HB 487 will standardize the placarding system in both municipalities and areas outside municipalities. The industry will not be faced with the responsibility of differing placarding systems.

Section 2 amends AS 29.35.500 by adding a new section to allow municipalities to establish or amend hazardous materials or hazardous wastes reporting programs that differ from that required in State law, provided they are consistent with federal law.

A similar bill, HB 516, has been filed which is more comprehensive, consistent, and is preferred by the Department of Public Safety.

The Department of Public Safety urges the amendment of HB 487 to include those sections included in HB 516.

Arthur English
Commissioner

H B

4 8 9

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/88

FURTHER REFERRALS: Finance

(waived from c&ra 3/11)

DATE: April 19, 1988

The Health, Education and Social Services Committee has considered HB 489

"An Act relating to state aid for education."

RECOMMENDS:

- replace with CSHB 489 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO-PASS:

Nito Kossman
John Ellis
Mark Kuenberg

SIGNING OTHER RECOMMENDATIONS:

Bill Hulse - No Rec.
Robert E. Pease - No Rec.
Wayne Staley - No Rec.

Nito Kossman
 cc-chairman's signature
John Ellis

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: . . state aid for bilingual education. . .
Sponsor: Herrmann, et. al
Requestor: House HESS

Agency Affected: Education
BRU: K-12 Support
Components: Foundation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		632.4	632.4	632.4	632.4	632.4
MISCELLANEOUS						
TOTAL OPERATING		632.4	632.4	632.4	632.4	632.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		632.4	632.4	632.4	632.4	632.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Steve Hole Phone: 465-2800
Division: Commissioner's Office Date: 4-18-88
Approved by Commissioner: William G. Demmert Date: 4-18-88
Agency: Department of Education

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H HESS	4-18-88	8:30 a.m.
H HESS	4-19-88	8:30 a.m.
H HESS	3-30-88	8:30 a.m.

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 83
NAKNEK, ALASKA 99833
(907) 248-4486

While in Juneau
BOX V
JUNEAU, ALASKA 99811
(907) 486-4942, 486-4943



CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE

House of Representatives

MEMORANDUM

DISTRICT 20

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

TO: Representative Niilo Koponen, Chairman
House HESS Committee

FROM: Representative Adelheid Herrmann

DATE: March 29, 1988

SUBJ: Overview of HB 489

House Bill 489 would amend three sections of the school foundation formula. It would add a small schools section to the formula for single site districts, change the formula for bilingual education instructional units and change the hold harmless provisions.

Section 1: ELEMENTARY AND SECONDARY INSTRUCTION
This amendment would give additional instructional units to small single site districts.

As the law reads now, the more sites a district has the more money they generate. While this may seem equitable many single site districts, particularly the ones with a comparatively low number of students are faced with high fixed costs and educational requirements that are not factored into the formula. The more sites a district has, the lower the ratio of fixed costs to total budget.

Section 2: BILINGUAL EDUCATION INSTRUCTION UNITS.
This amendment would lower the weighted Average Daily Membership (ADM) requirement to receive a second unit for bilingual education.

As the law reads now, every district receives a minimum of one instructional unit if they have a bilingual program for one or more students.

This bill would add the following language: if the weighted average daily membership is 13 or greater, then a minimum of 2.0 units is allowed.

The result of this change would be to lower the cutoff point to receive a second instructional unit. Under

current provisions, a school district must have a weighted ADM of 24 before they could receive 2.0 instructional units for bilingual education. HB 489 would lower the weighted average to 13.

The way the formula is written now, a school could have 2 or 200 students in bilingual education and could conceivably receive one instructional unit, or \$60,000. If the students are spread out in a district over several locations, it further compounds the financial burden to the school district.

School districts with very low bilingual populations and very high bilingual populations would not be affected by this amendment. However, medium size districts with bilingual populations resulting in a weighted average from 13 to 45 (this could translate to 13 to 250 students) would receive additional funding.

Section 24. TRANSITION.

This amendment would keep the hold harmless provision at 90% for the three year transition period in 1988, 1989 and 1990. As the law reads now, the hold harmless amount would be 90% in 1988, reduced to 80% in 1989 and reduced again to 70% in 1990.

The result of this change would be that no school district would receive less than 90% of their FY 87 funding for the three year transition period, unless there was a reduction in enrollment. With the drastic reductions that all schools have made over the last two years this would help to stabilize their funding and restore confidence future funding levels. Keeping the hold harmless at 90% would insure that no school would take another cut beyond what they have already taken in the last 2 years, with the exception of declining enrollments.

These changes to the foundation formula could go a long way in reducing some of the inequities in funding currently being felt by the school districts, particularly in rural areas. In addition, they would help to stabilize school funding for the next three years, reduce the uncertainty of future budgets and restore confidence in the funding process.

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99833
(907) 246-4495

While in Juneau
BOX V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943



CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE

House of Representatives

DISTRICT 28

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSK
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

SECTIONAL ANALYSIS

HB 489 An Act Relating to State Aid for Education

Section 1

14.17.041 ELEMENTARY AND SECONDARY EDUCATION
Adds a new subsection (e)

Provides for an additional single site formula to be added to the entitlement provided under 14.17.041 (a). This would allow small single site school districts to receive up to 2 additional units based the size of the school population.

A single site district with up to 120 students would receive 2 additional units. A district with 121 to 160 students would receive 1.75 additional units. A district with 161 to 250 students would receive 1.50 additional units. A district with over 251 students would receive 1 additional unit.

The number of additional units is inversely proportional to the number of students in the school district.

Section 2 BILINGUAL EDUCATION INSTRUCTION UNITS
Adds language

This section would lower the weighted average requirement in order to receive a second bilingual unit. Currently, every district with a bilingual program receives one unit. A second unit is provided when the weighted average in a district reaches 24. This amendment would lower the requirement to a weighted average of 13.

Sectional Analysis
HB 489
page 2

Section 3 TRANSITION
Amends Hold Harmless provisions

Provides that the hold harmless payment to school districts will be calculated at 90% of the total (state and federal) FY 87 funding level.

Current law uses the amount of state aid received in FY 88 as the base for future hold harmless payments. It also requires the payment to be reduced to 80% in FY 89 and 70% in FY 90.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB-489
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: state aid for education.

Agency Affected: Education
BRU: K-12 Support

Sponsor: Herrmann
Requestor: Sponser

Components: Foundation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		6,596.7	6,596.7	6,596.7	6,596.7	6,596.7
MISCELLANEOUS						
TOTAL OPERATING		6,596.7	6,596.7	6,596.7	6,596.7	6,596.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		6,596.7	6,596.7	6,596.7	6,596.7	6,596.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Assumes bill has a July 1, 1988 effective date.
 Cost: Section 1 \$2,727.0 (see column 6, attached)
 Section 2 \$ 632.4 (see column 9, attached)
 Section 3 \$3,237.3 (see column 10, attached)

Prepared by: Steve Hole Phone: 465-2800
 Division: Commissioner's Office Date: 3-11-88

Approved by Commissioner: William G. Demmert Date: 3-11-88
 Agency: Department of Education

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

1	2	3	4	5	6	7	8	9	10	11	
1 ALASKA PUBLIC SCHOOL FOUNDATION FUNDING PROGRAM											
2 FY89 LEGISLATIVE PROJECT ION											
3 AS 14.17 AMENDED PER HB 489 PROPOSALS											
4 PREPARED 2/24/88											
			PER HB 489	ADJ.		PER HB 489	ADJ.		PER HB 489	ESTIMATED	
5	-----										
6	AREA	FY 89	SINGLE	SINGLE	COLUMN 5	ADDITIONAL	ADDITIONAL	COLUMN 8	FY89	INCREASE PER	
7	SCHOOL	COST	FUNDING	FUNDING	TIMES	BIL/BIC	BIL/BIC	TIMES	HOLD	DISTRICT DUE	
8	DISTRICT	DIFF.	COMM. UNITS	COMM. UNITS	COLUMN 3	UNITS	UNITS	COLUMN 3	HARMLESS	TO HB 489	
9	-----										
10	-----										
11	ADAK	1.27	\$60,000	1.00	1.27	\$76,200	0.00	0.00	\$0	\$0	\$76,200
12	ALASKA GATEWAY	1.19	\$60,000	0.00	0.00	\$0	0.92	1.11	\$66,600	\$0	\$66,600
13	ALEUTIAN REGION	1.31	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
14	ANCHORAGE	1.00	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
15	ANNETTE ISLAND	1.03	\$60,000	1.00	1.03	\$61,800	0.00	0.00	\$0	\$266,698	\$328,498
16	BERING STRAIT	1.39	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
17	BRISTOL BAY	1.27	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$214,729	\$214,729
18	CHATHAM	1.03	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
19	CHUGACH	1.14	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
20	COPPER RIVER	1.14	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
21	CORDOVA	1.11	\$60,000	1.00	1.11	\$66,600	0.00	0.00	\$0	\$0	\$66,600
22	CRAIG	1.03	\$60,000	1.50	1.55	\$93,000	0.00	0.00	\$0	\$0	\$93,000
23	DELTA GREELY	1.16	\$60,000	1.00	1.16	\$69,600	0.00	0.00	\$0	\$0	\$69,600
24	DILLINGHAM	1.27	\$60,000	1.00	1.27	\$76,200	1.00	1.27	\$76,200	\$555,300	\$707,700
25	FAIRBANKS	1.04	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
26	GALENA	1.30	\$60,000	1.75	2.28	\$136,800	0.00	0.00	\$0	\$0	\$136,800
27	HAINES	1.05	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
28	HOONAH	1.08	\$60,000	1.50	1.62	\$97,200	0.00	0.00	\$0	\$0	\$97,200
29	HYDABURG	1.03	\$60,000	2.00	2.06	\$123,600	0.00	0.00	\$0	\$0	\$123,600
30	IDITAROD	1.33	\$60,000	0.00	0.30	\$0	0.00	0.00	\$0	\$157,553	\$157,553
31	JUNEAU	1.00	\$60,000	1.00	1.00	\$60,000	0.53	0.53	\$31,800	\$0	\$91,800
32	KAKE	1.03	\$60,000	1.50	1.55	\$93,000	0.00	0.00	\$0	\$0	\$93,000
33	KASHUNAMIUT	1.33	\$60,000	1.50	2.00	\$120,000	0.76	1.01	\$60,600	\$0	\$180,600
34	KENAI	1.00	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
35	KETCHIKAN	1.00	\$60,000	1.00	1.00	\$60,000	1.00	1.00	\$60,000	\$0	\$120,000
36	KING COVE	1.27	\$60,000	1.75	2.22	\$133,200	0.00	0.00	\$0	\$0	\$133,200
37	KLAWOCK	1.03	\$60,000	1.50	1.55	\$93,000	0.00	0.00	\$0	\$196,719	\$289,719
38	KODIAK	1.09	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
39	KUSPUK	1.33	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$196,506	\$196,506
40	LAKE & PENINSULA	1.31	\$60,000	0.00	0.00	\$0	1.00	1.31	\$78,600	\$0	\$78,600
41	LOWER KUSKOKWIM	1.42	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
42	LOWER YUKON	1.35	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
43	MAT-SU	1.00	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
44	NENANA	1.20	\$60,000	1.50	1.80	\$108,000	0.00	0.00	\$0	\$0	\$108,000
45	NOME	1.34	\$60,000	1.00	1.34	\$80,400	0.00	0.00	\$0	\$0	\$80,400
46	NORTH SLOPE	1.45	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$1,380,465	\$1,380,465
47	NORTHWEST ARCTIC	1.45	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
48	PELICAN	1.08	\$60,000	2.00	2.16	\$129,600	0.00	0.00	\$0	\$0	\$129,600
49	PETERSBURG	1.00	\$60,000	1.00	1.00	\$60,000	0.00	0.00	\$0	\$0	\$60,000
50	PRIBILOF	1.30	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
51	RAILBELT	1.23	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
52	SAND POINT	1.27	\$60,000	1.75	2.22	\$133,200	0.00	0.00	\$0	\$0	\$133,200
53	SITKA	1.00	\$60,000	1.00	1.00	\$60,000	1.00	1.00	\$60,000	\$0	\$120,000
54	SKAGWAY	1.05	\$60,000	1.75	1.84	\$110,400	0.00	0.00	\$0	\$0	\$110,400
55	SOUTHEAST ISLAND	1.04	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
56	SOUTHWEST REGION	1.31	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
57	ST. MARY'S	1.30	\$60,000	2.00	2.60	\$156,000	1.00	1.30	\$78,000	\$0	\$234,000
58	TANANA	1.30	\$60,000	2.00	2.60	\$156,000	0.00	0.00	\$0	\$0	\$156,000
59	UNALASKA	1.27	\$60,000	1.75	2.22	\$133,200	0.00	0.00	\$0	\$0	\$133,200
60	VALDEZ	1.11	\$60,000	1.00	1.11	\$66,600	0.00	0.00	\$0	\$269,314	\$335,914
61	WRANGELL	1.00	\$60,000	1.00	1.00	\$60,000	0.00	0.00	\$0	\$0	\$60,000
62	YAKUTAT	1.08	\$60,000	1.75	1.84	\$113,400	0.00	0.00	\$0	\$0	\$113,400
63	YUKON FLATS	1.46	\$60,000	0.00	0.00	\$0	0.59	0.96	\$51,600	\$0	\$51,600
64	YUKON-KOYUKUK	1.34	\$60,000	0.00	0.00	\$0	0.86	1.15	\$69,000	\$0	\$69,000
65	YUPIIT	1.41	\$60,000	0.00	0.00	\$0	0.00	0.00	\$0	\$0	\$0
66	-----										
67	-----										
68	TOTALS			39.5	45.45	\$2,727,000	8.67	10.54	\$632,400	\$3,237,284	\$6,594,284

RECEIVED MAR - 4 1988



Dillingham Chamber of Commerce

P.O. Box 348
Dillingham, Alaska
99576

Representative Adeheid Herrmann
P.O. Box 7
Juneau, Alaska 99811

February 19, 1988

Dear Representative Herrmann:

Dillingham City School District faces a serious financial crisis which is far beyond that being experienced by most districts. They may not be making their true plight well enough known to you.

Dillingham has received the largest proportionate reduction in state revenues under the new funding formula. The school's programs are reduced far beyond those of surrounding districts and serious further reductions are anticipated. To complicate an already serious problem, Dillingham falls under the hold harmless provision of the funding formula and can expect another large reduction for FY 89 in state revenues of \$600,000.

Proposed changes to the funding formula by HB 489 will correct some of these deficiencies. They are minor in relationship to the overall funding formula but needed by smaller rural districts to prevent financial and program collapse. Additional dollars may be needed by some districts that go beyond these proposals. We actively request your help in this matter. Dillingham children deserve nothing less than that received by other districts in this state.

Thanks for your support.

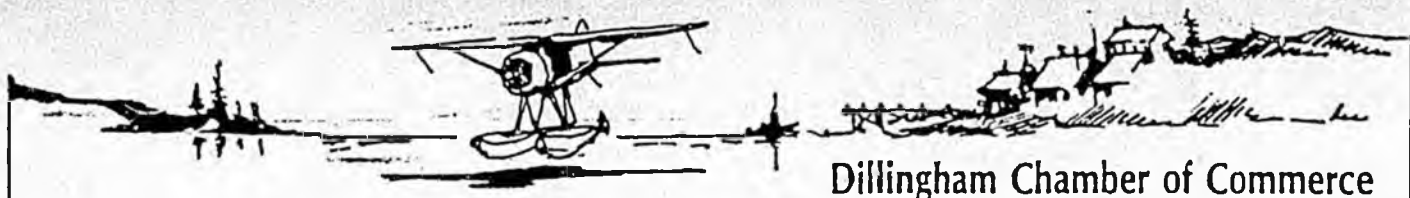
Sincerely,

[Handwritten signature]
J. A. Hansen
President

enclosures

WJ/LS





Dillingham Chamber of Commerce
P.O. Box 348
Dillingham, Alaska
99576

DILLINGHAM CHAMBER OF COMMERCE

RESOLUTION 88-01

REQUESTING THAT FOUNDATION FUNDS NOT BE REDUCED TO INDIVIDUAL
SCHOOL DISTRICTS IN FY'89

WHEREAS: The Constitution of the State of Alaska recognizes education as one of the primary responsibilities of the State; and

WHEREAS: State revenues have decreased drastically over the past three years; and

WHEREAS: Foundation support to school districts has been decreased as a result of these declining revenues; and

WHEREAS: Many programs directly affecting students have been reduced or eliminated as a result of this decrease; and

WHEREAS: Some school districts will be further reduced in FY'89 in revenues by the hold harmless provision of the foundation formula; and

WHEREAS: Any further reductions will seriously harm school programs and the quality of education for our children,

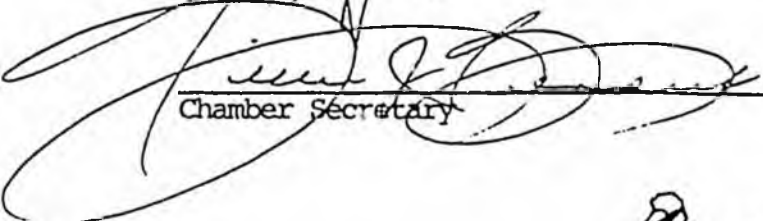
NOW THEREFORE BE IT RESOLVED, that the Dillingham Chamber of Commerce requests that the FY'89 state operating budget for foundation support monies to school districts not be affected by such a decrease; and

BE IT FURTHER RESOLVED, that no school district receive fewer dollars in FY'89 than received in FY'88 except for declines in enrollment.

WITNESS:



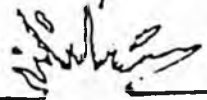
Chamber President



Chamber Secretary

DATE: Feb 26 1988







Sand Point City School District

Box 269

Sand Point, Alaska 99661

John A. Davis
Superintendent

(907) 383-2393

RESOLUTION 88-08

★

Adequate Single Site Funding

Whereas, The State of Alaska has determined education is an important service provided our citizens and,

Whereas, the State Department of Education has established minimum graduation requirements and,

Whereas, many school districts serve only one community in a single site and,

Whereas, single site school districts are providing more efficient use of resources over smaller multiple site and,

Whereas, the current funding formula does not adequately provide for the basic needs of a comprehensive school program.

Therefore be it resolved that the Sand Point Board of Education urges that an adequate solution be supported to help fund single school sites.

President, Sand Point Board of Education

Date

Dillingham High Times perseveres despite hard times

Alaska Times 3/14/88

By Michael Dean
Times Writer

The award-winning Dillingham High Times newspaper changed its name, lost its journalism instructor, cut its staff in two, moved from professional press production to the school copying machine and through it all, still looks good.

Last year, for the third consecutive time, Quill and Scroll — the national honorary society for high school journalism students

— awarded the paper second-place in its high school newspaper contest.

Since then, the High Times was re-named the DHS Express. Rodney Mehrtens, who replaced June Cherry this year as the instructor, said, "We changed it because High Times was the name for a dope magazine, which doesn't speak too well for us." Mehrtens replaced Cherry, the journalism instructor since 1984.

In 1987, Keggie Tubbs was editor of a five-person team. "We were once again very close to a first," Tubbs said. But Tubbs did not elect to take the class this year for a shot at first-place.

Dillingham is a single-site school district hit hard by state revenue reductions. Superintendent Henry Kilmer said. It operates at a \$250,000 deficit and faces a \$600,000 budget reduction next year. During a three-year period which includes next year,

Kilmer said, the district has cut its \$4 million budget by one-third. Budget reductions forced layoffs of eight teachers and those remaining were given additional responsibilities. Teachers were juggling around. Cherry, an English teacher with a master's degree in journalism, was given another English class to teach and Mehrtens, a creative writing teacher, was given the newspaper to run.

Apparently the tight budget

was also behind the decision to print on a school copier.

"Content-wise, I would say they are as good or better than last year," said Fritz Johnson, editor of the Bristol Bay Times and Dutch Harbor Fisherman. "Graphically it's more exciting than it was last year."

Prior to this year, the High Times was inserted in the local newspaper. "Once every quarter, we put four full pages in The Bristol Bay Times because I thought the townspeople needed to see the quality of work the students were doing," Cherry said.

By February 1987, the High Times had produced six issues. This year only two issues of the DHS Express have rolled off the copying machine. Neither has gone into the local newspaper but they continue Cherry's philosophy.

"Too many high school newspapers are filled with frivolous stuff. The staff did not write old dead news. There was no garbage in my paper, no song dedications, no gossip, no plagiarism," Cherry said.

Some of the more newsy items this year include an interview with the principal and student body president; a student returns to school after being hit by a truck; a locker was buried; budding authors return to lake retreat; and the school buys new copy machines because the old ones are broken.

Mehrtens said the newspaper is a winner because its staff pays attention to detail, "not letting anything go by the wayside."

The journalists write a variety of articles that feature new stu-

gents and award-winning teachers, or evaluate field trips they go on, Mehrtens said.

Cherry, who also taught journalism at Togiak and is president of the Alaska Journalism Education Association, said it took a year to develop and build a reputation at the High Times so the best students would want to take the class.

"I was just getting there," she said. "I regret not doing it this year," yet, "it was so much work I'm glad to be out of it."

Journalism is "one of the best learning tools, as far as practical application, we have in the school," she said. She recalled how her journalism students would perk up in English class. They wanted to learn what was being taught because they knew their name would be over some article they had written in the newspaper. But Cherry said journalism has never been a priority at Dillingham High School or any other high school in Alaska.

"I told the kids I'm not preparing around here. I'm preparing you for a part-time job when you go to college, if you want it," Cherry said. And sometimes students went to work during the summer or after school at the local newspaper.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

March 18, 1988

The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Herrmann:

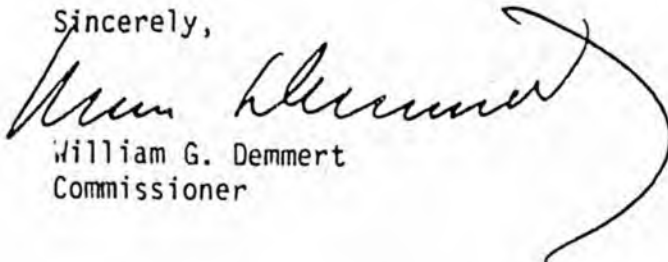
This letter is in response to your request for information on HB 489, Section 14.17.047, as it relates to Bilingual-Bicultural Education. HB 489 will provide a minimum of two instructional units to rural and city school districts that have at least 13 students in average daily membership in bilingual-bicultural programs.

Currently, districts receive a minimum of one instruction unit. Approximately ten (10) school districts would receive additional funding under the revision to the bilingual education formula contained in HB 489. My understanding is that the primary reasons for the proposed change are due to:

- a) Bilingual students spread over multiple school sites. Currently, districts receive the same amount of funding for bilingual education regardless of the number of school sites in which a program must be provided. Example: Alaska Gateway has 120 students spread over seven villages, yet it generates the identical number of instructional units (one unit) as districts that have only one school site and as few as two (2) bilingual students.
- b) Multiple languages and cultures within one school district. Currently, districts receive the same amount of funding for bilingual education regardless of the numbers of language groups for which a program must be provided. Example: Ketchikan, Sitka, and Juneau have relatively small bilingual student populations, but must provide instructional services to as many as five different language groups. Multiple languages require additional costs for appropriate instructional materials, assessment instruments, and appropriately bilingual instructional staff.

Please do not hesitate to call me at 465-2800, or Laurel Tatsuda, Program Manager for Bilingual Education, at 465-2970 for further information.

Sincerely,



William G. Demmert
Commissioner

Attachments

AAC 34.050 Identification and Assessment of Language Dominance

Category	Definition
A	Speaks a language other than English exclusively
B	Speaks mostly a language other than English, but also speaks some English
C	Speaks English and another language with equal ease
D	Speaks mostly English, but also speaks a language other than English
E	Speaks English exclusively but whose manner of speaking reflects the grammatical structure of another language
F	Speaks English exclusively but does not fit category E

MEMORANDUM

State of Alaska

TO: Marshall L. Lind, Commissioner
Department of Education

DATE: March 25, 1987

FILE NO.:

THRU: Richard Luther, Director
Educational Program Support

TELEPHONE NO.: 465-2970

SUBJECT: SB 119/HB 126

FROM: Laurel Tatsuda, Program Manager
Bilingual-Bicultural and G/T Education

The B/B Regulations Task Force has the following recommendations regarding state aid for Bilingual-Bicultural Education:

- a. SB 119/HB 126: Amend Sec. 9 AS 14.17.047 BILINGUAL EDUCATION INSTRUCTIONAL UNITS as follows:

Any funding community in which a bilingual program, approved by the Department, is operated receives a minimum of 0.10 instructional units for bilingual education, and each district in which such a program is operated receives a minimum of 1.00 such unit when the weighted ADM is less than 13 and a minimum of 2.00 such units when the weighted ADM is 13 or higher.

- b. INTENT LANGUAGE:

Sec. 9 AS 14.17 BILINGUAL EDUCATION INSTRUCTIONAL UNITS shall be re-evaluated by the Department of Education for revision based on weighted program costs consistent with proposed revisions to bilingual education regulations.

We believe that these recommendations will alleviate the concerns of districts that were facing substantial reductions in B/B funding under the original SB 119/HB 126 proposal. Approximately 13 districts would gain 1.00 instructional unit or a fraction of 1.00 instructional unit under this change. This proposal will not affect districts that already generate through ADM more than 2.00 instructional units or districts, with very few B/B students (weighted ADM under 13); in need of only 1.00 instructional unit. Attached is a listing of districts and the estimated gain under this recommendation.

Attachment

cc: Larry Huxel
Nat Cole
Bill Mulnix
Task Force Members

7403S

1	2	3	4	5	6	7	8	9	10
1 ALASKA PUBLIC SCHOOL FOUNDATION FUNDING PROGRAM									
2 BILINGUAL STATE FOUNDATION AID AS 14.17				COLUMN 2 X 3			COLUMN 2 X 6		With Amendment
3 FY88, FY89 AND PROPOSED CHANGE TO FY89				TIMES			TIMES		
4 PREPARED 2/16/88				COLUMN 4			COLUMN 7	ESTIMATED	PROPOSAL
5									
6	AREA	FY 88	FY 88	FY88 STATE	FY 89	FY 89	FY89 STATE	FY89 INCREASED	FY89 STATE
7 SCHOOL	COST	BIL./BIC.	STATE AID	AID FOR	BIL./BIC.	STATE AID	AID FOR	STATE AID	AID FOR
8 DISTRICT	DIFF.	UNITS	PER UNIT	BIL/BIC	UNITS	PER UNIT	BIL/BIC	FOR BIL/BIC	BIL/BIC
9									
10									
11 ADAK	1.27	1.00	129,353	137,278	1.00	127,637	135,099		135,099
12 ALASKA GATEWAY	1.19	1.01	151,412	161,792	1.07	151,862	166,036	166,000	1132,636
13 ALEUTIAN REGION	1.31	1.00	151,764	167,811	1.00	160,000	178,600		178,600
14 ANCHORAGE	1.00	40.56	139,163	11,584,451	39.52	141,605	11,644,230		11,644,230
15 ANNETTE ISLAND	1.03	1.00	121,532	122,178	1.00	122,659	123,339		123,339
16 BEKING STRAIT	1.39	11.42	142,439	1673,668	13.95	142,993	1633,656		1633,656
17 BRISTOL BAY	1.27	1.00	143,084	154,717	1.00	140,574	151,529		151,529
18 CHATHAM	1.03	0.00	141,261	10	0.00	141,261	10		10
19 CHUGACH	1.14	0.00	153,156	10	0.00	153,762	10		10
20 COPPER RIVER	1.14	1.00	159,989	168,587	1.00	154,944	162,641		162,641
21 CORDOVA	1.11	0.00	148,014	10	0.00	149,527	10		10
22 CRAIG	1.03	0.00	152,967	10	0.00	152,739	10		10
23 DELTA GREELY	1.16	0.00	148,226	10	0.00	147,789	10		10
24 OLLINGERMAN	1.27	1.00	143,870	156,715	1.00	143,679	156,472	176,200	1131,672
25 FAIRBANKS	1.04	6.65	142,775	1206,860	4.64	143,534	1210,078		1210,078
26 GALENA	1.30	1.00	140,245	152,319	1.00	139,245	151,019		151,019
27 HAINES	1.05	1.00	149,498	151,973	1.00	148,887	151,331		151,331
28 HOONAH	1.06	0.00	148,813	10	0.00	151,277	10		10
29 HYDABURG	1.03	1.00	156,844	158,549	1.00	157,502	159,227		159,227
30 IOTIAROD	1.33	1.09	149,463	171,707	1.04	149,426	168,366		168,366
31 JUNEAU	1.00	1.41	141,884	159,054	1.47	143,260	163,592	131,800	195,392
32 KAKE	1.03	0.00	142,700	10	0.00	141,340	10		10
33 KASHUNALIUT	1.33	1.24	146,231	176,244	1.24	148,031	179,213	160,600	1139,813
34 KENAI	1.00	10.92	139,000	1425,880	10.92	134,626	1421,796		1421,796
35 KETCHIKAN	1.00	1.00	142,433	142,433	1.00	144,031	144,031	160,000	1104,031
36 KING COVE	1.27	0.00	143,134	10	0.00	142,665	10		10
37 KLANNOCK	1.03	0.00	137,541	10	0.00	136,558	10		10
38 KODIAK	1.09	2.17	150,715	1119,954	2.17	149,244	1116,477		1116,477
39 KUSPUK	1.33	1.00	149,299	165,568	1.00	150,195	166,759		166,759
40 LAKE & PENINSULA	1.31	1.42	148,048	189,379	1.00	146,851	161,375	178,600	1139,975
41 LOWER KUSKOKWIM	1.12	54.34	148,273	13,724,880	56.20	144,137	13,841,525		13,841,525
42 LOWER KUKON	1.35	7.04	138,080	1361,912	6.81	144,281	1407,097		1407,097
43 NAT-SU	1.00	1.34	144,135	159,141	2.00	143,064	186,128		186,128
44 NENANA	1.20	1.00	157,418	168,902	1.00	157,883	169,160		169,160
45 NOME	1.34	1.52	151,982	1105,877	2.04	152,444	1143,372		1143,372
46 NORTH SLOPE	1.45	5.65	138,984	1319,376	5.26	139,013	1297,552		1297,552
47 NORTHWEST ARCTIC	1.45	4.15	142,075	1253,186	4.15	142,982	1258,644		1258,644
48 PELICAN	1.08	0.00	154,263	10	0.00	155,913	10		10
49 PETERSBURG	1.00	1.00	150,528	150,528	1.00	147,624	147,624		147,624
50 PRIBILOF	1.30	1.00	143,761	156,889	1.00	144,449	160,410		160,410
51 RAULBELT	1.23	0.00	154,439	10	0.00	154,359	10		10
52 SAND POINT	1.27	0.00	145,541	10	0.00	153,280	10		10
53 SITKA	1.00	1.00	144,277	144,277	1.00	146,047	146,047	160,000	1106,047
54 SKAGWAY	1.05	0.00	147,064	10	0.00	148,386	10		10
55 SOUTHEAST ISLAND	1.04	0.00	150,911	10	0.00	150,666	10		10
56 SOUTHWEST REGION	1.31	9.23	143,476	1525,681	8.82	143,279	1500,054		1500,054
57 ST. MARY'S	1.30	1.00	158,605	175,927	1.00	154,427	175,955	178,000	1133,955
58 TANANA	1.30	1.00	149,158	163,905	1.00	149,229	163,998		163,998
59 UNALASKA	1.27	1.00	138,907	149,412	1.00	139,847	150,656		150,656
60 VALDEZ	1.11	0.00	138,080	10	0.00	138,854	10		10
61 WRANGELL	1.30	0.00	150,573	10	0.00	151,074	10		10
62 YAKUTAT	1.08	0.00	144,676	10	0.00	144,372	10		10
63 YUKON PLATS	1.44	1.22	153,563	195,406	1.41	154,611	1112,422	152,200	1164,422
64 YUKON-KOYUKUK	1.34	1.15	149,775	176,703	1.14	150,628	177,339	169,000	1144,339
65 YUPIK	1.41	8.82	148,145	1598,741	8.82	149,350	1613,726		1613,726
66									
67									
68									
69 TOTALS				110,442,644			110,895,895	1633,000	111,528,895

ADAK	\$1,727,609	\$1,727,609	\$0
ALASKA GATEWAY	\$4,589,033	\$4,522,433	\$66,600
ALUTIAN REGION	\$1,876,800	\$1,876,800	\$0
ANCHORAGE	\$126,445,507	\$126,445,507	\$0
ANNETTE ISLAND	\$966,670	\$966,670	\$0
BERING STRAIT	\$11,467,570	\$11,467,570	\$0
BRISTOL BAY	\$1,501,659	\$1,501,659	\$0
CHATHAM	\$2,108,870	\$2,108,870	\$0
CHUGACH	\$1,217,179	\$1,217,179	\$0
COPPER RIVER	\$4,347,287	\$4,347,287	\$0
CORDOVA	\$2,478,354	\$2,478,354	\$0
CRAIG	\$1,250,990	\$1,250,990	\$0
DELTA GREELY	\$4,323,022	\$4,323,022	\$0
DILLINGHAM	\$2,586,895	\$2,510,695	\$76,200
FAIRBANKS	\$47,243,578	\$47,243,578	\$0
GALENA	\$941,902	\$941,902	\$0
HAINES	\$1,910,997	\$1,910,997	\$0
HOONAH	\$1,400,390	\$1,400,390	\$0
HYDABURG	\$995,376	\$995,376	\$0
IDITAROD	\$4,183,432	\$4,183,432	\$0
JUNEAU	\$15,837,396	\$15,805,596	\$31,800
KAKE	\$911,565	\$911,565	\$0
KASHUNAMIUT	\$1,525,564	\$1,464,964	\$60,600
KEMAI	\$28,517,809	\$28,517,809	\$0
KETCHIKAN	\$9,067,868	\$9,007,868	\$60,000
KING COVE	\$968,077	\$968,077	\$0
KLAWOCK	\$771,018	\$771,018	\$0
KODIAK	\$11,778,812	\$11,778,812	\$0
KUSPUK	\$4,052,751	\$4,052,751	\$0
LAKE & PENINSULA	\$4,318,192	\$4,239,592	\$78,600
LOWER KUSKOKWIM	\$25,705,829	\$25,705,829	\$0
LOWER YUKON	\$10,037,739	\$10,037,739	\$0
MAT-SU	\$29,552,448	\$29,552,448	\$0
MEMANA	\$1,686,738	\$1,686,738	\$0
NOME	\$4,671,572	\$4,671,572	\$0
NORTH SLOPE	\$7,768,020	\$7,768,020	\$0
NORTHWEST ARCTIC	\$11,386,836	\$11,386,836	\$0
PELICAN	\$588,773	\$588,773	\$0
PETERSBURG	\$2,745,531	\$2,745,531	\$0
PRIBILOF	\$1,500,496	\$1,500,496	\$0
RAILBELT	\$3,118,721	\$3,118,721	\$0
SAND POINT	\$1,195,610	\$1,195,610	\$0
SITKA	\$6,268,104	\$6,208,104	\$60,000
SKAGWAY	\$872,403	\$872,403	\$0
SOUTHEAST ISLAND	\$4,126,245	\$4,126,245	\$0
SOUTHWEST REGION	\$4,579,440	\$4,579,440	\$0
ST. MARY'S	\$1,420,076	\$1,342,076	\$78,000
TANANA	\$906,802	\$906,802	\$0
UNALASKA	\$1,003,183	\$1,003,183	\$0
VALDEZ	\$2,463,126	\$2,463,126	\$0
WRANGELL	\$2,380,093	\$2,380,093	\$0
YAKUTAT	\$920,960	\$920,960	\$0
YUKON FLATS	\$5,298,020	\$5,243,820	\$52,200
YUKON-KOYUKUK	\$5,955,076	\$5,886,076	\$69,000
YUPIIT	\$3,528,084	\$3,528,084	\$0

TOTALS	\$440,990,097	\$440,357,097	\$633,000
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ADAK	563.00	42.75	1.00	4.47	1.00	19.22
• ALASKA GATEWAY	503.00	61.60	2.00	9.57	1.04	74.21
ALEUTIAN REGION	103.00	20.88	1.00	1.00	1.00	23.88
ANCHORAGE	37,912.00	2,540.89	39.52	427.24	31.53	3,039.18
ANNETTE ISLAND	430.00	34.67	1.00	4.75	1.00	41.42
BERING STRAIT	1,300.00	160.87	13.95	16.98	2.09	191.89
BRISTOL BAY	240.00	24.00	1.00	3.14	1.00	29.14
CHATHAM	316.00	44.58	0.00	4.04	1.00	49.62
CHUGACH	132.00	17.71	0.00	1.15	1.00	19.86
COPPER RIVER	562.00	63.51	1.00	3.85	1.02	69.38
CORDOVA	429.00	34.60	0.00	6.07	6.41	45.08
CRAIG	213.00	20.20	0.00	1.83	1.00	23.03
DELTA GREELY	944.00	68.13	0.00	8.58	1.27	77.98
• DILLINGHAM	486.00	38.08	2.00	5.18	1.00	46.26
FAIRBANKS	13,085.00	897.11	4.64	129.10	12.60	1,043.45
GALENA	140.00	15.33	1.00	1.13	1.00	18.46
HAINES	364.00	33.16	1.00	2.07	1.00	37.23
HOONAH	235.00	21.60	0.00	2.69	1.00	25.29
HYDABURG	110.00	13.16	1.00	1.65	1.00	16.81
IOTIARCO	408.00	57.52	1.04	3.71	1.37	63.64
• JUNEAU	4,429.00	300.59	2.00	58.30	5.00	365.89
KAKE	169.00	17.26	0.00	3.15	1.00	21.41
• KASHUNAUTUT	169.00	17.27	2.00	2.42	2.00	23.69
KEMAI	8,001.00	637.88	10.92	80.28	9.21	738.29
• KETCHIKAN	2,502.50	175.23	2.00	24.98	3.37	205.58
KING COVE	134.00	16.93	0.00	1.94	1.00	17.87
KLADOCK	172.00	17.47	0.00	2.01	1.00	20.48
KOOTAK	2,305.00	186.87	2.17	27.39	3.01	219.44
KUSPUK	379.00	54.26	1.00	4.45	1.00	60.71
• LAKE & PENINSULA	365.00	62.35	2.00	4.21	1.52	70.08
LOWER KUSKOWIM	2,673.50	287.66	56.20	28.86	3.34	376.06
LOWER YUKON	1,299.00	145.41	6.81	13.93	1.76	167.91
MAT-SU	8,528.00	611.46	2.00	62.56	10.22	686.24
MEWANA	200.00	19.33	1.00	2.95	1.00	24.28
MIPE	748.00	55.55	2.04	7.38	1.50	66.47
NORTH SLOPE	1,259.00	122.69	5.26	7.68	1.89	137.32
NORTHWEST ARCTIC	1,658.00	164.00	4.15	12.78	1.77	182.70
PELICAN	50.00	7.75	0.00	1.00	1.00	9.75
PETERSBURG	630.00	67.83	1.00	7.82	1.00	57.65
PRIBILOF	164.00	20.71	1.00	2.13	1.00	24.84
RAILBELT	349.00	40.10	0.00	2.35	1.00	43.45
SAND POINT	145.00	15.67	0.00	1.00	1.00	17.67
• SITKA	1,610.00	112.99	2.00	19.07	1.76	135.82
SKAGWAY	135.00	15.00	0.00	1.00	1.17	17.17
SOUTHEAST ISLAND	463.05	74.11	0.00	3.20	1.00	78.31
SOUTHWEST REGION	477.00	66.24	8.82	4.71	1.00	80.77
• ST. MARY'S	115.00	13.58	2.00	2.09	1.00	13.67
TANANA	86.00	11.17	1.00	1.00	1.00	14.17
UNALASKA	160.00	16.67	1.00	1.13	1.00	19.80
VALDEZ	695.00	52.34	0.00	3.77	1.00	57.11
WRANGELL	506.00	39.43	0.00	6.17	1.00	46.60
YAKUTAT	130.00	14.68	0.00	1.34	2.37	18.39
• YUKON FLATS	376.00	57.16	2.00	5.51	1.69	65.36
• YUKON-KOYUKUK	555.00	77.14	2.00	7.00	1.18	87.62
YUPIIT	296.00	36.38	8.82	4.50	1.00	50.70

TOTALS 100,408.05 7,819.51 200.34 1,054.06 140.39 9,214.30

Fy 84 state aid with proposed B/S Amendment = \$440,990,1297

Fy 84 est. increase \$633,000

• District's total will receive minimum units under this proposal

ADAK	563.00	42.75	1.00	4.47	1.00	49.22
ALASKA GATEWAY	503.00	61.60	1.07	9.57	1.04	73.28
ALEUTIAN REGION	103.00	20.88	1.00	1.00	1.00	23.88
ANCHORAGE	37,912.00	2,540.89	39.52	427.24	31.53	3,009.18
ANNETTE ISLAND	430.00	34.67	1.00	4.75	1.00	41.42
BERING STRAIT	1,300.00	160.87	13.95	14.98	2.09	191.89
BRISTOL BAY	240.00	24.00	1.00	3.14	1.00	29.14
CHITNAH	316.00	44.58	0.00	4.04	1.00	49.62
CHUGACH	132.00	17.71	0.00	1.15	1.00	19.86
COPPER RIVER	562.00	63.51	1.00	3.85	1.02	69.38
CORDOVA	429.00	34.60	0.00	4.07	6.41	45.08
CRAIG	213.00	20.20	0.00	1.83	1.00	23.03
DELTA GREELY	944.00	68.13	0.00	8.58	1.27	77.98
DILLINGHAM	486.00	38.08	1.00	5.18	1.00	45.26
FAIRBANKS	13,085.00	897.11	4.64	129.10	12.60	1,043.45
GALENA	140.00	15.33	1.00	1.13	1.00	18.46
HAINES	364.00	33.16	1.00	2.07	1.00	37.23
HOONAH	235.00	21.60	0.00	2.69	1.00	25.29
HYDABURG	110.00	13.16	1.00	1.65	1.00	16.81
IDITAROD	608.00	57.52	1.04	3.71	1.37	63.64
JUNEAU	4,629.00	300.59	1.47	58.30	5.00	365.36
KAKE	169.00	17.26	0.00	3.15	1.00	21.41
KASHUNMIUT	169.00	17.27	1.24	2.42	2.00	22.93
KENAI	8,001.00	637.88	10.92	80.28	9.21	738.29
KETCHIKAN	2,502.50	175.23	1.00	24.98	3.37	204.58
KING COVE	134.00	14.93	0.00	1.94	1.00	17.87
KLADOCK	172.00	17.47	0.00	2.01	1.00	20.48
KOOTAK	2,305.00	186.87	2.17	27.39	3.01	219.44
KUSPUK	379.00	34.26	1.00	4.45	1.00	60.71
LAKE & PENINSULA	365.00	62.35	1.00	4.21	1.52	69.08
LOWER KUSKOWIM	2,673.50	287.66	56.20	28.86	3.34	376.06
LOWER YUKON	1,299.00	145.44	6.81	13.93	1.76	167.91
MAT-SU	8,528.00	611.46	2.00	62.56	10.22	686.24
HEMANA	200.00	19.33	1.00	2.95	1.00	24.28
NOME	748.00	55.55	2.04	7.38	1.50	66.47
NORTH SLOPE	1,259.00	122.69	5.26	7.48	1.89	137.32
NORTHEAST ARCTIC	1,658.00	164.00	4.15	12.78	1.77	182.70
PELICAN	50.00	7.75	0.00	1.00	1.00	9.75
PETERSBURG	630.00	47.83	1.00	7.82	1.00	57.65
PRIBILOF	164.00	20.71	1.00	2.13	1.00	24.84
RAILBELT	349.00	40.10	0.00	2.35	1.00	43.45
SAND POINT	145.00	15.67	0.00	1.00	1.00	17.67
SIITKA	1,610.00	112.99	1.00	19.07	1.76	134.82
SKAGWAY	135.00	15.00	0.00	1.00	1.17	17.17
SOUTHEAST ISLAND	463.05	74.11	0.00	3.20	1.00	78.31
SOUTHWEST REGION	477.00	66.24	8.82	4.71	1.00	80.77
ST. MARY'S	115.00	13.58	1.00	2.09	1.00	17.67
TANANA	86.00	11.17	1.00	1.00	1.00	14.17
UNALASKA	160.00	16.67	1.00	1.13	1.00	19.80
VALDEZ	695.00	52.34	0.00	3.77	1.00	57.11
WRANGELL	506.00	39.43	0.00	6.17	1.00	46.60
YAKUTAT	130.00	14.68	0.00	1.34	2.37	13.39
YUKON FLATS	315.00	57.16	1.41	5.51	1.69	65.77
YUKON-KOYUKUK	555.70	77.14	1.14	7.00	1.44	86.76
YUPIIT	296.00	36.38	8.82	4.50	1.00	50.70

TOTALS 100,408.05 7,819.51 191.67 1,054.06 140.39 9,205.63

FY 39 current state aid projection: \$440,357,097

ALASKA GATEWAY SCHOOL DISTRICT

P.O. Box 226
907-883-5151
Tok, Alaska 99780

MAR 11 1987

March 6, 1987

Ms. Laurel Tatsuda
State of Alaska
Dept. of Ed.
Box F
Juneau, AK. 99811

Dear Laurel:

The purpose of this letter is to let you know how SB119 affects the B/B, and Special Education Programs in Alaska Gateway School District and to propose some changes in those funding formulas.

The Alaska Gateway school District has an enrollment of 121 students in the Bilingual/Bicultural Program, representing seven different cultural/language backgrounds. The students are served with programs appropriate for their identified needs in 7 different communities. Last year, the program generated 3 instructional units, \$143,456.25. Cutting the program down to the absolute minimum still cost us more than that. The program cost \$148,018 with the added cost coming from the foundation. This was basic cost of staff with ALL supplies, travel, equipment, or other instructional media cut out. This year under SB119, the program will generate \$68,652. The bilingual/bicultural students have urgent needs for assistance in order to succeed academically. Even though the student need is there, and documented, the district will not be able to adequately provide needed services for these students. With the needs documented and regulations requiring that they be served, how can the state not provide at least the minimum necessary to run the program. Anything less than this minimum, will not give the students the service they need. In order to run a basic quality program, which will provide the necessary service to students, the .042 weight should be increased to .138. Another idea might be to place weights on the type of program that is provided for students. In this district we find that an SESC program costs less than ESL or LOESL. B/B, Transitional B/B, and High Intensity are the most expensive. If you have to adjust the weight probably this would provide the most rational base for it.

ADM x .042 x Lau Category Wt. x Program Wt.

Program Weight

B/B	1.8	
T B/B	1.7	(These weights represent the approximate comparative costs of the different types of programs in Alaska Gateway.)
ESL	1.6	
HILT	1.6	
SESC	1.4	
LOESL	1.6	

The overall special education program in Alaska Gateway is cut by 24% from last year's funding level under SB119.

The Extended Learning (Gifted & Talented) Program cost the district \$85,292 during the current year. With the new formula the district program would have to be cut by about 64%.

The district feels strongly that this program is developing the promise of the future. Without this program, several students will not be receiving the specialized training, support, and direction they need to achieve their potential in areas different from or beyond the regular school curriculum.

In order to maintain the quality of the program we now have, we recommend that the weight for gifted and talented students be increased from .025 to .056 the same as for Resource Services. In this district, the costs for each of these is very similar.

Thanks for your consideration.

Sincerely,



Sharon Sonnenberg
Director of Special
Services
Alaska Gateway School
Dist.

cc: Rep. Dick Shultz
Sen. Jack Coghill

SS/bh

DILLINGHAM CITY SCHOOLS DISTRICT

RESOLUTION 87-9

A RESOLUTION FOR SUPPORT OF INCREASED BILINGUAL EDUCATION FUNDING.

WHEREAS, bilingual/bicultural programs provide important skills and values to Dillingham City School District students, and

WHEREAS, reading and language arts instruction in all grades is important to basic skill development, and

WHEREAS, integration of the Yup'ik culture and values into the entire curriculum is important to self esteem and to understanding of native issues of Bristol Bay, and

WHEREAS, funding through the school foundation formula for FY 88 is 1/3 former funding for bilingual education with significant inequities in the distribution of funds, and

WHEREAS, this school district is attempting to continue these programs through the regular operating budget, and

WHEREAS, the regular operating budget has decreased significantly since FY 86 and cannot continue to financially support the needs of students sufficiently in all programs,

NOW THEREFORE BE IT RESOLVED that the Dillingham City School District requests the Alaska Legislature and the Department of Education to review the funding formula for bilingual education and remove inequities within the formula, during the 1988 Legislative Session, and

BE IT FURTHER RESOLVED that increased funding is needed for this curriculum area if serious problems in basic skill development in Native students is not to increase, and

BE IT FURTHER RESOLVED that support be requested for bilingual funding changes from the Alaska State Bilingual/Bicultural Advisory Committee, Alaska Federation of Natives, and other appropriate organizations.

WITNESSES:

H. Sally Smith
School Board President

Shirley Weigman
School Board Clerk-Treasurer

DATE: 9-21-87

District Offices
P.O. Box 00309
Nenana, Alaska 99760
(907) 832-5594



James
Joe B. Cooper Sr.
Superintendent

15

May 4, 1987

Dr. William G. Demmert
Commissioner of Education
State of Alaska
Pouch F
Juneau, Alaska 99811

Dear Dr. Demmert,

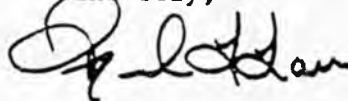
In response to your memorandum concerning a more permanent solution to bilingual and special education sections of the new funding bill, please consider the following:

1. Even though Larry Huxel has assured you that the "hold harmless" clause should provide sufficient funding for FY88 to those districts that are facing large reductions in B/B education funds, I do not believe this to be true. As you must be aware the "hold harmless" clause applies to total district funds and not to individual categories. Therefore it is quite conceivable that a district could lose more than 10% of its B/B funds and still not fall under the "hold harmless". It would seem that as Paul Harvey says you need "the rest of the story".
2. It would seem that rather than waiting to try and amend a bill that could in fact be cast in case hardened steel that the special education and bilingual education sections of the bill should be changed now. If you and the Department staff agree that there "is a need to reassess the weighting" then why not do it now. If its not right now then let's fix it now.

We appreciate the fact that you have taken the time to investigate the recommendations from the B/B Regulations Task Force. We know that this is a time of transition for you and that many of the facts pertaining to the new foundation

proposal may not be readily apparent, however, we would ask you to consider the information from your Director of Finance very carefully. Thank you for reviewing the above information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred L. Lau".

Fred L. Lau
Assistant Superintendent

FLL/clh

cc: Dr. Joe B. Cooper
Representative Ron Larson
Senator Paul Fischer

KUSPUK SCHOOL DISTRICT

P.O. Box 108
Aniak, Alaska 99557
(907) 675-4250

FE:
207
BOB R. McHENRY
SUPERINTENDENT OF SCHOOLS

Rob Clift
P.O. Box 108
Aniak, AK 99557
February 16, 1987

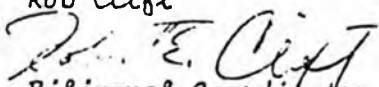
Laurel Tatsuda
State Bilingual Director

Dear Laurel:

I have recently received SB 119. When I perused this bill, I discovered that Bilingual Education in my district would be cut by more than two thirds. This seems to be the result of weighing the Bilingual ADM one in accordance to the regulations as they now exist and then applying a new factor. Which in effect weights the ADM twice.

Hopefully this was in error and resulted from those who prepared this bill not understanding the present funding method. If this proposal becomes law it will make it difficult if not impossible to provide Bilingual services in this District. If we are able to provide services they will not in any way approach the standard which now exist.

When considering the alleged financial situation the state economy is in, it is to be expected that cuts will be made. However, the districts might expect to be funded at a level which makes it possible to comply with federal mandates.

Rob Clift

Bilingual Coordinator
Kuspuk School District

cc: Larry Huxel

CHOGGIUNG LIMITED
RESOLUTION 37- 3

WHEREAS, bilingual/bicultural programs provide important skills and values to Dillingham City School District students; and

WHEREAS, integration of the Yup'ik culture and values into the entire curriculum is important for the learning and understanding of native issues in Bristol Bay; and

WHEREAS, Choggiung Limited is very supportive of the incorporation of bilingual/bicultural programs into the Dillingham City School curriculum; and

WHEREAS, the Dillingham City School District anticipates a significant negative impact on the bilingual/bicultural program because of decreased funding,

NOW THEREFORE BE IT RESOLVED that the Board of Directors of Choggiung Limited support the Dillingham City School District request to the Alaska Legislature and the Department of Education for a review of the funding formula for bilingual education, including the removal of inequities within the formula; and

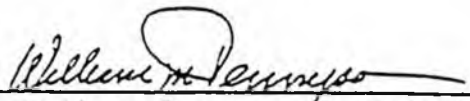
BE IT FURTHER RESOLVED that the Board of Directors of Choggiung Limited support the Dillingham City School District's request for increased funding.

ADOPTED this 19th day of October, 1987.

ATTEST:



Fred Mulkiel, Secretary


William Tennyson, President

April 15, 1987

Dr. Bill Demmert, Commissioner
Department of Education
P. O. Box F
Juneau, AK 99811

Dear Dr. *Bill* Demmert:

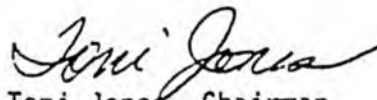
The State Advisory Council for Bilingual/Bicultural Education has just concluded their fourth quarterly meeting held in Anchorage, April 14-15, 1987. A major item of concern for the Council is the possible passage of the SB119/HB126 on the Foundation Funding Formula for schools without the proposed amendment to correct what we consider to be a major flaw in the formula for Bilingual/Bicultural program funding.

The Council has been informed that Mr. Larry Huxel's testimony against the amendment carried considerable influence. Several legislators have been led to believe that the amendment is not necessary and that Bilingual/Bicultural programs will in fact be receiving more money this year than they did last year.

We have also become aware that this bill will be closed out tomorrow, April 16, 1987. If the Department of Education plans to have a representative present, during the final considerations of this bill, we would like to request the department's support recognizing the additional funding required, but feel it is a justifiable means for correcting an inherent flaw in the formula. The amendment will provide a more equitable distribution of funds to statewide Bilingual/Bicultural programs.

We appreciate your willingness to look into this matter and look forward to more prosperous times. Please keep us informed. Best wishes!

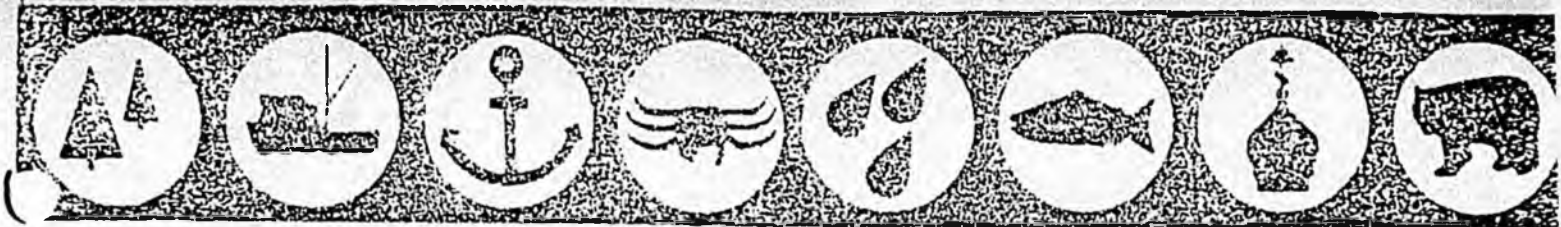
Sincerely,



Toni Jones, Chairman
State Advisory Council for
Bilingual/Bicultural Education

TJ/fb

18EP2



KODIAK ISLAND BOROUGH SCHOOL DISTRICT

722 Mill Bay Road
Kodiak Alaska 99615
(907) 486-3131

March 2, 1988

Suzanne,

John asked me to give you some input relative to funding for Bilingual/Bicultural Education Programs in the State under the present funding formula. As you know, Kodiak has come out on the short end of the funding formula.

Kodiak's main problem with the present Bilingual funding is that all of our Bilingual students fall into one "funding community" (Kodiak City Schools), and within that one "funding community" we have many students of various language backgrounds we are required to serve.

The formula is based on students falling into categories based on language dominance... no English, only another language is a Category A, mostly another language is a Category B, equal language ability is a Category C, mostly English and some other language background is a D, English only with another language in the family is an E.

A District whose students all speak a similar second language such as Yupik would need only Yupik staff, and they would have programs in each village or "funding community". They can afford under the funding formula to provide the legally required Bilingual education program.

Our program, featuring many kids from many language backgrounds, requires an "labor intensive" approach due to the native language teacher aides required... Korean, Spanish, Tagalog, etc.

The approach the Statewide Task Force on Bilingual Education (a DOE group of which I am a member) is advocating for is this. We would like to see all Bilingual students categorized as either a Resource student or an Intensive Resource student. This would do away with the A to E categories, and would base the actual funding per student on the type of services the student requires.

This approach would require additional state funding, but we feel is the most equitable. It would especially help Districts such as ours with an immigrant population and a fairly small enrollment.

If you get a chance, give Laurel Tatsuda or Mike Travis at the Department of Education a call at 465-2970. They are the Bilingual/Bicultural Education staff for DOE, and have lots of information on the issue.

Thanks for the help,

JM
Jim Nagan

H B

491

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary

DATE: April 19, 1988

The Health, Education and Social Services Committee has considered HB 491

"An Act establishing a statutory form power of attorney."

RECOMMENDS:

- replace with CSHB 491 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS: -

[Signature]
 Co-Chairman's signature
[Signature]



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Miss Patricia Oakes
Box 30009
Central, AK 99730
(907) 520-5227

VICE CHAIRMAN
Mr. R. W. Pavitt
130 Seward Street, #205
Juneau, AK 99801
(907) 586-2066

SECRETARY
Mrs. Marian R. Triggs
475 Panorama Drive
Fairbanks, AK 99712
(907) 457-4386

MAR 25 1988

3/22/88

and
Representatives Niilo Koponen
and Johnny Ellis, Co-Chairmen
House HESS Committee
PO Box V
Juneau, AK 99811

Dear Representatives Koponen and Ellis:

AARP/Alaska State Legislative Committee is pleased to see legislation such as HB 491, "An Act establishing a statutory form power of attorney."

We feel such legislation is vital to clearly defining for Alaskans both general and durable powers of attorney. Such clarification is important not only to those who deal with complex legal issues through attorneys or who can afford to have attorneys draw up their powers of attorney, but also to those whose lower incomes cause them to rely on pre-printed forms for these matters.

Because low-income elderly persons are often unknowing victims of unclear or scattered statutes, bringing together these materials into a clear package seems especially important.

We urge your committee's support of this legislation and hope that it will include protection of "living wills" and state benefits.

Sincerely yours,

Miss Patricia Oakes, Chairman
AARP/Alaska State Legislative Committee

Anchorage, Alaska
March 18, 1986

MAR 24 1986

TO: REPRESENTATIVE JOHNNY ELLIS
REPRESENTATIVE MAX GRUENBERG, Jr.

FROM: Thelma P. Langdon - 2363 Capt. Cook Drive - Anchorage 99517

RE: HB NO. 491 - "An Act establishing a statutory form power of attorney"

I am in strong support of this bill. As one of the organizers of the Alzheimer's Disease Family Support Group, I know what a great help it would be to the families of victims of Alzheimer's Disease and Related Disorders.

My own father has a severe and progressive dementia and my sister and I need to have the kind of authority and protection this bill addresses. In carrying out our responsibility we need to have the authority to make decisions he cannot or will not make.

Thank you for introducing this bill.

Thelma P. Langdon

*MSR
consult*



Alzheimer's Disease Family Support Group

Funded by Older Alaskans Commission

Anchorage and Statewide Support
9210 Jupiter Street
Anchorage, Alaska 99507
346-2366

Northern Region Coordinator
P.O. Box 80188
Fairbanks, Alaska 99708-0188

March 16, 1988

MAR 21 1988

HESS Committee
c/o Representative Johnny Ellis, Co-Chair
PO Box V
Juneau, Alaska 99811

Deb

Dear HESS Committee Members:

My purpose today is to present to you a review of, and support for, HB 491
"An Act establishing a statutory form power of attorney"

In my experiences as Out-reach Worker, Project Director, Board Member
and Volunteer with the Alzheimer's Disease Family Support Group of
Alaska (ADFSG) I have encountered many individuals needing or wanting a
Durable Power of Attorney for themselves or a loved one.

The current statute gives authority for the DPA but does not give
guidelines for the development of such a tool. Problems that have been
encountered are:

1. There is no uniformity in how a DPA can be drawn up.
2. There is no guideline for identifying who has power and when power
can be assumed. Currently anyone can be appointed and anything can be
included to determine when a person becomes incapacitated. But this
measure has to be expressly written into the DPA. Unfortunately, this
measure has been overlooked and persons find themselves needing further
legal assistance and may find themselves seeking guardianship.
3. Attorneys often do not understand what can be included in a DPA and
find themselves doing a lot of research at the expense of the client. I have
had families tell me what they wanted drawn up and what they actually
received were worthless. It is imperative that a person seeking the DPA

HESS Committee
March 16, 1988

Page 2 of 2

know and research all aspects of the DPA. But once again the lay person does not usually have skills to interpret legal jargon.

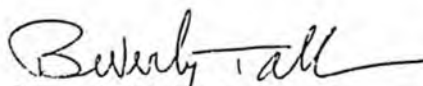
4. The present DPA can be questioned and not accepted by banks, health care agencies, social service agencies and state agencies (for instance, the Longevity Bonus Program does not accept a DPA).

After having reviewed the proposed bill, I can clearly see that the problems addressed above will be eliminated because:

1. The proposed bill will provide a statute that is, stated simply, a guided tour for those drawing up a DPA for a client, for individuals wishing to do it themselves, and for the institutions that may question the DPA. It will state specifically the powers that can be implemented under the DPA statute.

On behalf of the many families I have worked with in the past and will work with in the future, I support this bill as a positive effort in eliminating problems that have occurred with current law, and will streamline the process for families who are already overwhelmed with care issues.

Respectfully submitted:


Beverly Tallman
Outreach Worker

Not
constit

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: HESS Committee Members
FROM: Representative Johnny Ellis *JE*
RE: HB 491
DATE: March 17, 1988

I introduced HB 491; "An Act establishing a statutory form power of attorney" in order to address the concerns of several active Anchorage Seniors relating to Alaska's existing durable power of attorney statute, (AS 13.26.325).

The first concern is the vagueness of the existing statute and the problems this has caused drafters of durable power authorizations. Because the existing statute does not explicitly describe the powers which the principal may delegate to an agent, many institutions do not honor powers of attorney drafted under the statute.

HB 491 sets into statute the actual form an individual may use to assign specific powers to an agent in the event of disability. It sets out a list of powers which are authorized and gives the principal the option of deleting those powers he or she does not wish to delegate. Each power is described in detail in statute to avoid any question of the agent's authority.

A second major concern is the durability of the existing power of attorney in the event that the principal becomes disabled or otherwise incapacitated. Alaskan Seniors are finding that it is in their best interest and that of their loved ones to appoint a person whom they trust to make important decisions regarding their property and health care before the onset of a disabling illness or in the event of an accident.

The form created in HB 491 has a section which specifically addresses the durability of the power of attorney established by the form. An individual has the option of stating in this section that "(t)his instrument shall continue in effect during the subsequent disability of the principal.

The third and final concern addressed in this legislation has to do with the definition of "disabled" or "incapacitated." The existing statute merely allows for the inclusion of a statement to the effect that the power of attorney remains effective or becomes effective upon the disability of the principal but does not define disability. This has led to challenges of the agent's authority in some circumstances.

HB 491 adds a section to the statutes which calls for a physician or similarly qualified medical professional's affidavit stating that the principal's ability to receive and evaluate information or to communicate decisions is impaired.

In addition to these major issues, the bill also has the potential to greatly reduce the time and fees involved in drafting a durable power from scratch. With the statutory form in place, time spent in legal consultation may be substantially decreased. This will be very beneficial to those Seniors who are on a fixed income.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 10, 1988

SUBJECT: House Bill 491, sectional analysis
TO: Representative Johnny Ellis
FROM: Jack Chenoweth
Legislative Counsel

This legislation adds to the body of law covering persons under disability new sections of law that authorize and direct the use of the statutory power of attorney. The material added is in addition to existing provisions (AS 13.-26.325 and 13.26.330) permitting and governing the use of the statutory power of attorney.

A person typically uses a power of attorney to designate another to serve as the person's agent or representative. The instrument may be a general power of attorney, giving full power to the designee, but is often a special power of attorney, giving the designee specifically limited authority within time and other constraints. A power of attorney is usually drawn by an attorney or legal representative, but individuals may prepare their own, with or without benefit of preprinted forms.

HB 491 is a two section bill. Based upon a model act, its purpose is to authorize and define use of a power of attorney and to set out a specific form that the maker of a power of attorney should use in order to claim the benefits of the statutory power of attorney statutes. This legislation also prescribes limits on the exercise of authority by the agent or representative within each of 15 different categories for which the statutory power of attorney may be used. Presumably the drafters of the model act believe that these categories cover the most common kinds of personal and business affairs for which a power of attorney is commonly used.

In bill section 1, subsection (a) of AS 13.26.335 (the first three pages of the bill) sets out the language of the statutory power of attorney. As the bill is drafted, the maker of the power of attorney (termed "the principal" in this

legislation) turns over to the agent designated in the power of attorney all authority except that which is specifically deleted in the manner set out at page 2 of the bill. The statutory power of attorney also makes provision for several contingencies, including appointment of more than one agent and termination in the event of the maker's disability. Subsection (b) gives direction as to how the instrument is to be interpreted and applied in the event the maker of the power of attorney elects one or more of several contingencies.

AS 13.26.340 interprets the application of the statutory power of attorney. For each of the 15 categories or subdivisions that the maker of the power of attorney may elect to confer or withhold from the agent (see page 2 of the bill), AS 13.26.340 defines what the grant of authority provided under each of those sections permits the agent to do in the principal's behalf. Presumably, if authority is not expressly provided under each subsection of AS 13.26.340, the agent may not act on behalf of the principal on the basis of the authority granted by the instrument.

AS 13.26.345 (beginning at page 32 of the bill) is inserted to affirm that a power of attorney that is not in this statutory form may be valid as a statutory power of attorney (and, therefore, subject to interpretation under AS 13.26.-340) even as modified so long as the power of attorney conforms to the requirements of the section.

AS 13.26.350(a) prescribes the continued validity of a statutory power of attorney after the maker of the power becomes disabled or an invalid so long as the statutory power of attorney contains "words . . . showing the intent of the principal that the authority conferred shall [continue to] be exercisable." AS 13.26.350(b) affirms the continuing authority of the person acting under the statutory power of attorney to act during periods of disability, incompetence, or uncertainty, and describes the relationship between that person and any conservator who may be appointed for the maker of the power of attorney.

AS 13.26.355 collects miscellaneous provisions applicable to the preceding sections: subsection (a) speaks to how disability of a principal who has given a statutory power of attorney may be established, and subsection (b) limits the liabilities of third parties who deal with an agent operating under "a properly executed" statutory power of

attorney. AS 13.26.355(c) prescribes a civil penalty for those who fail to honor the terms of a properly executed statutory power of attorney.

Bill section 2, an uncodified section, is included in the bill to provide guidance as to how this Act affects existing powers of attorney. The several subsections cover, in turn, (a) general powers of attorney, (b) special powers of attorney, and (c) so-called "durable" powers of attorney, that is, a power of attorney that continues to be valid even after the disability of the principal. A key to the understanding of bill section 2 is the last sentence, or last part of the sentence, of each: as a general rule, subject only to the exceptions noted, the language "other provisions of AS 13.26.335 - 13.26.355 apply to a . . . power of attorney" makes the general principles of the material that is set out in bill section 1 applicable to existing powers of attorney.

JBC:bb
b3/101

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: <hr/> Revision Date: Title: An act establishing a statutory form of power of attorney Sponsor: Ellis & Gruenberg Requestor: HESS	Bill Version: HB 491 Publish Date: 2/15/88 Agency Affected: Alaska Court System BRU: Trial Courts Components:
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EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
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REVENUE
----------------	---------	---------	---------	---------	---------	---------

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: <i>Jan Strandberg</i> Division: Alaska Court System	Phone: 264-8228 Date: 03/14/88
Approved by: <i>Stephanie Cole, for</i> Agency: Alaska Court System	Date: 03/14/88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act establishing a statutory form power of attorney."
Sponsor: Representative Ellis
Requestor: House HESS

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services

Date: March 14, 1988

Approved by Commissioner: Grace Berg/Schaible, Atty. Gen.

Date: March 14, 1988

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 491

This bill amends AS 13.26 by adding new sections that set out a comprehensive statutory form power of attorney covering most situations where an individual may wish to appoint an agent or agents to personally represent an individual as an attorney-in-fact. Because the bill's provisions would govern matters between private parties they will not have a fiscal impact on the Department of Law.

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- HB 491 "An Act Establishing a Statutory Form Power of Attorney"

This bill deals with what is commonly known as "Durable Powers of Attorney." Such durable powers are currently authorized in AS 13.26.325. This bill strengthens the efficacy of that statute and would provide in the statute a form power of attorney which individuals may use.

A general, non-durable power of attorney is effective only so long as the person who gave the power of attorney remains mentally competent, because the law views a power of attorney as being renewed each and every moment of its existence, and it must be renewed on the basis of the giver's legal ability, including mental competency, to continue to give the power. What this means is that the power of attorney becomes ineffective just at the time when one might most need it-- because one has become incompetent and needs someone else to act in one's behalf.

A Durable Power of Attorney cures this defect, because it either becomes effective upon the giver's reaching a state of disability, or it starts before and remains effective after the disability status is reached. However, Durable Powers of Attorney drafted in accordance with current AS 13.26.325 are sometimes not honored by third parties because there has been no simple way to determine when the disability or incompetency has occurred, or because the third party felt unsure of their legal ability to rely on the power of attorney for certain high-risk actions such as health care decision-making.

HB 491 makes Alaska's current statute on powers of attorney much more beneficial for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

HB 491 improves upon current law because it:

- (1) spells out in detail the specific powers which an agent may exercise under a power of attorney;
- (2) provides for a simple method to determine "disability," without requiring a judicial determination; and
- (3) provides an approved form for use, thereby saving time and expense in the drawing up of a power of attorney.

POSITION PAPER ON HB 491 -- PAGE 2
OLDER ALASKANS COMMISSION

The Older Alaskans Commission strongly supports passage of this bill. In many instances the existence of a Durable Power of Attorney could avoid the need for family or caregivers of a person to seek a judicial guardianship, a cumbersome and possibly costly procedure.

The Commission does suggest two amendments to HB 491:

At page 2, line 17, insert:

"(M) benefits from local, state, or federal
government ()

[(M)] (N) ..."

The bill would also need a detail section on the powers specific to applying for government benefits, to be inserted at page 30, just before the present line 29.

At page 2, line 24, insert a new portion of the form:

IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING HEALTH
CARE SERVICES, CHECK ONE OF THE FOLLOWING:

- () I have executed a separate "Living Will" regarding the use of life-sustaining procedures. I hereby authorize my agent to enforce that Will in keeping with my wishes expressed in it.
- () If I choose in the future to execute a "Living Will," I authorize my agent to enforce that Will.
- () I do not authorize my agent to deal with any "Living Will" which I might choose to execute, now or in the future.

This second amendment would tie together a Power of Attorney with the "Living Will" authorized in AS 18.12.010. This is needed because the powers proposed in the new AS 13.26.340(1) regarding health care do not allow the agent to authorize the termination of life-sustaining procedures. If a person executes a separate Living Will, the person should be able to empower their legal agent to see that the Will is carried out. The Living Will Act does not now provide for any method to ensure that the intent of the will's maker is promptly carried out.

In summary, the Commission strongly supports this bill in its present form, but also urges the two amendments noted above.

APPROVED BY:

Dove M. Kull
Dove M. Kull, Chair
Legislative Committee
Older Alaskans Commission

DATE: 3-14-88

REVIEWED BY:

John M. Andrews
John M. Andrews, Commissioner
Department of Administration

DATE: 3/15/88

ENCLOSURE

ATTACHMENT D
Family Circle Article: Durable Power
of Attorney

FREE! THE LEGAL FORM THAT PROTECTS YOUR LOVED ONES

It's a durable general power of attorney form. And although you may never have heard of it, it's even more important than a will. Use the form on page 9 to protect your family and yourself. It may be the wisest legal step you take. BY BARBARA GILDER QUINT

Two years ago, Clare Richards's husband, Jim, was badly hurt in an automobile crash. Although Jim spent 10 days in the emergency care unit, he's fine now and has returned to work. Looking back, Clare remembers the terror, grief and worry she felt. She also recalls the problems that arose while Jim, heavily sedated, was lying in the hospital, and the family's finances were at a standstill.

"There was a deposit due at college to reserve a place for our daughter for the next term," Clare recalls. "The money was in Jim's savings account, but there was no way I could get at it. I couldn't file our tax return, even though we were counting on a fast refund to pay bills. I couldn't even cash his paycheck."

Fortunately, Jim recovered quickly and was soon able to sign the necessary papers to take care of these and other important matters.

Harriet Danvers's 74-year-old mother suffered a stroke several months ago and became unable to manage her own affairs. The social service department at the hospital suggested a nursing home, but because her mother could not sign the required papers, Harriet could not sell her mother's stocks to raise the necessary money for nursing home care. As a last resort, with the written consent of the rest of the family, Harriet went to court, had her mother declared unable to manage her own affairs and had herself appointed conservator of her mother's assets. Not only was this painful, but it also wasted money. The family lost two months' rent on the mother's apartment because they were unable to sublet sooner and spent \$5,000 on lawyers' and court fees. Moreover, there will be annual fees for accounting reports, which Harriet must file with the court.

Clare and Harriet are among hundreds of thousands of Americans who each year face the problem of handling the financial affairs of a family member who has been temporarily or permanently disabled. One out of every two Americans will undergo a lengthy period of disability during his or her lifetime: A 62-year-old is four times more likely to suffer a disability than to die. If the disability is such that the person is no longer physically or mentally able to make financial decisions, family members may be unable to act for him or her without taking costly and cumbersome legal measures.

But there is a sensible and economical alternative to the court action families are often forced to take in such circumstances. If the disabled person has, in the past, signed a simple legal document called a *du-*

rable general power of attorney, then there will be someone who is legally able to act at once, without any expense or delay. Lawyers suggest that this is a step many families should consider. Read the following questions and answers and then talk with your family about using a durable general power of attorney.

What is a durable general power of attorney? It's a legal form that authorizes someone you designate to act in your behalf. It gives this person a wide variety of powers that you spell out in advance. For example, in the sample form on pages 9 and 10, the powers include the right to draw checks on bank accounts, to have access to a safe-deposit box and to buy and sell stocks and bonds. The idea is that the person to whom you give these powers will use them in your best interest.

To whom should you give a power of attorney? In legal language, the person you choose to act for you when you sign a power of attorney is called the "agent" or the "attorney-

in-fact." Don't be confused by this jargon; *this person does not have to be a lawyer*, and actually, in many cases, you will want to choose someone other than an attorney, such as your spouse, a grown child, a close relative or good friend. You should choose someone in whom you have full confidence, because that person could be stepping into your shoes someday to make decisions about you and your property.

Can anyone sign a power of attorney? A person can sign a power of attorney only if he is "competent" or, as some state laws phrase it, as long as he is not "under a disability." Being "under a disability" is usually defined as being unable to manage one's property effectively for reasons

(Please turn to page 42)

Barbara Gilder Quint is a contributing editor to FAMILY CIRCLE. Her last article was "Last-Chance Tax Deductions. Use

For instructions on how to use the durable general power of attorney form, see page 43.

Feminine itching

simple to relieve
...as easy as a headache

This instantly-soothing medication relieves external feminine itching as easily as aspirin relieves a headache.

That's good news because minor feminine itching is about as common as a headache—caused by everyday things like jogging, pantyhose, even normal perspiration.

VAGISIL® Feminine Itching Creme has been formulated with medication recognized effective by expert gynecologists. In fact, it's been used by over 4 million women who need fast relief from itching and irritation.



Of course, should irritation persist, see your doctor. But if you're like millions of other women, VAGISIL® will relieve the problem. As simply as aspirin relieves a headache.

Feminine moisture

end it now and stay fresher all day

Now stay drier, feel fresher all day with VAGISIL™, the first Feminine Powder with a totally unique formula to solve wetness problems. Its special moisture absorber is 25 times more effective than talc—with a natural skin-protecting emollient. Created with a leading gynecologist—100% talc-free, so safe, even its light, clean scent is hypoallergenic.



Vagisil

FEMININE POWDER & ITCHING MEDICATION

ON THE COUCH (From page 40)

then write it in the space below the dream word.

(Enid's paper looked like this: *Husband (partner), dinner (feeds), fighting (opposed), Dinah Shore (perfect woman), Burt Reynolds (perfect man), watch (time), working (good), garden (grow), see (realize), flower (growth), step (go), hole (nothingness)*)

DR. K.: O.K. Now tell me a story, linking the new words.

ENID: My partner feeds (takes care of) me, but he is opposed to my becoming the perfect woman and is trying to stop us from being the perfect couple. He wants more time. But good comes from growing and realizing my growth (my potential)... But what about the fact that I end up in a hole? I don't like that.

DR. K.: Parts of dreams, like the hole, tell you what your fears are, not what's really going to happen. Many women are afraid of becoming more independent because to them, losing dependence on a man means losing the man. What they don't realize is that most men today appreciate independent women.

ENID: Having a paid job is a little threatening to me. My daughter told me the other day that she didn't want a man to buy her a car when she grows up; she wants to pay for it herself. I didn't think I felt that way, but my dreams say I do.

DR. K.: I think you do. But remember, you don't have to be perfect at everything, as you think Dinah Shore is, and you can involve your husband in helping you work out your new schedule so you still have the time together that you want.

ENID: But how do I know that my interpretation of the dream is right?

DR. K.: Trust your own "reading." If it comes to you instinctively, it's "right." Just for fun you might ask your friends to do these exercises with your dream. In psychology classes where dreams are discussed, about 70% of the students come up with identical "free association" words, and an even higher percentage agree on the overall meaning of a given dream. To gain even more control over your dreams, try changing them so they work out better. The Senoi Indians are famous for doing that, and

university research proves that it works. When you wake, stay in the dreamy state and "rewrite" the ending to make it more positive. How would you rewrite your dream?

ENID: I'd climb out of the hole and then I'd plant seeds to make more beautiful flowers.

DR. K.: Good. You can also use a technique called "dream incubation." Before going to sleep, think about what you *want* to dream about, then quietly say: "Help me understand..." When you wake, write down your dream and translate it. You'll gain new insights that can help you with your personal growth.

BOOKS FOR FURTHER READING

• *Dream Workbook*, by Jill Morris (Little, Brown, 1985). • *Living Your Dreams*, by Gayle Delaney (Harper & Row, 1981).

To be considered for a therapy session, write to: Dr. J.K., P.O. Box 1379, Grand Central Station, New York, NY 10163. Describe your problem; include address and phone number.

THE LEGAL FORM THAT PROTECTS (From page 6)

such as mental or physical illness or advanced age. In practical terms, this means that in order for a power of attorney to be legal, it must be signed while a person is still considered competent. Thus, once Harriet Danvers's mother was mentally disabled by a stroke, legally she could no longer sign a paper giving Harriet a power of attorney to act for her.

This power of attorney sounds as if it gives someone else considerable power over your affairs. Is it safe? Most people who sign powers of attorney do so to make sure that there will be someone around to act for them in case they are physically or mentally disabled. However, you may worry that the person to whom you give such a power could take actions while you are still competent to run your own affairs. One way of protecting yourself is to keep control over the signed legal form as long as you can manage your finances. You might consider giving the signed form to a third party, such as your lawyer or a close friend, with instructions that it should not be turned over to the attorney-in-fact unless the need arises.

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If I sign a durable general power of attorney, how long does it stay in force? With many durable general powers of attorney (including the form printed on pages 9 and 10), the right to exercise the power begins as soon as you sign. It continues in effect until you either revoke it or notify third parties (such as a bank) that you have terminated it. Such a durable general power of attorney includes a special clause saying that it remains in force even if you become disabled or incompetent. This is especially important because the ordinary power of attorney form does not have this special clause. If you become disabled, the ordinary power of attorney you signed automatically terminates, even though this is precisely when and why you might need it most. □

For More Information

If you're interested in do-it-yourself law and in cutting legal fees, consult the following books:

- *How to Avoid Lawyers: A Step-by-Step Guide to Being Your Own Lawyer in Almost Every Situation*, by Don Biggs (Garland Publishing, Inc.).
- *How to Avoid Probate: Updated!*, by Norman F. Dacey (Crown).

HOW TO USE THE DURABLE GENERAL POWER OF ATTORNEY FORM

1. Read the form carefully. If there are parts you don't understand fully or with which you do not feel comfortable, consult your lawyer before proceeding. The form covers those transactions in which it would be most useful. It does not cover real estate matters because recording requirements for real estate documents vary greatly from state to state.
2. Each state establishes its own rules governing the use of a durable power of attorney. The form reproduced here is not suitable for use in North Carolina, Oklahoma, South Carolina, Wyoming, Florida or Missouri. (If you live in any one of these states, you can consult with your lawyer; pre-printed forms similar to the one here are available in stationery stores in your state for about \$1.) California requires that the attorney-in-fact named in the power of attorney be a resident of the state. Because laws change, it is always good procedure to check with your lawyer on the use and execution of any legal form.
3. In the past, some banks and insurance companies have traditionally been unwilling to accept or act on

any preprinted power of attorney form, recognizing only forms that they have prepared themselves. In an attempt to deal with this problem, we have included in the form reproduced on pages 9 and 10, in capital letters, special language that will protect such third parties and thus encourage them to accept this particular form; however, there can be no assurance that they will do so. You might prefer to contact your bank and discuss its own forms.

4. After reading the form, fill in the name and address of the person giving the power—the principal—on the first and second lines. (Use a pen, not a pencil.) On the next set of lines, fill in the name(s) and address(es) of those to whom the power of attorney is given—the agent(s) or attorney(s)—in fact. The person giving the power must then sign the form and the person accepting the power must sign his or her name.

The last signature on the form is that of the notary public, indicating that he or she witnessed the signing of the form. In Connecticut, as indicated on the form, two witnesses in addition to the notary public must sign, although the witnesses' signatures need not be notarized. (A notary is authorized by the state or Federal government to administer oaths and attest to the authenticity of signatures.) ■



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If you're allergy sensitive, your world is uncomfortable... irritating... ever-threatening. For relief, ask your doctor or pharmacist about the histamine blocker, Benadryl® — the most prescribed allergy medication ever — available without prescription in full 25 mg. strength. Use Benadryl or Benadryl Decongestant as directed for upper respiratory allergy and cold symptoms. At last, good news for allergy sensitive people.



Prescription Strength Allergy Relief from PARKE-DAVIS (PD)

DURABLE GENERAL POWER OF ATTORNEY

STATE OF _____

COUNTY OF _____

Know all Men by These Presents, which are intended to constitute a DURABLE GENERAL POWER OF ATTORNEY

That I _____
(Insert name of principal)

(Insert address of principal)

do hereby appoint _____
(Insert name of agent)

(Insert address of agent)

and

(Insert name of agent if more than one agent is designated)

(Insert address of agent if more than one agent is designated)

My Attorney(s)-in-Fact TO ACT (jointly), as my true and lawful Attorney(s)-in-Fact, for me and in my name, place and stead:

(A) Power with Respect to Bank Accounts. To establish accounts of all kinds for me with financial institutions of any kind; to modify, terminate, make deposits to and write checks on and endorse checks for or make withdrawals from all accounts in my name or with respect to which I am an authorized signatory; to negotiate, endorse or transfer any checks or other instruments with respect to any such accounts; and to contract for any services rendered by any financial institution.

(B) Power with Respect to Safe-Deposit Boxes. To contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory; to add to and remove from the contents of any such safe-deposit box and to terminate any and all contracts for such boxes.

(C) Power to Sell and Buy. To sell and buy personal, intangible or mixed property, upon such terms and conditions as may seem appropriate; to use any credit card held in my name to make such purchases and to sign such charge slips as may be necessary to use such credit cards; and to repay from any funds belonging to me any money borrowed and to pay for any purchases made or cash advanced using credit cards issued to me.

(D) Power to Exercise Rights in Securities. To exercise all rights with respect to securities that I now own, or may hereafter acquire; and to establish, utilize and terminate brokerage accounts.

(E) Power to Borrow Money (including any Insurance Policy Loans). To borrow money for _____ account upon such terms and conditions as may seem appropriate and to secure such borrowing by the granting of security interests in any property or interest in property which I may now or hereafter own; to borrow money upon any life insurance policies owned by me upon my life for any purpose and to grant a security interest in such policy to secure any such loans; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds therefrom.

CLIP OUT AND SAVE

(F) Power with Respect to Taxes. To prepare, sign and file Federal, state and/or local income, gift, property or other tax returns, claims, etc.

(G) Power to Demand and Receive. To demand, arbitrate, settle, sue for, collect, receive, deposit, expand for my benefit, reinvest or make such other appropriate dispositions of, as my Agent deems appropriate, all cash rights to payments of cash, property (personal, intangible and/or mixed), rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved (and for purposes of receiving Social Security benefits, my Agent is herewith appointed my "Representative Payee"); to utilize all lawful means and methods for such purposes.

I further give and grant to my said Attorney(s)-in-Fact full power and authority to do and perform every act necessary to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney(s)-in-Fact shall lawfully do, or cause to be done by virtue hereof.

This instrument may not be changed orally.

This power of attorney is durable and shall not be affected by the subsequent disability or incompetence of the principal.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

In witness whereof, I have hereunto signed my name this _____ day of _____, 19____.

(Signature of Principal)
Specimen Signature of Attorney(s)-in-Fact

Witness

Witness

[In Connecticut power of attorney must be signed by two witnesses.]

CERTIFICATE OF NOTARY

STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____, 19____, before me personally came _____ whose identity is well known to me and known to me to be the individual described in and who executed the foregoing instrument, and (he) (she) acknowledged to me that (he) (she) executed the same.

Notary Public

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1988

SUBJECT: House Bill 491, technical amendments
TO: Representative Johnny Ellis
FROM: Jack Chenoweth
Legislative Counsel

As the Health, Education and Social Services Committee considers and reports the bill, please consider incorporating the following technical amendments:

- Page 20, line 2: Following "statutory", insert "form"
- Page 32, line 13: Following "STATUTORY", insert "FORM"
- Page 32, line 15: Following "statutory", insert "form"
- Page 32, line 19: Following "statutory", insert "form"
- Page 32, line 26: Following "statutory", insert "form"
- Page 32, line 27: Following "STATUTORY", insert "FORM"
- Page 33, line 22, Following "STATUTORY", insert "FORM"
- Page 34, line 11, Following "statutory", insert "form"

Though this change may also appear to be warranted in page 1, lines 13 and 14, I would rather omit the change there; in those two lines the phrase "statutory power of attorney set out in substantially the following form" accurately describes the nature of the document that follows.

Thank you.

JBC:gc
WKG2:49

NEW YORK COMMENTS

Henry A. Lowet
Kramer, Levin, Nessen, Kamin & Frankel
919 Third Avenue
New York, NY 10022

The special impetus for enacting the legislation which authorized use of the Durable Power of Attorney in New York may have been the Internal Revenue Service. The IRS had been questioning whether "flower bonds" actually were owned by a decedent at the time of death where such bonds were purchased shortly before death by an attorney-in-fact and the competence of the principal was uncertain at the time of purchase. It also was contemplated that enactment would improve, simplify and reduce the cost of planning for persons advanced in age, and of managing their affairs in the event of their later disability or incompetence. The legislation was enacted as Section 5-1601 of the New York General Obligations Law (McKinney 1978) and became effective immediately on June 10, 1975, pursuant to L. 1975, c. 195, § 1.

The legislation was derived from Section 5-501 of the Uniform Probate Code (1969) ("UPC") and requires the express inclusion in the power of the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import.

The New York statute omits the UPC language declaring that a power may be framed to become effective on the future disability of the principal, the so-called "springing power." The statute is silent on the possible effectiveness of a "springing power," should the language of such a power be added to the usual form of durable power. Although not formally a part of the "legislative history," it is well known that the draftsmen of the New York legislation considered a provision authorizing the use of a "springing power," but decided not to offer such a bill because of concern regarding appropriate evidence of disability or incompetence, short of an adjudication of incompetency. This would tend to lead to the conclusion that the modification of a standard durable power form to make it a "springing power" would not be enforceable in New York.

The New York statute also omits the UPC language authorizing the exercise of a Durable Power of Attorney when the attorney-in-fact is either uncertain or does not know whether the principal is dead or alive. A bill to gain this result, S. 4962, was introduced in the state senate in early 1975 but was not enacted. Hence, it is doubtful that acts by an attorney-in-fact are valid after the principal's death, even if the attorney-in-fact had no knowledge of such death, or, indeed, that the power may be exercised if the attorney-in-fact is uncertain whether the principal is dead or alive. It is unclear, if the attorney-in-fact did not know of the principal's death, whether such invalidity may be raised by the attorney or third party who dealt with the attorney-in-fact. The attorney-in-fact nonetheless would bear the risk of liability for loss to the estate due to the attorney-in-fact's actions whether or not the attorney-in-fact knew of the principal's death.

The statutory framework in New York is unusual in that even prior to the enactment of the durable power legislation in 1975, there has existed since 1948 a statutory short form of general power of attorney, derived from the New York General Business Law, L. 1948, c. 422, General Obligations Law § 5-1501 (McKinney 1978 and Supp. 1983). This permits a principal to adopt by reference detailed statutory powers relating to the principal's property (any of which may be omitted by the principal drawing a line through the text of that subdivision and writing in his or her initials in the box opposite).

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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Attorneys in New York generally use a printed form of durable power which satisfies the requirements of the statute. Nonetheless, the statute expressly permits any "additional provision [to be added] which is not inconsistent with the other provisions of the statutory short form power of attorney." General Obligations Law § 5-1503(3) (McKinney 1978). As a matter of practice, this has encouraged practitioners to add provisions to the usual printed form of power, such as the power to represent the principal in all tax matters (typically using language from the Internal Revenue Service's own form of power of attorney, Form 2848); the power to make charitable donations which the principal had been in the habit of making or which the attorney-in-fact thinks the principal would make if able; and the power to make gifts to the principal's descendants and spouses (including the attorney-in-fact, if a descendant or spouse), but usually not to exceed the largest amount which then qualifies for the annual per donee exclusion allowed for federal gift tax purposes. These additional powers each relate to property rights and appear to be consistent with General Obligations Law § 5-1502(1) (McKinney 1978), which power deals with personal relationships and affairs, and other provisions of the statutory short form power.

New York practice, in the absence of decisional law, seems to indicate, however, that subjects relating to "substitution of judgment," including personal care or health care decisions, are not consistent with the other provisions of the statutory short form power. No case or rule has been found which would authorize the addition of a provision permitting the attorney-in-fact to create a trust for the principal's benefit, to make an election against the will of the principal's deceased spouse, to disclaim an interest in an estate, or to "pull the plug" should the principal be in a vegetative coma or similar state short of literal or absolute death, with no substantial prospect of recovery. Such provisions seemingly would have to await legislative action.

There is no general procedure or requirement for filing a power of attorney. If, however, a power of attorney relates to an interest in a decedent's estate, such as an authorization from an individual residing abroad who seeks to appoint an agent in New York to qualify as the administrator of an estate or to receive the principal's share in an estate, New York Estates, Powers and Trusts Law § 13-2.3 (McKinney 1967 and Supp. 1983) ("EPTL") raises such a requirement. In addition to requiring such power to be in writing and acknowledged in the manner prescribed by the laws of New York for the recording of a conveyance of real property, the statute provides for recording in the office of the surrogate granting letters on such decedent's estate, or, if no such letters have been granted, in the office of the surrogate having jurisdiction to grant them. Such recording confers on the surrogate jurisdiction over the grantor of such power, the attorney-in-fact therein named and any other person acting thereunder. EPTL § 13-2.3(a).

A durable power must be created by a written and acknowledged instrument and may be made by anyone competent to make a contract. There is no limit on those to whom powers may be given. There is no statute or rule which restricts the creation of such a power to, or the conferring of a power upon, residents of New York. If a non-resident executes the usual printed form of statutory power, he or she presumably would be making a "choice of law" decision, since the statutory form expressly must invoke the provisions of the governing New York law relating to such powers. There is no known decision in New York dealing with the validity of a durable power executed by a resident or non-resident of New York in another jurisdiction and then used in New York.

There is no requirement for court approval of a power, nor is there any statute which establishes a specific procedure for enforcing or testing the validity of a power.

While Section 2 of the durable power statute provides that the attorney-in-fact can be made to account to a committee or conservator if one is appointed rather than to the principal, the statute is silent as to accountings when the donor of the power is disabled or incompetent and no committee or conservator has been appointed. Adequate protection for a disabled or incompetent principal does exist under New York law, however, since an attorney-in-fact owes a fiduciary duty to the principal and can be compelled to account to the principal or to the court, on its own initiative, or on the petition of a person interested. It is the same fiduciary duty owed by a trustee under an express deed of trust. *Estate of Raphael Hudis* (NYLJ 2/3/77, p. 25, col. 2; *motion to reargue denied*, NYLJ 4/6/77, p. 15, col. 4).

There is nothing in the statute which expressly authorizes the inclusion in a power of the authority on the part of the attorney-in-fact to nominate the committee or conservator of the principal.

The statutory form of power expressly gives full and unqualified authority to the attorney-in-fact to delegate any or all of his powers to any person or persons whom the attorney-in-fact shall select.

There is scant authority regarding the compensation of an attorney-in-fact. With respect to a power in relation to an interest in a decedent's estate, one court has held that compensation only can be awarded to an attorney-in-fact for services rendered under a valid power of attorney. *In re Braunstein's Estate*, 202 Misc. 244, 144 N.Y.S. 2d 280 (Sur. Ct., N.Y. Cty. 1952). There is also statutory authorization in such a context for the surrogate in any appropriate proceeding to "fix and determine the validity and reasonableness" of the attorney-in-fact's compensation and expenses, "whether or not the same have been previously fixed by agreement . . ." EPTL § 13-2.3(b)(3). This would seem to recognize the right of an attorney-in-fact to receive compensation using the rule of reasonableness which is the standard for the compensation of any agent. Attorneys in this jurisdiction have discussed the possibility of including a "fee clause" in a durable power, under which they are to act as attorneys-in-fact, but such provisions apparently have not come into use.

Sec. 5-1501. Statutory short form of general power of attorney; formal requirements; joint agents.

1. The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this title:

"Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned."

Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I do hereby
(insert name and address of the principal)

appoint
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally." Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

DRAFTING THE DURABLE POWER — NEW YORK

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L), inclusive, shall automatically constitute an elimination also of subdivision (M).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

- (A) real estate transactions;
(B) chattel and goods transactions;
(C) bond, share and commodity transactions;
(D) banking transactions;
(E) business operating transactions;
(F) insurance transactions;
(G) estate transactions;
(H) claims and litigation;
(I) personal relationships and affairs;
(J) benefits from military service;
(K) records, reports and statements;
(L) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact should select;
(M) all other matters;

.....
.....
.....
.....

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

In Witness Whereof I have hereunto signed my name and affixed my seal this day of, 19...

..... (Seal)
(Signature of Principal)

[ACKNOWLEDGEMENT]

The execution of this statutory short form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgement of a conveyance of real property.

No provision of this article shall be construed to bar the use of any other or different form of power of attorney desired by the parties concerned.

Every statutory short form power of attorney, to be valid, must contain, in bold face type or a reasonable equivalent thereof the "Notice" which is printed in bold face type at the beginning of this section.

2. A power of attorney is a "statutory short form power of attorney," as this phrase is used in the following sections of this title, when, but only when, it is in writing and has been duly acknowledged by the principal and it contains the exact wording of clause First set forth in subdivision one of this section, except that any one or more of subdivisions (A) to (M) may be stricken out and initialed by the principal, in which case the subdivisions so stricken out and initialed and also subdivision (M) shall be deemed eliminated. A "statutory short form power of attorney" may contain modifications or additions of the types described in section 5-1503 of this chapter.

3. If more than one agent is designated by the principal, such agents, in the exercise of the powers conferred, must act jointly unless the principal specifically provides in such statutory short form power of attorney that they are to act severally.

4. Notwithstanding subdivisions one and two of this section, a power of attorney executed either before or after September twenty-seventh, nineteen hundred sixty-four is a "statutory short form power of attorney" as this phrase is used in the following sections of this title when it uses the words "New York General Business Law, Article 13, sections 222-234" and the words "Article 13 of the New York General Business Law" in lieu of the words "New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503" and "Article 5, Title 15 of the New York General Obligations Law" and in other respects complies with subdivision two of this section.

[L.1963, c. 576, § 1; amended L.1967, c. 197, § 1; L. 1980, c. 140, §§ 1, 2; L. 1981, c. 458, § 1.]

Sec. 5-1502A. Construction — real estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire either ownership or possession of any estate or interest in land;
2. To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to incumber, to partition or to consent to the partitioning, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;
3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim to land which exists, or is claimed to exist, in favor of the principal;
4. To do any act of management or of conservation with respect to any estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect such estate or interest by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to purchase supplies, to hire assistance or labor and to make repairs or alterations in the structures or lands;
5. To utilize in any way, to develop, to modify, to alter, to replace, to remove, to erect or to install structures or other improvements upon any land in which the principal has, or claims to have, any estate or interest;
6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;
7. To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with such plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of such shares, or any of them, to exercise or to sell any option, conversion or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy;
8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;
9. To execute, to acknowledge, to seal and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;
10. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating thereto;
11. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and
12. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any estate or interest in land.

All powers described in this section 5-1502A of the general obligations law shall be exercisable equally with respect to any estate or interest in land owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Sec. 5-1502A. Construction — real estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire either ownership or possession of any estate or interest in land;

2. To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to incumber, to partition or to consent to the partitioning, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim to land which exists, or is claimed to exist, in favor of the principal;

4. To do any act of management or of conservation with respect to any estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect such estate or interest by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to purchase supplies, to hire assistance or labor and to make repairs or alterations in the structures or lands;

5. To utilize in any way, to develop, to modify, to alter, to replace, to remove, to erect or to install structures or other improvements upon any land in which the principal has, or claims to have, any estate or interest;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

7. To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with such plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of such shares, or any of them, to exercise or to sell any option, conversion or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating thereto;

11. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

12. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any estate or interest in land.

All powers described in this section 5-1502A of the general obligations law shall be exercisable equally with respect to any estate or interest in land owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

Sec. 5-1502B. Construction — chattel and goods transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "chattel and goods transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any chattel or goods or any interest in any chattel or goods;

2. To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to incur, to pledge, to hypothecate, to pawn, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet to others, or otherwise to dispose of any chattel or goods or any interest in any chattel or goods;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim, which exists, or is claimed to exist, in favor of the principal, with respect to any chattel or goods or any interest in any chattel or goods;

4. To do any act of management or of conservation, with respect to any chattel or goods or to any interest in any chattel or goods owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession, or to protect such chattel or goods or interest in any chattel or goods, by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to move from place to place, to store for hire or on a gratuitous bailment, to use, to alter, and to make repairs or alterations of any such chattel or goods, or interest in any chattel or goods;

5. To demand, to receive, to obtain by action, proceeding or otherwise, any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of a chattel or goods or of any interest in any chattel or goods, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to seal and to deliver any conveyance, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any chattel or goods transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any chattel or goods or interest in any chattel or goods.

All powers described in this section 5-1502B of the general obligations law shall be exercisable equally with respect to any chattel or goods or interest in any chattel or goods owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502C. Construction — bond, share and commodity transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share and commodity transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, together with the interest, dividends, proceeds or other distributions connected therewith;

2. To sell (including short sales), to exchange, to transfer either with or without a guaranty, to release, to surrender, to hypothecate, to pledge, to revoke, create or modify a trust, to grant options concerning, to loan, to trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any pledge, incumbrance, lien or other claim as to any bond, share, instrument of similar character, commodity interest or any interest with respect thereto, when such pledge, incumbrance, lien or other claim is owned, or claimed to be owned, by the principal;

4. To do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect the principal's interest therein by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to consent to and to participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights or other special rights with respect thereto, to become a depositor with any protective, reorganization or similar committee of the bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, belonging to the principal, to make any payments reasonably incident to the foregoing, to exercise or to sell any option, conversion or similar right, to vote in person or by the granting of a proxy (with or without the power of substitution), either discretionary, general or otherwise, for the accomplishment of any of the purposes enumerated in this section;

5. To carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, other instrument of similar character, commodity interest or instrument with respect thereto, belonging to the principal;

6. To employ, in any way believed to be desirable by the agent, any bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, in which the principal has or claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;

7. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

8. To agree and to contract, in any manner, and with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any consent, agreement, authorization, assignment, revocation, declaration or modification of trust, notice, waiver of notice, check, or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To execute, to acknowledge and to file any report or certificate required by law or governmental regulation;

11. To prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any bond, share or commodity transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity.

All powers described in this section 5-1502C of the general obligations law shall be exercisable equally with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or thereafter acquired, whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502D. Construction — banking transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "banking transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to modify and to terminate any deposit account, or other banking arrangement made by or on behalf of the principal prior to the creation of the agency;
2. To open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly or otherwise, a deposit account of any type with any banker or in any banking institution selected by the agent, to hire such safe deposit box or vault space and to make such other contracts for the procuring of other services made available by any such banker or banking institution as the agent shall think to be desirable;
3. To make, to sign and to deliver checks or drafts for any purpose, to withdraw by check, order or otherwise any funds or property of the principal deposited with, or left in the custody of, any banker or banking institution, wherever located, either before or after the creation of the agency;
4. To prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal, and to deliver statements so prepared to any banker, banking institution or other person, whom the agent believes to be reasonably entitled thereto;
5. To receive statements, vouchers, notices or other documents from any banker or banking institution and to act with respect thereto;
6. To have free access at any time or times to any safe deposit box or vault to which the principal might have access, if personally present;
7. To borrow money by bank overdraft, or by promissory note of the principal given for such period and at such interest rate as the agent shall select, to give such security out of the assets of the principal as the agent shall think to be desirable or necessary for any such borrowing, to pay, to renew or to extend the time of payment of any note so given or given by or on behalf of the principal, and to procure for the principal a loan from any banker or banking institution by any other procedure made available by such banker or institution;
8. To make, to assign, to indorse, to discount, to guarantee, and to negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper of the principal, or payable to the principal or to his order, to receive the cash or other proceeds of any such transactions, to accept any bill of exchange or draft drawn by any person upon the principal, and to pay it when due;
9. To receive for the principal and to deal in and to deal with any trust receipt, warehouse receipt or other negotiable or nonnegotiable instrument, in which the principal has or claims to have an interest;
10. To apply for and to receive letters of credit or travelers checks from any banker or banking institution selected by the agent, giving such indemnity or other agreements in connection therewith as the agent shall think to be desirable or necessary;
11. To consent to an extension in the time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;
12. To pay, to compromise or to contest taxes or assessments and to apply for refunds in connection therewith;
13. To demand, to receive, to obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal himself, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

14. To execute, to acknowledge, to seal and to deliver any instrument of any kind, in the name of the principal or otherwise, which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

15. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any banking transaction or to intervene in any action or proceeding relating thereto;

16. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

17. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any banking transaction which does or might in any way affect the financial or other interests of the principal.

All powers described in this section 5-1502D of the general obligations law shall be exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or thereafter engaged in, and whether conducted in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502E. Construction — business operating transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to discharge and to perform any duty or liability and also to exercise any right, power, privilege or option which the principal has, or claims to have, under any contract of partnership whether the principal is a general or special partner thereunder, to enforce the terms of any such partnership agreement for the protection of the principal, by action, proceeding or otherwise, as the agent shall think to be desirable or necessary, and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party because of his membership in said partnership;

2. To exercise in person or by proxy or to enforce by action, proceeding or otherwise, any right, power, privilege or option which the principal has as the holder of any bond, share, or other instrument of similar character and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party because of any such bond, share, or other instrument of similar character;

3. With respect to any business enterprise which is owned solely by the principal

a. to continue, to modify, to renegotiate, to extend and to terminate any contractual arrangements made with any person, firm, association or corporation whatsoever by or on behalf of the principal with respect thereto prior to the creation of the agency;

b. to determine the policy of such enterprise as to the location of the site or sites to be utilized for its operation, as to the nature and extent of the business to be undertaken by it, as to methods of manufacturing, selling, merchandising, financing, accounting and advertising to be employed in its operation, as to the amount and types of insurance to be carried, as to the mode of securing, compensating and dealing with accountants, attorneys, servants and other agents and employees required for its operation, to agree and to contract, in any manner, and with any person and on any terms, which the agent thinks to be desirable or necessary for effectuating any or all of such decisions of the agent as to policy, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

c. to change the name or form of organization under which such business is operated and to enter into such partnership agreement with other persons or to organize such corporation to take over the operation of such business, or any part thereof, as the agent shall think to be desirable or necessary;

d. to demand and to receive all moneys which are, or may become, due to the principal, or which may be claimed by the principal or on his behalf, in the operation of such enterprise, and to control and to disburse such funds in the operation of such enterprise in any way which the agent shall think to be desirable or necessary, to engage in any banking transactions which the agent shall think to be desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision;

4. To prepare, to sign, to file and to deliver all reports, compilations of information, returns or other papers with respect to any business operating transaction of the principal, which are required by any governmental agency, department or instrumentality or which the agent shall think to be desirable or necessary for any purpose, and to make any payments with respect thereto;

5. To pay, to compromise or to contest taxes or assessments and to do any act or acts which the agent shall think to be desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties or assessments in connection with his business operations, including power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties or assessments;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any business operation of such principal, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

7. To execute, to acknowledge, to seal and to deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any business operating transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any business operated by the principal, which the agent shall think to be desirable or necessary for the furtherance or protection of the interests of the principal.

All powers described in this section 5-1502E of the general obligations law shall be exercisable equally with respect to any business in which the principal is interested at the creation of the agency or in which the principal shall thereafter become interested, and whether operated in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502F. Construction — insurance transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to pay the premium or assessment on, to modify, to rescind, to release or to terminate any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary thereunder;

2. To procure new, different or additional contracts of insurance on the life of the principal or protecting the principal with respect to ill-health, disability, accident or liability of any sort, to select the amount, the type of insurance contract and the mode of payment under each such policy, to pay the premium or assessment on, to modify, to rescind, to release or to terminate, any contract so procured by the agent and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

3. To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise any election as to beneficiary or mode of payment, to change the manner of paying premiums, to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section and to change the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such new beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

4. To demand, to receive, to obtain by action, proceeding or otherwise, any money, dividend, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To apply for and to procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal;

6. To sell, to assign, to hypothecate, to borrow upon, or to pledge the interest of the principal in any contract of insurance;

7. To pay, from such proceeds or otherwise, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of such tax or assessment;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract;

9. To execute, to acknowledge, to seal and to deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To continue, to procure, to pay the premium or assessment on, to modify, to rescind, to release, to terminate or otherwise to deal with any contract of insurance, other than those enumerated in subdivisions one or two of this section, whether fire, marine, burglary, compensation, disability, liability, hurricane, casualty, or other type, or any combination of insurance, to do any act or acts with respect to any such contract or with respect to its proceeds or enforcement which the agent thinks to be desirable or necessary for the promotion or protection of the interests of the principal;

11. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to any claim existing in favor of, or against, the principal based on or involving any insurance transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with procuring, supervising, managing, modifying, enforcing and terminating contracts of insurance in which the principal is the insured or is otherwise in any way interested.

All powers described in this section 5-1502F of the general obligations law shall be exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502G. Construction — estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to apply for and to procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, to act as a fiduciary of any sort;

2. To the extent that an agent is permitted by law thus to act for a principal, to represent and to act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, infant or incompetent, or any trust or other fund, out of which the principal is entitled, or claims to be entitled, to some share or payment, or with respect to which the principal is a fiduciary;

3. To accept, to reject, to receive, to receipt for, to sell, to assign, to release, to pledge, to exchange, or to consent to a reduction in or modification of, any share in or payment from any estate, trust or other fund;

4. To demand, to obtain by action, proceeding or otherwise any money, or other thing of value to which the principal is, or may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of an infant or incompetent or the administration of any trust or other fund, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the removal, substitution or surcharge of a fiduciary, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prepare, to sign to file and to deliver all reports, compilations of information, returns or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund, to pay, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in any estate, trust or other fund or by reason of the death of any person, or with respect to any property in which such interest is had or claimed;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to verify, to seal, to file and to deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To submit to arbitration or to settle, and to propose or to accept a compromise with respect to any controversy or claim which affects the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, and to do any and all acts which the agent shall think to be desirable or necessary in effectuating such compromise;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants, when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, or with respect to which the principal is a fiduciary.

All powers described in this section 5-1502G of the general obligations law shall be exercisable equally with respect to any estate of a decedent, absentee, infant or incompetent, or the administration of any trust or other fund, in which the principal is interested at the giving of the power of attorney or may thereafter become interested, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502H. Construction — claims and litigation

In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation," must be construed to mean that the principal authorizes the agent:

1. To assert and to prosecute before any court, administrative board, department, commissioner or other tribunal, any cause of action, claim, counterclaim, offset or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of land or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief;

2. To bring an action of interpleader or other action to determine adverse claims, to intervene or to interplead in any action or proceeding, and to act in any litigation as *amicus curiae*;

3. In connection with any action or proceeding or controversy, at law or otherwise, to apply for and, if possible, to procure a libel, an attachment, a garnishment, an order of arrest or other preliminary, provisional or intermediate relief and to resort to and to utilize in all ways permitted by law any available procedure for the effectuation or satisfaction of the judgment, order or decree obtained;

4. In connection with any action or proceeding, at law or otherwise, to perform any act which the principal might perform, including by way of illustration and not of restriction, acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts, consent to examination before trial, and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the agent;

5. To submit to arbitration, to settle, and to propose or to accept a compromise with respect to any claim existing in favor of or against the principal, or any litigation to which the principal is, or may become or be designated a party;

6. To waive the issuance and service of a summons, citation or other process upon the principal, to accept service of process, to appear for the principal, to designate persons upon whom process directed to the principal may be served, to execute and to file or deliver stipulations on the principal's behalf, to verify pleadings, to appeal to appellate tribunals, to procure and to give surety and indemnity bonds at such times and to such extent as the agent shall think to be desirable or necessary, to contract and pay for the preparation and printing of records and briefs, to receive and to execute and to file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent shall think to be desirable or necessary in connection with the prosecution, settlement or defense of any claim by or against the principal or of any litigation to which the principal is or may become or be designated a party;

7. To appear for, to represent and to act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding, or with respect to any receivership or application for the appointment of a receiver or trustee which, in any way, affects any interest of the principal in any land, chattel, bond, share, commodity interest, chose in action or other thing of value;

8. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section;

9. To pay, from funds in his control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section, and to receive and conserve any moneys or other things of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section, and to receive and endorse checks and to deposit the same; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any claim by or against the principal or with litigation to which the principal is or may become or be designated a party.

All powers described in this section 5-1502H of the general obligations law shall be exercisable equally with respect to any claim or litigation existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502I. Construction — personal relationships and affairs

In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships," must be construed to mean that the principal authorizes the agent:

1. To do all acts necessary for maintaining the customary standard of living of the spouse and children, and other dependents of the principal, including by way of illustration and not by way of restriction, power to provide living quarters by purchase, lease or by other contract, or by payment of the operating costs, including interest, amortization payments, repairs and taxes, of premises owned by the principal and occupied by his family or dependents, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities, and to provide funds for all the current living costs of such spouse, children and other dependents, including, among other things, shelter, clothing, food and incidentals;

2. To provide, whenever necessary, medical, dental and surgical care, hospitalization and custodial care for the spouse, children and other dependents of the principal;

3. To continue whatever provision has been made by the principal, prior to the creation of the agency or thereafter, for his spouse, children and other dependents, with respect to automobiles, or other means of transportation, including by way of illustration but not by way of restriction, power to license, to insure and to replace any automobiles owned by the principal and customarily used by the spouse, children or other dependents of the principal;

4. To continue whatever charge accounts have been operated by the principal prior to the creation of the agency or thereafter, for the convenience of his spouse, children or other dependents, to open such new accounts as the agent shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal to make such charges prior to the creation of the agency;

5. To continue the discharge of any services or duties assumed by the principal, prior to the creation of the agency or thereafter, to any parent, relative or friend of the principal;

6. To supervise and to enforce, to defend or to settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal, or under such circumstances that the loss resulting therefrom will, or may fall on the principal;

7. To continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization or to continue contributions thereto;

8. To demand, to receive, to obtain by action, proceeding or otherwise any money or other thing of value to which the principal is or may become or may claim to be entitled as salary, wages, commission or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and to endorse, collect or otherwise realize upon any instrument for the payment so received;

9. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which the principal is or may be liable;

10. To utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from any bank deposit of the principal, to sell any land, chattel, bond, share, commodity interest, chose in action or other asset of the principal, to borrow money and to pledge as security for such loan, any asset, including insurance, which belongs to the principal;

11. To execute, to acknowledge, to verify, to seal, to file and to deliver any application, consent, petition, notice, release, waiver, agreement or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

12. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any transaction enumerated in this section or to intervene in any action or proceeding relating thereto;

13. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

14. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, for the welfare of the spouse, children or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations.

All powers described in this section 5-1502I of the general obligations law shall be exercisable equally whether the acts required for their execution shall relate to real or personal property owned by the principal at the giving of the power of attorney or thereafter acquired and whether such acts shall be performable in the state of New York or elsewhere.

Sec. 5-1502J. Construction — benefits from military service

In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service," must be construed to mean that the principal authorizes the agent:

1. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or by any state or subdivision thereof, to the principal, including by way of illustration and not of restriction, all allowances and reimbursements for transportation of the principal and of his dependents, and for shipment of household effects, to receive, to indorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision thereof;

2. To take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose;

3. To prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal, to execute any receipt or other instrument which the agent shall think to be desirable or necessary for the enforcement or for the collection of such claim;

4. To receive the financial proceeds of any claim of the type described in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any benefits from military service or to intervene in any action or proceeding relating thereto;

6. To hire, to discharge, and to compensate any attorney, accountant, expert witness, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section; and

7. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, and which the agent shall think to be desirable or necessary, to assure to the principal, and to the dependents of the principal, the maximum possible benefit from the military service performed prior to or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

All powers described in this section 5-1502J of the general obligations law shall be exercisable equally with respect to any benefits from military service existing at the giving of the power of attorney or thereafter accruing, and whether accruing in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502K. Construction — records, reports and statements

In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports and statements," must be construed to mean that the principal authorizes the agent:

1. To keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

2. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns, required by the laws of the United States, of any state or of any subdivision thereof or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation;

3. To prepare, to execute and to file any record, report or statement, which the agent shall think to be desirable or necessary for the safeguarding or maintenance of the principal's interest, with respect to price, rent, wage or rationing control, or other governmental activity;

4. To hire, to discharge, and to compensate any attorney, accountant, or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section; and

5. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with the preparation, execution, filing, storage or other utilization of any records, reports or statements of or concerning the principal's affairs.

All powers described in this section 5-1502K of the general obligations law shall be exercisable equally with respect to any records, reports or statements of or concerning the affairs of the principal existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502L. Construction — all other matters

In a statutory short form power of attorney, the language conferring general authority with respect to "all other matters," must be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in sections 5-1502A to 5-1502K, inclusive, of this chapter, and which the principal can do through an agent.

[L.1963, c. 576, § 1.]

Sec. 5-1503. Modifications of the statutory short form power of attorney

A power of attorney which satisfies the requirements of subdivision two of section 5-1501 of this chapter is not prevented from being a "statutory short form power of attorney," as this phrase is used in the sections of this title, by the fact that it also contains additional language which:

1. Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal; or

2. Supplements one or more of the powers enumerated in one or more of the constructional sections in this title with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal, by specifically listing additional powers of the agent; or

3. Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney.

[L.1963, c. 576, § 1.]

Sec. 5-1601. Powers of attorney which survive disability or incompetence

1. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal which contains the words "This power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his subsequent disability or incompetence.

2. All acts done by an attorney-in-fact pursuant to a power granted pursuant to subdivision one of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled. If a committee or conservator thereafter is appointed for such principal, such attorney-in-fact, during the continuance of the appointment, shall account to the committee or conservator rather than to such principal. The committee or conservator shall have the same power such principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of such power of attorney.

[N.Y. Gen. Oblig. Law § 5-1601 (McKinney 1978) (effective June 10, 1975); L. 1975, c. 175, § 1.]

CSHB 491

CHANGES FROM THE ORIGINAL BILL

CHANGES TO THE FORM:

1) Page 1, line 22: "IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE."

- self-explanatory

2) minor language changes throughout the form to make it more easily understood (i.e. the word "document" is substituted for the word "instrument")

3) Page 2, line 10: (B) "tangible personal property" is added to clarify this section (also added in the corresponding statutory interpretation)

4) Page 2, line 20: (K) "government programs and" is added to the benefits section (also added in the corresponding statutory interpretation)

- at the request of the Older Alaskans Commission to assure that benefits such as Longevity Bonus and Permanent Fund will be collectable for the principal

5) Page 3, entire page has been converted to "check-off" from "fill-in" format

- optional time limitation added

- "NOTICE TO THIRD PARTIES" added to enforce the power and limit liability

6) Page 4, line 17: notarization requirement added

7) Page 4 and 5: Optional provisions specifically designed for Senior citizens have been added

- notification of existence of a "Living Will"

- specification of alternate attorney-in-fact

- nomination of a guardian or conservator

STATUTORY CHANGES:

8) Page 5, line 19: explanation of how to fill out the form

9) Page 5, line 26 - Page 6, line 15: default provisions

CSHB 491: CHANGES (CONT'D.)

10) Pages 24 and 25: changes within the gifting section to clarify the agent's authority to gift to himself or herself only if the principal has specifically allowed it under (O) of the form. (This language is particularly important if the agent is a family member or friend whom the principal would wish to benefit from his or her estate.)

11) Page 36, line 12: affidavit of disability must be signed by two physicians instead of one

12) Page 37, line 25 - Page 38, line 12: EFFECT ON PREVIOUSLY CREATED POWERS OF ATTORNEY

- in essence, substantiates pre-existing powers and applies the enforcement and default provisions of this new statute to any pre-existing power

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HHESS

4-19-88

8:30 a.m.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
UNELAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1988

SUBJECT: Statutory power of attorney (CSHB 491)
TO: Representative Johnny Ellis
FROM: Jack Chenoweth
Legislative Counsel

I have made the changes requested by your April 15 memo, incorporating several additional technical changes requested by Older Alaskans Commission Executive Director Connie Sipe that Deborah Bonito of your staff approved.

Please note:

For purposes of consistency with existing language in the form, I have reworked some of the language that your staff had suggested in the material appended to your April 15 memo.

The changes that you request in this memo have led me to revise the language appearing at the bottom of page 3 of the last draft relating to the "Living Will." Some of that language, which had been specifically requested by Ms. Sipe and the Commission, has been deleted. Is this your intent?

I have repealed AS 13.26.330. The changes that I suggested in my April 10 corrective amendment are carried forward into a new section, AS 13.26.356.

The redraft necessitated adding new sections. Because I must insert this new material within the parameters of certain other existing sections unrelated to powers of attorney, I have had to renumber the sections in this draft.

If this draft or memo prompts questions, please contact me.

JC:mkr
008/wkb5

Enclosure