

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 14, 2008

1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Bob Lynn
Representative Ralph Samuels

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 97(JUD)

"An Act relating to identification seals for certain articles created or crafted in the state by Alaska Native persons; relating to the Alaska State Council on the Arts; and making certain identification seal violations unfair trade practices."

- MOVED HCS CSSB 97(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 50

"An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED CSHB 50(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 97

SHORT TITLE: ALASKA NATIVE ART IDENTIFICATION SEALS

SPONSOR(S): SENATOR(S) STEVENS

02/26/07	(S)	READ THE FIRST TIME - REFERRALS
02/26/07	(S)	L&C, FIN
03/08/07	(S)	L&C AT 1:30 PM BELTZ 211
03/08/07	(S)	Heard & Held
03/08/07	(S)	MINUTE(L&C)

03/13/07 (S) L&C AT 1:30 PM BELTZ 211
 03/13/07 (S) Moved SB 97 Out of Committee
 03/13/07 (S) MINUTE(L&C)
 03/14/07 (S) L&C RPT 4DP
 03/14/07 (S) DP: ELLIS, BUNDE, DAVIS, STEVENS
 03/21/07 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/21/07 (S) Moved SB 97 Out of Committee
 03/21/07 (S) MINUTE(FIN)
 03/21/07 (S) FIN RPT 7DP
 03/21/07 (S) DP: HOFFMAN, STEDMAN, ELTON, THOMAS,
 DYSON, HUGGINS, OLSON
 03/26/07 (S) JUD REFERRAL ADDED
 04/02/07 (S) JUD AT 1:30 PM BELTZ 211
 04/02/07 (S) Moved CSSB 97(JUD) Out of Committee
 04/02/07 (S) MINUTE(JUD)
 04/04/07 (S) JUD RPT CS 1DP 4NR SAME TITLE
 04/04/07 (S) DP: FRENCH
 04/04/07 (S) NR: MCGUIRE, HUGGINS, WIELECHOWSKI,
 THERRIAULT
 04/11/07 (S) BEFORE SENATE IN THIRD READING
 04/11/07 (S) TRANSMITTED TO (H)
 04/11/07 (S) VERSION: CSSB 97(JUD)
 04/13/07 (H) READ THE FIRST TIME - REFERRALS
 04/13/07 (H) EDT, HES, JUD
 05/01/07 (H) EDT AT 5:15 PM CAPITOL 106
 05/01/07 (H) Heard & Held
 05/01/07 (H) MINUTE(EDT)
 05/08/07 (H) HES AT 3:00 PM CAPITOL 106
 05/08/07 (H) Scheduled But Not Heard
 05/11/07 (H) JUD AT 1:00 PM CAPITOL 120
 05/11/07 (H) <Bill Hearing Canceled>
 02/21/08 (H) EDT AT 11:00 AM CAPITOL 106
 02/21/08 (H) Moved Out of Committee
 02/21/08 (H) MINUTE(EDT)
 02/25/08 (H) EDT RPT 7DP
 02/25/08 (H) DP: DOOGAN, GATTO, DOLL, LYNN,
 JOHANSEN, KELLER, NEUMAN
 02/25/08 (H) HES REFERRAL WAIVED
 03/14/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 50

SHORT TITLE: CHILD PLACEMENT COMPACT

SPONSOR(S): REPRESENTATIVE(S) COGHILL, NEUMAN, WILSON

01/16/07 (H) PREFILE RELEASED 1/5/07
 01/16/07 (H) READ THE FIRST TIME - REFERRALS
 01/16/07 (H) HES, JUD

02/21/08 (H) HES AT 3:30 PM CAPITOL 106
02/21/08 (H) Heard & Held
02/21/08 (H) MINUTE(HES)
02/28/08 (H) HES AT 3:00 PM CAPITOL 106
02/28/08 (H) Moved CSHB 50(HES) Out of Committee
02/28/08 (H) MINUTE(HES)
02/29/08 (H) HES RPT CS(HES) 6DP 1NR
02/29/08 (H) DP: CISSNA, FAIRCLOUGH, GARDNER,
SEATON, ROSES, WILSON
02/29/08 (H) NR: KELLER
03/14/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

TIM LAMKIN, Staff
to Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented Version N of SB 97, on behalf of the sponsor, Senator Stevens.

BENJAMIN BROWN, Chair
Alaska State Council on the Arts (ASCA)
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 97.

L. SAUNDERS McNEILL, Director
Community and Native Arts Program
Alaska State Council on the Arts (ASCA)
Department of Education and Early Development (EED)
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 97.

DONALD C. MITCHELL, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 97.

DAN BRANCH, Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified on SB 97.

RYNNIEVA MOSS, Staff
to Representative John Coghill

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 50 on behalf of joint prime sponsor Representative Coghill.

MARCIA PICKERING, Deputy Compact Administrator
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified on HB 50.

JAN RUTHERDALE, Senior Assistant Attorney General
Child Protection Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified on HB 50.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:08:10 PM](#). Representatives Coghill, Holmes, Dahlstrom, and Ramras were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representatives Lynn and Samuels were excused.

SB 97 - ALASKA NATIVE ART IDENTIFICATION SEALS

[1:08:27 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 97(JUD), "An Act relating to identification seals for certain articles created or crafted in the state by Alaska Native persons; relating to the Alaska State Council on the Arts; and making certain identification seal violations unfair trade practices."

[1:08:45 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed House committee substitute (HCS) for SB 97(JUD), Version 25-LS0405\N, Bannister, 3/14/08, as the work draft. There being no objection, Version N was before the committee.

[1:08:57 PM](#)

TIM LAMKIN, Staff to Senator Gary Stevens, Alaska State Legislature, on behalf of Senator Stevens, sponsor, relayed that SB 97 is a branding program similar to the Made in Alaska program, but it is narrowly focused on Alaska Native art. Mr. Lamkin offered that he previously met with individual members and Version N attempts to address their concerns. He referred to page 4, lines 6-8, proposed AS 45.65.070(1), which adds language, "a work of art that is created or crafted" in order to clarify that the art in question are "objects that are touched by the artist to become the art." Further, this paragraph stresses that the article of art is "created or crafted" in the state, in order to clarify that the art has not been manufactured elsewhere but rather has been made in the state.

MR. LAMKIN referred to page 4, line 14, proposed AS 45.65.070(6), which adds "enrolled member" thus excluding those non-Native persons who are formally adopted into a tribe. He stated that when a person is ceremonially adopted into a tribe, although it is an honor, it does not entitle the person to the benefits of an "enrolled" tribal member. He referred to page 4, lines 26-30, proposed AS 45.65.070(9), specifically to the definition of "original", and stated that the sponsor struggled with that definition. A prior version of SB 97 referred to "offset print" and yet "original" would exclude "mechanized duplication instruments". He noted that the use of "offset print" created a conflict since "offset print" is created by "mechanized duplication instruments." He stated that "offset print" was deleted and the definition was clarified by further defining "original." He read a portion of proposed AS 45.65.070(9):

... except that "original" includes etched prints, lithographic prints, serigraphic prints, and prints from photographs, if the prints are made by hand by the person who created or crafted the etched plate, etched drawing, etched design, lithographic plate, lithographic stone, silkscreen, or photograph from which the prints were made;"

MR. LAMKIN referred to proposed AS 45.65.070(10), to the definition of "work of art" which includes subparagraphs (A)-(E) and is connected by "or" to clarify that this is not exclusive, that the art includes the subparagraphs, but is not limited to those items.

REPRESENTATIVE DAHLSTROM inquired as to the reason for the bill, the attorney general's interest in SB 97, and clarification of

adopted versus enrollment. She relayed her understanding that an adopted child would never be eligible to participate in the program and use the emblem or seal.

MR. LAMKIN noted that currently an "Alaska Native" means, "any resident Eskimo, Aleut, or Indian possessing not less than one-quarter Eskimo, Aleut, or Indian blood." The bill proposes to change that definition and strike reference to blood quantum as the criterion, and would suggest that an Alaska Native is a resident who is a member of an Alaska Native tribe. If a person is a member of an Alaska Native tribe, he/she is also a member of an "Indian Tribe" as defined by federal law, and would be eligible for the Silver Hand program. He referred to a flowchart in members packets labeled, "Senate Bill 97, Eligibility to Use the Silver Hand. He pointed out that this flow chart only determines eligibility and is separate from other issues such as sovereignty or gaming. As currently drafted, the bill is meant to preclude the raising of federal sovereignty issues.

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MR. LAMKIN referred to the issue of equal protection, and posed a scenario in which a non-Native person has grown up in a rural community, such as Egegik, and is an accomplished artist, familiar with traditional art. That person could appeal to the Alaska State Council on the Arts (ASCA) if he/she was denied use of the Silver Hand seal. He related his understanding that a series of tests are made when equal protection issues come before the court, and offered his belief that one remedy would be to reference the Made in Alaska program, and another remedy could be that the Silver Hand program could be expanded to offer more than one type of seal. He opined that the Silver Hand seal is reserved for Native artists, but another type of seal could be devised for non-Native artists.

REPRESENTATIVE DAHLSTROM stated that she did not understand the need to separate out Native and non-Native artists and the need for the bill.

CHAIR RAMRAS offered that in operating a hotel that contains a gift shop, he has unsuccessfully marketed items for over \$200. Subsequently, when unsolicited Native-crafts persons come to his shop with baleen, sculptures, and other handcrafted artwork, he said that he has declined to purchase them because the price is too high for his market and his shop cannot create the distinction in any meaningful way that denotes that the product

is authentic, rather than a cheap, imported "knock off" product. He opined that the Silver Hand program would be beneficial for his hotel gift shop to offer authentic Native art.

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MR. LAMKIN noted that the Silver Hand program is not a new law and has been in statute for over 45 years in some form. However, fraud has been prevalent and this has ruined the integrity of the program. The ASCA has assisted in writing a bill to help rebuild the integrity of the Silver Hand program, which not only assists artists, but helps the state in its marketing efforts, and helps ensure that the consumer obtains authentic Native art made in Alaska.

REPRESENTATIVE GRUENBERG offered that he strongly supports the Silver Hand program and considers SB 97 to be a good bill.

REPRESENTATIVE COGHILL asked whether there will be any changes to the fees.

MR. LAMKIN relayed his understanding that the fees are not cost prohibitive and are currently set at \$10 annually, which covers the cost of printing the stickers.

REPRESENTATIVE COGHILL noted that the certification gives authenticity to Native arts. He opined that the case could be made that this is legitimate, especially since federal law grants Natives exclusive rights to some raw materials. He asked whether that might place tension in the community for Native Alaskans not living in Alaska.

MR. LAMKIN stated the whole purpose of the program is to ensure that the products are made in Alaska, and currently that is the state boundary. He questioned how to authenticate Alaska Native products if they are not made in the state.

REPRESENTATIVE COGHILL offered that simply being enrolled might be sufficient regardless of the residence. He stated that he would not hold up SB 97 solely for that reason.

MR. LAMKIN pointed out that to be eligible, the person must be a resident of Alaska, and that that residency is linked with the eligibility to obtain a Permanent Fund Dividend (PFD). He posed a scenario in which a student in Washington state returns home on spring break and creates his/her art. He offered that it

would be legitimate to take that art and sell it in another state.

CHAIR RAMRAS characterized the bill as one of self-reliance.

[1:30:15 PM](#)

BENJAMIN BROWN, Chair, Alaska State Council on the Arts (ASCA), characterized SB 97 as a good program. Passage of SB 97 will make it a better program, with less fraud, he opined, and pointed out that the attorney general's office acts as the enforcement arm for consumer protection. He offered, in response to Representative Dahlstrom's earlier question, that tribal adoption refers to a person's honorary adoption to a tribe rather than a family adoption. He surmised that if a family adopted a child, that child would likely become enrolled and be eligible for any corporate shares. He urged the committee to support SB 97.

REPRESENTATIVE GRUENBERG asked whether the main purpose of the Act is to prevent fraud.

MR. BROWN stated that the main purpose of SB 97 is to promote the creation and sale of Alaska Native art. He further stated that the art will be available and enjoyed for its own intrinsic purposes, and also that the economic benefits of creating that art flows back to Alaska Natives in their communities. He noted that fraud prevention is an essential part of that main purpose.

REPRESENTATIVE GRUENBERG surmised that it is the Silver Hand emblem or seal that makes the "authentic art" readily apparent to the public.

MR. BROWN agreed.

REPRESENTATIVE GRUENBERG opined that the promotion of this particular type of art and the prevention of fraud are valid state interests, and support the mechanism of the program.

MR. BROWN offered his understanding that potential equal protection issues are more than addressed by the existence of the Made in Alaska program. The ASCA can at some future time assess that program and possibly even expand it or create a new program. He said he is confident that the bill is constitutional and it's aimed at promoting the production and sale of Alaska Native Art for the benefit of those producing it,

those selling it, and those buying it knowing that the products are authentic.

REPRESENTATIVE GRUENBERG asked Mr. Brown whether he was referring to the Silver Hand program.

MR. BROWN said he was.

REPRESENTATIVE GRUENBERG asked Mr. Brown whether he thought that the Silver Hand program would withstand another potential challenge based on privileges and immunities.

MR. BROWN indicated that he did.

[1:36:24 PM](#)

L. SAUNDERS McNEILL, Director, Community and Native Arts Program, Alaska State Council on the Arts (ASCA), stated that hundreds of permit holders are currently in the program, and that the program has the largest number of permit holders, along with "Alaska Grown" and "Made in Alaska". Senate Bill 97 represents 20 years of feedback from Alaska Native artists through requests, recommendations, and surveys, and Alaska Native artists exclusively comprise the Silver Hand Task Force, formed for the purpose of working on this legislation. She expressed gratitude to the committee for considering the bill and supporting it. In response to a comment, she concurred that the seals inform the public that the product they are acquiring is authentic.

[1:38:31 PM](#)

DONALD C. MITCHELL, Attorney at Law, stated that for a number of years he has advised the legislature on legal issues related to Alaska Natives. He referred to a March 29, 2007, memorandum that he wrote, and said he believes that the Silver Hand program is a terrific program that has unintentionally gotten entangled in a complicated legal dispute. When people come to visit Alaska, their experience is unique from what they have in other states in that some of Alaska's Native population still lead a traditional lifestyle, which is reflected in their art. Visitors want to own art that they know was made by an Alaska artist rather than by someone in China. In 1961 the legislature created the Silver Hand Program to help consumers know what was being represented to them. That was a simpler time, though, and statute provided that those who would be eligible to use the

sticker on their art were artists with a certain blood quantum signifying that they were Native Alaskans.

MR. MITCHELL suggested that SB 97 instead places people in the middle of a classification system that has nothing to do with the program, but has huge implications elsewhere such as possibly violating the Alaska State Constitution's equal protection clause, or further confusing the unsettled federal legal dispute regarding whether Alaska Natives in rural communities are members of federally-recognized tribes whose governing bodies have authority that could supersede the authority of the legislature and provide them with sovereign immunity. He referred to the February 22, 2008, decision issued by Judge Tim Burgess in the Kaltag v. State of Alaska adoption case, in which the tribal court had completed an adoption but the state would not issue the child's birth certificate; the U.S. District Court for the District of Alaska upheld the tribal court's adoption. He offered his belief that legislators do not want to make any such issues worse, and remarked that his memorandum accurately identifies those issues.

[1:47:09 PM](#)

REPRESENTATIVE COGHILL asked whether using the term, "enrolled" addresses the issue.

MR. MITCHELL said he thought that if the group that is being used in the classification system is itself otherwise constitutionally appropriate, then the state has an interest in ensuring that someone who purports to be a member of that group actually is. He indicated that using that term would provide an appropriate additional safeguard. However, the larger question is how to define a group of artists entitled to use this seal in a constitutionally appropriate way without getting further entangled in sovereignty issues.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. MITCHELL, noting that Congress has the authority to designate groups of Native Americans as "tribes" for some purposes such as for the specific purpose of delivering federal services and programs or recognizing sovereign immunity, he said that this bill seems to be a reasonable compromise that will pass constitutional muster.

REPRESENTATIVE COGHILL opined that [language in the bill] gives applicants a "clear line" in the application process for the Silver Hand program.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. MITCHELL, in response to a question, offered his understanding that one of the programs and services provided to people who qualify as members of tribes through the Indian Self-Determination and Education Assistance Act are for health benefits. He pointed out that the Indian Health Care Improvement Act also provides services. He offered his understanding that it will be possible to determine, on an individual basis, whether an artist is enrolled in a tribe that would qualify them for the Silver Hand program.

[1:56:02 PM](#)

MR. LAMKIN referred to the Alaska Federation of Natives (AFN) Resolution 07-35, specifically item 5 on page 2, which read [original punctuation provided]:

To be eligible for the program, we support a requirement that the individual is 1) an Alaska Native and an enrolled member of an Alaska Native tribe; or, 2) an enrolled member of Alaska Native Corporation;

MR. LAMKIN stated that the word "enrolled" creates the distinction between an Alaska Native and a member who has been ceremonially adopted by the tribe.

REPRESENTATIVE COGHILL said he is content with the current language of Version N.

REPRESENTATIVE GRUENBERG asked Mr. Mitchell whether he agrees with the purposes of the bill, and, if so, whether he thinks that the program can withstand an equal protection challenge.

MR. MITCHELL indicated that he agrees with the purposes of the program, and opined that an equal protection issues exists regarding the classification that distinguishes Alaska Native artists from other artists. Assuming that it is constitutional to have such a classification, a second question is whether the legislature has the authority to have a program such as the Silver Hand program. In his view, it is more certain that the legislature's constitutional authority for the program is much stronger than its authority to create the classification system.

MR. MITCHELL surmised that if the legislature were to enact a statute that said that the only art that can be sold in Alaska is art that carries the seal, then a constitutional commerce clause problem might be raised. However, that is not what SB 97 and this program provide for; instead they only provide that the only artist who is eligible to sell art bearing the Silver Hand emblem or seal must meet particular criteria such that the person must have status as a member of an Indian tribe as defined by statute, and must manufacture the art in the state. He related that he is quite comfortable that the committee is on solid ground. While the standards for identifying class membership are on less solid ground, under the circumstances, the bill's sponsor has done the best job possible that is fair and reduces the constitutional and political problems, he opined.

REPRESENTATIVE GRUENBERG concurred.

MR. MITCHELL surmised that this bill could almost be considered part of the consumer protection statutes.

[2:06:20 PM](#)

DAN BRANCH, Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law (DOL), pointed out that the Silver Hand program is contained in current law, and opined that replacing the blood quantum requirement with membership in a tribal organization will help to alleviate problems. With respect to the Alaska State Constitution, the Alaska Supreme Court has identified a higher level protection than under the federal Constitution. He indicated that although no guarantees exist with respect to the constitutionality of the bill, he would be willing to defend the Silver Hand program. He stated that the Alaska Supreme Court would first examine whether someone is being damaged by the classification. If one reads the bill as discriminating between Alaska Native artists and non-Native artists, there is a fairly high standard of proof required to show that it is constitutional. However, what this bill does is prevent someone from committing fraud on the public by placing a Silver Hand seal on a piece of art when he/she doesn't have a right to do that. He opined that the only possible interest such a person would have is to defraud the public.

MR. BRANCH said that if SB 97 is a consumer protection bill, it will also protect the artist from unfair competition, and the

standard of proof is much easier to meet. Another thing that the Alaska Supreme Court will examine is whether the provisions of the bill will serve the constitutional purpose of preventing fraud. He opined that the bill does so by making it easier for the state to police the action of artists by requiring that only those that are entitled to use the program can place the Silver Hand seal on their art.

MR. BRANCH, in response to Representative Gruenberg, remarked that 25 U.S.C. 305(e) prohibits anyone from directly or indirectly offering something in a manner that falsely suggests that it is Indian produced or a product of a particular Indian tribe. He highlighted that a U.S. District court in Illinois identified that the purposes of that federal law is to protect Indian artists from unfair competition and to protect consumers from unknowingly purchasing imitation products. He said that he thinks those also appear to be the purposes of [SB 97].

REPRESENTATIVE DAHLSTROM said she supports the intent of the bill, but has concern that it will also affect Office of Children's Services (OCS) issues and gaming issues.

MR. BRANCH answered that SB 97 would not affect the child in need of assistance (CINA) issues. That the issue was raised last year, and as a result of that, the bill was amended to change how a "tribe" is defined. Currently the bill uses a sovereignty-neutral definition from another federal Act. For that reason, no one can say that Alaska artists who participate in the Silver Hand program are therefore part of an Alaska tribe that should receive federal recognition.

[2:13:42 PM](#)

REPRESENTATIVE GRUENBERG referred to proposed AS 45.65.070(10), which defines the term, "work of art", and characterized the list included as a "moving target" since both the methods of creation and the materials used changes vastly over time. He stated that traditionally sculptors would carve in stone or wood, or model in clay. However, modern materials include acrylic and other materials that were unknown 10 or 15 years ago. He relayed his understanding that SB 97 would allow Native artists to create modern works of art and handicrafts, rather than limit them to traditional materials, so long as the art is not mass produced. He suggested that the ASCA be granted regulatory authority to allow the definition to reflect all materials used in works of art over time.

REPRESENTATIVE GRUENBERG referred to an amendment in members' packets labeled 25-LS0405\N.1, Bannister, 3/14/08, which read:

Page 3, following line 1:

Insert a new bill section to read:

"* **Sec. 5.** AS 45.65.020 is amended by adding a new subsection to read:

(c) The council shall adopt regulations defining "work of art" for AS 45.65.010 - 45.65.070."

Renumber the following bill sections accordingly

Page 4, line 31, through page 5, line 9:

Delete all material and insert:

"(10) "work of art" has the meaning given by the council under AS 45.65.020(c)."

REPRESENTATIVE GRUENBERG also referred to a memorandum from the drafter dated March 14, 2008, that with regard to the amendment in part read [original punctuation provided]:

Delegation of authority. Please be aware that delegating to the Alaska State Council on the Arts the definition of "work of art" for AS 45.65.010 - 45.65.070, raises the issue whether the delegation amounts to an unlawful delegation of legislative power to the Council. The reasons are (1) that "work of art" is a very important term for those sections and will significantly affect the application of those sections, and (2) that the bill does not give the Council any guidelines for the Council to follow when defining the term.

REPRESENTATIVE GRUENBERG stated that it is clear that the bill's definition of "work of art" does not include performing arts, but rather visual arts such as paintings and sculptures. He suggested that the definition should include the following language:

A "work of art" is a visual article that has the meaning given by the council

[2:18:25 PM](#)

MS. McNEILL offered that she reviewed the suggested definition and spoke with the ASCA's legal counsel, and the ASCA believes

that the existing definitions are sufficient for the Silver Hand Program.

REPRESENTATIVE GRUENBERG maintained his concern that the definitions may not be adequate in the future.

MR. LAMKIN offered his preference for the definition as currently drafted in Version N.

CHAIR RAMRAS, after determining that no one else wished to testify, closed public testimony on SB 97.

[2:21:18 PM](#)

REPRESENTATIVE GRUENBERG relayed that he would not be offering his proposed amendment at this time since he believes the sponsor would not approve of it.

REPRESENTATIVE DAHLSTROM moved to report the proposed House committee substitute (HCS) for SB 97, Version 25-LS0405\N, Bannister, 3/14/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 97(JUD) was reported from the House Judiciary Standing Committee.

HB 50 - CHILD PLACEMENT COMPACT

[2:21:49 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." [Before the committee was CSHB 50(HES).]

REPRESENTATIVE COGHILL, speaking as one of the joint prime sponsors of HB 50, related that the bill addresses the Interstate Compact for the Placement of Children (ICPC) that was originally formulated in [1960]. The compact language and rules adopted by the interstate commission for the placement of children relinquish state's rights and supersede state law. He opined that Alaska has been instrumental in improving the compact and bringing it into the 21st century. He related that some of the changes surround issues pertaining to home visits and grandparents. He characterized HB 50 as a good bill.

2:26:02 PM

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, on behalf of Representative Coghill, one of the joint prime sponsors of HB 50, opined that Alaska has gained a good reputation in working with other states in the placement of children. She stated that Representative Coghill has been interested in the issues surrounding the placement of children in part due to discussions held with former Judge Niesje J. Steinkruger who described the difficulty in placing children with a parent residing in another state.

MS. MOSS explained that under HB 50, the state would not be involved in home studies and other bureaucratic "red tape" when placing a child with a parent if the child is not in state custody. It also removes the applicability of the compact in instances in which the child is placed in residential treatment in the Lower 48 by his/her parents. Ms. Moss noted that HB 50 would change the background checks necessary for placing children with relatives from a thorough background investigation and home study to requiring only an assessment, which will eliminate unnecessary delays in placing the child.

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MARCIA PICKERING, Deputy Compact Administrator, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), relayed that for the last four years she has served on the executive committee for the National Association of ICPC Administrators. She offered that during the past year she has been heavily involved in rewriting the new compact. She noted that the ICPC was written in 1959 and adopted by New York in 1960, but did not go into effect until 15 years later, with Alaska joining in 1976.

MS. PICKERING stated that the concept behind the new compact is to provide uniformity in the process and accountability. She opined that the old ICPC did not have any accountability or enforcement of reciprocity to ensure that each state is not charged by another state for the services provided. The changes in the ICPC will lessen the time it takes to place a child, while still ensuring that the home is safe for the child. She highlighted that the ICPC has been endorsed by executive committees of the National Council of Human Services, Public Child Welfare Administrators, the executive committee of the ICPC, and the American Academy of Adoption Attorneys.

MS. PICKERING continued that the new ICPC provides for administrative rule-making enforcement; penalties for the "sending state" for an illegal placement, but not for initiating activity in the "receiving state"; for supervision services; for guidelines for tribal governments that will include tribal government participation in the development of those guidelines; and will create an option for purchasing services such as home studies and supervision from private agencies not previously accepted by states.

MS. PICKERING said that two types of home studies will be authorized, a "home study" and an "assessment." She noted that the assessment will be an abbreviated version, and this will help to provide placement. Although a relative would still be required to submit to a home study, the initial placement could happen much more quickly. The new ICPC would allow for provisional approvals and will allow selection of either the "sending" or "receiving" state's law; with regard to the U.S. Armed Services, this will make that a much smoother transition when determining which jurisdiction has precedence. She offered that the new ICPC will require a state advisory committee.

MS. PICKERING stated that the executive branch, judiciary branch, and the legislative branch will oversee and advise the agency that will carry out the compact. This bill deletes applicability to private-parent placements, to avoid private family business, and would exempt the compact in instances of private family placements with relatives and non-relatives when it will not result in an adoption. She related an example of a mother who sends a child to live with her friend while she attends school; HB 50 will make it clear that the decision to send the child to live with the friend is solely the mother's decision.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

[2:35:03 PM](#)

MS. PICKERING, in response to Vice Chair Dahlstrom, answered that this new compact would apply to members of the armed forces. She added that applicability with regard to foreign adoptions has been deleted because the federal government is regulating activities through the visa process and adoption agencies must facilitate the adoption. Thus, the necessity for the states to be involved is eliminated.

REPRESENTATIVE GRUENBERG referred to page 28, lines 1-6, , which gives the Interstate Commission on the Placement of Children the right to intervene in a judicial proceeding pertaining to the ICPC, and asked whether this is permissive intervention or mandatory intervention.

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JAN RUTHERDALE, Senior Assistant Attorney General, Child Protection Section, Civil Division (Juneau), Department of Law (DOL), stated that the bill does not say, but her assumption is that it is a permissive intervention.

REPRESENTATIVE GRUENBERG opined that the language on page 28, line 2, ought to clarify that the court rule being amended is Rule 24(b) of the Alaska Rules of Civil Procedure, in order to be clear that Rule 24(a) is not being amended.

MS. PICKERING said that the intent is to allow the ICPC, if invited, to testify to the rules, regulations, and any mediation in a case that necessitated court intervention. She pointed out that if a lawsuit occurs between two states, it will be in federal court, and the ICPC may petition to be a party.

REPRESENTATIVE COGHILL referred to the term, "entitled" which he opined would provide the DOL the right to have a standing in the matter.

REPRESENTATIVE GRUENBERG referred to page 22, lines 19-25, paragraph, which read:

(4) The Interstate Commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the Interstate Commission shall render any judgment, order or other determination, however so captioned or classified, void as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Commission.

REPRESENTATIVE GRUENBERG pointed out that this paragraph provides for the ICPC to receive notice, which he stressed is a different issue than focusing on what action the ICPC will take once it receives the notice. The purpose of this paragraph, he

opined, is to provide the commission notice so that it could file a motion to intervene if it so desires. Representative Gruenberg again asked whether the ICPC has a right to intervene and, if so, if it is permissive or mandatory, particularly given that the aforementioned Rule 24 covers both. He opined that the ICPC should have the right to intervene, but that it should only be permissive with the court.

MS. RUTHERDALE agreed.

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REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to insert "(b)" on page 28, line 2, after "Rule 24".

REPRESENTATIVE COGHILL stated that his intent to allow the state to challenge the validity of the placement under the compact. He indicated that he would be amenable to Conceptual Amendment 1 as long as it results in an accurate reference.

VICE CHAIR DAHLSTROM asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG asked whether the aforementioned language on page 22, lines 19-25, is typical such that when the validity of a compact provision or rule is challenged, that the commission shall be given the right of process.

MS. PICKERING answered that the drafters consulted with a couple of national organizations that specialize in compacts and determined that this language is uniform.

REPRESENTATIVE GRUENBERG referred to a letter in members' packets from the American Academy of Adoption Attorneys dated January 14, 2008. He opined that this group is the premier group of adoption attorneys in the country.

MS. PICKERING, in response to Representative Gruenberg, answered that the estimated three months to a year to complete home studies and to arrive at placement decisions will be cut dramatically under HB 50.

REPRESENTATIVE GRUENBERG opined that from a child's point of view and sense of time, that reduced time represents a tremendous savings.

VICE CHAIR DAHLSTROM, after first determining no one else wished to testify, closed public testimony on HB 50.

[2:46:06 PM](#)

REPRESENTATIVE COGHILL moved to report CSHB 50(HES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 50(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:46 p.m.