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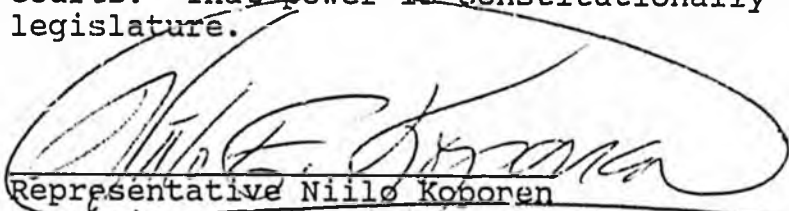
Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

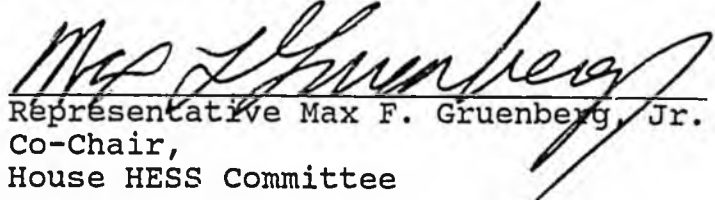
OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

LETTER OF INTENT

It is the intent of the Health, Education and Social Services Committee in passing CS HB 255 (HESS) that this bill would not empower the Department of Health and Social Services to recognize the legal jurisdiction of tribal courts whose authority has not been legally established yet, nor would it permit DHSS to agree to limit the jurisdiction of the state courts. That power is constitutionally vested in the legislature.


Representative Niilo Koboren
Co-Chair,
House HESS Committee


Representative Max F. Gruenberg, Jr.
Co-Chair,
House HESS Committee

proposal co.

Jan

BY WALLIS, ADAMS, TAYLOR,
HURLEY, THOMPSON, KOPONEN
AND HERRMANN

1 IN THE HOUSE

Committee

2 ~~SPONSOR~~ SUBSTITUTE FOR HOUSE BILL NO. 255 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Department of Health and
7 Social Services to enter into agreements concerning
8 the care and custody of Native children."

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

10 * Section 1. AS 47.10.230 is amended by adding a new subsection to
11 read:

12 (g) The department may enter into agreements with Indian tribes
13 under 25 U.S.C. 1919 (Indian Child Welfare Act of 1978) respecting the
14 care and custody of Native children and jurisdiction of Native child
15 custody proceedings.

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COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

3/1/85

Date: March 11, 1986

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 255

"An Act authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 255 (HESS) same title
- and recommends no pass new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Max Greenberg

Robert Taylor *Vice Chair*

John Rosen

Frank Whelan

Alvin...

Attorney no rec

John B. Rosen
CHAIRMAN
Co chair

Handwritten initials or mark in the top right corner.

BY MALLIS, ADAMS, TAYLOR
HURLEY, THOMPSON, KOPONI
AND HERRMANN

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 255

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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FEB 28 1985

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 28, 1985

SUBJECT: Indian Child Welfare Act
(Work Order No. 14-0618)

TO: Representative Kay Wallis

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The bill draft you requested would authorize the Department of Health and Social Services to enter into agreements with Indian tribes concerning care, custody, and jurisdiction of Native children. This authority is already granted to the States by federal law under the Indian Child Welfare Act (25 U.S.C. 1919). Therefore the bill you have requested would not add to the authority of the State, but would merely mirror the existing federal statute. In this same manner, the use of the term "jurisdiction" in the bill draft does not give the State any more or less authority to act in a children's proceeding than exists under present law.

Please contact me if you have further questions on this matter.

MFF:ojb
J12/033

POSITION PAPER
HOUSE BILL 255

"An Act Authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children"

Under Section 1919 of the Federal Indian Child Welfare Act, 25 U.S.C. 1919, "States and Indian Tribes are authorized to enter agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings..."

Despite this federal authorization, the Attorney General has taken the position that the State cannot exercise this power until a State law is passed authorizing a particular State agency to execute agreements on the State's behalf (see March 30, 1983 opinion attached).

HB 255 is the specific authorization which the Attorney General requires. It simply authorizes the Department of Health and Social Services to act for the State in the execution of State-Tribal Native child custody agreements. HB 255 does not add to the State's existing power to enter into such agreements--it merely removes the reluctance the Department has because of the Attorney General's opinion.

Nor would HB 255 violate the Alaska Constitution. Under Federal law, states are empowered to pass laws which implement Federal laws. The sole purpose of HB 255 is to implement the Federal Indian Child Welfare Act. It is therefore consistent with Federal law. Furthermore, under the Federal Supremacy Clause, State laws which are passed to implement Federal laws cannot be successfully challenged on State constitutional grounds.

HBV 255 neither enlarges, diminishes, nor in any way affects the existing power of Alaska Native villages to establish tribal courts and exercise jurisdiction over Native child custody matters. Native governments in Alaska are taking increased interest in exercising their federally guaranteed rights. This bill authorizes DH&SS to do what it ought to do--cooperate with Native governments and Native people to alleviate the problems that led to Congressional passage of the Indian Child Welfare Act.

In passing the Indian Child Welfare Act (ICWA), Congress expressly found:

...the States exercising their recognized jurisdiction

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 10, 1986

ANALYSIS OF SSHB 255
by the Alaska Department of Law

The purpose of HB 255 is to authorize the Department of Health and Social Services to enter into agreements with Native villages for implementation of the Indian Child Welfare Act, (ICWA), 25 U.S.C. § 1901 et seq. State-tribal agreements are specifically authorized by 25 U.S.C. § 1919(a). The language of HB 255 is taken directly from 25 U.S.C. § 1919(a).

As background, it should be noted that ICWA is one of the few federal statutes which authorizes Native entities to exercise tribal powers whether or not they exist on reservations. The definition of "Indian tribe" in ICWA explicitly adds Alaska Native Villages: "... including any Alaska Native village as defined in section 1602(c) of Title 43 [the Alaska Native Claims Settlement Act]." ICWA requires state court proceedings involving Native children to meet certain minimal standards, and it also authorizes tribal courts to exercise concurrent jurisdiction with state courts in certain cases involving Native children. HB 255 would authorize the Department of Health and Social Services to enter into agreements with tribes, i.e., Native villages, regarding care and placement of Native children and regarding jurisdiction of Native child custody proceedings.

Agreements on care and placement would include cooperative arrangements for foster care and for developing local provision for child welfare assistance. It could include provisions for cross-licensing of foster homes, for example, or such arrangements regarding contract foster homes or payments for foster care as the parties were able to negotiate.

Agreements on jurisdiction of Native child custody proceedings could deal with the complexities caused by the fact that over 200 Native villages exist in the state and that Native children may have connections to several villages. Methods need to be arrived at for sorting through such complications and deciding what notice and procedures are to be followed in particular cases. We note that this bill would not empower the Department of Health and Social Services to recognize the legal jurisdiction of tribal courts whose authority has not been legally established yet, nor would it permit DHSS to agree to limit the jurisdiction

of the state courts. That power is constitutionally vested in the legislature. Otherwise DHSS would have fairly broad discretion on which agreements to enter into and which to decline as not in the best interests of the state.

Because DHSS will necessarily be using its discretion in negotiating and deciding whether to enter into specific agreements, we support the bill as now amended. The proposed changes clarify that DHSS must consider the best interests of the state and the public in evaluating a proposed agreement and is not obligated to accept any agreement offered by a village without negotiating its terms.

In our opinion, HB 255, as amended by the sponsor substitute, merits the support of the Department of Law.

HAROLD M. BROWN
ATTORNEY GENERAL

By: 

Douglas K. Mertz
Assistant Attorney General

DKM:dlm

FEB 28 RECO

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1985

SUBJECT: Indian Child Welfare Act
(Work Order No. 14-0618)

TO: Representative Kay Wallis

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The bill draft you requested would authorize the Department of Health and Social Services to enter into agreements with Indian tribes concerning care, custody, and jurisdiction of Native children. This authority is already granted to the States by federal law under the Indian Child Welfare Act (25 U.S.C. 1919). Therefore the bill you have requested would not add to the authority of the State, but would merely mirror the existing federal statute. In this same manner, the use of the term "jurisdiction" in the bill draft does not give the State any more or less authority to act in a childrens' proceeding than exists under present law.

Please contact me if you have further questions on this matter.

MFF:ojb
J12/033

POSITION PAPER
HOUSE BILL 255

"An Act Authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children"

Under Section 1919 of the Federal Indian Child Welfare Act, 25 U.S.C. 1919, "States and Indian Tribes are authorized to enter agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings..."

Despite this federal authorization, the Attorney General has taken the position that the State cannot exercise this power until a State law is passed authorizing a particular State agency to execute agreements on the State's behalf (see March 30, 1983 opinion attached).

HB 255 is the specific authorization which the Attorney General requires. It simply authorizes the Department of Health and Social Services to act for the State in the execution of State-Tribal Native child custody agreements. HB 255 does not add to the State's existing power to enter into such agreements--it merely removes the reluctance the Department has because of the Attorney General's opinion.

Nor would HB 255 violate the Alaska Constitution. Under Federal law, states are empowered to pass laws which implement Federal laws. The sole purpose of HB 255 is to implement the Federal Indian Child Welfare Act. It is therefore consistent with Federal law. Furthermore, under the Federal Supremacy Clause, State laws which are passed to implement Federal laws cannot be successfully challenged on State constitutional grounds.

HBV 255 neither enlarges, diminishes, nor in any way affects the existing power of Alaska Native villages to establish tribal courts and exercise jurisdiction over Native child custody matters. Native governments in Alaska are taking increased interest in exercising their federally guaranteed rights. This bill authorizes DH&SS to do what it ought to do--cooperate with Native governments and Native people to alleviate the problems that led to Congressional passage of the Indian Child Welfare Act.

In passing the Indian Child Welfare Act (ICWA), Congress expressly found:

...the States exercising their recognized jurisdiction

over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." (25 U.S.C. 1901(5)).

By authorizing the Department of Health and Social Services to contract with Native governments, HB 255 will ensure that the State of Alaska recognizes and protects "the cultural and social standards prevailing in Native communities and families" in the administration of Native child welfare proceedings. Agreements have been arrived at in other states. Minnesota, for example, has entered into an agreement with some of its tribes to ensure tribal input and State compliance with the ICWA. H&SS, too, should be free to work with Native people and entities so that these important issues may be dealt with in a spirit of cooperation, rather than confrontation.

HB 255 merely authorizes the Department to enter into such agreements--it does not mandate that they must.

F. Kay Wallis
Representative

March 7, 1986

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

604 BARNETTE ST., RM 228
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

March 30, 1983

Mike Walleri
Tanana Chiefs Conference
Building 201 - First Avenue
Fairbanks, Alaska 99701

Dear Mike:

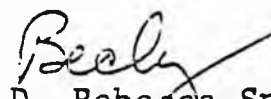
Many months ago you sent me a draft of a "109-Agreement" that you have been working on with the villages in your region. Jim Fox responded with some Division of Family and Youth Services' concerns. I have not responded previously because the Department of Law does not have a settled position on negotiation of Section 109 agreements.

At this point, in fact, we recognize that there has been no enabling legislation enacted by the State of Alaska which would authorize any State agency to enter into such an agreement with a village or an entity such as Tanana Chiefs Conference. Until such legislation is enacted setting the limits of any such authority, we feel that it would be impossible to enter into good faith negotiations on the substance of such an agreement. Thus, while I would suggest ordinarily that the proper process for arriving at such an agreement would be for a representative of the villages and/or Tanana Chiefs Conference to sit down with a representative of the Division of Family and Youth Services and a representative of the Department of Law, regrettably at this time I cannot offer to participate in such negotiations. Please be assured that should the necessary enabling legislation be enacted, we would be very willing to sit down with anyone designated by the villages to work on such an agreement.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



D. Rebecca Snow
Assistant Attorney General

DRS:bsw

cc: Ron Lorensen
Deputy Attorney General

POSITION PAPER

SPONSOR SUBSTITUTE FOR HOUSE BILL 255

For an Act entitled: "An Act authorizing the Department of Health and Social Services to enter into agreements concerning the care and custody of Native children."

HB 255 would authorize the department to enter into agreements for child protection with Native tribes under 25 U.S.C. 1919 (Indian Child Welfare Act [ICWA]).

The department has and will continue to award monetary grants and contracts to Native nonprofit organizations and to enter into non-monetary social services agreements with Native organizations so that Natives may actively participate in the care and custody of Native children. The department actively supports the Indian Child Welfare Act provisions whereby Native children who must be separated from their families are placed in Native homes and village council authorities must be allowed to recommend the type of placement for Native children.

The Department of Law has informed the department that the Department of Health and Social Services currently has the authority to enter into, and has already entered into, some agreements with Native organizations. Therefore, according to the Attorney General, HB 255 does not add to the department's authority to enter into the agreements. The Attorney General, however, states that the Department of Health and Social Services cannot enter into agreements that would delegate the State's discretionary (police power) duties, and cannot enter into agreements affecting the judicial branch's jurisdiction over Native children.

It is possible for the State to enter into cooperative social services agreements with Native organizations. For example, such agreements were entered into with the Ketchikan Indian Corporation and the United Crow Band. The intent of these agreements is for the parties "to cooperate with each other towards mutual goals of protecting the best interests of Native children, establishing a more effective provision of child protection service, and promoting the stability and security of Native families and villages." (United Crow Band agreement). These social service agreements do not provide state funding directly to the Native villages or organizations for social services.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 255
 Title : An Act authorizing the Department of Health & Social Services to enter into agreements concerning Native Children.
 Sponsor : _____
 Requestor : _____
 Date of Request : 2/24/86

FISCAL DETAIL

Agency Affected : Health & Social Services
 BRU : Social Services
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael L. Price, Director Phone : 465-3170
 Division : Family and Youth Services Date : 2/24/86

Approved by Commissioner : John R. Pugh Date : _____
 Agency : Department of Health & Social Services

Distribution (by Agency preparing fiscal note):

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

Position: _____
Sponsor: Substitute for House Bill 255
Page 2

The Department of Health and Social Services supports this bill.

RECOMMENDED: Michael L. Price
Michael L. Price, Director
Division of Family
and Youth Services

DATE: March 10, 1986

APPROVED: John R. Pugl
John R. Pugl, Commissioner
Department of Health
and Social Services

DATE: 3/10/86

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS
FROM: NANCY BENNETT, COMMITTEE STAFF
DATE: MARCH 10, 1986
RE: TODAY'S AGENDA

We have three bills scheduled for today:

HB 614 - Relating to the Board of Dental Examiners

This bill was introduced by the Committee to continue the board for four years following the Sunset Review hearing conducted in February. There is also a sunset review report in your folder.

SB 263 - Relating to disqualification for certain state loan programs for failure to pay child support

This bill has been in subcommittee. Representative Taylor has a proposed amendment to offer.

We also have a new memo from Senator Faiks.

HB 255 - Enabling the Department of Health and Social Services to enter into custody agreements regarding indian children

We are having a teleconference on this bill, which would put into state law federal provisions allowing agreements to be entered into regarding the custody of native children.

We also have a bill relating to municipal sales tax and food stamps before us to consider for introduction