

HONORABLE Senator Ben Nighthorse Campbell
Chairman Senate Committee of Indian Affairs
Room 106 - Dirksen Senate Building
Washington, D.C. 20510-6450

Re: S-1586 - The Indian Land Consolidate Act Amendments of 1999

Honorable Chairman Nighthorse-Campbell:

I am extremely honored that you invite me to provide testimony on behalf of the Indian Land Working Group. My name is Delmar "Poncho" Bigby, a member of the Assiniboine Nation (Tribe) of the Fort Belknap Indian Reservation, in Montana. I am especially grateful to the members of the Indian Land Working Group for allowing me to testify on their behalf as Chairman of this wonderful organization. Our organization is an "Ad Hoc" group of dedicated individuals from all walks of Indian life. Some of us are Tribal Employees, Tribal Council members, employees of the Bureau of Indian Affairs and extremely concerned private citizens who are directly affected by all of the policies and procedures of the United States Government in the administration of Indian lands.

The Bureau of Indian Affairs has proposed amendments to the Indian Land Consolidation Act (P.L. 97-459; 96 STAT.2515 - dated January 12, 1983, as amended by H.J. Resolution 159 (P.L. 98-608; 98 STAT. 3171 - dated October 30, 1984) introduced by you, Chairman Campbell, as S.1586

We would much prefer that the proposed amendments be rejected by the Committee and the alternative developed by the Indian Land Working Group be the vehicle for the 'management of our remaining resources'. But, we are here to provide your Committee with our understanding and interpretation of the proposed amendments and to offer our suggestions and recommendations on how to improve the proposed amendments so that they are not only beneficial to the Congress and the Bureau of Indian Affairs but also to Tribes and Individual Landowners, and non-Landowners, in their Trust Responsibilities to Tribes and Individual Indians (Native Americans) in the management and administration of our trust resources in accordance with the exacting "highest fiduciary standards" developed by Congressional Acts and Court Decisions.

We respectfully urge you, as Chairman of the Senate Committee on Indian Affairs to conduct field hearings through-out Indian County, including Alaska, on the proposed amendments. The history of the Indian Land Consolidation Act, and its amendment, is not a very good one. The voice of the grass-root Native American, who are most impacted by this type of legislation, have not been heard by the Bureau of Indian Affairs, and to a certain degree, our Congressional

Representatives. We are not aware of any single Tribal Government or any potential heir, or current beneficiary of Trust Lands that is in agreement with the ESCHEAT portion of the Indian Land Consolidation Act. There are several Tribal Governments who have chosen to compensate heirs of 'Escheated' lands because they do not want to receive any property of their members without just compensation.

We offer the following for consideration by the Committee:

TITLE II

Sec. 2 - FINDINGS: Congress finds that --

(1) - before the semi-colon (;) at the end of the sentence: ADD: and to weaken and destroy Traditional Tribal Governments.

(2) - before the semi-colon (;) at the end of the sentence: ADD: and by the United States Government at the behest of non-Indians desirous of securing FEE SIMPLE TITLE to Indian lands;

(3) - before the semi-colon (;) at the end of the sentence: ADD: until abolished by the United States Congress;

(4) because of the (ADD: lack of comprehensive) inheritance provisions ----

(8) —, which was enacted in 1983; (ADD): further, many individuals blame the “Tribes” for loss of their anticipated inheritance;

(12) –, and requires a solution under Federal law, (ADD) which recognizes the Government-to-Government relationship with Tribes and requires equal participation of Tribes in arriving at solutions that are applicable to the lands under their jurisdiction.

ADD: (13) the descent and distribution of Trust or Restricted Lands is not a racial issue but a Trust issue.

Sec. 3 - DECLARATION OF POLICY - It is the policy of the United States --

(2) to consolidate fractional interests and ownership of those interests into usable parcels (ADD) by the Tribes and individual Indians;

(4) to promote tribal (ADD: and individual Indian) self-sufficiency and self-determination

ADD: (5) to prevent fee patents and foreclosure of Trust Lands and to preserve the Trust Status of Indian lands.

Sec. 202 - For the purpose of this title ---

(5) “heirs of the first or second degree” means patents, children, grandchildren, (ADD: great-grandchildren), grandparents, (ADD: great-grandparents), brothers and sisters of a decedent.

Sec. 205: (a) In General: Subject to subsection (b), any Indian tribe may purchase — with the

consent of the owners of (DELETE: over 50 percent) (ADD: 100% if ten (10) or less owners; 80% if between eleven (11) and forty (40) owners; 60% if forty-one (41) or more owners; PROVIDED: Those members of the Tribe who desire not to sell may require a PARTITION of their fractionated share or an exchange of Tribal lands in accordance with existing and approved Tribal land exchange policies) of the individual interests in such tract.

(B) Conditions applicable to purchase: Subsection (a) applies on the conditions that –
“(1) Any Indian (ADD: who is a member of the Tribe of the Reservation where the land is located) owning ----

Sec. 206: DESCENT AND DISTRIBUTION OF TRUST OR RESTRICTED LANDS; TRIBAL ORDINANCE BARRING (ADD: NON-INDIANS OR) NONMEMBERS OF AN INDIAN TRIBE FROM INHERITANCE (ADD: OF TRUST LANDS) BY DEVISE OR DESCENT.

(a) Tribal Probate Codes:

(b) Secretarial Approval:

(2) Review and Approval:

(A) NO COMMENT

(B) QUESTION: Who makes the determination that a Tribal Probate Code is approved “ONLY TO THE EXTENT THAT THE TRIBAL PROBATE CODE IS CONSISTENT WITH FEDERAL LAW”?

(C) NO COMMENT:

ADD: (c) The Secretary must compile any and all Tribal Probate Codes and must provide them to any Probate Proceedings upon request.

QUESTION/COMMENT ON Sec. 206 is “How does a mandate to follow Federal law accomplish the policy enumerated in SEC 3 - DECLARATION OF POLICY: It is the Policy of the United States –

(4) to promote tribal self-sufficiency and self-determination.

Sec. 207 - DESCENT AND DISTRIBUTION; (DELETE: ESCHEAT OF FRACTIONAL INTERESTS)

COMMENT: All of this section must be deleted from this proposed amendments. Administrative/ Bureaucratic proposed solutions will not ‘solve’ the fractionated heirship problems. The only real positive solutions must be developed at the local Tribal level, which does take into account the means necessary to “protect and preserve the Reservation as an abiding place for present and future generations” and to “provide lands for eligible members for homes and livelihood”.

In the event this section is not deleted, we offer the following suggestions to “improve” the proposed amendments.

(a)

(4) The Indian tribe with jurisdiction over the lands devised;

COMMENT/QUESTION: Does the 'Turtle Mountain' reservation located in Belcourt, ND have jurisdiction over 'Turtle Mountain Public Domain Allotments' located in the State of Montana? If no, does the Tribal Government of the B.I.A. Agency having administrative responsibility have 'jurisdiction' over the lands? (EXAMPLE: Fort Belknap B.I.A. Agency administers some 50,000 acres of Turtle Mountain Public Domain Allotments in the State of Montana.)

(C) Devise of Interest in the Same Parcel to more than 1 Person:

(4) Notification to Indian tribes: Not later than 180 days — the Secretary shall, (DELETE: to the extent that the Secretary considers to be practicable) notify Indian Tribes and individual landowners of the amendments made by the Indian Land Consolidation Act Amendments of 1999 ADD: by Certified Mail - Return Receipt Requested to serve ACTUAL NOTICE. The notice shall list estate planning options available to the owners.

(5) Descent of off-reservation lands:

(A) Indian reservation defined:

(iii) ADD: the boundaries of lands identified by Tribes in accordance with a Tribal designation of aboriginal/historical land base.

COMMENT: What the B.I.A. fails to understand, or is totally unwilling to understand, is that to a very many of our People it makes no difference what the economic value of a tract of land may be.. The real value to them is not economic, but tied to that tract of land are their culture, memories, and a sense of belonging that no money (\$) can equal. An increasing number of our members are forced to make an economic living off the reservation. To them and their descendants, this tract of land, no matter how small the interest may be, is their direct link to their ancestors and their roots. Without this link, they would be as lost as the vast majority of the dominant society. The dominant society searches for their roots to establish a personal sense of connection of who they are and where they came from, which is very sad.

Sec. 207: Descent and distribution; escheat of fractional interests

(B) Escheatable fractional interests

COMMENT: This provision must be deleted from the bill in its entirety!!!!

If the B.I.A. is successful on 2% interest or less escheating, than what is to prevent them from increasing the escheatable interest amount to 10%, 25%, 50%, 75%, 99%?????

Sec. 213. Acquisition of Fractional Interests:

COMMENT: This section must be contractable by Tribes. The 'lien' placed on acquired interests by the B.I.A. prevents individuals from 'consolidating' in a tract.

We thank you for this opportunity to provide some initial comments on the proposed amendments to the Indian Land Consolidation Act. We respectfully request that the record be

kept open indefinitely, or until a Bill is actually signed into Law, so that we, and other interested persons, may revise and extend our remarks. We also respectfully request that you conduct field hearings throughout Indian County, including Alaska, so that the local individuals who are so impacted by the proposed amendments have an opportunity to comment.

Respectfully,

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