



NCAI BULLETIN



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National Congress of American Indians

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TRICKY LEGISLATION PENDING

FEDERAL "PREEMPTION" BILL

It is important to distinguish between S.Con.Res. 3 (85th Cong.), which is Senator Murray's federal Indian policy resolution in the U.S. Senate, and H.R. 3, which passed the House of Representatives July 17, and can be referred to as the "federal preemption bill."

H.R. 3 is a bill "to establish rules of interpretation governing questions of the effect of acts of Congress on State laws," according to its title. The bill, if passed, would prevent generalized interpretations by the Courts that the Federal Government had taken over exclusive jurisdiction of a particular field.

The bill is an effort by many different groups to overcome recent Supreme Court decisions which held that since Congress had passed some legislation on a particular subject the states had no authority to act at all in that field.

Cong. Lee Metcalf (Mont.) felt this bill might be "inadvertently a backdoor termination bill, a left-handed proposal to terminate Federal control over the Indians." He offered an amendment on the floor of the House which he hoped would protect Indians, but his amendment did not pass. This failure to adopt Cong. Metcalf's amendment to exclude Indians from the bill makes the "legislative history" on this bill bad for Indians, in the event the bill should be enacted into law.

We are not suggesting a campaign to defeat the bill at this time. In fact, we recommend against it. Several good friends of Indians in Congress believe the bill has practically no chance of passage in this Congress.

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FEDERAL "ENCLAVES" BILL

Another bill including possible danger to Indians is S. 1538 (85th Cong.), with a companion bill, H.R. 2553. Senate Rpt. 1278, dated March 25, 1958, discusses S. 1538.

Our attorneys tell us: "The language of the bill...is broad enough to be interpreted to include Indian lands, and to permit complete relinquishment of federal jurisdiction with its protection of treaty rights, tax exemption, etc. If used for this purpose, it could speed up transmission of jurisdiction over Indian lands by putting the initiative in the hands of the Department of the Interior instead of in those of the reluctant states as provided by Public Law 280."

NCAI has sent 42 letters (separately typed) to the House and Senate Members of the Committees on Government Operations, asking them to use their good offices to obtain an amendment of the bill specifically excluding Indian lands and reservation areas, or at the least, making the report and legislative history show clearly that it is not intended that this legislation should include Indian lands.

(Copy of the letter sent to Congressmen is attached herewith.)

FEDERAL PREEMPTION BILL (cont'd)

Feeling runs very high in Congress over this measure and a great many issues are involved that have nothing to do with Indians. There is danger in getting Indian issues mixed up with the other controversies that have been brought into the debate on H.R. 3. To straighten out the legislative history on

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It seems a shame that effort and expense must be spent in the negative approach of killing or patching up harmful legislation in the U.S. Congress when there are good and constructive bills we need and wish to support.

But there are two or three hundred "Indian bills" in each Congress of which some are obviously bad for Indians and others contain provisions that could be dangerous. Besides the straight "Indian bills" there are always several others entirely outside the field of Indian affairs that contain possibly dangerous provisions for Indians, like the federal "preemption" and "enclaves" bills discussed in this BULLETIN. These bills well illustrate why Indians and their friends who maintain legislative information and "watchdog" programs in Washington are doing such an important work and why they should continue to do all they can to safeguard Indian properties, rights and interests.

We who work in Washington wish it were not necessary to spend so much time and money trying to prevent harmful actions. It is not very satisfying to report to our members: "We hope we stopped this. Or, we prevented that. Or, you would have been hurt by something else if it had gone through." Yet it is essential to prevent harm and dispossession of your property before it is possible to develop resources and improve conditions.

To oppose the bad is a negative approach. Let us all hope for increasing opportunity to work for improvement and good - the positive approach.

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FEDERAL PREEMPTION BILL (cont'd from p. 1, col.2)

the bill, we have asked Senator Langer (N.D.), a member of the Judiciary Committee, to try to get an amendment to the bill in the Senate excluding Indians; he was hopeful of getting such an amendment. If he gets that amendment through, Indians are safe. If the bill does not pass, there is no harm done.

However, if these two conditions change, it might still become necessary to ask you to wire your Senators and in that event we shall let you know at once. In the meantime, we suggest no further action at this time.

For full discussions of H.R. 3, read pages 12763-12765 in the July 16 Congressional Record, and page 12083 of the July 17 Congressional Record.

There have been "wilderness" bills in the 84th and 85th Congresses (1955-1958). These bills would establish a "National Wilderness Preservation System" which would be designed to keep certain remaining large areas of the country in "the natural primeval environment and influence," and which the various bills usually described as "an area where the earth and its community of life are untrammelled by man, where man himself is a member of the natural community who visits but does not remain and whose travels leave only trails."

The first bills included a "consent" provision -- to include tribal lands in the roadless and wilderness areas only with the consent of the tribe itself.

Now, however, Senator Humphrey of Minnesota, with Senators Neuberger and Douglas, has introduced another Wilderness Bill, S. 4028, which calls for only "consultation" with the tribe. Cong. Saylor of Pennsylvania has introduced an identical bill in the House, H.R. 13013. (See Cong. Record for June 18, page 10438.)

No doubt S. 4028 is an attempt to meet objections of opposing groups in the hope of getting the bill through Congress. However, NCAI is maintaining a firm position asking for "consent" rather than mere consultation.

As of this week, the Interior Department reported on this bill, recommending that "consent" as to Indian land be required in the bill. To our knowledge, the Department has recommended consent only in respect to private bills -- this is the first time, to our knowledge, that in general legislation affecting a number of tribes, the Department has recommended a "consent" provision. This is heartening.

NCAI is continuing to press for a consent amendment. You may wish to write Senators Murray, Neuberger, Humphrey and Douglas your views, and you might also write Ass't. Secy. of Interior, Roger Ernst, commending the Department's favorable report and recommendation concerning the consent clause.

The National Congress of American Indians
(NCAI)

a Membership Organization with voting membership composed entirely of Indians.

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