

CONFIRMING TITLE TO LANDS GRANTED IN AID OF
COMMON OR PUBLIC SCHOOLS

JANUARY 13, 1927.—Committed to the Committee of the Whole House on the
state of the Union and ordered to be printed

Mr. COLTON, from the Committee on the Public Lands, submitted
the following

REPORT

[To accompany S. 564]

The Committee on the Public Lands, to whom was referred the
act (S. 564), confirming in States and Territories title to lands granted
by the United States in the aid of common or public schools, having
considered the same, report it favorably to the House with the recom-
mendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following:

That, subject to the provisions of subsections (a), (b), and (c) of this section,
the several grants to the States of numbered sections in place for the support
or in aid of common or public schools be, and they are hereby, extended to em-
brace numbered school sections mineral in character, unless land has been
granted to and/or selected by and certified or approved, to any such State or
States as indemnity or in lieu of any land so granted by numbered sections.

(a) That the grant of numbered mineral sections under this act shall be of
the same effect as prior grants for the numbered nonmineral sections, and titles
to such numbered mineral sections shall vest in the States at the time and in
the manner and be subject to all the rights of adverse parties recognized by
existing law in the grants of numbered nonmineral sections.

(b) That the additional grant made by this act is upon the express condition
that all sales, grants, deeds, or patents for any of the lands so granted shall be
subject to and contain a reservation to the State of all the coal and other min-
erals in the lands so sold, granted, deeded, or patented, together with the right
to prospect for, mine, and remove the same. The coal and other mineral de-
posits in such lands shall be subject to lease by the State as the State legislature
may direct, the proceeds of rentals and royalties therefrom to be utilized for the
support or in aid of the common or public schools: *Provided*, That any lands
or minerals disposed of contrary to the provisions of this act shall be forfeited
to the United States by appropriate proceedings instituted by the Attorney
General for that purpose in the United States district court for the district in
which the property or some part thereof is located.

(c) That any lands included within the limits of existing reservations of or
by the United States, or specifically reserved for water-power purposes, or
included in any pending suit or proceedings in the courts of the United States,

or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska, are excluded from the provisions of this act.

SEC. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this act shall not apply to indemnity or lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

The report and recommendation of the Secretary of the Interior upon the above substitute was favorable and is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, January 8, 1927.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: Herewith is draft of measure designed as a substitute for S. 564, now pending before your committee.

You will note that it grants to the States title to the minerals in school sections in place; that is, in the specific numbered sections in each township granted the States for the support or in aid of common or public schools by Congress. The grant is on the express condition that the States shall not sell any minerals but shall lease the same, the proceeds to be utilized for the support or in aid of common or public schools, provision being made for forfeiture in the event conditions are violated. This is in form proposed by your committee.

Under the bill the title to numbered school sections containing minerals passes and vests in the same manner as under the prior grants for the numbered nonmineral sections, subject to the rights of adverse parties recognized by law. The last clause is for the purpose of protecting, as do the grants heretofore made, those citizens who make homestead settlement, mineral location, or initiate other claims permitted by law upon the lands prior to their identification by survey.

All lands included within the limits of existing reservations of the United States, specifically reserved for water-power purposes, included in any pending suit or proceeding in the United States courts, subject to or included in any valid application, claim, or right under the laws of the United States, and all lands in the Territory of Alaska are excluded from the provisions of the act. Provision is made that if any such applications, claim, or rights are relinquished or canceled, the title of the United States shall vest to the lands formerly covered thereby.

The concluding section of the substitute bill is designed to preserve and continue in full force and effect, and without change, the rights of the States under grants other than for the purpose of common or public schools, and as to indemnity, lieu selections, or exchanges. These matters are adequately covered by existing law, and if and when selections, indemnity, or exchanges are found by the Secretary of the Interior to be of the character and subject to the provisions of existing law governing same, same are approved or certified to the State by the Secretary of the Interior. This certification or approval has been construed by this department and by the Attorney General as equivalent to a patent; that is, that after approval or certification it can not be set aside except by proceedings in the courts on the ground of fraud. There is therefore no uncertainty as to such titles, but it was deemed advisable to make it clear in this bill that the provisions of all existing laws affecting such matters remain in full force and effect.

The bill as now submitted has the approval of this department and its enactment is recommended.

I am advised by the Director of the Bureau of the Budget that the foregoing report is not in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK, *Secretary.*

Under the provisions of the bill the prior grants to the States by Congress for the benefit of the common and public schools are extended to embrace mineral as well as nonmineral sections of land.

The bill specifically excepts from the provisions of the act "any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska."

It will be further noted that under the provisions of the act only those lands granted to the States for the benefit of their common or public schools are affected; that is to say, the numbered sections that were granted by Congress to the States are the only lands affected by the provisions of the bill. It will be further noted that the designated lands or numbered sections situated in existing reservations are unaffected by the bill. They remain subject to the present law until such time as the reservation is disestablished, and if indemnity has not been received therefor the State's title to the same attaches.

The bill also fully protects the rights of third parties which have been initiated prior to the enactment of the legislation, and such rights are continued in full force and effect until such time as they are relinquished or canceled, when the State, if it has not already taken indemnity therefor, may take the same.

The bill also requires the States to reserve and to withhold unto themselves all minerals of whatsoever character, in any and all lands which they shall hereafter transfer or sell, giving to them, however, the right to lease the minerals in the lands and to utilize the proceeds received as rentals or royalties for the benefit of their common or public schools.

The committee had before it for consideration a number of bills introduced in the House the last session of Congress dealing with the same subject matter. On one of them a hearing was held and considerable testimony was taken, and after a very careful study and full discussion of the matter and the various bills introduced with reference to the same, the committee reached the conclusion that not only was immediate and adequate relief necessary, but that the measure reported herewith remedies to a large extent the existing conditions which jeopardize and cloud the State's title to these lands, and which prevent to a large extent the realization of the purposes intended by the grant itself.

To those not familiar with the subject of this legislation, the impression might be that the legislation perhaps deals with the entire public domain within the borders of the States affected. Such is not the case. The proposed legislation deals only with those lands which were granted to the States by Congress in their enabling acts for the benefit of their common and public schools, which grants comprise but a very small fraction of the entire area in the State. The proposed legislation does not and can not work any hardship on the Federal Government when the situation is thoroughly understood. Some States receive but two school sections in each township, a township usually comprising 36 sections. Some States receive but one; and two or three States received four, the latter receiving four because of the many Government reservations within their borders, and also because of the barren and desert character of the land within their borders.

In order that the Members of the House might be acquainted with the necessity for the proposed legislation, there is submitted herewith a brief summary of the conditions which existed and which are sought to be remedied. The following is extracted from the Senate report on the bill:

The various grants to the States for school purposes are as a rule contained in the enabling act of that State. All States did not receive the same number of sections. Some received 1, others 2, and still others 4. The number of sections granted apparently varying according to the class of land to be found within the confines of that particular State; also varying because of reservations by the Federal Government of one form or another within the State. The grant itself makes no provision for any evidence of title, it operating both as a grant and conveyance, subject to certain exceptions.

The enabling acts of the various States nearly all provided that the proceeds derived from the land so granted for educational purposes should be and constitute a permanent school fund, the interest of which only should be expended for the support of the schools; and it was further provided that the lands should not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, and should be surveyed for school purposes only.

In some of the enabling acts mineral lands are excepted, and in case school section lands are of known mineral character at the time the title to them would have otherwise attached, these do not pass under the grant.

As has been stated by the Secretary in his report:

"This has resulted in much vexatious and costly litigation, as there is no statute of limitation which prevents inquiry at any time either by way of Government proceedings or by private contest or protest, as to whether or not title to school section land has vested in a State."

Contests or proceedings may be brought or initiated which bring into question the title of the State or its transferees at any time, be it one or one hundred years after survey, or after statehood, as the case may be.

In some instances States who have presumably held title to their school lands for more than 25 years are now being faced with attacks upon their title, both by the Federal Government and private parties, these attacks being made by way of contest or protest upon the theory that the lands were of known mineral character at the time the State's title would have attached. In other instances the States have conveyed title to these lands to third parties, and they to fourth parties, and so on, until they have passed through many hands, each transferee assuming that he had received a good and sufficient title from his predecessor in interest. These parties proceed to occupy and farm or improve the land, as the case may be, when without the slightest warning their title is brought into question either by a private party or the Federal Government, and they are brought into court, forced to obtain counsel, and indulge in costly and protracted litigation in defense of a title which was in the first instance secured from a sovereign State of the United States and which the transferee had assumed, and the sovereign State had assumed, to be good for more than 25 years.

The transferee, be it State or individual, is placed in an embarrassing situation. A State can not be sued, hence the transferee must depend upon the goodness of the State legislature for reimbursement, and thus the very purpose and intent of the grant, namely, the building up of a fund for educational purposes within the confines of the State is practically indeed if not entirely defeated.

The condition referred to is particularly prevalent in the following-named States, whose titles, if not now being contested, are nevertheless subject to attack at any time: Arizona, admitted in 1912; California, admitted in 1850; Colorado, admitted in 1876; Idaho, admitted in 1890; Nevada, admitted in 1864; Montana, admitted in 1889; New Mexico, admitted in 1912; Oregon, admitted in 1859; Washington, admitted in 1889; Wyoming, admitted in 1890; and Utah, admitted in 1896.

This is a matter of vital importance to these States and their common-school system. Many of these States are but sparsely settled, and nearly all of them have large areas of arid, desolate, barren, and desert waste, which is totally valueless. As a result, their taxation is high and they must depend to a large extent upon the funds derived from the disposal of these school lands for the maintenance of that great institution, our common-school system.

It may be suggested that the States have the right to select other lands for those taken away, but it appears that there are at least three effective and conclusive answers to that proposition, particularly as applied to the Western States: First, as has been said before, much of the land is barren, desert waste and of no value whatsoever; second, all of the better land which would have any salable value has either been sold or taken up; third, the remaining land which is of some value and desirable is Government reservation of some kind or other and not subject to selection.

It will be borne in mind that in the 11 Western States approximately one-half of the remaining public domain is either withdrawn or under reservation in one form or another, and thus the power to tax is defeated, and this notwithstanding the fact that the State is required to police these lands and build roads over this entire area. In one or two States approximately 70 per cent of the land within their borders is the property of the Federal Government, and this amount is steadily being increased.

The question presented by the proposed legislation is not a new one. Two bills were introduced in this body in the Sixty-second Congress, one in the Sixty-third, one in the Sixty-sixth, four in the Sixty-seventh and two in the House, five in the Sixty-eighth and two in the House, five in the present session and also four in the House. All had reference to the situation and condition with respect to these school-land grants. Twice this body has passed legislation, but it never reached the House Calendar. In the last session this body passed a bill almost identical with the present one and which was introduced by the same author; it, however, never reached the House Calendar.

There is, we think, ample grounds and precedent for the proposed legislation. But even if there were not, certainly justice and equity would furnish sufficient grounds for its enactment into law.

All of the Eastern States secured outright, without reservation, the lands within their borders. In addition, Michigan, Wisconsin, Minnesota, Missouri, Kansas, Alabama, Oklahoma, and Florida were given their minerals. Oklahoma also received a grant of \$5,000,000 for the benefit of the common schools, this because of Indian reservations. Some of the Southern States received swamp-land grants without any reservation. These States have all derived revenues, almost inexhaustible, from their public lands and built up great common-school systems supported almost entirely by a fund derived from that source. Michigan and Minnesota are good examples.

If these school sections are placed in the hands of the States it would at least tend to put them on a somewhat equal basis with the original States. They would then be relieved of all this costly, needless, and interminable litigation; titles would be stabilized and forever quieted. They would be able to relieve in part the present school-tax burden which is increased correspondingly with the deprivation of their school lands, and will thus be enabled to at least partly accumulate a fund to establish and support their common and public schools, and thereby effectuate the purpose and intent of their grant.

There seems to be no good reason why this should not be done. At least no good reason has as yet been forthcoming. It does not amount to any sacrifice on the part of the Federal Government. In some States it amounts to but two sections in a township, in others four, and in any event it leaves the Federal Government at least 32 sections in each township, which should more than suffice. Certainly Congress and the Federal Government can well afford to and should adopt a beneficent attitude toward these States whenever legislation which has for its purpose the education of its people is before it for consideration. That is the purpose of the proposed legislation.

The major difference between the measure reported herewith as amended and the original bill is this: The measure as amended expressly requires that "all minerals must be reserved by the State in any lands 'sold, granted, deeded, or patented,' and authorizes the States to lease the same and use the royalties and rentals received therefrom" for the support or in aid of the common or public schools. It also specifically excludes from the provisions of the act lands "included in any pending suit or proceeding in the courts of the United States." It further provides that in case the State fails to comply with the provisions in the act proceedings may be instituted by the Attorney General for the purpose of forfeiting to the United States any lands disposed of by the States in contravention of the provisions of the act. It will be readily observed that the provision requiring the States to reserve unto themselves all minerals in lands sold or transferred fully protects the State and conserves the natural resources.

It will also be noted from the report of the Secretary hereinbefore set out that the enactment of the legislation is recommended by the Department of the Interior.

In conclusion it is interesting to note that the following organizations have passed resolutions indorsing this legislation and urging its enactment into law: The National Education Association, the western division of the American Mining Congress, the United States Chamber of Commerce, the National Association of Attorneys General, and the department of superintendents of the National Education Association.

Your committee has given the matter careful consideration, and, after having done so, reached the conclusion that this was meritorious legislation and that it should be enacted into law.

