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SCHOOL INCOME FROM PUBLIC LANDS

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HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETIETH CONGRESS

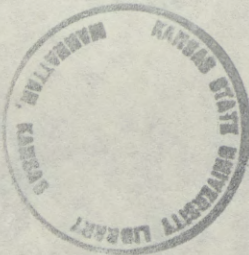
FIRST SESSION

ON

S. 617

A BILL TO AUTHORIZE THE STATE OF WASHINGTON TO USE
THE INCOME FROM CERTAIN LANDS FOR THE CONSTRUCTION
OF FACILITIES FOR SCHOOLS AND OTHER PUBLIC
INSTITUTIONS

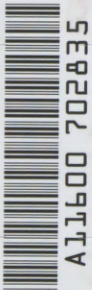
APRIL 12, 1967



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Committee on Interior and Insular Affairs

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WASHINGTON : 1967



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SCHOOL INCOME FROM PUBLIC LANDS

HEARING

MEMORANDUM

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

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SUBCOMMITTEE ON PUBLIC LANDS

FRANK CHURCH, Idaho, *Chairman*

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SCHOOL INCOME FROM PUBLIC LANDS

WEDNESDAY, APRIL 12, 1967

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 11:05 a.m., in room 3112, New Senate Office Building, Senator Frank Church (chairman of the subcommittee) presiding.

Present: Senators Frank Church (Idaho), Gordon Allott (Colorado), Len B. Jordan (Idaho), and Paul J. Fannin (Arizona).

Also present: Jerry T. Verkler, staff director; Porter Ward, professional staff member, and Ed Hansen, special assistant to Senator Jackson.

Senator CHURCH. This meeting will come to order.

This is the time that has been regularly set and noticed for the hearings upon S. 617, the bill to authorize the State of Washington to use the income from certain lands for the construction of facilities for schools and other public institutions.

At this point, I will direct that the text of the bill, S. 617, and agency reports, appear in the record.

(The material referred to follows:)

[S. 617, 90th Cong., first sess.]

A BILL To authorize the State of Washington to use the income from certain lands for the construction of facilities for schools and other public institutions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676), as amended, is amended by inserting before the period at the end of the second sentence in the fourth paragraph a comma and the following: "except that in the case of the State of Washington such income from lands granted for the support of schools (including proceeds from the sale of timber and other crops from such lands) may be used for the financing of construction of facilities for such schools, including the retirement of bonds authorized by law for the purpose of such financing".

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 11, 1967.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on S. 617, a bill "To authorize the State of Washington to use the income from certain lands for the construction of facilities for schools and other public institutions." S. 617 is identical to H.R. 5909 and similar to H.R. 4898.

The Interior Department's report on the two House bills points out that the Department views the enactment of this legislation as unnecessary. We concur in this position. However, should the Committee determine that passage of S. 617 would be helpful to the State of Washington and would not create problems for other States similarly treated by Federal law, we would not object to its enactment or to the enactment of H.R. 4898 or H.R. 5909.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 10, 1967.

DEAR SENATOR JACKSON: This responds to your request for our views on S. 617, a bill "To authorize the State of Washington to use the income from certain lands for the construction of facilities for schools and other public institutions."

S. 617 amends section 11 of the Act of February 22, 1889 (25 Stat. 676). We understand that the purpose of the bill is to clarify the provisions of section 11 which relate to the use of revenues derived from lands granted to the State of Washington for the construction of school facilities in that State.

In regard to the need for this legislation, the attorney general of the State of Washington recently said:

"* * * last November 8 the voters of Washington approved an amendment to the Washington State Constitution changing the structure of this state's common school fund to which is paid all moneys derived by the state from its common school lands, almost all of which were obtained under section 10 of our common Enabling Act.

"One change made by our constitutional amendment is to treat proceeds from timber sales as expendable revenue rather than as permanent funds. Another change is to authorize the acquisition and construction of educational facilities by use of this expendable revenue. However, before either change is implemented in this state, we want to be sure that neither change will conflict with the Enabling Act restrictions set forth in section 11.

"To put the matter beyond controversy, our proposed amendment to section 11 does two things:

"1. It provides specifically that the proceeds from the sale of timber and other crops constitute expendable revenue rather than permanent funds.

"The Attorneys General for North Dakota and South Dakota advise that even without the amendment it is the practice in their states now to treat timber proceeds as expendable revenue. (Wyoming and Colorado, under similar Enabling Act provisions, also treat timber proceeds as expendable revenue.) Nowadays, with the restocking of cutover lands, this interpretation of the Enabling Act seems most appropriate.

"2. It provides specifically that expenditures for the acquisition and construction of facilities (including the retirement of bonds for such purposes) are in the same category as expenditures for 'support and maintenance' of schools and other educational institutions.

"This is the present Montana interpretation of the existing provisions of section 11. See *State ex rel. Blume v. State Bd. of Educ.*, 97 Mont. 371, 34 P. 2d 515 (1934), *State ex rel. Wilson v. State Bd. of Educ.*, 102 Mont. 165, 56 P. 2d 1079

(1936); and *State ex rel. Dragstedt v. State Bd. of Educ.*, 103 Mont. 336, 62 P. 2d 330 (1936). And it is the preferred interpretation given to similar Enabling Act provisions in other states. See, e.g., *Arnold v. Bond*, 47 Wyo. 236, 34 P. 2d 28 (1934); and *Condor v. University of Utah*, 123 Utah 182, 257 P. 2d 367 (1953)."

The second sentence in the fourth paragraph of section 11 of the amended 1889 Act now states that the revenues from the granted lands are available for the "maintenance and support" of public schools and the various State institutions for which the lands have been granted. In our opinion, the term "maintenance and support" includes such items as the acquisition of lands and facilities, the construction of buildings, and the retirement of bonds and other items needed to operate and maintain these schools and institutions consistent with State law. Accordingly, we believe that the amendment proposed by the bill is unnecessary. However, we would not object to the enactment of S. 617 if it resolves State problems.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

Senator CHURCH. Since the bill was introduced, Senators Jackson and Magnuson have sought to improve the bill and have offered an amendment to effect such improvement. The proposed amendment broadens the bill to include the States of North Dakota, South Dakota, and Montana and make more specific the language pertaining to the proceeds from lands granted with statehood. It will be set out and explained in Senator Jackson's statement.

In November of last year, the voters of the State of Washington approved a constitutional amendment which would change the structure of the State's common school fund to which is paid all moneys derived by the State from its common school lands, almost all of which were obtained under section 11 of the Enabling Act.

One change made by the constitutional amendment is to treat proceeds from timber sales as expendable revenue rather than as permanent funds. Another change is to authorize the acquisition and construction of educational facilities by use of this expendable revenue. However, before either change is implemented by the State of Washington, officials want to be sure that neither change will conflict with the Enabling Act restrictions set forth in section 11. This legislation has been proposed to put the matter beyond controversy.

The chairman of the full committee, Senator Jackson, has a statement for the record.

**STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM
THE STATE OF WASHINGTON, AND CHAIRMAN, INTERIOR AND
INSULAR AFFAIRS COMMITTEE**

Senator JACKSON. Mr. Chairman, I am pleased to have this opportunity to testify before the subcommittee on legislation of extreme importance to the State of Washington.

Because of a unique situation in Washington State, Senator Magnuson and I have introduced S. 617 to amend certain land grant provisions of the Enabling Act of the States of Montana, South Dakota, North Dakota, and Washington (act of Feb. 22, 1889, ch. 180, 26 Stat. 676, as amended). Before proceeding further, Mr. Chairman, I should like to explain that Senator Magnuson and I have discussed our

amendment in considerable detail with various officials within the State of Washington. As a result of these discussions, we have decided that the language contained in our original bill should be modified somewhat. Accordingly, I submit to the committee that in place of the text of S. 617, the following be substituted:

A BILL To authorize the States of North Dakota, South Dakota, Montana, and Washington to use the income from certain lands for the construction of facilities for State charitable, educational, penal, and reformatory institutions

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22, 1889 (25 Stat. 676), as amended to read as follows:

"Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions."

Upon achieving statehood, these States were given certain lands by the Federal Government. These lands were not given without strings attached, however, as the Enabling Act contained certain provisions regulating the purposes and conditions regarding the use of these lands and revenues arising from these lands. The provision which we seek to amend is found in the second sentence of the fourth paragraph of section 11 of the Enabling Act and reads as follows:

Rentals on leased land, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions.

The words, "maintenance and support," have been interpreted by various Washington State officials in a very narrow manner. Accordingly, it was felt by these Washington State officials that funds which could only be used for the maintenance and support of schools and other State institutions could not be used for the construction of facilities for such schools and institutions. The Washington State constitution provided accordingly, presumably to implement the "restrictions" of the Enabling Act—under the State constitution, various revenues arising from the public lands were available only for "current support" of schools and institutions and could not be used for school construction.

Despite being unable to use these funds for school construction, Washington State had been able to finance a satisfactory school construction program from other sources. In 1963, however, in *State ex rel. Finance Committee v. Martin*, 384 P. 2d 833, the Washington State Supreme Court invalidated a longstanding State bonding practice thereby disrupting our State's school construction programs for several years.

The result, Mr. Chairman, was a severe strain on our existing school facilities which was heightened by the burgeoning population ex-

pansion in our State. Accordingly, in 1965 the legislature overwhelmingly approved Senate Joint Resolution 22, an amendment to the Washington State constitution which was subsequently ratified by a 72-percent majority in the 1966 general election. This amendment in essence provided that various expendable revenues which formerly could be used only for "current support" of schools could also be used for construction of schools, including acquisition of facilities and retirement of bonds issued for construction purposes. However, fear was expressed in State circles as to whether this amendment to the Washington State constitution would be effective without a corresponding amendment to the Enabling Act.

Because of this fear, the State has been reluctant to implement the constitutional amendment and has followed its old, cumbersome procedure in issuing bonds to finance school construction. Accordingly, Senator Magnuson and I were approached by the Governor and other State officials and requested to introduce an appropriate amendment to the Enabling Act. I understand that the other States covered by our Enabling Act may already use these expendable revenues for school construction under their respective interpretations of "maintenance and support." As to those States, our amendment would change nothing. But to the State of Washington it is important because of the body of State law which has evolved and created a question which presently prevents full implementation of the aforementioned amendment to the Washington State constitution. Actually, Mr. Chairman, our amendment merely clarifies the meaning of "support and maintenance" thereby eliminating any possible doubt regarding the efficacy of the amendment to the Washington State constitution, and assures the flexibility to use these expendable funds to best meet the challenge confronting our State's educational system.

In addition, another interpretational question concerning the Enabling Act involving timber proceeds is also clarified by our amendment. Again, Washington State has been uncertain about whether timber proceeds are expendable—if not, they constitute permanent funds which cannot be used for the current support and maintenance of schools, let alone construction of school facilities. To this end, our amendment merely makes clear that timber and crop proceeds are expendable and can be used for the support and maintenance of schools and other institutions—including, of course, construction purposes.

Mr. Chairman, our amendment has the endorsement of the Washington State Legislature—House Joint Memorial 11—its Governor, attorney general, superintendent of public instruction, and commissioner of public lands. I have received telegrams in support of S. 617 as amended from Governor Evans, Secretary of State Kramer, John J. O'Connell, attorney general of Washington State; Bert Cole, commissioner of public lands; and Louis Bruno, superintendent of public instruction and ask that they be included in the record at the conclusion of my remarks. I would also like to request that the record for these hearings be kept open for 5 days for additional testimony.

Again, Mr. Chairman, thank you for this opportunity to testify in behalf of S. 617, as amended.

(The telegrams referred to follow :)

OLYMPIA, WASH.,

April 10, 1967.

HON. HENRY M. JACKSON,
U.S. Senator, Washington, D.C.:

I greatly appreciate your assistance in helping solve the problem of the State of Washington relative to section 11 of the enabling act. With the passage of Senate Joint Resolution 22 by the voters in November 1966 the revenue from renewable resources, primarily timber sales, in our common school fund is treated as expendable revenue rather than as a part of the permanent fund and these revenues may be used for the acquisition and construction of educational facilities. The purpose of Senate bill 617 is to amend the enabling act so there is no question but that the procedures adopted by Senate Joint Resolution 22 are valid. This is highly important legislation for the State of Washington the capital funding of its common schools. I urge the favorable action of this committee.

DANIEL J. EVANS,

Governor, State of Washington.

OLYMPIA, WASH.

HON. HENRY M. JACKSON,
Chairman, Interior Committee, U.S. Senator, Washington, D.C.:

Encourage support of amendment to S. 617 to permit State of Washington to use receipts from timber sales, crops and rentals from common school grant lands for financing common school construction.

A. LUDLUW KRAMER,
Secretary of State.

OLYMPIA, WASH.,

April 11, 1967.

HON. HENRY M. JACKSON,
U.S. Senator, Washington, D.C.:

We wish to express our appreciation to you and the members of the Senate Interior and Insular Affairs Committee for scheduling an early hearing for revised S. 617 (to amend sec. 11 of the Washington, North Dakota, South Dakota, and Montana Enabling Act). The hearing gives us an opportunity to state briefly the considerations that impel the State of Washington to ask Congress for clarification of the land-grant provisions governing the use of funds derived from those lands donated to the State in trust for its common schools and other designated public institutions.

Revised S. 617 is intended to serve as an expression of congressional consent to the implementation of amendment 43 to the Washington Constitution approved by Washington voters on November 8, 1966. Amendment 43 creates a trust fund under the Washington constitution to be known as the common school construction fund. All moneys deposited in the fund are to be used for the purpose of financing the construction of common school facilities. It is the intention of the State to deposit in this fund all expendable revenue derived by it from those lands granted to it by Congress under the State's Enabling Act for support of its common schools.

The consent of Congress is sought because the State of Washington, by adopting amendment 43, is departing from its long-held constitutional and administrative interpretation of section 11 of the Enabling Act in two respects: First, the State proposes to treat proceeds from the sale of timber from common school lands as expendable income rather than as nonexpendable permanent funds. Thus timber proceeds will hereafter be treated in the same fashion as the State was heretofore treated lease rental: Interest on deferred payments on lands sold. Interest on funds derived from permanent funds. And all other actual income from granted lands. Second, the State proposes to use expendable income for construction of buildings and other common school facilities. Use of expendable income would henceforth not be limited merely to use for the current operation of the common schools.

The amendment proposed by revised S. 617 makes clear that both changes in past Washington use of income from federally donated lands are not contrary to the intent of Congress as expressed in existing section 11. Doubt about the matter is removed by amendatory language which affirmatively states that use of

proceeds from the sales of timber and other crops is expendable income and that expendable income in turn may be used for construction purposes as well as for current operations. During our review of the amendatory language of revised S. 617 we solicited information from Washington's sister States of North Dakota, South Dakota, and Montana, all of which were admitted to the Union by the same Enabling Act and all of which received similar land grants. We have been informally advised in each case that these sister States have in the past, by administrative or legislative action construed the existing provisions of section 11 as conferring implied congressional consent for the use of grant land revenues in the manner proposed by the express wording that would be added by revised S. 617.

JOHN J. O'CONNELL,
Attorney General, State of Washington.

OLYMPIA, WASH.,
April 10, 1967.

HON. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.:

As commissioner of public lands for the State of Washington, I wish to express my wholehearted support for revised S. 617 (to amend sec. 11 of the Enabling Act of Washington, North Dakota, South Dakota, and Montana).

The amendment to section 11 will permit the State of Washington to implement amendment 43 to its constitution whereby the people of the State overwhelmingly approved the creation of a common school construction fund to be used for the acquisition and construction of facilities for the State's common schools with funds derived from the land grant Enabling Act for the support of such common schools.

Additionally, I have carefully reviewed S. 617, as revised and find that its provisions may be implemented by the State of Washington without creating administrative or legal problems. In the future management of these and other classes of trust lands donated to the State by Congress in this State's Enabling Act.

BERT L. COLE,
Commissioner of Public Lands, State of Washington.

OLYMPIA, WASH.,
April 10, 1967.

Senator HENRY JACKSON,
*Senate Office Building,
Washington, D.C.:*

Encourage support of amendment to S. 617 which provides clear and succinct language as mandatory to our Enabling Act support same as per conference with attorney Ed Hansen and the States attorney general.

LOUIS BRUNO,
State Superintendent of Public Instruction.

PIERRE, S. DAK.
April 11, 1967.

Senator HENRY M. JACKSON,
*U.S. Senate Office Building,
Washington, D.C.:*

The State of South Dakota is in favor of the passage of your bill to amend the Enabling Act with reference to timber sales on school lands.

FRANK L. FARRAR,
Attorney General.

Senator CHURCH. Senator Warren Magnuson of Washington has submitted a statement for the record.

(The statement referred to follows:)

STATEMENT OF HON. WARREN G. MAGNUSON, A U.S. SENATOR FROM THE
STATE OF WASHINGTON

Mr. Chairman, I appreciate the opportunity to present testimony in support of S. 617, a bill to authorize the State of Washington to use income from certain lands for the construction of facilities for schools and other public institutions. Enactment of this legislation is of immediate importance to the State of Washington.

Senator Jackson and I introduced S. 617 at the request of the Washington State Superintendent of Public Instruction. Since the introduction of the bill, however, Senator Jackson and I have studied this problem further with several officials in the State of Washington and feel that the original language of S. 617 could be improved. Senator Jackson has furnished the subcommittee with a copy of the suggested amendment to S. 617.

As amended, S. 617 has the support of the Washington State legislature, the Governor of the State of Washington, the Superintendent of Public Instruction, the Commissioner of Public Lands, and the Washington State Attorney General.

Mr. Chairman, S. 617 provides for an amendment to the land grant provisions of the Enabling Act of the States of North Dakota, South Dakota, Montana, and Washington (Act of February 22, 1889, ch. 180, 26 Stat 679, as amended). Such an amendment is felt to be needed to express Congressional assent to the implication of Amendment 43 to the Washington State Constitution which was approved by the voters of the State of Washington on November 8, 1966.

The Enabling Act of 1889 provides that revenues arising from the "public lands" donated to the states by the Enabling Act:

"shall constitute permanent funds for the support and maintenance of the public schools and the various State institutions for which the lands have been granted."

The amendment to the Washington State Constitution, which I referred to earlier, created a new school fund in addition to the existing Common School Fund called for by the State Constitution. This is the "Common School Construction Fund" which would consist of:

1. Interest accruing on the Common School Fund
2. All rentals and other revenues from lands and other properties devoted to the Common School Fund
3. Proceeds from the sales of timber and other crops from school and state lands
4. And such other sources which the State legislature may direct.

However, present language of the Federal Enabling Act raises two questions regarding this amendment to the Washington State Constitution. First, the Enabling Act fails to expressly cover timber proceeds, although it had earlier been amended to cover oil and mineral leases, grazing and agricultural leases, and hydro-electric power facilities. Second, and of more importance, it is not clear whether the language "support and maintenance" found in the Enabling Act includes money spent for construction of school facilities. Under the Washington State Constitution, enacted at the time of the Enabling Act, support and maintenance did not include construction.

While it may be possible for a court to interpret the present language of the Enabling Act to cover the legal problems raised in the State of Washington, it is important as a practical matter for the State of Washington to limit the possibility of a court test of the 1966 constitutional amendment. This is because bonds to finance school construction must be sold to the general public, and the price which the public is willing to pay for these bonds will reflect the possibility of a law suit.

The purpose of S. 617 is to make clear that timber receipts are expressly covered, and that all income from these lands may be used for the acquisition and construction of facilities (including the retirement of bonds authorized by state law for such purposes) for those state schools and institutions which are the beneficiaries of Enabling Act land grants.

Mr. Chairman, I thank you for the opportunity to present this statement today, and you may be assured that officials of the State of Washington, both executive and legislative, are fully behind this legislation.

Thank you.

Senator CHURCH. Our witness this morning is the Honorable Harry R. Anderson, Assistant Secretary of the Interior for Public Lands Management.

We are very pleased, Mr. Secretary, to have the benefit of your testimony on this proposed legislation.

STATEMENT OF HON. HARRY R. ANDERSON, ASSISTANT SECRETARY OF THE INTERIOR FOR PUBLIC LANDS MANAGEMENT, ACCOMPANIED BY DAVID FINNIGAN, LEGISLATIVE COUNSEL'S OFFICE

Mr. ANDERSON. Thank you, Mr. Chairman.

I would like the record to show that I am accompanied here by Mr. Dave Finnigan from the Legislative Counsel's office.

Mr. Chairman and members of the committee, S. 617 amends section 11 of the act of February 22, 1889, as amended. This act admitted several States into the Union. We understand that the purpose of the bill is to clarify the provisions of section 11 which relate to the use of revenues derived from lands granted to the State of Washington.

Section 11 of the amended 1889 act now states that the revenues from the granted lands are available for the "maintenance and support" of public schools and the various State institutions for which the lands have been granted. In our opinion, the term "maintenance and support" includes such items as the acquisition of lands and facilities, the construction of buildings, and the retirement of bonds and other items needed to operate and maintain these schools and institutions consistent with State law. Accordingly, we believe that the amendment proposed by this bill is unnecessary; that is, as to any restriction in Federal law.

We understand, however, that the attorney general of the State of Washington believes that the amendment is necessary in order to enable the State to use these revenues for the construction of schools, including the retirement of authorized school construction bonds. As we understand the situation, under the 1889 State constitution, there existed a common school fund. The prime sources of revenue in the fund include (1) money from the sale of lands and other property granted by the Federal Government to the States for the support of its schools, and (2) money from the sale of timber, stone, minerals, or other property from those school or State lands which have not been granted to the State for a specific purpose.

The constitution provides that the principal of the fund shall remain permanent and irreducible. It permits interest accruing to the fund, as well as rental or other revenues derived from lands or other property devoted to the fund, to be used for the current support of the common schools. Neither the principal of this State fund nor any of its income could be used to construct school facilities.

Section 11 of the Federal statute, however, does not limit the State's use of the revenues from the granted lands. The limitation is in State law.

In November of last year, the voters approved a State constitutional amendment. The amendment established an additional fund called "the common school construction fund" to be available to finance the construction of common school facilities. The sources of revenues accruing to the fund are:

(1) Interest accruing in the permanent common school fund after July 1, 1967;

(2) All rentals and other revenues received after July 1, 1967, from lands and other property now devoted to the permanent school fund;

(3) Certain proceeds derived from the sale or appropriation of timber and other renewable resources from school and State lands after June 30, 1965; and

(4) Such other sources as the State legislature may direct.

S. 617 would affect the third category of revenues. Prior to the constitutional amendment, these revenues were deposited into the permanent school fund for the "maintenance and support" of common schools. Under State law, the term "maintenance and support" does not include the construction of facilities. Therefore, the attorney general believes that a change is needed in the Federal law to enable the State to use these revenues for the construction of facilities.

Mr. Chairman, just to very briefly summarize, we do not believe that these amendments are necessary and this apparently is the position that has been taken by the three other States, as they have had no difficulty we understand. However, I want to make it clear that we want to be cooperative with the State of Washington if they have a problem, and I understand it exists with respect to the selling of their bonds. Therefore, we would raise no objection to this bill.

Further to summarize, although there is no restriction of the Federal law, as we see it the State common school fund as approved by the 1889 State constitution of Washington did restrict the use of the revenues for maintenance and support; in other words, it could not be used for construction. Then in November of last year the voters of Washington by constitutional amendment established another fund called the common school construction fund and provided under this fund that the funds could be used for school construction and also provided for revenues and it is recommended this category of revenue be referred to as certain proceeds derived from the sale or appropriation of timber; in other words, resources from school and land funds after June 1965 and it seems to raise a question because of the prior act, the old act of 1889. The attorney general apparently feels there is still a restriction on these funds to be used for construction.

Now we have given this some thought and have some concern that this may cause a problem with respect to the other States.

Senator CHURCH. Mr. Secretary, in that regard that was my first reaction to the bill as originally drafted. Have you seen the committee print which seems to take that possibility into account?

Mr. ANDERSON. No, I have not, Senator.

Senator CHURCH. I think it might be helpful to contrast the original bill with the committee print. The original bill took care of the problem for the State of Washington but it might have led to some possible difficulty for the other States because the original language was that—

Except that in the case of the State of Washington such income from lands granted for the support of schools (including proceeds from the sale of timber and other crops from such lands) may be used for the financing of construction of facilities for such schools, including the retirement of bonds authorized by law for the purpose of such financing.

If the Congress were now to amend an act which applied commonly to North Dakota, South Dakota, and Montana and restrict the amendment in the State of Washington, it might then be subject to the construction that only the State of Washington could use these funds for financing construction of schools. The committee print I think removes that possible objection.

Mr. ANDERSON. Senator, as I understand then you are applying the same construction to all States equally.

Senator CHURCH. The original language is struck entirely and beginning on line 11 of page 2 of the committee print the new bill would read:

That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22, 1889, as amended, is amended to read as follows: "Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by the law for such purposes, and for the maintenance and support of such schools and institutions."

So this would have application to all States, not to cause this difficulty.

Mr. ANDERSON. The only point I would raise here would be, Would this have any effect possibly on any bond action of these other States that have already been passed if at this time we pass this act to clarify and to apply to all the States? Would this possibly cast any kind of a shadow or doubt with respect to actions that have been taken by the other States where the expenditures could be made for construction? I don't know. That is a legal question.

Mr. FINNIGAN. Senator, the States, at least Montana, that we know of have interpreted the terms of "maintenance" and "support" very broadly to include these items to this point.

Senator CHURCH. I beg your pardon?

Mr. FINNIGAN. I say the State of Montana at least has, and I understand the other two have, too, interpreted this very broadly to include almost everyone.

Senator CHURCH. Yes. I note from the report of the Secretary of the Interior, from your written report, Mr. Secretary, that the attorneys general for North Dakota and South Dakota advised that even without the amendment it is the practice in their States now to treat timber proceeds as expendable revenue. I take it this is also the case with the State of Montana.

Mr. FINNIGAN. That is right, sir.

Senator CHURCH. So really the question is simply one of taking care of the problem in Washington but we want to take care of it in such a way so as not to raise new questions concerning the other States.

Mr. ANDERSON. That is the only reason I brought up the point I did. I am not trying to be sticky or trying to cause any problem with respect to the State of Washington from this bill, I wanted to be sure that we are not possibly causing another problem.

Senator CHURCH. Yes. Well, I think that that is the reason the committee print has been substituted in place of the original bill.

Incidentally, for purposes of the record, we have received a telegram from Frank L. Farra, the attorney general of South Dakota, which reads:

The State of South Dakota is in favor of the passage of your bill to amend the Enabling Act with reference to the timber sale on school lands.

May I ask the staff if we have received any communication from any State that might be affected by this bill in opposition to its passage?

Mr. HANSEN. No, Mr. Chairman, all three States were contacted several weeks ago and invited to comment upon it. Apparently South Dakota is the only one which has commented to date. The other two, however, have not expressed any objections.

Senator CHURCH. Have the Senators of the other States been advised?

Mr. HANSEN. Yes, Mr. Chairman, all six Senators have been advised of the bill, these hearings, and how it would affect their States.

Senator CHURCH. Have any of them raised any objection to it?

Mr. HANSEN. No, Mr. Chairman, they have not.

Mr. VERKLER. Mr. Chairman, the appropriate officials of the other three States have been notified and no one has objected to the committee thus far, and in fact the attorney general of South Dakota has voiced his approval of this amendment. The committee print version of S. 617 was agreed upon at a meeting in Washington State attended by attorneys representing various State agencies and officials who had previously disagreed upon the bill as introduced and it now represents a consensus in the State of Washington.

The committee staff will attempt to learn the official positions of the other States right away.

Senator CHURCH. I think we should do that just to be sure they are fully apprised so in the event of any possible objection the full committee will have the benefit of it.

Senator FANNIN. Do I understand only North Dakota, South Dakota, Montana, and Washington are affected by the provisions of this act?

Mr. ANDERSON. One act that brought the States into statehood.

Senator CHURCH. And this is the only act that would be amended by the—

Mr. ANDERSON. Other States have the same language.

Senator CHURCH. It may be that the passage of this bill would lead to the other States asking for similar treatment, I don't know. I don't know whether it is a problem in other States. Apparently it is just a problem in the State of Washington because of the peculiarity of the Washington constitution.

Mr. ANDERSON. It is brought about as I understand, Senator, because in the State of Washington it is a State law rather than a Federal law, that the other States apparently have not had the problem. Now this may arouse sufficient interest and they may review it further and it may need clarification, I don't know.

Senator, I should mention that this is something we came up with this morning as another suggestion that you may want to consider,

and that is actually to provide a new statute and not even attempt to amend section 11 but a new statute which would read:

Notwithstanding any interpretation to the contrary by the State of Washington, the term "maintenance and support" in the second sentence of section 11 of the act of February 22, 1889, as amended, includes but is not limited to the acquisition of construction of facilities and the retirement of bonds authorized by law for such purposes and the term "all actual income" includes but is not limited to the proceeds of the sale of timber and other crops.

Now the purpose of this suggestion would be, and it would touch the Enabling Act section, we would have to have a separate statute.

Senator CHURCH. What would be the advantage of it?

Mr. ANDERSON. The advantage would be that it would be limited to the State of Washington and it would not have any reference to the other States.

Mr. FINNIGAN. It refers to an interpretation by the State of Washington which is the problem.

Mr. VERKLER. Mr. Chairman, at the meeting held in Olympia, Wash., it was agreed that it would be better to amend this second sentence and make it inclusive even though the other States might not be having a problem.

Senator CHURCH. Yes, I would not think that this should involve any difficulty from the other States.

Mr. ANDERSON. If there is no concern, as Mr. Verkler has indicated, it is not our purpose here to be causing any roadblocks or interjecting anything new. We want to be helpful.

Mr. VERKLER. The bill as introduced, of course, had a proviso at the end of the sentence and only applied to the State of Washington, and they suggested that the language be amended. Of course, as the chairman suggested, we are going to send this language in the committee print to each of the States involved and to the Senators. We have not seen Mr. Anderson's proposed amendment before.

Senator CHURCH. Senator Jordan, have you any questions to ask?

Senator JORDAN. No; I have not.

Mr. Chairman, I have been trying to keep up with two committees.

Senator CHURCH. That is a problem.

We were just at the point of closing the hearing. Inasmuch as we have had in attendance in the course of the hearing a full quorum of the subcommittee and since no objection has been raised by any member of the subcommittee, I would propose that the subcommittee recommend this bill in the form it appears in the committee print to the full committee with a recommendation that the full committee approve it for submission to the Senate.

There is no objection?

Senator JORDAN. No; I would agree with you.

Senator CHURCH. That will be the action of the subcommittee.

If there are no further questions, Mr. Secretary, we want to thank you for coming and giving us the benefit of your testimony.

Mr. ANDERSON. Thank you, Mr. Chairman.

Senator CHURCH. The record will be open for 5 days to receive additional correspondence that will be submitted for the record.

We stand adjourned.

(Whereupon, at 11 :25 a.m., the subcommittee adjourned.)

and that is exactly to provide a new statute and not even attempt to amend section 11 in a few details which would be of no value.

Nevertheless my attention is directed to the fact that in the past the Finance and Appropriations Committee of the House of Representatives has not limited itself to the act of January 12, 1927, mentioned in the bill, but has also considered legislation of a similar nature and the bill now before the House is in fact a continuation of the same line of legislation and it is not to be taken as the means of the end of matter and not a step.

Now the purpose of this bill is to provide a new statute and not even attempt to amend section 11 in a few details which would be of no value.

Senator O'Connor, I am sure, would be glad to discuss the bill with you and I am sure that you would be glad to discuss it with me.

The bill is not intended to amend section 11 in a few details which would be of no value.

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