

118TH CONGRESS
1ST SESSION

S. 1088

To authorize the relinquishment and in lieu selection of land and minerals in the State of North Dakota, to restore land and minerals to Indian Tribes within the State of North Dakota, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. HOEVEN (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the relinquishment and in lieu selection of land and minerals in the State of North Dakota, to restore land and minerals to Indian Tribes within the State of North Dakota, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “North Dakota Trust
5 Lands Completion Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) in 1889, Congress enacted the North Da-
2 kota Enabling Act “to provide for the division of
3 Dakota into two States and to enable the people of
4 North Dakota, South Dakota, Montana, and Wash-
5 ington to form constitutions and State governments
6 and to be admitted into the Union on an equal foot-
7 ing with the original States, and to make donations
8 of public lands to such States”;

9 (2) section 10 of the North Dakota Enabling
10 Act (25 Stat. 679, chapter 180)—

11 (A) with certain exceptions, granted sec-
12 tions 16 and 36 in every township to the new
13 States of North Dakota, South Dakota, Mon-
14 tana, and Washington “for the support of com-
15 mon schools”; and

16 (B) in cases where portions of sections 16
17 and 36 had been reserved, granted, or sold
18 prior to those States attaining statehood, au-
19 thorized indemnity or “in lieu” selections;

20 (3) the State of North Dakota was granted
21 land and minerals totaling more than 2,500,000
22 acres under the North Dakota Enabling Act;

23 (4) the North Dakota Enabling Act provided
24 further land grants to the State of North Dakota for

1 the support of colleges, universities, the State cap-
2 itol, and other public institutions;

3 (5) prior to the enactment of the North Dakota
4 Enabling Act, the United States, through treaties
5 and Executive orders, including the Treaty between
6 the United States of America and the Mandan,
7 Hidatsa, Arikara, and other Tribal Nations, made
8 and concluded at Fort Laramie September 17, 1851
9 (11 Stat. 749), the Treaty between the United
10 States of America and the Sisseton and Wahpeton
11 Bands of Dakota or Sioux Indians, made and con-
12 cluded at Washington February 19, 1867 (15 Stat.
13 505), the Treaty between the United States of
14 America and different Tribes of Sioux Indians, made
15 and concluded at Fort Laramie April 29, 1868 (15
16 Stat. 635), and the Executive order of April 12,
17 1870, established several reservations of land for
18 multiple Indian Tribes located in the State of North
19 Dakota;

20 (6) authorizing the State to relinquish the State
21 land grant parcels located within the reservations
22 and to select other Federal land or minerals in lieu
23 of the relinquished State land grant parcels will—

24 (A) fulfill the promise of land and minerals
25 to the State; and

1 (B) provide to Indian Tribes greater Tribal
2 sovereignty and control of land and minerals
3 within the reservations; and

4 (7) Congress should authorize the State—

5 (A) to relinquish the land and minerals lo-
6 cated within the reservations; and

7 (B) to select in lieu of the relinquished
8 land other Federal land or minerals in the
9 State of North Dakota of equal value.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) FEDERAL LAND.—The term “Federal land”
13 means public land and minerals located within the
14 State of North Dakota, including public land that is
15 mineral in character.

16 (2) NORTH DAKOTA ENABLING ACT.—The term
17 “North Dakota Enabling Act” means the Act of
18 February 22, 1889 (25 Stat. 676, chapter 180).

19 (3) PUBLIC LAND.—The term “public land”
20 has the meaning given the term “public lands” in
21 section 103 of the Federal Land Policy and Manage-
22 ment Act of 1976 (43 U.S.C. 1702).

23 (4) RESERVATION.—The term “reservation”
24 means any Indian reservation located wholly or par-
25 tially within the State of North Dakota and recog-

1 nized under United States treaty, Executive order,
2 or Act of Congress.

3 (5) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior.

5 (6) STATE.—The term “State” means the State
6 of North Dakota, acting through the North Dakota
7 Board of University and School Lands and its agent,
8 the Department of Trust Lands.

9 (7) STATE LAND GRANT PARCEL.—The term
10 “State land grant parcel” means—

11 (A) a parcel of land granted to the State
12 of North Dakota by Congress—

13 (i) on statehood; or

14 (ii) through a grant pursuant to the
15 North Dakota Enabling Act;

16 (B) a section of land numbered 16 or 36
17 granted to the State of North Dakota by Con-
18 gress for school purposes;

19 (C) a parcel of land selected by the State
20 of North Dakota as indemnity for any section
21 of land numbered 16 or 36; and

22 (D) a parcel of land other than a parcel of
23 land described in subparagraph (A), (B), or (C)
24 obtained by the State after statehood.

25 (8) UNAPPROPRIATED FEDERAL LAND.—

1 (A) IN GENERAL.—The term “unappropri-
2 ated Federal land” means Federal land under
3 the management and control of the Bureau of
4 Land Management and located within the State
5 of North Dakota.

6 (B) EXCLUSIONS.—The term “unappropri-
7 ated Federal land” does not include—

8 (i) surface interests acquired by the
9 Bureau of Land Management;

10 (ii) any area of critical environmental
11 concern established pursuant to section
12 202(c)(3) of the Federal Land Policy and
13 Management Act of 1976 (43 U.S.C.
14 1712(c)(3)); or

15 (iii) land that is—

16 (I) withdrawn from public entry;

17 (II) located within a unit of the
18 National Park System;

19 (III) located within any reserva-
20 tion;

21 (IV) located within—

22 (aa) T. 147 N., R. 95 W.;

23 (bb) T. 148 N., R. 95 W.;

24 (cc) T. 148 N., R. 96 W.; or

25 (dd) T. 149 N., R. 95 W.;

1 (V) located within a United
2 States military reservation; or

3 (VI) designated by Congress or
4 the President for conservation pur-
5 poses.

6 **SEC. 4. RELINQUISHMENT AND SELECTION; CONVEYANCE.**

7 (a) RELINQUISHMENT AND SELECTION.—

8 (1) IN GENERAL.—Subject to valid existing
9 rights, if the State elects to relinquish all right, title,
10 and interest of the State in and to a State land
11 grant parcel located wholly or partially within the
12 boundaries of any reservation, the Secretary shall
13 authorize the State to select in accordance with this
14 Act 1 or more parcels of unappropriated Federal
15 land of substantially equivalent value within the
16 State of North Dakota.

17 (2) APPROVAL.—Not later than 90 days after
18 the date on which the State makes a selection under
19 paragraph (1), the Secretary shall approve or reject,
20 in whole or in part, the selection.

21 (b) CONVEYANCE.—

22 (1) CONVEYANCE BY SECRETARY.—

23 (A) IN GENERAL.—Not later than 60 days
24 after the date on which the Secretary approves
25 a State selection of unappropriated Federal

1 land under subsection (a)(2), the Secretary
2 shall initiate the actions necessary to convey to
3 the State the unappropriated Federal land.

4 (B) REQUIREMENTS.—Conveyance of Fed-
5 eral land by the Secretary under this Act—

6 (i) shall be by clear list, patent, or
7 deed acceptable to the State; and

8 (ii) shall not be considered a sale, ex-
9 change, or conveyance under section 203,
10 205, 206, or 209 of the Federal Land Pol-
11 icy and Management Act of 1976 (43
12 U.S.C. 1713, 1715, 1716, 1719).

13 (2) RELINQUISHMENT AND CONVEYANCE BY
14 STATE.—

15 (A) IN GENERAL.—As consideration for
16 the conveyance of Federal land under para-
17 graph (1), on the date on which the Federal
18 land is conveyed to the State, the State shall
19 concurrently relinquish and convey to the Sec-
20 retary all right, title, and interest of the State
21 in and to the State land grant parcel identified
22 for relinquishment under subsection (a)(1).

23 (B) TITLE.—The State shall convey to the
24 Secretary title, free of any financial claims, li-

1 abilities, or other financial encumbrances, to all
2 parcels relinquished under subparagraph (A).

3 (C) LIMITATION.—Relinquishment and
4 conveyance by the State of a State land grant
5 parcel under this Act shall not be considered an
6 exchange or acquisition for purposes of section
7 205 or 206 of the Federal Land Policy and
8 Management Act of 1976 (43 U.S.C. 1715,
9 1716).

10 (c) SUCCESSION TO RIGHTS AND OBLIGATIONS.—
11 Each party to which land is conveyed under this Act shall,
12 to the fullest extent allowable under Federal and State
13 law, succeed to the rights and obligations of the conveying
14 party with respect to any lease, right-of-way, permit, or
15 other valid existing right to which the land is subject.

16 (d) MANAGEMENT AFTER RELINQUISHMENT.—

17 (1) RESERVATION.—If a State land grant par-
18 cel relinquished by the State and conveyed to the
19 Secretary under this Act is located wholly or par-
20 tially within the boundaries of any reservation, on
21 request of the applicable Indian Tribe, the portion of
22 the State land grant parcel located within the
23 boundaries of the reservation shall be—

1 (A) taken into trust by the Secretary on
2 behalf of, and for the benefit of, the Indian
3 Tribe on the date of the conveyance; and

4 (B) considered to be a part of the reserva-
5 tion of the Indian Tribe.

6 (2) CONSULTATION REQUIRED.—Prior to the
7 conveyance of a State land grant parcel located
8 wholly or partially within the boundaries of any res-
9 ervation, the State and the Secretary shall consult
10 with the Indian Tribe the land of which is subject
11 to conveyance in accordance with Executive Order
12 13175 (25 U.S.C. 5301 note; relating to consulta-
13 tion and coordination with Indian tribal govern-
14 ments).

15 (e) SPECIAL RULES FOR MINERAL LAND.—

16 (1) DEFINITION OF UNAPPROPRIATED FEDERAL
17 LAND SUBJECT TO A LEASE OR PERMIT.—In this
18 subsection, the term “unappropriated Federal land
19 subject to a lease or permit” means unappropriated
20 Federal land subject to a mineral lease or permit
21 that is—

22 (A) issued under the Mineral Leasing Act
23 (30 U.S.C. 181 et seq.); and

1 (B) in a producing or producible status
2 during the 10-year period following the date of
3 enactment of this Act.

4 (2) SELECTION OF MINERAL LAND.—The State
5 may select, and the Secretary may convey, unappro-
6 priated Federal land that is mineral in character
7 under subsection (b) on the condition that, except as
8 provided in paragraph (3)(A), if the selected land is
9 unappropriated Federal land subject to a lease or
10 permit—

11 (A) the Secretary shall reserve an over-
12 riding interest in the portion of the mineral es-
13 tate that is comprised of minerals subject to
14 leasing under the Mineral Leasing Act (30
15 U.S.C. 181 et seq.); and

16 (B) such a selection shall not include any
17 portion of the mineral lease or permit.

18 (3) CONVEYANCE OF MINERAL ESTATE.—

19 (A) IN GENERAL.—If the State selects un-
20 appropriated Federal land subject to a lease or
21 permit under paragraph (2), on the option of
22 the State—

23 (i) the Secretary may convey with the
24 surface interest in the land the interest in
25 the mineral estate that is comprised of

1 minerals subject to leasing under the Min-
2 eral Leasing Act (30 U.S.C. 181 et seq.);
3 and

4 (ii) all Federal mining claims over the
5 land shall be converted to State leases in
6 accordance with this paragraph.

7 (B) MINING CLAIMS.—To facilitate the
8 conversion of Federal mining claims to State
9 leases under subparagraph (A), a Federal min-
10 ing claimant may file with the Secretary a vol-
11 untary relinquishment of the Federal mining
12 claim conditioned on—

13 (i) conveyance of the land to the
14 State; and

15 (ii) the conversion of the Federal min-
16 ing claim to a State lease.

17 (C) OBLIGATIONS UNDER FEDERAL
18 LAW.—Until the date on which the land is con-
19 veyed to the State under subparagraph (A), a
20 Federal mining claimant shall be subject to any
21 obligations relating to the land under Federal
22 law.

23 (D) NO RELINQUISHMENT.—If the land
24 previously encumbered by the relinquished Fed-
25 eral mining claim is not conveyed to the State

1 under subparagraph (A), the relinquishment of
2 land under subparagraph (B) shall have no ef-
3 fect.

4 (E) RIGHTS-OF-WAY; OTHER INTEREST.—

5 On conveyance to the State of land encumbered
6 by a relinquished Federal mining claim under
7 this paragraph, the State shall assume author-
8 ity over any leases, licenses, permits, rights-of-
9 way, operating plans, other land use authoriza-
10 tions, or reclamation obligations applicable to
11 the relinquished Federal mining claim on the
12 date of conveyance.

13 (F) VALUATION.—If a Federal mining
14 claimant does not voluntarily relinquish under
15 subparagraph (B) a Federal mining claim on
16 land conveyed to the State, the Secretary shall
17 take into account the encumbrance represented
18 by the claim in determining the value of the
19 land under section 5(b).

20 (f) WITHDRAWAL.—

21 (1) IN GENERAL.—Subject to valid rights in ex-
22 istence on the date of enactment of this Act, all Fed-
23 eral land selected by the State for conveyance under
24 this Act, effective beginning on the date on which
25 the State makes the selection and ending on the

1 date described in paragraph (2), is withdrawn from
2 all forms of—

3 (A) entry, appropriation, or disposal under
4 the public land laws;

5 (B) location, entry, and patent under the
6 mining laws; and

7 (C) disposition under all laws pertaining to
8 mineral and geothermal leasing or mineral ma-
9 terials.

10 (2) DATE DESCRIBED.—The date referred to in
11 paragraph (1) is the date on which, as applicable—

12 (A) the Federal land is conveyed by the
13 Secretary to the State;

14 (B) the Secretary rejects the selection
15 under subsection (a)(2); or

16 (C) the State withdraws the selection.

17 **SEC. 5. VALUATION.**

18 (a) EQUAL VALUE.—With respect to a State land
19 grant parcel conveyed under this Act in consideration for
20 a parcel of Federal land selected in accordance with this
21 Act—

22 (1) the overall value of the State land grant
23 parcel and the overall value of the parcel of Federal
24 land shall be substantially equal; or

1 (2) subject to subsection (c), if the overall value
2 of the parcels is not equal, the party conveying the
3 parcel of lesser value shall—

4 (A) equalize the value by the payment of
5 funds to the other party; or

6 (B) enter the imbalance in value on a ledg-
7 er account in accordance with subsection (e).

8 (b) APPRAISAL REQUIRED.—Except as provided in
9 subsection (d), the Secretary shall determine the value of
10 a State land grant parcel and a parcel of Federal land
11 to be conveyed under this Act through an appraisal com-
12 pleted in accordance with—

13 (1) the Uniform Appraisal Standards for Fed-
14 eral Land Acquisitions; or

15 (2) subject to subsection (d)(1), the Uniform
16 Standards for Professional Appraisal Practice.

17 (c) EQUALIZATION.—With respect to a conveyance to
18 the Secretary of a State land grant parcel of lesser value
19 than the parcel of Federal land to be conveyed to the State
20 under this Act, the total value of the equalization payment
21 described in subsection (a)(2)(A) or the ledger entry de-
22 scribed in subsection (e), as applicable, may not exceed
23 25 percent of the total value of the parcel of Federal land.

24 (d) LOW VALUE PARCELS.—

1 (1) IN GENERAL.—The Secretary, with the con-
2 sent of the State, may use mass appraisals, a sum-
3 mary appraisal, or a statement of value made by a
4 qualified appraiser carried out in accordance with
5 the Uniform Standards for Professional Appraisal
6 Practice to determine the value of a State land
7 grant parcel or a parcel of Federal land to be con-
8 veyed under this Act instead of an appraisal that
9 complies with the Uniform Appraisal Standards for
10 Federal Land Acquisitions if the State and the Sec-
11 retary agree that market value of the State land
12 grant parcel or parcel of Federal land, as applicable,
13 is—

14 (A) less than \$500,000; and

15 (B) less than \$500 per acre.

16 (2) DIVISION.—A State land grant parcel or a
17 parcel of Federal land may not be artificially divided
18 in order to qualify for a summary appraisal, mass
19 appraisal, or statement of value under paragraph
20 (1).

21 (e) LEDGER ACCOUNTS.—

22 (1) IN GENERAL.—With respect to a State land
23 grant parcel conveyed under this Act in consider-
24 ation for a parcel of Federal land, if the overall
25 value of the parcels is not equal, the Secretary and

1 the State may agree to use a ledger account to make
2 equal the value.

3 (2) **IMBALANCES.**—A ledger account described
4 in paragraph (1) shall reflect imbalances in value to
5 be reconciled in a subsequent transaction.

6 (3) **ACCOUNT BALANCING.**—Each ledger ac-
7 count described in paragraph (1) shall be—

8 (A) balanced not later than 3 years after
9 the date on which the ledger account is estab-
10 lished; and

11 (B) closed not later than 5 years after the
12 date of the last conveyance of land under this
13 Act.

14 (4) **COSTS.**—

15 (A) **IN GENERAL.**—The Secretary or the
16 State may assume costs or other responsibilities
17 or requirements for conveying land under this
18 Act that ordinarily are borne by the other
19 party.

20 (B) **ADJUSTMENT.**—If the Secretary or the
21 State assume costs or other responsibilities
22 under subparagraph (A), the Secretary or the
23 State shall make adjustments to the value of
24 the Federal land conveyed to the State to com-
25 pensate the Secretary or the State, as applica-

1 ble, for assuming the costs or other responsibil-
2 ities.

3 (5) MINERAL LAND.—If value is attributed to
4 any parcel of Federal land that has been selected by
5 the State because of the presence of minerals under
6 a lease entered into under the Mineral Leasing Act
7 (30 U.S.C. 181 et seq.) that is in a producing or
8 producing status, and the lease is to be conveyed
9 under this Act, the value of the parcel shall be re-
10 duced by the amount that represents the likely Fed-
11 eral revenue sharing obligation under the Mineral
12 Leasing Act (30 U.S.C. 181 et seq.) with the State,
13 but the adjustment shall not be considered as re-
14 flecting a property right of the State.

15 **SEC. 6. MISCELLANEOUS.**

16 (a) IN GENERAL.—Land or minerals conveyed under
17 this Act shall be subject to all applicable Federal, State,
18 and Tribal law.

19 (b) PROTECTION OF INDIAN RIGHTS.—

20 (1) TREATY RIGHTS.—Nothing in this Act
21 modifies, limits, expands, or otherwise affects any
22 treaty-reserved right or other right of any Indian
23 Tribe recognized by any other means, including trea-
24 ties or agreements with the United States, Executive
25 orders, statutes, regulations, or case law.

1 (2) LAND OR MINERALS HELD IN TRUST.—

2 Nothing in this Act affects—

3 (A) land or minerals held in trust by the
4 United States as of the date of enactment of
5 this Act on behalf of, and for the benefit of, any
6 Indian Tribe; or

7 (B) any individual Indian allotment.

8 (c) HAZARDOUS MATERIALS.—

9 (1) IN GENERAL.—The Secretary and the State
10 shall make available for review and inspection any
11 record relating to hazardous materials on land to be
12 conveyed under this Act.

13 (2) CERTIFICATION.—

14 (A) IN GENERAL.—Prior to completing a
15 conveyance of Federal land under this Act, the
16 Secretary shall complete an inspection and a
17 hazardous materials certification of the land to
18 be conveyed.

19 (B) STATE LAND GRANT PARCELS.—Prior
20 to completing a conveyance of a State land
21 grant parcel under this Act, the State shall
22 complete an inspection and a hazardous mate-
23 rials certification of the land to be conveyed.

24 (d) GRAZING PERMITS.—

1 (1) IN GENERAL.—If land conveyed under this
2 Act is subject to a lease, permit, or contract for the
3 grazing of domestic livestock in effect on the date of
4 the conveyance, the Secretary or the State, as appli-
5 cable, shall allow the grazing to continue for the re-
6 mainder of the term of the lease, permit, or con-
7 tract, subject to the related terms and conditions of
8 the user agreements, including permitted stocking
9 rates, grazing fee levels, access, and ownership and
10 use of range improvements.

11 (2) CANCELLATION.—

12 (A) IN GENERAL.—Nothing in this Act
13 prevents the Secretary or the State from can-
14 celing or modifying a grazing permit, lease, or
15 contract if the land subject to the permit, lease,
16 or contract is sold, conveyed, transferred, or
17 leased for nongrazing purposes.

18 (B) BASE PROPERTIES.—If land conveyed
19 by the State under this Act is used by a grazing
20 permittee or lessee to meet the base property
21 requirements for a Federal grazing permit or
22 lease, the land shall continue to qualify as a
23 base property for the remaining term of the
24 lease or permit and the term of any renewal or
25 extension of the lease or permit.

1 (C) RANGE IMPROVEMENTS.—Nothing in
2 this Act prohibits a holder of a grazing lease,
3 permit, or contract from being compensated for
4 range improvements pursuant to the terms of
5 the lease, permit, or contract under existing
6 Federal or State laws.

7 **SEC. 7. SAVINGS CLAUSE.**

8 Nothing in this Act applies to or impacts the owner-
9 ship of any land or mineral resources.

○