

107TH CONGRESS
1ST SESSION

S. 1389

To provide for the conveyance of certain real property in South Dakota to the State of South Dakota with indemnification by the United States Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. DASCHLE (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the conveyance of certain real property in South Dakota to the State of South Dakota with indemnification by the United States Government, 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 “Homestake Mine Con-
5 veyance Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the United States is among the leading na-
2 tions in the world in conducting basic scientific re-
3 search;

4 (2) that leadership position strengthens the
5 economy and national defense of the United States
6 and provides other important benefits;

7 (3) the Homestake Mine in Lead, South Da-
8 kota, owned by the Homestake Mining Company of
9 California, is approximately 8,000 feet deep and is
10 situated in a unique physical setting that is ideal for
11 carrying out certain types of particle physics and
12 other research;

13 (4) the Mine has been selected by the National
14 Underground Science Laboratory Committee, an
15 independent panel of distinguished scientists, as the
16 preferred site for the construction of a national un-
17 derground laboratory;

18 (5) such a laboratory would be used to conduct
19 scientific research that would be funded and recog-
20 nized as significant by the United States;

21 (6) the establishment of the laboratory is in the
22 national interest, and would substantially improve
23 the capability of the United States to conduct impor-
24 tant scientific research;

1 (7) for economic reasons, Homestake intends to
2 cease operations and close the Mine in 2001;

3 (8) on cessation of operations of the Mine,
4 Homestake intends to implement reclamation actions
5 that would preclude the establishment of a labora-
6 tory at the Mine;

7 (9) Homestake has advised the State that, after
8 cessation of operations at the Mine, instead of car-
9 rying out those reclamation actions, Homestake is
10 willing to donate the underground portion of the
11 Mine and certain other real and personal property of
12 substantial value at the Mine for use as the under-
13 ground science laboratory;

14 (10) use of the Mine as the site for the labora-
15 tory, instead of other locations under consideration,
16 would result in a savings of millions of dollars;

17 (11) if the National Science Foundation selects
18 the Mine as the site for the laboratory, it is essential
19 that Homestake not complete certain reclamation ac-
20 tivities that would preclude the location of the lab-
21 oratory at the Mine;

22 (12) Homestake is unwilling to donate, and the
23 State is unwilling to accept, the property at the
24 Mine for the laboratory if Homestake and the State

1 would continue to have potential liability with re-
 2 spect to the transferred property; and

3 (13) to secure the use of the Mine as the loca-
 4 tion for the laboratory, and to realize the benefits of
 5 the proposed laboratory, it is necessary for the
 6 United States to—

7 (A) assume a portion of any potential fu-
 8 ture liability of Homestake concerning the
 9 Mine; and

10 (B) address potential liability associated
 11 with the operation of the laboratory.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) ADMINISTRATOR.—The term “Adminis-
 15 trator” means the Administrator of the Environ-
 16 mental Protection Agency.

17 (2) AFFILIATE.—

18 (A) IN GENERAL.—The term “affiliate”
 19 means any corporation or other person that
 20 controls, is controlled by, or is under common
 21 control with Homestake.

22 (B) INCLUSIONS.—The term “affiliate” in-
 23 cludes a director, officer, or employee of an af-
 24 filiate.

1 (3) CONVEYANCE.—The term “conveyance”
2 means the conveyance of the Mine to the State
3 under section 4(a).

4 (4) FUND.—The term “Fund” means the Envi-
5 ronment and Project Trust Fund established under
6 section 7.

7 (5) HOMESTAKE.—

8 (A) IN GENERAL.—The term “Homestake”
9 means the Homestake Mining Company of Cali-
10 fornia, a California corporation.

11 (B) INCLUSION.—The term “Homestake”
12 includes—

13 (i) a director, officer, or employee of
14 Homestake; and

15 (ii) an affiliate of Homestake.

16 (6) LABORATORY.—

17 (A) IN GENERAL.—The term “laboratory”
18 means the national underground science labora-
19 tory proposed to be established at the Mine
20 after the conveyance.

21 (B) INCLUSION.—The term “laboratory”
22 includes operating and support facilities of the
23 laboratory.

24 (7) MINE.—

1 (A) IN GENERAL.—The term “Mine”
 2 means the portion of the Homestake Mine in
 3 Lawrence County, South Dakota, proposed to
 4 be conveyed to the State for the establishment
 5 and operation of the laboratory.

6 (B) INCLUSIONS.—The term “Mine”
 7 includes—

8 (i) real property, mineral and oil and
 9 gas rights, shafts, tunnels, structures, in-
 10 Mine backfill, in-Mine broken rock, fix-
 11 tures, and personal property to be con-
 12 veyed for establishment and operation of
 13 the laboratory, as agreed upon by
 14 Homestake, the State, and the Director of
 15 the laboratory; and

16 (ii) any water that flows into the Mine
 17 from any source.

18 (C) EXCLUSIONS.—The term “Mine” does
 19 not include—

20 (i) the feature known as the “Open
 21 Cut”;

22 (ii) any tailings or tailings storage fa-
 23 cility (other than in-Mine backfill); or

1 (iii) any waste rock or any site used
2 for the dumping of waste rock (other than
3 in-Mine broken rock).

4 (8) PERSON.—The term “person” means—

5 (A) an individual;

6 (B) a trust, firm, joint stock company, cor-
7 poration (including a government corporation),
8 partnership, association, limited liability com-
9 pany, or any other type of business entity;

10 (C) a State or political subdivision of a
11 State;

12 (D) a foreign governmental entity; and

13 (E) any department, agency, or instrumen-
14 tality of the United States.

15 (9) PROJECT SPONSOR.—The term “project
16 sponsor” means an entity that manages or pays the
17 costs of 1 or more projects that are carried out or
18 proposed to be carried out at the laboratory.

19 (10) STATE.—

20 (A) IN GENERAL.—The term “State”
21 means the State of South Dakota.

22 (B) INCLUSIONS.—The term “State” in-
23 cludes an institution, agency, officer, or em-
24 ployee of the State.

1 **SEC. 4. CONVEYANCE OF REAL PROPERTY.**

2 (a) IN GENERAL.—

3 (1) DELIVERY OF DOCUMENTS.—Subject to
4 paragraph (2) and subsection (b) and notwith-
5 standing any other provision of law, on the execution
6 and delivery by Homestake of 1 or more quit-claim
7 deeds or bills of sale conveying to the State all right,
8 title, and interest of Homestake in and to the Mine,
9 title to the Mine shall pass from Homestake to the
10 State.

11 (2) CONDITION OF MINE ON CONVEYANCE.—

12 The Mine shall be conveyed as is, with no represen-
13 tations as to the conditions of the property.

14 (b) REQUIREMENTS FOR CONVEYANCE.—

15 (1) IN GENERAL.—As a condition precedent of
16 conveyance and of the assumption of liability by the
17 United States in accordance with this Act, the Ad-
18 ministrator shall accept the final report or certifi-
19 cation of the independent entity under subpara-
20 graphs (A) through (E) of paragraph (3).

21 (2) DUE DILIGENCE INSPECTION.—

22 (A) IN GENERAL.—As a condition prece-
23 dent of conveyance and of Federal participation
24 described in this Act, Homestake shall permit
25 an independent entity that is selected jointly by
26 Homestake, the South Dakota Department of

1 Environment and Natural Resources, and the
 2 Administrator to conduct a due diligence in-
 3 spection of the Mine to determine whether any
 4 condition of the Mine poses a substantial risk
 5 to human health or the environment.

6 (B) CONSULTATION.—As a condition
 7 precedent of the conduct of a due diligence in-
 8 spection, Homestake, the South Dakota Depart-
 9 ment of Environment and Natural Resources,
 10 the Administrator, and the independent entity
 11 shall consult and agree upon the methodology
 12 and standards to be used, and other factors to
 13 be considered, by the independent entity in—

14 (i) the conduct of the due diligence in-
 15 spection;

16 (ii) the scope of the due diligence in-
 17 spection; and

18 (iii) the time and duration of the due
 19 diligence inspection.

20 (3) REPORT TO ADMINISTRATOR.—

21 (A) IN GENERAL.—The independent entity
 22 shall submit to the Administrator a report
 23 that—

1 (i) describes the results of the due
2 diligence inspection under paragraph (2);
3 and

4 (ii) identifies any condition of or in
5 the Mine that poses a substantial risk to
6 human health or the environment.

7 (B) PROCEDURE.—

8 (i) DRAFT REPORT.—Before finalizing
9 the report under this paragraph, the inde-
10 pendent entity shall—

11 (I) issue a draft report;

12 (II) submit to the Administrator
13 a copy of the draft report;

14 (III) issue a public notice re-
15 questing comments on the draft re-
16 port that requires all such comments
17 to be filed not later than 45 days
18 after issuance of the public notice;
19 and

20 (IV) during that 45-day public
21 comment period, conduct at least 1
22 public hearing in Lead, South Dakota,
23 to receive comments on the draft re-
24 port.

1 (ii) FINAL REPORT.—In the final re-
 2 port submitted to the Administrator under
 3 this paragraph, the independent entity
 4 shall respond to, and incorporate necessary
 5 changes suggested by, the comments re-
 6 ceived on the draft report.

7 (4) REVIEW AND APPROVAL BY ADMINIS-
 8 TRATOR.—

9 (A) IN GENERAL.—Not later than 60 days
 10 after receiving the final report under paragraph
 11 (3), the Administrator shall—

12 (i) review the report; and

13 (ii) notify the State in writing of ac-
 14 ceptance or rejection of the final report.

15 (B) CONDITIONS FOR REJECTION.—The
 16 Administrator may reject the final report only
 17 if the Administrator identifies 1 or more condi-
 18 tions of the Mine that—

19 (i) pose a substantial risk to human
 20 health or the environment, as determined
 21 by the Administrator; and

22 (ii) require response action to correct
 23 each condition causing the substantial risk
 24 to human health or the environment identi-
 25 fied in clause (i) before conveyance and as-

1 sumption by the Federal Government of li-
2 ability concerning the Mine under this Act.

3 (C) REMEDIAL MEASURES AND CERTIFI-
4 CATION.—

5 (i) REMEDIATION.—

6 (I) IN GENERAL.—If the Admin-
7 istrator rejects the final report,
8 Homestake may carry out, or permit
9 the State to carry out, such measures
10 as are necessary to remove or reme-
11 diate any condition identified by the
12 Administrator under subparagraph
13 (B)(i) as posing a substantial risk to
14 human health or the environment.

15 (II) LONG-TERM REMEDI-
16 ATION.—

17 (aa) IN GENERAL.—In a
18 case in which the Administrator
19 determines that a condition iden-
20 tified by the Administrator under
21 subparagraph (B)(i) requires
22 continuing remediation, or reme-
23 diation that can only be com-
24 pleted as part of the final closure
25 of the Mine, it shall be a condi-

tion of conveyance that Homestake or the National Science Foundation shall deposit into the Fund such funds as are necessary to pay the costs of that remediation.

(bb) SOURCE OF FUNDS.—

Any funds deposited by the National Science Foundation under this paragraph shall be made available from grant funding provided for the construction of the Laboratory.

(ii) CERTIFICATION.—After the reme-

dial measures described in clause (i)(I) are carried out and funds are deposited under clause (i)(II), the independent entity may certify to the Administrator that the conditions for rejection identified by the Administrator under subparagraph (B) have been corrected.

(iii) ACCEPTANCE OR REJECTION OF

CERTIFICATION.—Not later than 60 days after an independent entity makes a certification under clause (ii), the Adminis-

1 trator shall accept or reject the certifi-
2 cation.

3 **SEC. 5. LIABILITY.**

4 (a) ASSUMPTION OF LIABILITY.—Notwithstanding
5 any other provision of law, on completion of the convey-
6 ance in accordance with this Act, the United States shall
7 assume any and all liability relating to the Mine and lab-
8 oratory, including liability for—

9 (1) damages;

10 (2) reclamation;

11 (3) the costs of response to any hazardous sub-
12 stance (as defined in section 101 of the Comprehen-
13 sive Environmental Response, Compensation, and
14 Liability Act of 1980 (42 U.S.C. 9601)), contami-
15 nant, or other material on, under, or relating to the
16 Mine and laboratory; and

17 (4) closure of the Mine and laboratory.

18 (b) LIABILITY PROTECTION.—On completion of the
19 conveyance, neither Homestake nor the State shall be—

20 (1) liable to any person or the United States for
21 injuries, costs, injunctive relief, reclamation, dam-
22 ages (including damages to natural resources or the
23 environment), or expenses, or liable under any other
24 claim (including claims for indemnification or con-
25 tribution, claims by third parties for death, personal

1 injury, illness, or loss of or damage to property, or
2 claims for economic loss), under any law (including
3 a regulation) for any claim arising out of or in con-
4 nection with contamination, pollution, or other con-
5 dition, use, or closure of the Mine and laboratory,
6 regardless of when a condition giving rise to the li-
7 ability originated or was discovered; or

8 (2) subject to any claim brought by or on behalf
9 of the United States under section 3730 of title 31,
10 United States Code, relating to negligence on the
11 part of Homestake in carrying out activities for the
12 conveyance of, and in conveying, the Mine.

13 (c) INDEMNIFICATION.—Notwithstanding any other
14 provision of law, on completion of the conveyance in ac-
15 cordance with this Act, the United States shall indemnify,
16 defend, and hold harmless Homestake and the State from
17 and against any and all liabilities and claims described in
18 subsections (a) and (b).

19 (d) WAIVER OF SOVEREIGN IMMUNITY.—For the
20 purposes of this Act, the United States waives any claim
21 to sovereign immunity.

22 (e) TIMING FOR ASSUMPTION OF LIABILITY.—If the
23 conveyance is effectuated by more than 1 legal trans-
24 action, the assumption of liability, liability protection, in-
25 demnification, and waiver of sovereign immunity provided

1 for under this section shall apply to each legal transaction,
 2 as of the date on which the transaction is completed and
 3 with respect to such portion of the Mine as is conveyed
 4 under that transaction.

5 (f) EXCEPTIONS FOR HOMESTAKE CLAIMS.—Noth-
 6 ing in this section constitutes an assumption of liability
 7 by the United States, or relief of liability of Homestake,
 8 for—

9 (1) any unemployment, worker's compensation,
 10 or other employment-related claim of an employee of
 11 Homestake that arose before the date of conveyance;

12 (2) any claim or cause of action, other than an
 13 environmental claim or a claim concerning natural
 14 resources, that arose before the date of conveyance;

15 (3) any violation of any provision of criminal
 16 law; or

17 (4) any claim, injury, damage, liability, or rec-
 18 lamation or cleanup obligation with respect to any
 19 property or asset that is not conveyed under this
 20 Act, except to the extent that any such claim, injury,
 21 damage, liability, or reclamation or cleanup obliga-
 22 tion arises out of the continued existence or use of
 23 the Mine subsequent to the date of conveyance.

24 **SEC. 6. INSURANCE COVERAGE.**

25 (a) PROPERTY AND LIABILITY INSURANCE.—

1 (1) IN GENERAL.—To the maximum extent
 2 practicable, subject to the requirements described in
 3 paragraph (2), the State shall purchase property
 4 and liability insurance for the Mine and the oper-
 5 ation of the laboratory to provide coverage against
 6 the liability described in subsections (a) and (b) of
 7 section 5.

8 (2) REQUIREMENTS.—The requirements re-
 9 ferred to in paragraph (1) are the following:

10 (A) TERMS OF INSURANCE.—In deter-
 11 mining the type, extent of coverage, and policy
 12 limits of insurance purchased under this sub-
 13 section, the State shall—

14 (i) periodically consult with the Ad-
 15 ministrator and the Director of the Na-
 16 tional Science Foundation; and

17 (ii) consider certain factors,
 18 including—

19 (I) the nature of the projects and
 20 experiments being conducted in the
 21 laboratory;

22 (II) the availability of commercial
 23 insurance; and

1 (III) the amount of funding
 2 available to purchase commercial in-
 3 surance.

4 (B) ADDITIONAL TERMS.—The insurance
 5 purchased by the State under this subsection
 6 may provide coverage that is—

7 (i) secondary to the insurance pur-
 8 chased by project sponsors; and

9 (ii) in excess of amounts available in
 10 the Fund to pay any claim.

11 (3) FINANCING OF INSURANCE PURCHASE.—

12 (A) IN GENERAL.—Subject to section 7,
 13 the State may finance the purchase of insur-
 14 ance required under this subsection by using—

15 (i) funds made available from the
 16 Fund; and

17 (ii) such other funds as are received
 18 by the State for the purchase of insurance
 19 for the Mine and laboratory.

20 (B) NO REQUIREMENT TO USE STATE
 21 FUNDS.—Nothing in this Act requires the State
 22 to use State funds to purchase insurance re-
 23 quired under this subsection.

24 (4) ADDITIONAL INSURED.—Any insurance pur-
 25 chased by the State under this subsection shall—

1 (A) name the United States as an addi-
 2 tional insured; or

3 (B) otherwise provide that the United
 4 States is a beneficiary of the insurance policy
 5 having the primary right to enforce all rights of
 6 the United States under the policy.

7 (5) TERMINATION OF OBLIGATION TO PUR-
 8 CHASE INSURANCE.—The obligation of the State to
 9 purchase insurance under this subsection shall ter-
 10minate on the date on which—

11 (A) the Mine ceases to be used as a labora-
 12 tory; or

13 (B) sufficient funding ceases to be avail-
 14 able for the operation and maintenance of the
 15 Mine or laboratory.

16 (b) PROJECT INSURANCE.—

17 (1) IN GENERAL.—The State, in consultation
 18 with the Administrator and the Director of the Na-
 19 tional Science Foundation, may require, as a condi-
 20 tion of approval of a project for the laboratory, that
 21 a project sponsor provide property and liability in-
 22 surance or other applicable coverage for potential li-
 23 ability associated with the project described in sub-
 24 sections (a) and (b) of section 5.

1 (2) ADDITIONAL INSURED.—Any insurance ob-
 2 tained by the project sponsor under this section
 3 shall—

4 (A) name the State and the United States
 5 as additional insureds; or

6 (B) otherwise provide that the State and
 7 the United States are beneficiaries of the insur-
 8 ance policy having the primary right to enforce
 9 all rights under the policy.

10 (c) STATE INSURANCE.—

11 (1) IN GENERAL.—To the extent required by
 12 State law, the State shall purchase, with respect to
 13 the operation of the Mine and the laboratory—

14 (A) unemployment compensation insur-
 15 ance; and

16 (B) worker's compensation insurance.

17 (2) PROHIBITION ON USE OF FUNDS FROM
 18 FUND.—A State shall not use funds from the Fund
 19 to carry out paragraph (1).

20 **SEC. 7. ENVIRONMENT AND PROJECT TRUST FUND.**

21 (a) ESTABLISHMENT.—On completion of the convey-
 22 ance, the State shall establish, in an interest-bearing ac-
 23 count at an accredited financial institution located within
 24 the State, an Environment and Project Trust Fund.

25 (b) AMOUNTS.—The Fund shall consist of—

1 (1) an annual deposit from the operation and
2 maintenance funding provided for the laboratory in
3 an amount to be determined—

4 (A) by the State, in consultation with the
5 Director of the National Science Foundation
6 and the Administrator; and

7 (B) after taking into consideration—

8 (i) the nature of the projects and ex-
9 periments being conducted at the labora-
10 tory;

11 (ii) available amounts in the Fund;

12 (iii) any pending costs or claims that
13 may be required to be paid out of the
14 Fund; and

15 (iv) the amount of funding required
16 for future actions associated with the clo-
17 sure of the facility;

18 (2) an amount determined by the State, in con-
19 sultation with the Director of the National Science
20 Foundation and the Administrator, and to be paid
21 by the appropriate project sponsor, for each project
22 to be conducted, which amount—

23 (A) shall be used to pay—

1 (i) costs incurred in removing from
 2 the Mine or laboratory equipment or other
 3 materials related to the project;

4 (ii) claims arising out of or in connec-
 5 tion with the project; and

6 (iii) if any portion of the amount re-
 7 mains after paying the expenses described
 8 in clauses (i) and (ii), other costs described
 9 in subsection (c); and

10 (B) may, at the discretion of the State, be
 11 assessed—

12 (i) annually; or

13 (ii) in a lump sum as a prerequisite to
 14 the approval of the project;

15 (3) interest earned on amounts in the Fund,
 16 which amount of interest shall be used only for a
 17 purpose described in subsection (c); and

18 (4) all other funds received and designated by
 19 the State for deposit in the Fund.

20 (c) EXPENDITURES FROM FUND.—Amounts in the
 21 Fund shall be used only for the purposes of funding—

22 (1) waste and hazardous substance removal or
 23 remediation, or other environmental cleanup at the
 24 Mine;

1 (2) removal of equipment and material no
2 longer used, or necessary for use, in conjunction
3 with a project conducted at the laboratory;

4 (3) a claim arising out of or in connection with
5 the conducting of such a project;

6 (4) purchases of insurance by the State as re-
7 quired under section 6;

8 (5) payments for and other costs relating to li-
9 ability described in section 5; and

10 (6) closure of the Mine and laboratory.

11 (d) FEDERAL PAYMENTS FROM FUND.—The United
12 States—

13 (1) to the extent the United States assumes li-
14 ability under section 5—

15 (A) shall be a beneficiary of the Fund; and

16 (B) may direct that amounts in the Fund
17 be applied to pay amounts and costs described
18 in this section; and

19 (2) may take action to enforce the right of the
20 United States to receive 1 or more payments from
21 the Fund.

22 (e) NO REQUIREMENT OF DEPOSIT OF PUBLIC
23 FUNDS.—Nothing in this section requires the State to de-
24 posit State funds as a condition of the assumption by the

1 United States of liability, or the relief of the State or
2 Homestake from liability, under section 5.

3 **SEC. 8. REQUIREMENTS FOR OPERATION OF LABORATORY.**

4 After the conveyance, nothing in this Act exempts the
5 laboratory from compliance with any law (including a Fed-
6 eral environmental law).

7 **SEC. 9. CONTINGENCY.**

8 This Act shall be effective contingent on the selection,
9 by the National Science Foundation, of the Mine as the
10 site for the laboratory.

11 **SEC. 10. PAYMENT AND REIMBURSEMENT OF COSTS.**

12 The United States may seek payment—

13 (1) from the Fund, under section 7(d), to pay
14 or reimburse the United States for amounts payable
15 or liabilities incurred under this Act; and

16 (2) from available insurance, to pay or reim-
17 burse the United States and the Fund for amounts
18 payable or liabilities incurred under this Act.

19 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 as are necessary to carry out this Act.

○