

Union Calendar No. 119

117TH CONGRESS
1ST SESSION

H. R. 2088

[Report No. 117-164]

To take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2021

Mr. FLEISCHMANN introduced the following bill; which was referred to the Committee on Natural Resources

NOVEMBER 1, 2021

Reported from the Committee on Natural Resources; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, 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 “Eastern Band of Cher-
5 okee Historic Lands Reacquisition Act”.

6 **SEC. 2. LAND TAKEN INTO TRUST FOR THE EASTERN BAND**
7 **OF CHEROKEE INDIANS.**

8 (a) LANDS INTO TRUST.—Subject to such rights of
9 record as may be vested in third parties to rights-of-way
10 or other easements or rights-of-record for roads, utilities,
11 or other purposes, the following Federal lands managed
12 by the Tennessee Valley Authority and located on or above
13 the 820-foot (MSL) contour elevation in Monroe County,
14 Tennessee, on the shores of Tellico Reservoir, are declared
15 to be held in trust by the United States for the use and
16 benefit of the Eastern Band of Cherokee Indians:

17 (1) SEQUOYAH MUSEUM PROPERTY.—Approximately
18 46.0 acres of land generally depicted as
19 “Sequoyah Museum”, “Parcel 1”, and “Parcel 2”
20 on the map titled “Eastern Band of Cherokee His-
21 toric Lands Reacquisition Map 1” and dated April
22 30, 2015.

23 (2) SUPPORT PROPERTY.—Approximately 11.9
24 acres of land generally depicted as “Support Parcel”
25 on the map titled “Eastern Band of Cherokee His-

1 toric Lands Reacquisition Map 2” and dated April
2 30, 2015.

3 (3) CHOTA MEMORIAL PROPERTY AND TANASI
4 MEMORIAL PROPERTY.—Approximately 18.2 acres of
5 land generally depicted as “Chota Memorial 1” and
6 “Tanasi Memorial” on the map titled “Eastern
7 Band of Cherokee Historic Lands Reacquisition Map
8 3” and dated April 30, 2015, and including the
9 Chota Memorial and all land within a circle with a
10 radius of 86 feet measured from the center of the
11 Chota Memorial without regard to the elevation of
12 the land within the circle.

13 (b) PROPERTY ON LANDS.—In addition to the land
14 taken into trust by subsection (a), the improvements on
15 and appurtenances thereto, including memorials, are and
16 shall remain the property of the Eastern Band of Cher-
17 okee Indians.

18 (c) REVISED MAPS.—Not later than 1 year after the
19 date of a land transaction made pursuant to this section,
20 the Tennessee Valley Authority, after consultation with
21 the Eastern Band of Cherokee Indians and the Secretary
22 of the Interior, shall submit revised maps that depict the
23 land taken into trust under this section, including any cor-
24 rections made to the maps described in this section to the
25 Committee on Natural Resources of the House of Rep-

1 representatives and the Committee on Indian Affairs of the
2 Senate.

3 (d) CONTOUR ELEVATION CLARIFICATION.—The
4 contour elevations referred to in this Act are based on
5 MSL Datum as established by the NGS Southeastern
6 Supplementary Adjustment of 1936 (NGVD29).

7 (e) CONDITIONS.—The lands taken into trust under
8 this section shall be subject to the conditions described
9 in section 5.

10 **SEC. 3. PERMANENT EASEMENTS TAKEN INTO TRUST FOR**
11 **THE EASTERN BAND OF CHEROKEE INDIANS.**

12 (a) PERMANENT EASEMENTS.—The following perma-
13 nent easements for land below the 820-foot (MSL) con-
14 tour elevation for the following Federal lands in Monroe
15 County, Tennessee, on the shores of Tellico Reservoir, are
16 declared to be held in trust by the United States for the
17 benefit of the Eastern Band of Cherokee Indians:

18 (1) CHOTA PENINSULA.—Approximately 8.5
19 acres of land generally depicted as “Chota Memorial
20 2” on the map titled “Eastern Band of Cherokee
21 Historic Lands Reacquisition Map 3” and dated
22 April 30, 2015.

23 (2) CHOTA-TANASI TRAIL.—Approximately 11.4
24 acres of land generally depicted as “Chota-Tanasi
25 Trail” on the map titled “Eastern Band of Cherokee

1 Historic Lands Reacquisition Map 3” and dated
2 April 30, 2015.

3 (b) REVISED MAPS.—Not later than 1 year after the
4 date of a land transaction made pursuant to this section,
5 the Tennessee Valley Authority, after consultation with
6 the Eastern Band of Cherokee Indians and the Secretary
7 of the Interior, shall submit to the Committee on Natural
8 Resources of the House of Representatives and the Com-
9 mittee on Indian Affairs of the Senate revised maps that
10 depict the lands subject to easements taken into trust
11 under this section, including any corrections necessary to
12 the maps described in this section.

13 (c) CONDITIONS.—The lands subject to easements
14 taken into trust under this section shall be subject to the
15 use rights and conditions described in section 5.

16 **SEC. 4. TRUST ADMINISTRATION AND PURPOSES.**

17 (a) APPLICABLE LAWS.—Except as described in sec-
18 tion 5, the lands subject to this Act shall be administered
19 under the laws and regulations generally applicable to
20 lands and interests in lands held in trust on behalf of In-
21 dian tribes.

22 (b) USE OF LAND.—Except the lands described in
23 section 2(a)(2), the lands subject to this Act shall be used
24 principally for memorializing and interpreting the history
25 and culture of Indians and recreational activities, includ-

1 ing management, operation, and conduct of programs of
2 and for—

3 (1) the Sequoyah birthplace memorial and mu-
4 seum;

5 (2) the memorials to Chota and Tanasi as
6 former capitals of the Cherokees;

7 (3) the memorial and place of reinterment for
8 remains of the Eastern Band of Cherokee Indians
9 and other Cherokee tribes, including those trans-
10 ferred to the Eastern Band of Cherokee Indians and
11 other Cherokee tribes and those human remains and
12 cultural items transferred by the Tennessee Valley
13 Authority to those Cherokee tribes under the Native
14 American Graves Protection and Repatriation Act
15 (25 U.S.C. 3001 et seq.); and

16 (4) interpreting the Trail of Tears National
17 Historic Trail.

18 (c) USE OF SUPPORT PROPERTY.—The land de-
19 scribed in section 2(a)(2) shall be used principally for the
20 support of lands subject to this Act and the programs of-
21 fered by the Tribe relating to such lands and their pur-
22 poses including—

23 (1) classrooms and conference rooms;

24 (2) cultural interpretation and education pro-
25 grams;

1 (3) temporary housing of guests participating
2 in such programs or the management of the prop-
3 erties and programs; and

4 (4) headquarters offices and support space for
5 the trust properties and programs.

6 (d) LAND USE.—The principal purposes of the use
7 of the land described in section 3(a)—

8 (1) paragraph (1), shall be for a recreational
9 trail from the general vicinity of the parking lot to
10 the area of the Chota Memorial and beyond to the
11 southern portion of the peninsula, including inter-
12 pretive signs, benches, and other compatible im-
13 provements; and

14 (2) paragraph (2), shall be for a recreational
15 trail between the Chota and Tanasi Memorials, in-
16 cluding interpretive signs, benches, and other com-
17 patible improvements.

18 **SEC. 5. USE RIGHTS, CONDITIONS.**

19 (a) FLOODING OF LAND AND ROADS.—The Ten-
20 nessee Valley Authority may temporarily and intermit-
21 tently flood the lands subject to this Act that lie below
22 the 824-foot (MSL) contour elevation and the road access
23 to such lands that lie below the 824-foot (MSL) contour
24 elevation.

1 (b) FACILITIES AND STRUCTURES.—The Eastern
2 Band of Cherokee Indians may construct, own, operate,
3 and maintain—

4 (1) water use facilities and nonhabitable struc-
5 tures, facilities, and improvements not subject to se-
6 rious damage if temporarily flooded on the land ad-
7 joining the Tellico Reservoir side of the lands subject
8 to this Act that lie between the 815-foot and 820-
9 foot (MSL) contour elevations, but only after having
10 received written consent from the Tennessee Valley
11 Authority and subject to the terms of such approval;
12 and

13 (2) water use facilities between the 815-foot
14 (MSL) contour elevations on the Tellico Reservoir
15 side of the lands subject to this Act and the adjacent
16 waters of Tellico Reservoir and in and on such
17 waters after having received written consent from
18 the Tennessee Valley Authority and subject to the
19 terms of such approval, but may not construct, own,
20 operate, or maintain other nonhabitable structures,
21 facilities, and improvements on such lands.

22 (c) INGRESS AND EGRESS.—The Eastern Band of
23 Cherokee Indians may use the lands subject to this Act
24 and Tellico Reservoir for ingress and egress to and from
25 such land and the waters of the Tellico Reservoir and to

1 and from all structures, facilities, and improvements main-
2 tained in, on, or over such land or waters.

3 (d) RIVER CONTROL AND DEVELOPMENT.—The use
4 rights under this section may not be exercised so as to
5 interfere in any way with the Tennessee Valley Authority’s
6 statutory program for river control and development.

7 (e) TVA AUTHORITIES.—Nothing in this Act shall be
8 construed to affect the right of the Tennessee Valley Au-
9 thority to—

10 (1) draw down Tellico Reservoir;

11 (2) fluctuate the water level thereof as may be
12 necessary for its management of the Reservoir; or

13 (3) permanently flood lands adjacent to lands
14 subject to this Act that lie below the 815-foot (MSL)
15 contour elevation.

16 (f) RIGHT OF ENTRY.—The lands subject to this Act
17 shall be subject to a reasonable right of entry by the per-
18 sonnel of the Tennessee Valley Authority and agents of
19 the Tennessee Valley Authority operating in their official
20 capacities as necessary for purposes of carrying out the
21 Tennessee Valley Authority’s statutory program for river
22 control and development.

23 (g) ENTRY ONTO LAND.—To the extent that the
24 Tennessee Valley Authority’s operations on the lands sub-
25 ject to this Act do not unreasonably interfere with the

1 Eastern Band of Cherokee Indians' maintenance of an ap-
2 propriate setting for the memorialization of Cherokee his-
3 tory or culture on the lands and its operations on the
4 lands, the Eastern Band of Cherokee Indians shall allow
5 the Tennessee Valley Authority to enter the lands to clear,
6 ditch, dredge, and drain said lands and apply larvicides
7 and chemicals thereon or to conduct bank protection work
8 and erect structures necessary in the promotion and fur-
9 therance of public health, flood control, and navigation.

10 (h) LOSS OF HYDROPOWER CAPACITY.—All future
11 development of the lands subject to this Act shall be sub-
12 ject to compensation to the Tennessee Valley Authority
13 for loss of hydropower capacity as provided in the Ten-
14 nessee Valley Authority Flood Control Storage Loss
15 Guideline, unless agreed to otherwise by the Tennessee
16 Valley Authority.

17 (i) PROTECTION FROM LIABILITY.—The United
18 States shall not be liable for any loss or damage resulting
19 from—

20 (1) the temporary and intermittent flooding of
21 lands subject to this Act;

22 (2) the permanent flooding of adjacent lands as
23 provided in this section;

24 (3) wave action in Tellico Reservoir; or

1 (4) fluctuation of water levels for purposes of
2 managing Tellico Reservoir.

3 (j) CONTINUING RESPONSIBILITIES.—The Tennessee
4 Valley Authority shall—

5 (1) retain sole and exclusive Federal responsi-
6 bility and liability to fund and implement any envi-
7 ronmental remediation requirements that are re-
8 quired under applicable Federal or State law for any
9 land or interest in land to be taken into trust under
10 this Act, as well as the assessments under paragraph
11 (2) to identify the type and quantity of any potential
12 hazardous substances on the lands;

13 (2) prior to the acquisition in trust, carry out
14 an assessment and notify the Secretary of the Inte-
15 rior and the Eastern Band of Cherokee Indians
16 whether any hazardous substances were stored on
17 the lands and, if so, whether those substances—

18 (A) were stored for 1 year or more on the
19 lands;

20 (B) were known to have been released on
21 the lands; or

22 (C) were known to have been disposed of
23 on the lands; and

24 (3) if the assessment under paragraph (2)
25 shows that hazardous substances were stored, re-

1 leased, or disposed of on the lands, include in its no-
2 tice under paragraph (2) to the Secretary of the In-
3 terior and the Eastern Band of Cherokee Indians—

4 (A) the type and quantity of such haz-
5 ardous substances;

6 (B) the time at which such storage, re-
7 lease, or disposal took place on the lands; and

8 (C) a description of any remedial actions,
9 if any, taken on the lands.

10 **SEC. 6. LANDS SUBJECT TO THE ACT.**

11 For the purposes of this Act, the term “lands subject
12 to this Act” means lands and interests in lands (including
13 easements) taken into trust for the benefit of the Eastern
14 Band of Cherokee Indians pursuant to or under this Act.

15 **SEC. 7. GAMING PROHIBITION.**

16 No class II or class III gaming, as defined in the In-
17 dian Gaming Regulatory Act (25 U.S.C. 2701 et seq.),
18 shall be conducted on lands subject to this Act.

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