

EASTERN BAND OF CHEROKEE HISTORIC LANDS  
REACQUISITION ACT

FEBRUARY 27, 2018.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 146]

[Including cost estimate of the Congressional Budget Office]

The Committee Natural Resources, to whom was referred the bill (H.R. 146) to take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Eastern Band of Cherokee Historic Lands Reacquisition Act”.

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

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

(1) SEQUOYAH MUSEUM PROPERTY.—Approximately 46.0 acres of land generally depicted as “Sequoyah Museum”, “Parcel 1”, and “Parcel 2” on the map titled “Eastern Band of Cherokee Historic Lands Reacquisition Map 1” and dated April 30, 2015.

(2) SUPPORT PROPERTY.—Approximately 11.9 acres of land generally depicted as “Support Parcel” on the map titled “Eastern Band of Cherokee Historic Lands Reacquisition Map 2” and dated April 30, 2015.

(3) CHOTA MEMORIAL PROPERTY AND TANASI MEMORIAL PROPERTY.—Approximately 18.2 acres of land generally depicted as “Chota Memorial 1” and “Tanasi Memorial” on the map titled “Eastern Band of Cherokee Historic Lands Reacquisition Map 3” and dated April 30, 2015.

quisition Map 3” and dated April 30, 2015, and including the Chota Memorial and all land within a circle with a radius of 86 feet measured from the center of the Chota Memorial without regard to the elevation of the land within the circle.

(b) **PROPERTY ON LANDS.**—In addition to the land taken into trust by subsection (a), the improvements on and appurtenances thereto, including memorials, are and shall remain the property of the Eastern Band of Cherokee Indians.

(c) **REVISED MAPS.**—Not later than one year after the date of a land transaction made pursuant to this section, the Tennessee Valley Authority, after consultation with the Eastern Band of Cherokee Indians and the Secretary of the Interior, shall submit revised maps that depict the land taken into trust under this section, including any corrections made to the maps described in this section to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate.

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

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

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

(a) **PERMANENT EASEMENTS.**—The following permanent easements for land below the 820-foot (MSL) contour elevation for the following Federal lands in Monroe County, Tennessee, on the shores of Tellico Reservoir, are declared to be held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians:

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

(2) **CHOTA-TANASI TRAIL.**—Approximately 11.4 acres of land generally depicted as “Chota-Tanasi Trail” on the map titled “Eastern Band of Cherokee Historic Lands Reacquisition Map 3” and dated April 30, 2015.

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

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

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

(a) **APPLICABLE LAWS.**—Except as described in section 5, the lands subject to this Act shall be administered under the laws and regulations generally applicable to lands and interests in lands held in trust on behalf of Indian tribes.

(b) **USE OF LAND.**—Except the lands described in section 2(a)(2), the lands subject to this Act shall be used principally for memorializing and interpreting the history and culture of Indians and recreational activities, including management, operation, and conduct of programs of and for—

(1) the Sequoyah birthplace memorial and museum;

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

(3) the memorial and place of reinterment for remains of the Eastern Band of Cherokee Indians and other Cherokee tribes, including those transferred to the Eastern Band of Cherokee Indians and other Cherokee tribes and those human remains and cultural items transferred by the Tennessee Valley Authority to those Cherokee tribes under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

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

(c) **USE OF SUPPORT PROPERTY.**—The land described in section 2(a)(2) shall be used principally for the support of lands subject to this Act and the programs offered by the Tribe relating to such lands and their purposes including—

(1) classrooms and conference rooms;

(2) cultural interpretation and education programs;

(3) temporary housing of guests participating in such programs or the management of the properties and programs; and

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

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

(1) paragraph (1), shall be for a recreational trail from the general vicinity of the parking lot to the area of the Chota Memorial and beyond to the southern portion of the peninsula, including interpretive signs, benches, and other compatible improvements; and

(2) paragraph (2), shall be for a recreational trail between the Chota and Tanasi Memorials, including interpretive signs, benches, and other compatible improvements.

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

(a) **FLOODING OF LAND AND ROADS.**—The Tennessee Valley Authority may temporarily and intermittently flood the lands subject to this Act that lie below the 824-foot (MSL) contour elevation and the road access to such lands that lie below the 824-foot (MSL) contour elevation.

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

(1) water use facilities and nonhabitable structures, facilities, and improvements not subject to serious damage if temporarily flooded on the land adjoining the Tellico Reservoir side of the lands subject to this Act that lie between the 815-foot and 820-foot (MSL) contour elevations, but only after having received written consent from the Tennessee Valley Authority and subject to the terms of such approval; and

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

(c) **INGRESS AND EGRESS.**—The Eastern Band of Cherokee Indians may use the lands subject to this Act and Tellico Reservoir for ingress and egress to and from such land and the waters of the Tellico Reservoir and to and from all structures, facilities, and improvements maintained in, on, or over such land or waters.

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

(e) **TVA AUTHORITIES.**—Nothing in this Act shall be construed to affect the right of the Tennessee Valley Authority to—

(1) draw down Tellico Reservoir;

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

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

(f) **RIGHT OF ENTRY.**—The lands subject to this Act shall be subject to a reasonable right of entry by the personnel of the Tennessee Valley Authority and agents of the Tennessee Valley Authority operating in their official capacities as necessary for purposes of carrying out the Tennessee Valley Authority's statutory program for river control and development.

(g) **ENTRY ONTO LAND.**—To the extent that the Tennessee Valley Authority's operations on the lands subject to this Act do not unreasonably interfere with the Eastern Band of Cherokee Indians' maintenance of an appropriate setting for the memorialization of Cherokee history or culture on the lands and its operations on the lands, the Eastern Band of Cherokee Indians shall allow the Tennessee Valley Authority to enter the lands to clear, ditch, dredge, and drain said lands and apply larvicides and chemicals thereon or to conduct bank protection work and erect structures necessary in the promotion and furtherance of public health, flood control, and navigation.

(h) **LOSS OF HYDROPOWER CAPACITY.**—All future development of the lands subject to this Act shall be subject to compensation to the Tennessee Valley Authority for loss of hydropower capacity as provided in the Tennessee Valley Authority Flood Control Storage Loss Guideline, unless agreed to otherwise by the Tennessee Valley Authority.

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

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

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

(3) wave action in Tellico Reservoir; or

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

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

(1) retain sole and exclusive Federal responsibility and liability to fund and implement any environmental remediation requirements that are required

under applicable Federal or State law for any land or interest in land to be taken into trust under this Act, as well as the assessments under paragraph (2) to identify the type and quantity of any potential hazardous substances on the lands;

(2) prior to the acquisition in trust, carry out an assessment and notify the Secretary of the Interior and the Eastern Band of Cherokee Indians whether any hazardous substances were stored on the lands and, if so, whether those substances—

(A) were stored for 1 year or more on the lands;  
 (B) were known to have been released on the lands; or  
 (C) were known to have been disposed of on the lands; and  
 (3) if the assessment under paragraph (2) shows that hazardous substances were stored, released, or disposed of on the lands, include in its notice under paragraph (2) to the Secretary of the Interior and the Eastern Band of Cherokee Indians—

(A) the type and quantity of such hazardous substances;  
 (B) the time at which such storage, release, or disposal took place on the lands; and  
 (C) a description of any remedial actions, if any, taken on the lands.

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

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

**SEC. 7. GAMING PROHIBITION.**

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

**PURPOSE OF THE BILL**

The purpose of H.R. 146 is to take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes.

**BACKGROUND AND NEED FOR LEGISLATION**

The Eastern Band of Cherokee Indians is a relatively small tribe located in the Great Smoky Mountains of westernmost North Carolina. The Tribe’s reservation, which covers over 51,000 acres, is known as the Qualla Boundary and is headquartered in Cherokee, North Carolina.<sup>1</sup>

After the 1979 completion of the Tellico Dam in Loudon County, Tennessee, the Tribe continued in active communication with the Tennessee Valley Authority (TVA) on any areas impacted that the Tribe believed was of historical significance to the Tribe. The Tribe currently manages most of these properties as part of two permanent easements granted to the Tribe in 1984 and 1986. These easements were a result of informal agreements with TVA to address the Tribe’s objections to TVA’s construction of the Tellico Dam and Reservoir. Currently, the Tribe operates the Sequoyah Museum on one easement with TVA.

The Tribe believes that the original intent of both the Eastern Band leadership and TVA was to have the properties permanently transferred into trust status for the Tribe.

H.R. 146 would place approximately 96 acres of TVA land in Monroe County, Tennessee, on the shores of Little Tennessee River/Tellico Reservoir into trust for the benefit of the Eastern Band of Cherokee Indians. Additionally, the bill provides that two permanent easements over TVA land be held in trust. Gaming pur-

<sup>1</sup> Veronica E. Valarde Tiller, Tiller’s Guide to Indian Country, third edition, at 587 (2015).

suant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) would be prohibited on the lands placed into trust.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Provides that the Act may be cited as the Eastern Band of Cherokee Historic Lands Reacquisition Act.

##### *Sec. 2. Land taken into trust for the Eastern Band of Cherokee Indians*

Subsection (a) provides that subject to pre-existing rights-of-way or easements by third parties, three federal properties as shown on referenced maps, totaling approximately 76.1 acres, shall be placed into trust for the Tribe.

Subsection (b) provides that any physical property, including improvements to or on the land under section (a), will be the property of the Tribe.

Subsection (c) provides that TVA, after consulting with the Tribe and the Secretary of the Interior, shall submit any revisions to any maps to the Congressional committees of jurisdiction.

Subsection (d) indicates that the contour elevations referred to in this Act are based on MSL Datum as established by the NGS Southeastern Supplementary Adjustment of 1936 (NGVD29).

Subsection (e) provides that lands taken into trust under this section are bound by conditions set forth in section 5 of the bill.

##### *Sec. 3. Permanent easements taken into trust for the Eastern Band of Cherokee Indians*

Subsection (a) provides that two easements held by the Tribe and identified on "Map 3" shall be placed into trust for the Tribe.

Subsection (b) provides that TVA, after consulting the Tribe and the Secretary of the Interior, shall submit any revisions to any maps regarding permanent easements to Congressional committees of jurisdiction.

Subsection (c) provides that lands taken into trust under this section are bound by conditions set forth in Section 5 of the bill.

##### *Sec. 4. Trust administration and purposes*

Subsection (a) clarifies that except as provided by section 5, the laws and regulations generally applicable to lands held in trust for tribes shall apply to the lands subject to the Act.

Subsection (b) provides that all lands taken into trust, except lands described in section 2(a)(2), shall be used primarily for memorializing and interpreting history of the Tribe.

Subsection (c) indicates that support property identified under the bill shall be limited to uses such as classrooms and conference rooms; cultural interpretation for education programs; and temporary housing for guests.

Subsection (d) indicates that principal purposes of the use of land described in section 3(a) shall be for recreational trails.

##### *Sec. 5. Use rights, conditions*

Provides that the lands placed into trust under this Act may not interfere with normal operations of the TVA and grants TVA ade-

quate access for carrying out TVA activities. Further, this section provides that TVA shall not be liable for any loss or damage resulting from normal activities. The section also delineates activities that may be conducted by the Tribe and grants the Tribe access to the lands taken into trust under this Act.

*Sec. 6. Lands subject to the Act*

Clarifies that the term “lands subject to this Act” used in the bill includes land and easements placed into trust for the Tribe under this Act.

*Sec. 7. Gaming prohibition*

Provides that class II and III gaming as defined in the Indian Gaming Regulatory Act would be prohibited on the lands put into trust under the bill.

COMMITTEE ACTION

H.R. 146 was introduced on January 3, 2017, by Congressman Charles J. “Chuck” Fleischmann (R-TN). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On October 4, 2017, the Subcommittee held a hearing on the bill. On January 17, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment designated #1; it was adopted by unanimous consent. No additional amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 23, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 146, the Eastern Band Cherokee Historic Lands Reacquisition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 146—Eastern Band Cherokee Historic Lands Reacquisition Act*

H.R. 146 would take into trust, for the benefit of the Eastern Band of Cherokee Indians, approximately 96 acres of land located in Monroe County, Tennessee, that is currently administered by the Tennessee Valley Authority (TVA). The bill would require TVA to submit revised maps to the Congress of those lands and would prohibit certain types of gaming on them.

Using information from TVA, CBO estimates that compiling the information to revise the maps of the lands taken into trust under the bill would cost about \$30,000 in 2018. Under current law, TVA sells electricity at prices sufficient to recover any costs over the useful life of an investment, program, or activity in lieu of receiving annual appropriations. On that basis, CBO expects that any increase in direct spending for mapping would be treated as an operating expense and recovered quickly in TVA's rates. Thus, CBO estimates that the net effect on direct spending would be negligible.

Because enacting H.R. 146 would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 146 would not affect revenues.

CBO estimates that enacting H.R. 146 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 146 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the Federal Government known to be du-

plicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

