

# Union Calendar No. 442

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 146

**[Report No. 115–584]**

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

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

FEBRUARY 27, 2018

Additional sponsors: Mr. ROE of Tennessee, Mr. JONES, Mr. COOK, Mr. MEADOWS, Mr. DENHAM, Mr. COLE, and Mr. HUDSON

FEBRUARY 27, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on January 3, 2017]

# **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, or*  
 11 *other purposes, the following Federal lands managed by the*  
 12 *Tennessee Valley Authority and located on or above the 820-*  
 13 *foot (MSL) contour elevation in Monroe County, Tennessee,*  
 14 *on the shores of Tellico Reservoir, are declared to be held*  
 15 *in trust by the United States for the use and benefit of the*  
 16 *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” on*  
 20 *the map titled “Eastern Band of Cherokee Historic*  
 21 *Lands Reacquisition Map 1” and dated April 30,*  
 22 *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 Historic*

1       *Lands Reacquisition Map 2” and dated April 30,*  
2       *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 Band*  
7       *of Cherokee Historic Lands Reacquisition Map 3”*  
8       *and dated April 30, 2015, and including the Chota*  
9       *Memorial and all land within a circle with a radius*  
10       *of 86 feet measured from the center of the Chota Me-*  
11       *memorial without regard to the elevation of the land*  
12       *within the circle.*

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

18              (c) *REVISED MAPS.—Not later than one year after the*  
19       *date of a land transaction made pursuant to this section,*  
20       *the Tennessee Valley Authority, after consultation with the*  
21       *Eastern Band of Cherokee Indians and the Secretary of the*  
22       *Interior, shall submit revised maps that depict the land*  
23       *taken into trust under this section, including any correc-*  
24       *tions made to the maps described in this section to the Com-*

1 *mittee on Natural Resources of the House of Representatives*  
 2 *and the Committee on Indian Affairs of the Senate.*

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

7 (e) *CONDITIONS.—The lands taken into trust under*  
 8 *this section shall be subject to the conditions described in*  
 9 *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) contour*  
 14 *elevation for the following Federal lands in Monroe County,*  
 15 *Tennessee, on the shores of Tellico Reservoir, are declared*  
 16 *to be held in trust by the United States for the benefit of*  
 17 *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 His-*  
 21 *toric Lands Reacquisition Map 3” and dated April*  
 22 *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 one year after the*  
 4       *date of a land transaction made pursuant to this section,*  
 5       *the Tennessee Valley Authority, after consultation with the*  
 6       *Eastern Band of Cherokee Indians and the Secretary of the*  
 7       *Interior, shall submit to the Committee on Natural Re-*  
 8       *sources of the House of Representatives and the Committee*  
 9       *on Indian Affairs of the Senate revised maps that depict*  
 10       *the lands subject to easements taken into trust under this*  
 11       *section, including any corrections necessary to the maps de-*  
 12       *scribed in this section.*

13       **(c) CONDITIONS.**—*The lands subject to easements taken*  
 14       *into trust under this section shall be subject to the use rights*  
 15       *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 sec-*  
 23       *tion 2(a)(2), the lands subject to this Act shall be used prin-*  
 24       *cipally for memorializing and interpreting the history and*  
 25       *culture of Indians and recreational activities, including*

1 management, operation, and conduct of programs of and  
2 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 re-  
8 mains of the Eastern Band of Cherokee Indians and  
9 other Cherokee tribes, including those transferred to  
10 the Eastern Band of Cherokee Indians and other  
11 Cherokee tribes and those human remains and cul-  
12 tural items transferred by the Tennessee Valley Au-  
13 thority 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 His-  
17 toric Trail.

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

23 (1) classrooms and conference rooms;

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

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

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

6           (d) *LAND USE.—The principal purposes of the use of*  
7           *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 interpre-*  
12          *tive signs, benches, and other compatible improve-*  
13          *ments; 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 compat-*  
17          *ible improvements.*

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

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



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

4           (1) *water use facilities and nonhabitable struc-*  
5 *tures, facilities, and improvements not subject to seri-*  
6 *ous damage if temporarily flooded on the land adjoin-*  
7 *ing the Tellico Reservoir side of the lands subject to*  
8 *this Act that lie between the 815-foot and 820-foot*  
9 *(MSL) contour elevations, but only after having re-*  
10 *ceived written consent from the Tennessee Valley Au-*  
11 *thority and subject to the terms of such approval; and*

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

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

1 *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 inter-*  
5 *fere in any way with the Tennessee Valley Authority's stat-*  
6 *utory 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 Author-*  
9 *ity 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 the*  
19 *Tennessee Valley Authority operating in their official ca-*  
20 *pacities as necessary for purposes of carrying out the Ten-*  
21 *nessee Valley Authority's statutory program for river con-*  
22 *trol and development.*

23       (g) *ENTRY ONTO LAND.*—*To the extent that the Ten-*  
24 *nessee Valley Authority's operations on the lands subject to*  
25 *this Act do not unreasonably interfere with the Eastern*

1 *Band of Cherokee Indians' maintenance of an appropriate*  
 2 *setting for the memorialization of Cherokee history or cul-*  
 3 *ture on the lands and its operations on the lands, the East-*  
 4 *ern Band of Cherokee Indians shall allow the Tennessee Val-*  
 5 *ley Authority to enter the lands to clear, ditch, dredge, and*  
 6 *drain said lands and apply larvicides and chemicals there-*  
 7 *on or to conduct bank protection work and erect structures*  
 8 *necessary in the promotion and furtherance of public health,*  
 9 *flood control, and navigation.*

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

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

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

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

22 *(3) wave action in Tellico Reservoir; or*

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

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

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

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

16                   (A) *were stored for 1 year or more on the*  
17 *lands;*

18                   (B) *were known to have been released on the*  
19 *lands; or*

20                   (C) *were known to have been disposed of on*  
21 *the lands; and*

22           (3) *if the assessment under paragraph (2) shows*  
23 *that hazardous substances were stored, released, or*  
24 *disposed of on the lands, include in its notice under*

1       *paragraph (2) to the Secretary of the Interior and the*  
2       *Eastern Band of Cherokee Indians—*

3               *(A) the type and quantity of such hazardous*  
4       *substances;*

5               *(B) the time at which such storage, release,*  
6       *or disposal took place on the lands; and*

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

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

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

14   **SEC. 7. GAMING PROHIBITION.**

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

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[Report No. 115-584]

A BILL

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