

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

January 12, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 146 (Rep. Chuck Fleischmann)**, To take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians, and for other purposes. “*Eastern Band Cherokee Historic Lands Reacquisition Act*”.
January 17, 2018 at 10:00 a.m.; 1324 Longworth House Office Building

H.R. 146, Eastern Band [of] Cherokee Historic Lands Reacquisition Act

Summary of the Bill

H.R. 146 was introduced by Rep. Charles “Chuck” Fleischmann on January 3, 2017. The bill would place approximately 96 acres of Tennessee Valley Authority (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 pursuant to the Indian Gaming Regulatory Act¹ would be prohibited on the lands placed into trust. The maps referenced in the bill can be found [here](#).

Cosponsors

Rep. Mark Meadows (R-NC), Rep. Paul Cook (R-CA), Rep. Walter B. Jones (R-NC), Rep. David Roe (R-TN), and Rep. Jeff Denham (R-CA).

Background

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 covers over 51,000 acres which is known as the Qualla Boundary and is headquartered in Cherokee, North Carolina.²

After the completion of the Tellico Dam in Loudon County, Tennessee, in 1979, the Tribe continued in active communication with 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

¹ 25 U.S.C. §2701 et seq.

² Veronica E. Valarde Tiller, Tiller’s Guide to Indian Country, third edition, at 587 (2015).

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, as contemplated by the 1984-86 easements.

H.R. 146 places these land parcels into trust for the Tribe.

Section-by-Section Analysis of H.R. 146

Sec. 1. Short Title. Provides the short title of the bill.

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 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 the Secretary of the Interior, TVA and Tribe shall submit any revisions to any maps to the Congressional committees of jurisdiction.
- 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 the Secretary of the Interior, TVA and Tribe 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 this Act, 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 easements, shall be used primarily for memorializing and interpreting history of the Tribe.

- Subsection (c). The 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). Lands placed into trust which are easements shall only be used 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 adequate access for carrying out TVA activities. Further, this subsection provides that TVA shall not be liable for any loss or damage resulting from normal activities.

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.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill; however, the Committee doesn’t anticipate the bill affecting the federal budget.

Administration Position

At an October 4, 2017, legislative hearing before the Subcommittee on Indian, Insular and Alaska Native Affairs, the Trump Administration recommended several technical amendments to provide clarity for TVA’s role in any environmental liability, remedial actions taken by TVA, and unintentional limits on items that may be reinterred to the Tribe pertaining to the Native American Graves Protection and Repatriation Act.³

Anticipated Amendment

The Chairman may offer a technical amendment reflecting any technical amendments proposed by the Administration.

³ 25 U.S.C. 3001 et seq.