

Suspend the Rules and Pass the Bill, H.R. 2088, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
1ST SESSION

H. R. 2088

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

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 ookee Historic Lands Reacquisition Act”.

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

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

12 (1) SEQUOYAH MUSEUM PROPERTY.—Approximately
13 46.0 acres of land generally depicted as
14 “Sequoyah Museum”, “Parcel 1”, and “Parcel 2”
15 on the map titled “Eastern Band of Cherokee His-
16 toric Lands Reacquisition Map 1” and dated April
17 30, 2015.

18 (2) SUPPORT PROPERTY.—Approximately 11.9
19 acres of land generally depicted as “Support Parcel”
20 on the map titled “Eastern Band of Cherokee His-
21 toric Lands Reacquisition Map 2” and dated April
22 30, 2015.

23 (3) CHOTA MEMORIAL PROPERTY AND TANASI
24 MEMORIAL PROPERTY.—Approximately 18.2 acres of
25 land generally depicted as “Chota Memorial 1” and
26 “Tanasi Memorial” on the map titled “Eastern

1 Band of Cherokee Historic Lands Reacquisition Map
2 3” and dated April 30, 2015, and including the
3 Chota Memorial and all land within a circle with a
4 radius of 86 feet measured from the center of the
5 Chota Memorial without regard to the elevation of
6 the land within the circle.

7 (b) PROPERTY ON LANDS.—In addition to the land
8 taken into trust by subsection (a), the improvements on
9 and appurtenances thereto, including memorials, are and
10 shall remain the property of the Eastern Band of Cher-
11 ookee Indians.

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

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

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

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

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

12 (1) CHOTA PENINSULA.—Approximately 8.5
13 acres of land generally depicted as “Chota Memorial
14 2” on the map titled “Eastern Band of Cherokee
15 Historic Lands Reacquisition Map 3” and dated
16 April 30, 2015.

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

22 (b) REVISED MAPS.—Not later than 1 year after the
23 date of a land transaction made pursuant to this section,
24 the Tennessee Valley Authority, after consultation with
25 the Eastern Band of Cherokee Indians and the Secretary

1 of the Interior, shall submit to the Committee on Natural
2 Resources of the House of Representatives and the Com-
3 mittee on Indian Affairs of the Senate revised maps that
4 depict the lands subject to easements taken into trust
5 under this section, including any corrections necessary to
6 the maps described in this section.

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

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

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

16 (b) USE OF LAND.—Except the lands described in
17 section 2(a)(2), the lands subject to this Act shall be used
18 principally for memorializing and interpreting the history
19 and culture of Indians and recreational activities, includ-
20 ing management, operation, and conduct of programs of
21 and for—

22 (1) the Sequoyah birthplace memorial and mu-
23 seum;

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

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

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

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

17 (1) classrooms and conference rooms;

18 (2) cultural interpretation and education pro-
19 grams;

20 (3) temporary housing of guests participating
21 in such programs or the management of the prop-
22 erties and programs; and

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

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

3 (1) paragraph (1), shall be for a recreational
4 trail from the general vicinity of the parking lot to
5 the area of the Chota Memorial and beyond to the
6 southern portion of the peninsula, including inter-
7 preitive signs, benches, and other compatible im-
8 provements; and

9 (2) paragraph (2), shall be for a recreational
10 trail between the Chota and Tanasi Memorials, in-
11 cluding interpretive signs, benches, and other com-
12 patible improvements.

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

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

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

23 (1) water use facilities and nonhabitable struc-
24 tures, facilities, and improvements not subject to se-
25 rious damage if temporarily flooded on the land ad-

1 joining the Tellico Reservoir side of the lands subject
2 to this Act that lie between the 815-foot and 820-
3 foot (MSL) contour elevations, but only after having
4 received written consent from the Tennessee Valley
5 Authority and subject to the terms of such approval;
6 and

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

16 (c) INGRESS AND EGRESS.—The Eastern Band of
17 Cherokee Indians may use the lands subject to this Act
18 and Tellico Reservoir for ingress and egress to and from
19 such land and the waters of the Tellico Reservoir and to
20 and from all structures, facilities, and improvements main-
21 tained in, on, or over such land or waters.

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

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

4 (1) draw down Tellico Reservoir;

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

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

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

17 (g) ENTRY ONTO LAND.—To the extent that the
18 Tennessee Valley Authority’s operations on the lands sub-
19 ject to this Act do not unreasonably interfere with the
20 Eastern Band of Cherokee Indians’ maintenance of an ap-
21 propriate setting for the memorialization of Cherokee his-
22 tory or culture on the lands and its operations on the
23 lands, the Eastern Band of Cherokee Indians shall allow
24 the Tennessee Valley Authority to enter the lands to clear,
25 ditch, dredge, and drain said lands and apply larvicides

1 and chemicals thereon or to conduct bank protection work
2 and erect structures necessary in the promotion and fur-
3 therance of public health, flood control, and navigation.

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

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

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

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

18 (3) wave action in Tellico Reservoir; or

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

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

23 (1) retain sole and exclusive Federal responsi-
24 bility and liability to fund and implement any envi-
25 ronmental remediation requirements that are re-

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

6 (2) prior to the acquisition in trust, carry out
7 an assessment and notify the Secretary of the Inte-
8 rior and the Eastern Band of Cherokee Indians
9 whether any hazardous substances were stored on
10 the lands and, if so, whether those substances—

11 (A) were stored for 1 year or more on the
12 lands;

13 (B) were known to have been released on
14 the lands; or

15 (C) were known to have been disposed of
16 on the lands; and

17 (3) if the assessment under paragraph (2)
18 shows that hazardous substances were stored, re-
19 leased, or disposed of on the lands, include in its no-
20 tice under paragraph (2) to the Secretary of the In-
21 terior and the Eastern Band of Cherokee Indians—

22 (A) the type and quantity of such haz-
23 ardous substances;

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

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

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

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

8 **SEC. 7. GAMING PROHIBITION.**

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

12 **SEC. 8. DETERMINATION OF BUDGETARY EFFECTS.**

13 The budgetary effects of this Act, for the purpose of
14 complying with the Statutory Pay-As-You-Go Act of 2010,
15 shall be determined by reference to the latest statement
16 titled “Budgetary Effects of PAYGO Legislation” for this
17 Act, submitted for printing in the Congressional Record
18 by the Chairman of the House Budget Committee, pro-
19 vided that such statement has been submitted prior to the
20 vote on passage.