

POARCH BAND OF CREEK INDIANS LAND  
REAFFIRMATION ACT

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JANUARY 11, 2018.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1532]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1532) to reaffirm that certain land has been taken into trust for the benefit of the Poarch Band of Creek Indians, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1532 is to reaffirm that certain land has been taken into trust for the benefit of the Poarch Band of Creek Indians.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1532 would “reaffirm” and “ratify” the trust status of approximately 390 acres of land the Secretary of the Interior acquired in trust for benefit of the Poarch Band of Creek Indians of Alabama. The Tribe currently operates casinos regulated pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on a portion of the lands under consideration, along with a health clinic, an assisted living facility and other facilities.

The Poarch Band of Creek Indians is located approximately 56 miles north of Mobile, Alabama. The Poarch Band is a segment of the original Creek Nation which covered areas of Alabama and Georgia. After the conclusion of the War of 1812, the Creeks who supported the United States subsequently signed the Treaty of Fort Jackson which resulted in the ceding of land in Alabama. In 1836,

many Creeks were removed from Alabama to the Oklahoma territory. Some Creek Indians remained around the town of Poarch, remaining a cohesive tribal group.

After fighting for decades to be recognized as a distinct tribe, the Poarch Band was administratively recognized by the Bureau of Indian Affairs on August 11, 1984. After obtaining federal recognition, the Tribe acquired lands in both Alabama and Florida, and these lands were then placed in trust by the Secretary of the Interior under the authority of section 5 of the Indian Reorganization Act (IRA, 25 U.S.C. 5108), which gives the Secretary exceptionally broad power to acquire lands in trust for Indians. Land held in trust for Indians is generally immune from State and local jurisdiction and taxation, and depending on the location of the land and the date it was put in trust, a Tribe may be able to operate a casino on it pursuant to the Indian Gaming Regulatory Act. Accordingly, the Poarch Creeks own and operate two Indian casinos and maintain several facilities for the use of its members on its trust lands.

The need for H.R. 1532 arises because the lawfulness of lands acquired in trust by the Secretary pursuant to the IRA for the benefit of tribes recognized after 1934 (i.e., the date of enactment of the IRA) is in question because of the U.S. Supreme Court decision in *Carcieri v. Salazar* (555 U.S. 379 (2009)). The Poarch Band is one such tribe.

Until *Carcieri*, the Secretary used the IRA as the basis for placing land in trust for tribes recognized at any time. However, the Supreme Court determined that trust land provisions of the IRA may be used only for the benefit of tribes “under federal jurisdiction” as of the date of enactment of the IRA. Since 2009, the Department of the Interior (DOI) has failed to divulge to the Committee the names of tribes that were or were not under federal jurisdiction in 1934 despite repeated requests for this information from Republican leaders of the Committee. Moreover, a controversial “M–Opinion” interpreting the meaning of “under federal jurisdiction” was issued by President Obama’s DOI Solicitor to provide legal backing to the continued acquisition of lands for tribes recognized after 1934. Thus, rather than work with the Committee to find a resolution to *Carcieri*, the Obama Administration increased the potential for litigation over the trust status of untold acres of lands owned by tribes.

The Committee has held several oversight and legislative hearings to address *Carcieri* and to explore potential reforms to improve the land-in-trust process administered by DOI. It is important to note that the trust acquisition authority in section 5 of the IRA has never been substantively amended since the IRA was enacted in 1934.

One of the oversight hearings held on *Carcieri* and the IRA includes a 2015 hearing in which the Poarch Band of Creek Indians testified as to its situation.<sup>1</sup> According to the Tribe, many of its lands were placed in trust prior to 2009 pursuant to the IRA, and these trust lands have been developed with the construction of buildings and businesses, including casinos. If a court were to de-

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<sup>1</sup> Oversight Hearing House Subcommittee on Indian, Insular and Alaska Native Affairs. *Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934*. May 14, 2015.

cide these lands are not lawfully held in trust on the grounds the Poarch Band was recognized after 1934, the lands could lose their trust status, exposing the Tribe to State taxation and civil regulation, which in turn could lead to the closure of tribal businesses and the dismantling of facilities. In addition, the Tribe's casinos would become subject to Alabama State law, which could lead to the modification or closure of the gambling facilities, which employ large numbers of people and generate revenues for the Tribe's government.

Like other post-1934 tribes, passing a "clean *Carcieri* fix" (a reversal of the Supreme Court opinion) is a high priority of the Poarch Creeks. On the other hand, there are various governments, government organizations (including certain tribes), private landowners, and citizen activists who oppose a "clean *Carcieri* fix" unless limits are placed on the power of the Secretary to acquire title to land, limits that reflect a reasonable balancing of interests of all affected by a trust acquisition. As explained by the chief legal officers of several states:

Each exercise of the Secretary's authority to take land into trust has substantial impact on state and local communities. . . .

The *Carcieri* decision is only one highly visible example of the larger frustration many states feel with the existing regulatory process for taking land into trust. The current process does not provide for meaningful analysis or weighing of the input of states and local units of government and is void of binding limits on the discretion of the Secretary.<sup>2</sup>

Until a bill to resolve *Carcieri* is enacted, certain tribes may seek to have the trust status of their existing lands legislatively ratified, especially those lands acquired prior to 2009. Accordingly, H.R. 1532 ratifies the trust status of certain lands held by the United States for the Poarch Band. The approximately 390 acres of land identified in H.R. 1532 were acquired in trust prior to the *Carcieri* decision in 2009, and are located in Alabama, while a one-acre parcel is located in Escambia County, Florida. The Committee has received no correspondence from the Alabama or Florida Congressional delegations or other elected officials from the affected areas in Alabama and Florida in opposition to the ratification of trust lands identified in H.R. 1532.

It is important to note that the State of Alabama was one of 21 States to submit a friend-of-the-court brief to the Supreme Court in support of the petition filed by Rhode Island in the *Carcieri* lawsuit. These States generally argued that the Secretary lacked power under the IRA to acquire land in trust for tribes recognized after 1934. The position of these States, including Alabama, does not necessarily indicate opposition to or concern with H.R. 1532.

It is also important to note that the Muscogee (Creek) Nation of Oklahoma has testified before the Natural Resources Committee as to concerns with a parcel of land taken in trust for the Poarch

<sup>2</sup>Letter to the Chairmen and Vice Chairman and Ranking Member of the Senate Committee on Indian Affairs and the House Natural Resources Committee from the Attorneys General of Alaska, Colorado, Connecticut, Florida, Hawaii, Iowa, Kansas, Massachusetts, Michigan, Mississippi, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, and Utah, dated April 24, 2009.

Band and subsequently developed by the Tribe for a gambling facility.<sup>3</sup> The Muscogee (Creek) Nation has argued that such lands known as Hickory Ground are a sacred site containing (or formerly containing until their removal) the remains of Creek ancestors. Members of the Committee, however, have not indicated an interest in using H.R. 1532 as a vehicle to resolve this controversy between the two tribes.

#### SECTION-BY-SECTION ANALYSIS OF THE BILL

*Section 1. Short title.* This section provides the short title of the bill, the Poarch Band of Creek Indians Land Reaffirmation Act.

*Section 2. Reaffirmation of Indian trust land.* Subsection (a) provides that lands described in subsection (b) are confirmed to be held in trust and remain as Indian Country (the term “Indian Country” denotes lands over which the federal government or a tribe exercise certain federal civil and criminal jurisdiction). Subsection (b) provides acreage and legal descriptions for the lands to be reaffirmed as trust land for the Poarch Band, totaling 390 acres. Subsection (c) provides that this Act shall supersede any claims against the trust status of the 390 acres of land described under subsection (b).

#### COMMITTEE ACTION

H.R. 1532 was introduced on March 15, 2017, by Congressman Bradley Byrne (R-AL). 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 November 7, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent on November 8, 2017.

#### 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:

<sup>3</sup> <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398481>

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 10, 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. 1532, the Poarch Band of Creek Indians Land Reaffirmation 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. 1532—Poarch Band of Creek Indians Land Reaffirmation Act*

H.R. 1532 would reaffirm the status of lands taken into trust by the Department of the Interior for the benefit of the Poarch Band of Creek Indians. The legislation also would prohibit any lawsuits related to the trust land. CBO estimates that implementing the legislation would have no significant effect on the federal budget and would not significantly increase the cost of managing tribal trust lands.

Enacting H.R. 1532 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1532 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1532 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 reaffirm that certain land has been taken into trust for the benefit of the Poarch band of Creek Indians.

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 duplicative 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.

