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SENATE

{ REPORT
105-80

BOUNDARY WATERS CANOE AREA WILDERNESS ACCESSIBILITY AND FAIRNESS ACT OF 1997

SEPTEMBER 11, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 783]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 783) to increase the accessibility of the Boundary Waters Canoe Area Wilderness, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Boundary Waters Canoe Area Wilderness Accessibility and Fairness Act of 1997”.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the national interest to protect, preserve, and improve for the long term the diverse resources of the Boundary Waters Canoe Area Wilderness for the benefit of the people of the United States;

(2) the Boundary Waters Canoe Area Wilderness is a unique wilderness area dedicated to appropriate public access and use through historically recognized motorized and nonmotorized recreational activities consistent with the protections afforded by and the commitments made in the Wilderness Act (16 U.S.C. 1131 et seq.) and the Act entitled “An Act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes”, approved October 21, 1978 (Public Law 95-495; 92 Stat. 1649);

(3) few other units of the National Wilderness Preservation System have been created from more densely populated and heavily utilized regions than the Boundary Waters Canoe Area Wilderness; and

(4) the cessation of traditional motorized transport on 3 portages between lakes on which the use of a motorboat is permitted in the Boundary Waters Canoe Area Wilderness unfairly restricts traditional and recognized public use

of the wilderness and causes unnecessary hardship to individuals and families who have physical difficulty accessing the area.

SEC. 3. EXTENSION OF ALLOWABLE USES WITHIN CERTAIN PORTIONS OF THE BOUNDARY WATER CANOE AREA WILDERNESS.

(a) SEAGULL LAKE.—Section 4(c) of the Act entitled “An Act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes”, approved October 21, 1978 (Public Law 95–495; 92 Stat. 1650) is amended—

(1) in paragraph (2), by striking “, that portion generally east of Threemile Island,”; and

(2) in paragraph (3), by striking “Sea Gull, Cook County, that portion generally west of Threemile Island, until January 1, 1999;”.

(b) MOTORIZED PORTAGES.—Section 4 of the Act entitled “An Act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes”, approved October 21, 1978 (Public Law 95–495; 92 Stat. 1650) is amended by striking subsection (g) and inserting the following:

“(g) MOTORIZED PORTAGES.—The Secretary shall permit the operation of motorized vehicles and associated equipment to transport boats across the portage between the Moose Lake chain and Basswood Lake, between Fall Lake and Basswood Lake, and between Vermilion Lake and Trout Lake.”.

PURPOSE

The purpose of S. 783 is to direct the Secretary of Agriculture to permit the use of motors at three portages within the Boundary Waters Canoe Area Wilderness. It would also delete a provision in the 1978 Boundary Waters Canoe Area Wilderness Act that would have phased out the use of motor boats on a portion of Sea Gull Lake within the wilderness.

BACKGROUND AND NEED

The Boundary Waters Canoe Area Wilderness (BWCAW) is the only lakeland-based wilderness area in the continental United States. Encompassing over 1.3 million acres, it is located on the northern edge of the Superior National Forest, in Minnesota. Under the leadership of the late U.S. Senator, Hubert Humphrey, this area was first included in the National Wilderness Preservation System in 1964.

The 1978 BWCAW Act, which created the present-day wilderness, limited the number of lakes that were open to motorboats, curtailed most snowmobile use, and restricted motor access through a quota system and other restrictions. The 1978 Act allowed for motorboat use on 18 of the 1,175 lakes and the operation of three truck-operated portages within the BWCAW. The Act strictly outlawed logging, mining, commercial, and residential development.

The Act further specified that, barring feasible alternatives, trucks or other motor conveyances could be used to transport boats, gear on the longest portages (Prairie, Trout and Fourmile) between the lakes on which motors were still allowed. After a study by the University of Minnesota, the Forest Service determined there was no feasible alternative to motorized portages. This allowed the trucks to remain. However, the 8th Circuit Court of appeals adopted a narrower definition of the term “feasible” and ordered the motorized portages closed in 1992.

The bill would also affect Seagull Lake on the periphery of the eastern section of the Boundary Waters Canoe Area Wilderness.

The lakeshore boasts 52 homes and one resort. Under current law, within the wilderness, ten horsepower motors are permitted until the year 1999. After 1999, motor boats would be prohibited in a portion of the lake within the wilderness. S. 783 would permit 10 horsepower motors to be used permanently on all of the lake's within the wilderness.

LEGISLATIVE HISTORY FOR S. 783

S. 783 was introduced on May 22, 1997 by Senator Rod Grams of Minnesota. On June 26, 1997 a hearing was held by the Subcommittee on Forests and Public Land Management. A markup was held on July 30, 1997, at which time the Committee ordered the bill reported with a favorable recommendation.

In the 104th Congress, Senator Grams introduced a similar bill, S. 1738 on May 8, 1996. No action was taken by the Senate during the 104th Congress on the bill.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 30, 1997, by majority vote of a quorum present, recommends that the Senate pass S. 783 if amended as described here in.

The rollcall vote on reporting the measure was 11 yeas, and 9 nays, as follows:

YEAS	NAYS
Mr. Murkowski	Mr. Bumpers
Mr. Domenici	Mr. Ford
Mr. Nickles	Mr. Bingaman ¹
Mr. Craig	Mr. Akaka
Mr. Campbell ¹	Mr. Dorgan
Mr. Thomas	Mr. Graham ¹
Mr. Kyl	Mr. Wyden
Mr. Grams	Mr. Johnson
Mr. Smith	Ms. Landrieu ¹
Mr. Gorton	
Mr. Burns ¹	

¹Indicates votes by proxy.

COMMITTEE AMENDMENTS

The Committee amendment was offered to clarify a number of technical changes.

SECTION-BY-SECTION

Section 1 of the bill provides the short title, the Boundary Waters Canoe Area Wilderness Accessibility and Fairness Act of 1997.

Section 2 contains four findings that are self-explanatory.

Section 3 of the bill allows ten horsepower motorboats to continue to operate west of Threemile Island on Seagull Lake after the year 1999. This section also amends the 1978 BWCAW law to direct the Secretary of Agriculture to allow motorized transport on Prairie, Trout and Fourmile portages.

COST AND BUDGETARY CONSIDERATIONS AND FEDERAL MANDATE
EVALUATION

The following estimate of costs of this measure and Federal mandate evaluation has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 7, 1997.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 783, the Boundary Waters Canoe Area Wilderness Accessibility and Fairness Act of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 783—Boundary Waters Canoe Area Wilderness Accessibility and Fairness Act of 1997

CBO estimates that enacting this bill would have no significant impact on the federal budget. Because S. 783 could affect offsetting receipts, pay-as-you-go procedures would apply; however, CBO estimates that any such effects would be negligible. S. 783 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would have no significant impact on the budgets of state, local, or tribal governments.

S. 783 would remove some current restrictions on the use of motorboats on Sea Gull Lake in Cook County, Minnesota, and also would require the Secretary of Agriculture to allow motorized vehicles and associated equipment to be used to transport boats across three portages in the Boundary Waters Canoe Area Wilderness. Based on information from the U.S. Forest Service, CBO expects that enacting this bill could increase the offsetting receipt from permit fees to use the portages, but we estimate that any such effects would be negligible.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 783.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals or businesses. The bill would remove some restrictions on uses in certain portions of the Boundary Waters Canoe Wilderness Area.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little if any additional paperwork would result from the enactment of S. 783.

EXECUTIVE COMMUNICATION

The administration testified in opposition to the legislation at a June 26, 1997 hearing held by the Subcommittee on Forests and Public Land Management. Legislative reports from the Department of Agriculture, the Department of the Interior, and the Office of Management and Budget setting forth Executive agency recommendations on S. 783 were unavailable at the time the report was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act S. 783, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 95-495—95th Congress

AN ACT To designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes

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ADMINISTRATION

SEC. 4. (a) * * *

* * * * *

(2) On the following lakes and river, motorboats with motors no greater than ten horsepower shall be permitted: Clearwater, Cook County; North Fowl, Cook County; South Fowl, Cook County; Island river east of Lake Isabella, Lake County; Sea Gull, **that portion generally east of Threemile Island,** Cook County; Alder, Cook County; Canoe, Cook County.

(3) On the following lakes, or specified portions of lakes, motorboats with motors of no greater than ten horsepower shall be permitted until the dates specified: Basswood River to and including Crooked Lake, Saint Louis and Lake Counties, until January 1, 1984; Carp Lake, the Knife River, and Knife Lake, Lake County, until January 1, 1984; **Sea Gull, Cook County, that portion generally west of Threemile Island, until January 1, 1999;** Brule, Cook County, until January 1, 1994, or until the termination of operation of any resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

* * * * *

Nothing in this Act shall be deemed to require the termination of the existing operation of motor vehicles to assist in the

transport of boats across the portages from Sucker Lake to Basswood Lake, from Fall Lake to Basswood Lake, and from Lake Vermilion to Trout Lake, during the period ending January 1, 1984. Following said date, unless the Secretary determines that there is no feasible nonmotorized means of transporting boats across the portages to reach the lakes previously served by the portages listed above, he shall terminate all such motorized use of each portage listed above.】

(g) MOTORIZED PORTAGES.—The Secretary shall permit the operation of motorized vehicles and associated equipment to transport boats across the portage between the Moose Lake chain and Basswood Lake, between Fall Lake and Basswood Lake, and between Vermilion Lake and Trout Lake.