

BWCAW ACCESSIBILITY AND FAIRNESS ACT OF 1997

APRIL 29, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1739]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1739) to amend the Act designating the Boundary Waters Canoe Area Wilderness to clarify certain provisions of law regarding activities authorized within the wilderness area, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend 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 “BWCAW Accessibility and Fairness Act of 1997”.

SEC. 2. FINDINGS AND DECLARATIONS.

The Congress finds and declares that 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.

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

(a) SEAGULL LAKE.—Section 4(c) of the Act of October 21, 1978, 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” (Public Law 95-495; 92 Stat. 1649, 1650) is amended as follows:

(1) In paragraph (2), by striking “, that portion generally east of Threemile Island, Cook County”.

(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(g) of the Act of October 21, 1978, 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” (Public Law 95–495; 92 Stat. 1649, 1651) is amended to read as follows:

“(g) Nothing in this Act shall be construed to prevent the operation (in the same manner as in 1992) of motorized vehicles to transport boats across the portages between the Moose Lake chain and Basswood Lake, between Fall Lake and Basswood Lake, and between Vermilion Lake and Trout Lake.”.

(c) **PROHIBITION OF SUBSIDIES.**—Section 4 of such Act is amended by adding the following new subsection at the end thereof:

“(j) **SUBSIDY FOR MOTORIZED PORTAGES PROHIBITED.**—No Federal funds may be used to operate or to assist in any way in the operation of any motorized portage within the wilderness area.”.

PURPOSE OF THE BILL

The purpose of H.R. 1739 is to amend the Act designating the Boundary Waters Canoe Area Wilderness to clarify certain provisions of law regarding activities authorized within the wilderness area, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Boundary Waters Canoe Area Wilderness is the only lake-land-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.

The Boundary Waters Canoe Area was included as part of the original 1964 Wilderness Preservation Act; however, to gain official wilderness designation for the Boundary Waters, Former Senator Hubert Humphrey (D-MN) made a compromise which allowed for motor-use to continue. The compromise allowed for motors on a limited number of lakes and limited motorized transport of boats, motors, gear and people across land between motorized lakes as well as some logging, mining and snowmobiling.

In 1978, another agreement further clarified specific uses within the wilderness. This agreement allowed the use of 25-horsepower motors on a limited number of lakes and limited motorized transport of boats, motors, gear and people across land between motorized lakes.

In 1992, a lawsuit was settled challenging the use of three of the existing portages that allowed access between motorized lakes. This lawsuit betrayed the 1978 agreement, and removed motorized access from these three portages.

H.R. 1739 would re-open the three portages of Prairie, Trout and Four Mile to motorized transport allowing for boats to be transported mechanically between motorized lakes. The bill would also suspend the ten horse-power motor restriction proposed take effect in 1999 on Seagull Lake. This keeps the current situation which imposes a ten-horsepower motor restriction on all the lake inside the designated wilderness area and no restriction on the portion outside the wilderness. All non-motorized paddle only lakes will remain paddle only under this bill.

COMMITTEE ACTION

H.R. 1739 was introduced on May 22, 1997, by Congressman James L. Oberstar (D-MN). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Forests and Forest Health. On September 9, 1997, the Subcommittee held a hearing on H.R. 1739, where the Administration testified in opposition to the bill. In its view, the bill does not provide a solution to the existing controversy, and it may increase the current polarization of the issue. On October 7, 1997, the Subcommittee met to mark up H.R. 1739. An amendment to maintain current law for Seagull Lake was offered by Congressman Bruce Vento (D-MN) which failed by voice vote. Mr. Vento offered an amendment to insure that only those portages that were motorized in 1992 can be motorized under H.R. 1739; this amendment also failed by voice vote. An amendment to limit motorized portages solely to trucks and trailers and not other commercial operations was offered by Mr. Vento, and failed by voice vote. An amendment to prohibit federal subsidies for private portages was offered by Mr. Vento, and failed on a 3-4 roll call vote, as follows:

**Committee on Resources
Subcommittee on Forests and Forest Health
U.S. House of Representatives
105th Congress**

Date: October 7, 1997

Bill No. HR 1739 Short Title: Amend Boundary Waters Canoe Area Wilderness

Amendment or matter voted on: Amendment #6 Offered by: Vento

Member	Yes	No	Present
Mrs. Chenoweth (Chairman)		x	
Mr. Hansen			
Mr. Doolittle		x	
Mr. Radanovich		x	
Mr. Peterson			
Mr. Hill		x	
Mr. Schaffer	x		
<i>Mr. Hinchey</i>			
<i>Mr. Vento</i>	x		
<i>Mr. Kildee</i>	x		
<i>Mr Faleomavaega</i>			
TOTAL	3	4	

An amendment to keep Four Mile Portage non-motorized was offered by Mr. Vento, which failed on voice vote. An amendment to close Alder, Canoe, and Loon Lakes and Lac la Croix to motorboats was offered by Mr. Vento, and failed by voice vote. The bill was then ordered favorably reported to the Full Committee by roll call vote of 5-2, as follows:

**Committee on Resources
Subcommittee on Forests and Forest Health
U.S. House of Representatives
105th Congress**

Date: October 7, 1997

Bill No. HR 1739 Short Title: Amend Boundary Waters Canoe Area Wilderness

Amendment or matter voted on: Final Passage

Member	Yea	Nay	Present
Mrs. Chenoweth (Chairman)	x		
Mr. Hansen			
Mr. Doolittle	x		
Mr. Radanovich	x		
Mr. Peterson			
Mr. Hill	x		
Mr. Schaffer	x		
<i>Mr. Hinchey</i>			
<i>Mr. Vento</i>		x	
<i>Mr. Kildee</i>		x	
<i>Mr Faleomavaega</i>			
TOTAL	5	2	

On October 22, 1997, the Full Resources Committee met to consider H.R. 1739. An en bloc amendment to prohibit subsidies for motorized portages, limit motorized portages to those mentioned in the bill, and limit motorized portages solely to trucks and trailers and not other commercial operations was offered by Congresswoman Helen Chenoweth (R-ID), and adopted by voice vote. Regarding the prohibition against subsidizing motorized portages, the Committee intends that the amendment affect only motorized concessions meant to provide portaging services. The U.S. Forest Service is still required to provide adequate funding to maintain the portages and effectively manage and supervise the concessions operating them in the same manner as in 1992 and before, just as

it is responsible for maintaining, managing and supervising all other lands and waters in the Boundary Waters Canoe Area. Mr. Vento then offered three amendments which all failed by voice vote. The first amendment struck the portion of the bill which reopened Seagull Lake to motorboats. The second amendment retained Four Mile portage as a nonmotorized portage. The third amendment closed Alder, Canoe, and Loon Lakes and Lac la Croix to motorboats. The bill as amended was then ordered favorably reported by a roll call vote of 22-7 to the House of Representatives, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 10-22-97Roll No. 1Bill No. H.R. 1739 Short Title "BWCAW Accessibility and Fairness Act of 1997"Amendment or matter voted on: FINAL PASSAGE

Mr. Young (Chairman)	X			Mr. Miller			
Mr. Tauzin	X			Mr. Markey			
Mr. Hansen	X			Mr. Rahall			
Mr. Saxton				Mr. Vento		X	
Mr. Gallegly				Mr. Kildee			
Mr. Duncan				Mr. DeFazio	X		
Mr. Hefley				Mr. Faleomavaega		X	
Mr. Doolittle	X			Mr. Abercrombie			
Mr. Gilchrest		X		Mr. Ortiz	X		
Mr. Calvert	X			Mr. Pickett	X		
Mr. Pombo	X			Mr. Pallone			
Mrs. Cubin				Mr. Dooley			
Mrs. Chenoweth	X			Mr. Romero-Barcelo			
Mrs. Linda Smith	X			Mr. Hinchey		X	
Mr. Radanovich	X			Mr. Underwood	X		
Mr. Jones	X			Mr. Farr			
Mr. Thornberry				Mr. Kennedy		X	
Mr. Shadegg	X			Mr. Adam Smith		X	
Mr. Ensign	X			Mr. Delahunt			
Mr. Bob Smith	X			Mr. John			
Mr. Cannon	X			Ms. Green	X		
Mr. Brady				Mr. Kind		X	
Mr. Peterson	X			Mr. Doggett			
Mr. Hill	X						
Mr. Schaffer	X						
Mr. Gibbons							
Mr. Crapo				TOTAL	22	7	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact H.R. 1739.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1739. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1739 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of H.R. 1739 could affect offsetting receipts by increasing permits fees to use portages, but any effects would be negligible.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1739.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1739 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 1997.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1739, the Boundary Waters Canoe Area Wilderness Accessibility and Fairness Act of 1977.

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.

H.R. 1739—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 H.R. 1739 could affect offsetting receipts, pay-as-you-go procedures would apply; however, CBO estimates that any such effects would be negligible. H.R. 1739 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.

H.R. 1739 would remove some currently planned restrictions on the use of motorboats on Seagull Lake in Cook County, Minnesota, and also would permit motorized vehicles to be used to transport boats across portages in the Boundary Waters Canoe Area Wilderness in the same manner as they were last permitted in 1992. The bill would prohibit federal funds from being used to operate any motorized portages in the wilderness area. Based on information from the U.S. Forest Service, CBO expects the enacting this bill could increase the offsetting receipts 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.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1739 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as 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):

SECTION 4 OF THE ACT OF OCTOBER 21, 1978

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

ADMINISTRATION

SEC. 4. (a) * * *

* * * * *

(c) Effective on January 1, 1979 the use of motorboats is prohibited within the wilderness designated by this Act, and that portion within the wilderness of all lakes which are partly within the wilderness, except for the following:

(1) * * *

(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.

* * * * *

[(g) 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) Nothing in this Act shall be construed to prevent the operation (in the same manner as in 1992) of motorized vehicles to transport boats across the portages between the Moose Lake chain and Basswood Lake, between Fall Lake and Basswood Lake, and between Vermilion Lake and Trout Lake.

* * * * *

(j) SUBSIDY FOR MOTORIZED PORTAGES PROHIBITED.—No Federal funds may be used to operate or to assist in any way in the operation of any motorized portage within the wilderness area.

DISSENTING VIEWS

We oppose H.R. 1739. This proposal is unneeded and should be rejected by the full House.

The 1978 BWCA Wilderness Act, Public Law 95-495, is working. This law, supported by a bipartisan, overwhelming majority in the House and in the Senate, was a responsible compromise. The legislation balanced local recreational concerns with the national interest to preserve the BWCA as a wilderness area. Over twenty percent of the water surface area remains open to motorboats, while the remaining waters offer a wilderness experience unmatched in our country.

This compromise law has been so successful that the BWCAW is the most popular wilderness unit in our entire National Wilderness System. While the area comprises only one percent of the acreage of the entire wilderness system, the BWCAW accounts for over 10 percent of the use of the system. This success is consistent with the commitments made throughout the history of the BWCAW and the representations made by past Minnesota and national lawmakers.

Another measure of the success of the existing BWCAW law has been the response of the Minnesota legislature to H.R. 1739 and its attack on the BWCAW. As a direct response in opposition to the changes proposed by H.R. 1739, the state legislation on the BWCA has been introduced in the Minnesota House and Senate. This bipartisan legislation would continue the current level of restrictions on motorized use in the wilderness. The legislation has broad bipartisan support with over 75 Senate and House members from all regions of the state included as authors.

H.R. 1739 would undo two provisions of the 1978 compromise. The legislation would restore trucks to three portages in the wilderness area—Trout Portage, Prairie Portage, and Four Mile Portage. Public Law 95-495 takes a definite position on motorized portages. The 95th Congress thought that this issue was important enough to address through specific provisions in the law. It is not an issue upon which Congress was silent. Clearly and without any ambiguity, the law states:

* * * 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.

To further underline Congressional intent on the use of trucks, Chairman Phil Burton, the floor manager of the legislation, defined "feasible" during the actual floor debate on the Conference Report. He stated "feasible meant a method involving two able-bodied resort guests and one able-bodied guide." The Chairman and the lead

author of the bill went on to state: "I would expect that the Secretary will terminate motorized use of these portages."

The Congressional record is clear. Motorized use of these portages was to be eliminated, a position upheld by the Federal courts. The removal of trucks from the portages has not diminished motorized access. The latest Forest Service numbers on use levels for 1996 show that motorboats continue intense use of the lakes connected by the portages in question at close to the ceiling established by law and administered by the National Forest Service.

Last year for Basswood Lake, over 100 percent of the day use motorboat permits were used (2,427 permits used out of 2,375 available). For Trout Lake, 413 out of 588 available permits were used. This high use level is not a deviation from past use. In fact, over the past two years, even though trucks were not allowed on the portages, near capacity levels of motorboat use on Basswood Lake and Trout Lake have been the norm. For the 1995 through 1996 seasons, over 98 percent of the motorboat permits on these two lakes have been used. It is important to remember that each permit can be used for up to 4 motorboats, a practice that is common for Basswood Lake. Under conservative estimates, that would mean up to nearly 10,000 motorboats have used Basswood Lake and nearly 2,000 motorboats have used Trout Lake over the past two years, an average of 6,000 motorboats per year for these two lakes.

As the Forest Service data demonstrates, even after the trucks were removed from the portages, access to Trout and Basswood was and is available. For individuals who do not want to or cannot portage their own boat, commercial, non-motorized portage services are available for Prairie Portage. Free market advocates should note that a commercial, non-motorized portage service was available for the Trout Lake portage, but was discontinued because people chose not to use it.

Nearly 6,000 motorboats each year can't be wrong—a feasible, nonmotorized means of transporting boats across the portages exist and motorized portages should not and need not be reintroduced into the BWCA.

Nor are the motorized portages necessary for the disabled. Individuals are not being denied access on the basis of personal disability. In fact, organizations such as the Minnesota State Council on Disability, the official state body that represents the disabled, Wilderness Inquiry, the American Amputee Foundation, and Disabled Sports USA oppose efforts to introduce motorized vehicles into the wilderness to accommodate the disabled.

The 1978 compromise law provided a 20 year phase-out of motors on a portion of Sea Gull Lake. H.R. 1739 would stop that 1999 phase-out and permanently keep open 3,600 more acres of water in the BWCAW to motorboats, fragmenting the 1978 efforts at compromise.

H.R. 1739 is yet another example of the Committee's ongoing attack against our national conservation system. Foiled in their attempts to force wholesale changes in the 104th Congress, this Committee is now slowly seeking to dismantle our special wilderness system, our National Parks, and our legacy to future generations.

Despite the fact that in a recent nationwide poll, 70 percent of the American people opposed reintroducing trucks and jeeps in the BWCAW, the Committee is moving ahead with its agenda. From the designation of the Superior National Forest by President Teddy Roosevelt to the inclusion of the Boundary Waters Canoe Area in the original Wilderness Act by Senator Hubert Humphrey, strong voices on both sides of the issue have been heard. But each and every time that the national government has been called on to act, the American people and their elected leaders have recognized the BWCA wilderness as a special area. Hopefully, this Congress will not retreat from a century of commitment to this national treasure.

BRUCE F. VENTO.
MAURICE HINCHEY.
ENI FALEOMAVAEGA.
GEORGE MILLER.

