

1 **EFFECT OF SENATE BILL S.2877 ON SECTION 4 OF THE**
2 **WILDERNESS ACT OF 1964**

3
4 *The current language in the Wilderness Act of 1964, § 4 (see 16 U.S.C. § 1133) is:*

5 **PROHIBITION OF CERTAIN USES**

6 (c) Except as specifically provided for in this Act, and subject to existing private rights,
7 there shall be no commercial enterprise and no permanent road within any wilderness
8 area designated by this Act and, except as necessary to meet minimum requirements for
9 the administration of the area for the purpose of this Act (including measures required in
10 emergencies involving the health and safety of persons within the area), there shall be no
11 temporary road, no use of motor vehicles, motorized equipment or motorboats, no
12 landing of aircraft, no other form of mechanical transport, and no structure or installation
13 within any such area.

14 *Under the Human-Powered Travel in Wilderness Areas Act, Senate Bill S.2877 (introduced*
15 *by Sen. Lee of Utah on May 17, 2018), the language would read:*

16 **(c) PROHIBITION OF CERTAIN USES.—**

17 (1) **DEFINITIONS.—**In this subsection:

18 (A) **LOCAL OFFICIAL.—**The term “local official” means the officer or employee
19 who is the head of a unit or jurisdiction of, as applicable—

20 (i) the Bureau of Land Management;

21 (ii) the National Park Service;

22 (iii) the Forest Service; or

23 (iv) the United States Fish and Wildlife Service.

24 (B) **NONMOTORIZED TRAVEL.—**The term “nonmotorized travel” means a
25 method of human travel that does not use a propulsive internal or external
26 motor with a nonliving power source.

27 (C) **PERMITTED ROUTE.—**The term “permitted route” means any new or
28 existing path, trail, paved or unpaved road, or way over snow or ice, located

1 within a wilderness area designated by this Act on which 1 or more forms of
2 nonmotorized recreational use is permitted under applicable law (including
3 regulations) on the date on which a local official makes a determination under
4 paragraph (3) or the date that is 2 years after the date of enactment of the
5 Human-Powered Travel in Wilderness Areas Act, as applicable in accordance
6 with paragraph (3).

7 (2) PROHIBITIONS.—

8 (A) COMMERCIAL ENTERPRISES; PERMANENT ROADS.—Except as specifically
9 provided for in this Act, and subject to existing private rights, there shall be no
10 commercial enterprise and no permanent road within any wilderness area
11 designated by this Act.

12 (B) TEMPORARY ROADS; MOTOR VEHICLES, MOTORIZED EQUIPMENT, AND OTHER
13 FORMS OF TRAVEL.—Except as necessary to meet minimum requirements for
14 the administration of the area for the purpose of this Act (including measures
15 required in emergencies involving the health and safety of persons within the
16 area), there shall be no temporary road, no use of motor vehicles, motorized
17 equipment or motorboats, no landing of aircraft, no other form of mechanical
18 transport (but not including any form of nonmotorized travel, regardless of
19 whether the travel is mechanically assisted, in which the sole propulsive power
20 source is 1 or more persons), and no structure or installation within any such
21 area.

22 (3) PERMISSIBLE FORMS OF RECREATIONAL USE ON PERMITTED ROUTES.—

23 (A) DETERMINATIONS BY LOCAL OFFICIALS.—

24 (i) IN GENERAL.—Notwithstanding any other provision of law, the
25 Secretary of Agriculture and the Secretary of the Interior shall authorize
26 relevant local officials to determine, by not later than 2 years after the date
27 of enactment of the Human-Powered Travel in Wilderness Areas Act, all
28 permissible forms of nonmotorized travel over any permitted route within
29 the jurisdiction of the local official.

30 (ii) FAILURE TO DETERMINE.—

31 (I) IN GENERAL.—If a local official fails to make the determination
32 described in clause (i) with respect to a permitted route within the
33 jurisdiction of the local official by the date that is 2 years after the date

1 of enactment of the Human-Powered Travel in Wilderness Areas Act,
2 any form of nonmotorized travel shall be allowable on the permitted
3 route.

4 (II) EFFECT OF CLAUSE.—Nothing in this clause limits the authority
5 of a local official to make a determination described in clause (i)
6 relating to a permitted route described in subclause (I) after the date
7 that is 2 years after the date of enactment of the Human-Powered
8 Travel in Wilderness Areas Act, in accordance with this
9 subparagraph.

10 (iii) REQUIREMENT.—In making a determination pursuant to this
11 subparagraph, a local official shall seek to accommodate all forms of
12 nonmotorized travel, to the maximum extent practicable.

13 (B) AUTHORITY.—In making a determination pursuant to subparagraph (A), a
14 local official may carry out such activities and promulgate such regulations as
15 the local official determines to be appropriate to reduce, eliminate, or prevent
16 environmental impacts or undue conflicts among members of nonmotorized
17 user groups, including—

18 (i) restricting, by permit or other means, the number of individuals
19 allowed on a permitted route or in a wilderness area;

20 (ii) instructing users to stay on permitted routes;

21 (iii) limiting party size;

22 (iv) educating users regarding best practices;

23 (v) using volunteer or paid patrollers;

24 (vi) establishing speed limits;

25 (vii) adding natural features to discourage improper uses of permitted
26 routes;

27 (viii) designating the direction of travel on a permitted route; and

28 (ix) separating uses of permitted routes—

29 (I) by day or time of day; or

1 (II) seasonally.

2 (4) EFFECT OF SUBSECTION.—

3 (A) IN GENERAL.—Subject to subparagraph (B), nothing in this subsection
4 requires the Secretary of Agriculture, the Secretary of the Interior, or any local
5 official—

6 (i) to alter any wilderness area;

7 (ii) to allow in a wilderness area any use that is likely to change the
8 wilderness character of the area;

9 (iii)(I) to open a permitted route or wilderness area to a public
10 recreational use; or

11 (II) to maintain a permitted route or wilderness area for such a use; or

12 (iv) to allow any nonmotorized travel on any portion of the Appalachian
13 National Scenic Trail that is administered entirely as a footpath pursuant
14 to section 5(a)(1) of the National Trails System Act (16 U.S.C. 1244(a)(1)).

15 (B) PRESUMPTION.—A form of nonmotorized travel, regardless of whether the
16 travel is mechanically assisted, in which the sole propulsive power source is 1
17 or more persons shall be rebuttably presumed to be in accordance with the
18 preservation and maintenance of the wilderness character of a wilderness area.

19

WHAT S.2877 WILL ACCOMPLISH

Here's what S.2877 will accomplish:

1. Congress's intent to generally allow human-powered travel in Wilderness, established in 1964 and made clear in 1980 regarding bicycling in a Montana Wilderness, will be reinstated. The Wilderness Act never prohibited bicycling, walking with a baby stroller, or using a hunter's game cart and this legislation reaffirms that intent.

2. No federal trails will be opened to mountain biking or other forms of human-powered travel unless:

(a) the federal agency in charge of a particular area authorizes it; or

(b) it takes no action within two years (not even to begin an environmental review or some other form of evaluation), in which case:

(i) it is presumed that the agency wishes to see if trail users can get along without new management rules and the trails in that unit would open to human-powered travel so the agency can do its evaluation; but

(ii) the federal agency would still be able to regulate the area it manages, restricting or prohibiting mountain biking or any other activity.

3. S.2877 does not require creating trails or modifying existing ones to facilitate bicycling or other human-powered uses, and the character of a Wilderness area is to be preserved.

4. The bill title reads, "To amend the Wilderness Act to allow local Federal officials to determine the manner in which nonmotorized uses may be permitted in wilderness areas, and for other purposes." The specification "and for other purposes" does not mean there's more to S.2877 than meets the eye. " 'For other purposes' . . . simply means that not all of the information about the bill can fit into the title, but if you want to know what is in the bill, just read the language. It does not create an open-ended law." <https://blog.popvox.com/2015/06/29/popvox-for-other-purposes/>