



**Legislative Bulletin.....January 29, 2008**

**Contents:**

**H.R. 1528**—The New England National Scenic Trail Designation Act

**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs:** 1

**Total Cost of Discretionary Authorizations:** \$300,000 in FY 2008 and \$2 million over the FY 2008—FY 2012 period.

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** 0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

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**H.R. 1528—The New England National Scenic Trail Designation Act  
(Olver, D-MA)**

**Order of Business:** H.R. 1528, New England National Scenic Trail Designation Act is scheduled to be considered on the House floor on Tuesday, January 29, 2008, subject to a structured rule ([H.Res. 940](#)), making in order 2 amendments, each debatable for 10 minutes.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

A full description of the amendments made in order under the rule may be found at the bottom of the document.

**Summary:** H.R. would designate the Monadnock, Metacomet, and Mattabesett (MMM) Trail System in Massachusetts and Connecticut as the New England National Scenic Trail and subject the trail to federal scenic trail regulations and management. The specific provisions are as follows:

**Authorization and Administration:**

The bill defines the location of the trail, which stretches some 220 miles from the southern border of New Hampshire, in the town of Royalston, Massachusetts, to Long Island Sound in the town of Guilford, Connecticut. The bill would require the Secretary of Interior to cooperate with “federal, state, tribal, regional, and local agencies, the Appalachian Mountain Club, the Connecticut Forest and Park Association, and other organizations” to administer the trail according to the recommendations in the [MMM trail feasibility study](#). H.R. 1528 would also restrict the U.S. from acquiring land for the trail against the owner’s consent.

**Management:**

The bill would require the Secretary to use the “Trail Management Blueprint” described in the [MMM trail feasibility study](#) as the framework for the management and administration of the trail. Any additional plans for the management, protection, development, or expansion of the trail must be, in the opinion of the Secretary, consistent with the feasibility study management blueprint.

**Cooperative Agreements:**

H.R. 1528 would authorize the Secretary to enter into cooperative agreements with the states of Connecticut and Massachusetts, the Appalachian Mountain Club, the Connecticut Forest and Park Association, and other regional, local, and private organizations. These agreements could include limited financial assistance to encourage participation in the planning, acquisition, protection, operation, development, or maintenance of the trail.

**Additional Trail Segments:**

Finally, the bill would encourage the Secretary to work with the state of New Hampshire (which asked not to be included in the designation because of potential land use issues) to eventually include the portion of the trail that lies in New Hampshire. The segments of the trail located in New Hampshire could be added if state and local entities concur with the Secretary that the additional sections of the trail should be included.

**Note:** There is no private property protection that allows a property owner to opt out of inclusions from the scenic trail designation or requires the management entity to notify the property owner when the designation occurs.

**Additional Background:** The National Trails System Act of 1968 authorized the creation of a series of federally designated national trails across the U.S. Since that time the federal government has provided financial assistance, volunteer support, and coordination with states

and other authorities to promote the federal trail systems. The National Trails System Act established three main types of trail designations:

- **Scenic trails**, which must be continuous trails that are 100 miles or longer and designated for non-motorized travel. There are eight scenic trails nationwide.
- **Historic trails**, which are, generally, motorized travel routes that are of historical “significance to the entire Nation.” There are 17 historic trails nationwide.
- **Recreation trails**, which are existing local trails that are recognized by either the Secretary of the Interior or Agriculture. There are over 900 recognized recreational trails nationwide (creating recreational trails does not require an act of Congress).

The New England National Scenic Trail would be the first scenic trail designation authorized by Congress since the Natchez Trace National Scenic Trail was created in 1983.

The New England National Scenic Trail would consist of portions of the current MMM trail, namely two parallel footpaths that run north to south from the northern border of Massachusetts to Connecticut’s Long Island Sound. The trail was created privately in 1931 and has operated without federal assistance since. According to the Committee on Natural Resources, the majority of the 200 mile trail runs across private land and exists with the permission of the land owners. Land use on the trail is currently determined by the owners or applicable state and local laws and includes hiking, off-roading, horseback riding, hunting, and fishing. The organizations and private associations that currently operate the trail must seek land owners consent to allow certain land use on the trail.

Republicans on the Natural Resource Committee, as well as some local residents, have voiced concerns about designating the trail as a federal management zone because of the possible land use effects. New Hampshire, which contains nearly half of the current MMM trails, asked to be excluded from the designation because of concerns that the managing entity may infringe on private property rights and because state officials believed that the current trail system was well managed. In addition, the Natural Resource Committee’s Republican Briefing Paper on H.R. 1528 suggests that the designation could lead to private property owners being coerced into giving up their land to the trail management entity. The brief states:

Although H.R. 1528 limits the acquisition of land to willing sellers, the National Scenic Trails Act, which likely supersedes this legislation, authorizes the National Park Service to use eminent domain powers to acquire land. The concept of “willing sellers” as defined by the National Park Service is highly dubious. The National Park Service has a long history of using strong arm tactics to pressure property owners into selling their land. Often times the mere threat of using the Park Service’s eminent domain powers is enough to force voluntary sales due to the time and expense it would cost a property owner to fight the taking and the proposed compensation.

During consideration of the rule for H.R. 1528 ([H.Res. 940](#)), a number of amendments were offered to ease fears that the legislation may be detrimental to private property rights. However, of the seven amendments offered (all by Republicans) only two were made in order under the rule. Among the amendments rejected by the Committee on Rules was a provision that would

have required the Secretary to notify the owners of private property along the trail and let them decline from including their property if they wished. The committee also rejected an amendment that prohibited the use of eminent domain to obtain private land on the trail and an amendment to restrict funds from the Appalachian Mountain Club and the Connecticut Forest and Park Association—two privately managed and funded forestry organizations that are due to receive funding and regulatory authority as a part of the administrative cooperative.

Finally, Republicans on the Natural Resources Committee have expressed concerns that H.R. 1528 would infringe on Second Amendment rights by barring firearms and hunting on trail land. An amendment to apply state and local laws regarding hunting and the use of firearms was offered by Rep. Bishop (R-UT) in committee, but was defeated by a party-line vote. An identical amendment to H.R. 1528 will be offered on the floor.

**Possible Conservative Concerns:** Some conservatives may be concerned that H.R. 1528 would federalize private land, subjecting private property owners to regulations created by an administrative body that includes federal agencies and private organizations. Conservatives may be concerned that the designation could allow the administrative body to restrict private land use and usurp state and local laws that protect hunting, fishing, and the use of firearms along the trail.

Some conservatives may also be concerned that H.R. 1528 does not require the Secretary to notify the owners of private property along the trail of the designation or let them decline from participating. In addition, the bill does not include language to specifically prohibit the use of eminent domain to obtain private land on the trail.

Finally, conservatives may be concerned that H.R. 1528 would require two private conservation organizations to participate in the trail's planning, administration, and development, effectively allowing private organizations to determine regulations on privately owned lands along the trail.

**Committee Action:** H.R. 1528 was introduced on March 14, 2007, and was referred to the Committee on Natural Resources' Subcommittee on National Parks, Forests, and Public Lands. On May 15, 2007, subcommittee hearings were held. The full committee held a mark-up on October 10, 2007, and was reported, as amended by voice vote. During full committee consideration an amendment was offered by Rep. Bishop (R-UT) to make all designated and future designated lands within the New England National Scenic Trail exclusively governed by relevant state and local laws regarding hunting, fishing and the possession or use of a weapon, trap or net. The amendment was not adopted by a vote of 10 to 16.

**Administration Position:** A statement of the Administration's position is currently unavailable.

**Cost to Taxpayers:** According to CBO, implementing H.R. 1528 would cost the National Park Service (NPS) \$300,000 in FY 2008 and \$2 million over the FY 2008—FY 2012 period.

**Does the Bill Expand the Size and Scope of the Federal Government?** Yes, the bill creates a new national scenic trail.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** The Natural Resources Committee, in [House Report 110—502](#), states that, “H.R. 1528 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.”

**Constitutional Authority:** The Natural Resources Committee, in [House Report 110—502](#), cites constitutional authority in Article I, Section 8, but does not cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

### **AMENDMENTS MADE IN ORDER UNDER THE RULE**

**Order of Business:** H.R. 1528, New England National Scenic Trail Designation Act is scheduled to be considered on the House floor on Tuesday, January 29, 2008, subject to a structured rule ([H.Res. 940](#)), making in order the following 2 amendments, each debatable for 10 minutes.

**Note:** The summaries below are based on RSC staff review of *actual amendment text* and thus often differ significantly from what’s on the Rules Committee website.

**1. Bishop (R-UT).** Establishes the effective date of the bill as the date that the Secretary of the Interior issues the final National Scenic Trail Feasibility Study and Environmental Assessment for the New England National Scenic Trail.

**2. Bishop (R-UT).** States that all designated and future designated land in the New England National Scenic Trail, including federal lands, shall be exclusively governed by state and local laws concerning hunting, fishing, or the use of a weapon, trap, or net.

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