

106TH CONGRESS
2D SESSION

S. 2331

AN ACT

To require the Secretary of the Interior to submit the dispute over the franchise fee owed by Fort Sumter Tours, Inc. to binding arbitration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION. 1. ARBITRATION REQUIREMENT.**

2 The Secretary of the Interior (in this Act referred
3 to as the “Secretary”) shall, upon the request of Fort
4 Sumter Tours, Inc. (in this Act referred to as the “Con-
5 cessioner”), agree to binding arbitration to determine the
6 franchise fee payable under the contract executed on June
7 13, 1986 by the Concessioner and the National Park Serv-
8 ice, under which the Concessioner provides passenger boat
9 service to Fort Sumter National Monument in Charleston
10 Harbor, South Carolina (in this Act referred to as “the
11 Contract”).

12 **SEC. 2. APPOINTMENT OF THE ARBITRATOR.**

13 (a) **MUTUAL AGREEMENT.**—Not later than 30 days
14 after the date of enactment of this Act, the Secretary and
15 the Concessioner shall jointly select a single arbitrator to
16 conduct the arbitration under this Act.

17 (b) **FAILURE TO AGREE.**—If the Secretary and the
18 Concessioner are unable to agree on the selection of a sin-
19 gle arbitrator within 30 days after the date of enactment
20 of this Act, within 30 days thereafter the Secretary and
21 the Concessioner shall each select an arbitrator, the two
22 arbitrators selected by the Secretary and the Concessioner
23 shall jointly select a third arbitrator, and the three arbi-
24 trators shall jointly conduct the arbitration.

25 (c) **QUALIFICATIONS.**—Any arbitrator selected under
26 either subsection (a) or subsection (b) shall be a neutral

1 who meets the criteria of section 573 of title 5, United
2 States Code.

3 (d) PAYMENT OF EXPENSES.—The Secretary and the
4 Concessioner shall share equally the expenses of the arbi-
5 tration.

6 (e) DEFINITION.—As used in this Act, the term “ar-
7 bitrator” includes either a single arbitrator selected under
8 subsection (a) or a three-member panel of arbitrators se-
9 lected under subsection (b).

10 **SEC. 3. SCOPE OF THE ARBITRATION.**

11 (a) SOLE ISSUES TO BE DECIDED.—The arbitrator
12 shall, after affording the parties an opportunity to be
13 heard in accordance with section 579 of title 5, United
14 States Code, determine—

15 (1) the appropriate amount of the franchise fee
16 under the Contract for the period from June 13,
17 1991 through December 31, 2000 in accordance
18 with the terms of the Contract; and

19 (2) any interest or penalties on the amount
20 owed under paragraph (1).

21 (b) DE NOVO DECISION.—The arbitrator shall not
22 be bound by any prior determination of the appropriate
23 amount of the fee by the Secretary or any prior court re-
24 view thereof.

1 (c) BASIS FOR DECISION.—The arbitrator shall de-
2 termine the appropriate amount of the fee based upon the
3 law in effect on the effective date of the Contract and the
4 terms of the Contract.

5 **SEC. 4. FINAL DECISION.**

6 The arbitrator shall issue a final decision not later
7 than 300 days after the date of enactment of this Act.

8 **SEC. 5. EFFECT OF DECISION.**

9 (a) RETROACTIVE EFFECT.—The amount of the fee
10 determined by the arbitrator under section 3(a) shall be
11 retroactive to June 13, 1991.

12 (b) NO FURTHER REVIEW.—Notwithstanding sub-
13 chapter IV of title 5, United States Code (commonly
14 known as the Administrative Dispute Resolution Act), the
15 decision of the arbitrator shall be final and conclusive
16 upon the Secretary and the Concessioner and shall not be
17 subject to judicial review.

1 **SEC. 6. GENERAL AUTHORITY.**

2 Except to the extent inconsistent with this Act, the
3 arbitration under this Act shall be conducted in accord-
4 ance with subchapter IV of title 5, United States Code.

 Passed the Senate October 5 (legislative day, Sep-
tember 22), 2000.

Attest:

Secretary.

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