

Calendar No. 926

106TH CONGRESS
2^D SESSION

S. 2331

[Report No. 106–477]

To direct the Secretary of the Interior to recalculate the franchise fee owed by Fort Sumter Tours, Inc., a concessioner providing service to Fort Sumter National Monument, South Carolina.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2000

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

OCTOBER 3 (legislative day, SEPTEMBER 22), 2000

Reported by Mr. MURKOWSKI, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To direct the Secretary of the Interior to recalculate the franchise fee owed by Fort Sumter Tours, Inc., a concessioner providing service to Fort Sumter National Monument, South Carolina.

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. RECALCULATION OF FRANCHISE FEE.**

2 (a) **DEFINITIONS.**—In this section:

3 (1) **FRANCHISEE.**—The term “franchisee”
4 means Fort Sumter Tours, Inc., a concessioner pro-
5 viding service to Fort Sumter National Monument,
6 South Carolina.

7 (2) **SECRETARY.**—The term “Secretary” means
8 the Secretary of the Interior.

9 (b) **RECALCULATION OF FRANCHISE FEE.**—Not later
10 than 30 days after the date of enactment of this Act, the
11 Secretary shall—

12 (1) recalculate the amount (if any) of the fran-
13 chise fee owed by the franchisee; and

14 (2) notify the franchisee of the recalculated
15 amount.

16 (c) **ARBITRATION.**—

17 (1) **IN GENERAL.**—If the amount of the fran-
18 chise fee as recalculated under subsection (a) is not
19 acceptable to the franchisee—

20 (A) the franchisee, not later than 5 days
21 after receipt of notification under subsection
22 (b)(2), shall so notify the Secretary; and

23 (B) the amount of the franchise fee owed
24 shall be determined through binding arbitration
25 that provides for a trial-type hearing that—

1 (i) includes the opportunity to call
2 and cross-examine witnesses; and

3 (ii) is subject to supervision by the
4 United States District Court for the Dis-
5 trict of Columbia in accordance with the
6 title 9, United States Code.

7 ~~(2) SELECTION OF ARBITRATOR OR ARBITRA-~~
8 ~~TION PANEL.—~~

9 ~~(A) AGREEMENT ON ARBITRATOR.—~~For a
10 period of not more than 30 days after the
11 franchisee gives notification under paragraph
12 ~~(1)(A)~~, the Secretary and the franchisee shall
13 attempt to agree on the selection of an arbi-
14 trator to conduct the arbitration.

15 ~~(B) PANEL.—~~If at any time the Secretary
16 or the franchisee declares that the parties are
17 unable to agree on an arbitrator—

18 (i) the Secretary and the franchisee
19 shall each select an arbitrator;

20 (ii) not later than 10 days after 2 ar-
21 bitrators are selected under clause (i), the
22 2 arbitrators shall select a third arbitrator;
23 and

24 (iii) the 3 arbitrators shall conduct
25 the arbitration.

1 ~~(3)~~ COMMENCEMENT AND COMPLETION.—An
 2 arbitration proceeding under paragraph (1)—

3 ~~(A)~~ shall commence not later than 30 days
 4 after the date on which an arbitrator or arbitra-
 5 tion panel is selected under paragraph (2); and

6 ~~(B)~~ shall be completed with a decision ren-
 7 dered not later than 240 days after that date.

8 ~~(4)~~ APPLICABLE LAW.—

9 ~~(A)~~ RELEVANT TIME PERIOD.—The law
 10 applicable to the recalculation of the franchise
 11 fee under this subsection shall be the law appli-
 12 cable to franchise fee determinations in effect
 13 at the beginning of the period for which the
 14 franchise fee is payable.

15 ~~(B)~~ PREVIOUS DECISIONS.—No previous
 16 judicial decision regarding the franchise fee dis-
 17 pute that is the subject of arbitration under
 18 this subsection may be introduced in evidence
 19 or considered by the arbitrator or arbitration
 20 panel for any purpose.

21 ~~(5)~~ FEES AND COSTS.—If the franchisee is the
 22 prevailing party in binding arbitration, the arbi-
 23 trator or arbitration panel shall award the franchisee
 24 reasonable attorney's fees and costs for all pro-

1 proceedings involving the disputed franchise fee con-
 2 sistent with—

3 (A) section 504 of title 5, United States
 4 Code; and

5 (B) section 2412 of title 28, United States
 6 Code.

7 (d) BIDS AND PROPOSALS.—Until such date as any
 8 arbitration under this Act is completed and is no longer
 9 subject to appeal, the Secretary—

10 (1) shall not solicit or accept a bid or proposal
 11 for any contract for passenger service to Fort Sum-
 12 ter National Monument; and

13 (2) shall offer to the franchisee annual exten-
 14 sions of the concessions contract in effect on the
 15 date of enactment of this Act.

16 **SECTION 1. ARBITRATION REQUIREMENT.**

17 *The Secretary of the Interior (in this Act referred to*
 18 *as the “Secretary”) shall, upon the request of Fort Sumter*
 19 *Tours, Inc. (in this Act referred to as the “Concessioner”),*
 20 *agree to binding arbitration to determine the franchise fee*
 21 *payable under the contract executed on June 13, 1986, by*
 22 *the Concessioner and the National Park Service, under*
 23 *which the Concessioner provides passenger boat service to*
 24 *Fort Sumter National Monument in Charleston Harbor,*
 25 *South Carolina (in this Act referred to as “the Contract”).*

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

2 (a) *MUTUAL AGREEMENT.*—Not later than 90 days
3 after the date of enactment of this Act, The Secretary and
4 the Concessioner shall jointly select a single arbitrator to
5 conduct the arbitration under this Act.

6 (b) *FAILURE TO AGREE.*—If the Secretary and the
7 concessioner are unable to agree on the selection of a single
8 arbitrator within 90 days after the date of enactment of
9 this Act, within 30 days thereafter the Secretary and the
10 Concessioner shall each select an arbitrator, the two arbitra-
11 tors selected by the Secretary and the Concessioner shall
12 jointly select a third arbitrator, and the three arbitrators
13 shall jointly conduct the arbitration.

14 (c) *QUALIFICATIONS.*—Any arbitrator selected under
15 either subsection (a) or subsection (b) shall be a neutral who
16 meets the criteria of section 573 of title 5, United States
17 Code.

18 (d) *PAYMENT OF EXPENSES.*—The Secretary and the
19 Concessioner shall share equally the expenses of the arbitra-
20 tion.

21 (e) *DEFINITION.*—As used in this Act, the term “arbi-
22 trator” includes either a single arbitrator selected under
23 subsection (a) or a three-member panel of arbitrators se-
24 lected under (b).

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

2 (a) *SOLE ISSUE TO BE DECIDED.*—The arbitrator
3 shall determine—

4 (1) *the appropriate amount of the franchise fee*
5 *under the Contract for the period from June 13, 1991,*
6 *through December 31, 2000, in accordance with the*
7 *terms of the Contract; and*

8 (2) *any interest or penalties on the amount owed*
9 *under paragraph (1).*

10 (b) *DE NOVO DECISION.*—The arbitrator shall not be
11 bound by any prior determination of the appropriate
12 amount of the fee by the Secretary.

13 (C) *BASIS FOR DECISION.*—The arbitrator shall deter-
14 mine the appropriate amount of the fee based upon the law
15 in effect on the effective date of the Contract and the terms
16 of section 9 of the Contract.

17 **SEC. 4. EFFECT OF DECISION.**

18 (a) *RETROACTIVE EFFECT.*—The amount of the fee de-
19 termined by the arbitrator under section 3(a) shall be retro-
20 active to June 13, 1991.

21 (b) *NO FURTHER REVIEW.*—Notwithstanding sub-
22 chapter IV of title 5, United States Code (commonly known
23 as the Administrative Dispute Resolution Act), the decision
24 of the arbitrator shall be final and conclusive upon the Sec-
25 retary and the Concessioner and shall not be subject to judi-
26 cial review.

1 **SEC. 5. GENERAL AUTHORITY.**

2 *Except to the extent inconsistent with this Act, the ar-*
 3 *bitration under this Act shall be conducted in accordance*
 4 *with subchapter IV of title 5, United States Code.*

5 **SEC. 6. ENFORCEMENT.**

6 *A party aggrieved by the alleged failure, neglect, or*
 7 *refusal of another to arbitrate under this Act, or by any*
 8 *unreasonable delay in the appointment of the arbitrator or*
 9 *the conduct of the arbitration, may petition the United*
 10 *States District Court for the District of South Carolina or*
 11 *the United States District Court for the District of Colum-*
 12 *bia for an order directing that the arbitration proceed in*
 13 *the manner provided by this Act.*

Amend the title to read: “A bill to require the Secretary of the Interior to submit the dispute over the franchise fee owed by Fort Sumter Tours, Inc. to binding arbitration.”.

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