

HR 5204 The Federal Lands Recreation Enhancement Modernization Act of 2014: What's in it?

A copy of the current law is posted at

http://www.westernslopenofee.org/pdfuploads/FLREA_Statute_Complete.pdf

and a copy of the House bill is posted at

http://www.westernslopenofee.org/pdfuploads/HR5204_Bishop.pdf

HR 5204 is written as an amendment to the current law, in the form of line-by-line additions, deletions, and substitutions, which makes it very difficult for the public to understand. (*Probably this was the intention.*) Here is what the key provisions would do, taking them line by line:

Page 5 Lines 8-13: Deletes the prohibitions currently imposed on the Forest Service and BLM from charging fees for parking, picnicking along roads or trailsides, general access, dispersed areas with low or no investment, driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using facilities and services, camping at undeveloped sites that do not provide minimum facilities, and use of overlooks or scenic pullouts. HR 5204 eliminates those prohibitions and replaces them with a single prohibition on fees “For any site, area, or activity, except as specifically authorized under this section.” Since “this section” authorizes fees for anything, that prohibition is meaningless.

Page 5 Line 21 through Page 6 Line 3: Would give educational institutions a waiver from National Park entrance fees only if the participants in an educational outing are earning academic credit for it. Currently such outings are only required to be “noncommercial” in order to get a waiver.

Page 7 Line 11 through Page 8 Line 24: Forest Service and BLM would be allowed to charge a Day Use Fee for entry to National Conservation Areas, National Volcanic Monuments, Visitor Centers, and anywhere that there is a toilet within 1/2 mile of the parking, with only a few other, easily met, requirements.

Although presented as restrictions, the language is extremely vague and full of undefined terms, giving no protection for the public against funding-hungry managers imposing fees for every trailhead, lakeshore, and river access point. The restrictions specified present such a low threshold that they would be cheap and easy for the agencies to provide. This language is dramatically less restrictive than what is in the current law.

The Day Use Fee authority could be used at:

“Sites *[undefined]* of concentrated *[undefined]* public use that are managed primarily for outdoor recreation purposes *[meaning anywhere]* where there has been a substantial *[undefined]* Federal investment in facilities and services that are necessary to accommodate heavy *[undefined]* public use, public access to the site is provided in such a manner that fees can be effectively collected at one or more centralized locations *[i.e. off-site pass sales by private vendors]*, the site has regularly *[undefined]* serviced and well maintained *[undefined]* toilet facilities *[porta-pottys]* and contains at least four of the following:

- (i) Designated developed parking. *[vague, cheap, easy]*
- (ii) Trash collection. *[expensive, hard – this will be the one they skip]*
- (iii) Permanent interpretative materials. *[vague, cheap, easy]*
- (iv) Picnic tables. *[a cheap, easy, one-time expense]*
- (v) Routine presence of agency personnel. *[vague, cheap, easy]”*

These requirements could be met merely by placing a porta-potty and a picnic table next to a bulletin board and calling it a day use site. They could even skip the picnic table if they interpret “trash collection” as merely an occasional clean-up, not the provision of a container that gets emptied regularly.

Page 9 Lines 1-18: The list of sites where Day Use Fees would be charged would have to be published and the agencies would have to take public comment for 60 days. But they only have to *take* comments, they don’t have to *do anything* with them. Once the 60 days are up they can publish the list without even revealing what the comments were.

Page 11 Lines 1-6: In the list of things that a campground must have in order to charge a fee, “refuse container” would be changed to “trash collection.” This could be interpreted to allow them to remove all the refuse containers and instead just come in and do an occasional clean-up. Also the provision of a campfire container would be no longer be required at developed campgrounds.

Page 11 Lines 7-10: Fees for use of sanitary dump stations could only be charged if no camping fee was paid for the prior night. *[Since dump stations are expensive to maintain, this is likely to result in increased camping fees for everyone, even though tent campers and many others don’t use the dump stations at all and RVs don’t generally use them every day.]*

Page 12 Lines 4-16: Fees for developed swimming sites would be expanded to include hot springs. The requirement for flush toilets would be eliminated and only a porta-potty would be necessary, although showers would still be required. *[If there’s running water for showers, why shouldn’t flush toilets be available?]* Refuse containers would not be required, only “trash collection” - which could consist of merely an occasional clean-up. *[Probably using volunteers.]*

Page 12 Line 19 through Page 13 Line 3: Would confer very broad authority to the Park Service and Fish & Wildlife Service to charge an Amenity Fee for use of anything they deem “specialized” that isn’t already listed – i.e. for anything.

Page 13 Lines 4-21: Forest Service and BLM would be allowed to charge a Permit Fee for entry to a “special area,” an undefined term that they would interpret to mean “any place that anybody wants to go.” It would allow permits and fees to be required:

“For specialized *[undefined]* individual and group use of Federal facilities and Federal recreational lands and waters, such as, but not limited to *[meaning the agencies can add anything they like to this list]*, use of special areas *[undefined, could mean any area that a local manager deems is special]* or areas where use is allocated *[limited permit systems would proliferate]*, motorized recreational vehicle use *[tolls on motorhomes?]*, and group *[undefined]* activities or events.”

This would be used as a catch-all bucket to charge fees for anyplace where a Day Use Fee cannot be charged because there is no toilet within 1/2 mile. In other words, for completely undeveloped lands.

Page 13 Line 22 through Page 16 Line 20: Explicitly authorizes guide/outfitter permits and fees, exempts them from NEPA analysis if they are consistent with existing uses, and limits them to 3% of gross revenue. These are all provisions that the outfitter/guide interests have been asking for. There is nothing objectionable about them, except that in order to gain these benefits for themselves they are willing to throw the unguided public under the bus.

Page 16 Line 21 through Page 17 Line 13: Authorizes concessionaire management of recreation

facilities and services on BLM lands. *[Our National Forests have already been mostly privatized – this would allow the BLM to do the same.]*

Page 17 Line 14 through Page 19 Line 13: Establishes a three-year pilot program for at least 20 sites allowing Special Recreation Permit fees to be offset by pre-approved “stewardship” work. This is another thing that the outfitter/guide interests have been asking for, as well as organizations such as the Backcountry Horsemen that do a lot of volunteer work on public lands. Again, there is nothing particularly objectionable about it except that in order to acquire this reduction in their own permit fees they are willing to allow Permit and Day Use Fees to be imposed on the rest of us for any access at all.

Page 20 Lines 7-21: Says that although the agencies themselves could charge a fee for a Visitor Center (as authorized at Page 7 Lines 21-23), they would not be allowed to hire a private entity to run the Visitor Center if it plans to charge a fee. But the private entity *could* collect a fee on behalf of the agency. *[confusing and pointless]*

Page 20 Line 22 through Page 22 Line 19: The agencies would have to submit a list of all Entrance, Day Use, and Amenity fees currently in place by 6 months after enactment. After that they would have to submit a list by June 1 each year of any new or increased fees, and can’t impose them without an Act of Congress. *[That “Act of Congress” sounds like a big deal, but would likely take the form of a rider on some must-pass piece of legislation like an appropriations bill, so approval of new and increased fees would likely be automatic and not undergo any public debate.]*

Page 24 Line 3 through Page 25 Line 10: The Public Participation section of the current law would be revised to eliminate the RRAC advisory committees. *[No loss there; the RRAC process has been pure theater from the beginning.]* Instead the law would say that the agencies “may” publish new and increased fees in the Federal Register and take public comment. *[Or they “may” not. It would be their choice. And even if they did take comments, they wouldn’t have to do anything with them or even publish what they were.]* But since they couldn’t impose a new or increased fee until Congress had already approved it *[see above re Page 20 Line 22.]*, even if they did publish the information it would only be to announce a done deal. *[This section and the section above on Page 20 interact strangely, almost like two different ideas about how new/increased fees would be enacted both made it into the bill.]*

Page 25 Line 22 through Page 26 Line 4: New concessionaire permits would have to undergo 180 days of “opportunity for public involvement” before being offered. *[Whatever that means. Once again, they might have to take comments but they wouldn’t have to do anything with them or even publish what they were.]*

Page 26 Lines 10-12: Interagency passes to cover Day Use and Entrance fees would be made available only to US citizens and permanent residents. Currently anyone can purchase one for \$80. This would require that park rangers, visitor center staff, private vendors, and online outlets somehow check citizenship/residency status at the point of purchase, and perhaps again when the pass is used. *[The opportunities for racial/ethnic profiling and discrimination are obvious. Do we really want park rangers checking immigration status in order to visit the Grand Canyon???)*

Page 26 Line 22 through Page 27 Line 4: The price of the annual interagency pass would be increased every three years according to the Consumer Price Index, rounded up to the nearest \$5.

Page 27 Lines 12-19: The agencies would have to conduct a study *[of undetermined method or*

duration] of pass utilization and report the results to Congress. This is the first step toward major changes to pass issuance/acceptance policy, especially regarding Senior and Disabled passes, which are considered money losers by the agencies. They are eager to find a way to rid themselves of these lifetime passes for special populations.

Page 27 Lines 22-25: Would entitle veterans with a service-connected disability to a free lifetime disabled pass. *[Since they are already entitled to that pass under current law – along with every other disabled person – this is a completely unnecessary change. Political pandering of the most despicable kind, pretending to give disabled veterans something that they already have.]*

Page 28 Lines 3-10: Active duty military “may” get a free annual pass *[if the agencies choose to give them one – or they “may” not. It would be up to the bureaucrats whether they do or not.]*. Military dependents would no longer be entitled to a free pass as they are under current policy. *[Dad’s serving in a combat zone overseas? Sorry Mom, you and the kids have to pay the fee.]*

Page 28 Lines 11-15: Senior and Disabled passes would have to provide some discount on campground fees, but the amount of the discount is not specified. Currently they receive a 50% discount. That would likely not be continued, since the concessionaires hate having to give it, and would likely be replaced with a lesser discount and one that would vary from site to site, day to day, and season to season.

Page 28 Line 22 through Page 29 Line 2: The agencies’ authority to declare fee-free days would be repealed.

Page 29 Line 7-26: Concessionaires “shall” be required to accept federal passes but only “to the extent reimbursement is practicable.” *[Meaning never.]*

Page 30 Lines 7-9: The amount of revenue that must be retained at the “unit” where collected is raised from 80% to 90%. *[But there is a catch. Two pages later, the percentage that can be used for cost of collection and administration is raised from 15% to 25%.] [And there is another catch. The definition of “unit” is so vague it could be applied to an entire Region of the Forest Service or a whole state for the BLM. The promise that your fees will benefit the place where you pay them, which seldom was true anyway, would become entirely false.]*

Page 32 Lines 4-13: Would allow the agencies to spend 5% of revenue on overhead and administration and another 20% on cost of collection, for a total overhead allowance of 25%. Current law caps the use of fee revenue for overhead, administration, and indirect costs (combined) at 15%. *[And of course the agencies are all skilled at moving funds around to give the appearance of staying within their limits while actually exceeding them.]*

Page 35 Lines 5-11: Would set a fixed date of December 31, 2020 for the sunset of the whole law. *[A strong indication that the bill is expected to pass this year.]*

Page 36 Lines 1-5: Would leave in place the draconian penalties and enforcement authority in the current law. Violators who commit recreation without paying a fee can be charged with a Class A Misdemeanor. Failure to display a required pass constitutes proof of failure to purchase one (with no further due process), and the owner and all occupants of a car parked without displaying a pass are presumed guilty and held jointly liable, unless the owner can show the car was stolen. First offenses are capped at a fine of \$100, but subsequent violations can be punished by up to \$100,000 and/or one year

of incarceration.

Page 37 Lines 15-22: Would give the agencies 18 months to come into compliance with the revisions. Combined with the hard sunset date of December 31, 2020, this would mean that whatever changes the agencies make could be in effect for less than five years. *[What then? Even worse?]*

Page 39 Lines 5-11: Would enshrine into law that concessionaires can pay their employees minimum wage instead of having to follow the higher wages required of federal contractors, even if they are required to accept federal passes. *[Which they can only be required to do if reimbursement to them is practicable, which it will never be.]*