

103D CONGRESS
1ST SESSION

H. R. 2146

To reform the concessions policies of the National Park Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1993

Mr. STEARNS introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To reform the concessions policies of the National Park Service, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Park Service
5 Concessions Policy Reform Act of 1993”.

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—In furtherance of the Act of August
8 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
9 4), which directs the Secretary of the Interior to admin-
10 ister areas of the National Park System in accordance

1 with the fundamental purpose of preserving their scenery,
2 wildlife, natural and historic objects, and providing for
3 their enjoyment in a manner that will leave them
4 unimpaired for the enjoyment of future generations, the
5 Congress finds that the preservation of park values re-
6 quires that public accommodations, facilities, and services
7 be limited to those necessary and appropriate to carry out
8 the approved management objectives for each park.

9 (b) POLICY.—It is the policy of the Congress that—

10 (1) public facilities or services shall be provided
11 within a park only when the private sector or other
12 public agencies cannot adequately provide such fa-
13 cilities or services in the vicinity of the park;

14 (2) if the Secretary determines that public fa-
15 cilities or services should be provided within a park,
16 such facilities or services shall be limited to locations
17 and designs consistent with the highest degree of re-
18 source preservation and protection of the aesthetic
19 values of the park;

20 (3) such facilities and services should be award-
21 ed through competitive bid procedures; and

22 (4) such facilities or services should be provided
23 to the public at reasonable rates.

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act, the term—

1 (1) “bid” means the complete proposal for a
2 concessions contract offered by a potential or exist-
3 ing concessioner in response to the minimum re-
4 quirements for the contract established by the Sec-
5 retary;

6 (2) “concessioner” means a private person, cor-
7 poration, or other entity to whom a concessions con-
8 tract has been awarded;

9 (3) “concessions contract” means a contract,
10 including permits, to provide facilities or services, or
11 both, at a park;

12 (4) “facilities” means improvements to real
13 property within parks used to provide accommoda-
14 tions, facilities, or services to park visitors;

15 (5) “park” means a unit of the National Park
16 System; and

17 (6) “Secretary” means the Secretary of the In-
18 terior.

19 **SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

20 The Act of October 9, 1965, Public Law 89–249 (79
21 Stat. 969, 16 U.S.C. 20–20g), entitled “An Act relating
22 to the establishment of concession policies administered in
23 the areas administered by the National Park Service, and
24 for other purposes”, is hereby repealed. The repeal of such
25 Act shall not affect the validity of any contract entered

1 into under such Act, but the provisions of this Act shall
2 apply to any such contract except to the extent such provi-
3 sions are inconsistent with the express terms and condi-
4 tions of the contract.

5 **SEC. 5. CONCESSIONS POLICY.**

6 Subject to the findings and policy stated in section
7 2 of this Act, and upon a determination by the Secretary
8 that facilities or services are necessary and appropriate for
9 the accommodation of visitors at a park, the Secretary
10 shall, consistent with the provisions of this Act, laws relat-
11 ing generally to the administration and management of
12 units of the National Park System, and the park's general
13 management plan, authorize private persons, corporations,
14 or other entities to provide and operate such facilities or
15 services as the Secretary deems necessary and appro-
16 priate.

17 **SEC. 6. COMPETITIVE BID PROCEDURES.**

18 (a) IN GENERAL.—Except as provided in subsection
19 (b), and consistent with the provisions of subsection (f),
20 any concessions contract entered into pursuant to this Act
21 shall be awarded only through competitive bid procedures.
22 Within 180 days after the date of enactment of this Act,
23 the Secretary shall promulgate appropriate regulations es-
24 tablishing such procedures.

1 (b) TEMPORARY CONTRACT.—Notwithstanding the
2 provisions of subsection (a), the Secretary may waive com-
3 petitive bid procedures and award a temporary concessions
4 contract in order to avoid interruption of services to the
5 public at a park.

6 (c) PUBLICATION OF CONTRACT REQUIREMENTS.—
7 Prior to soliciting bids for a concessions contract at a
8 park, the Secretary shall publish in the Federal Register
9 the minimum bid requirements for such contract, as set
10 forth in subsection (d). The Secretary shall also publish
11 the terms and conditions of the previous concessions con-
12 tract awarded for such park, and such financial informa-
13 tion of the existing concessioner pertaining directly to the
14 operation of the affected concessions facilities and services
15 during the preceding contract period as the Secretary de-
16 termines is necessary to allow for the submission of com-
17 petitive bids. Any concessions contract entered into pursu-
18 ant to this Act shall provide that the concessioner shall
19 waive any claim of confidentiality with respect to the po-
20 tential disclosure of such information by the Secretary.

21 (d) MINIMUM BID REQUIREMENTS.—(1) No bid shall
22 be considered which fails to meet the minimum require-
23 ments as determined by the Secretary. Such minimum re-
24 quirements shall include, but need not be limited to, the
25 amount of franchise fee, the duration of the contract, and

1 facilities or services required to be provided by the conces-
2 sioner.

3 (2) The Secretary may reject any bid, notwithstand-
4 ing the amount of franchise fee offered, if the Secretary
5 determines that the bidder is not qualified, is likely to pro-
6 vide unsatisfactory service, or that the bid is not respon-
7 sive to the objectives of protecting and preserving park
8 resources and of providing necessary and appropriate fa-
9 cilities or services to the public at reasonable rates.

10 (3) If all bids submitted to the Secretary either fail
11 to meet the minimum bid requirements or are rejected by
12 the Secretary, the Secretary shall establish new minimum
13 bid requirements and reinitiate the competitive bid process
14 pursuant to this section.

15 (e) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
16 retary shall submit any proposed concessions contract with
17 anticipated annual gross receipts in excess of \$1,000,000
18 or a duration of greater than five years to the Committee
19 on Energy and Natural Resources of the United States
20 Senate and the Committee on Natural Resources of the
21 United States House of Representatives.

22 (2) The Secretary shall not ratify any such proposed
23 contract until at least 60 days subsequent to the notifica-
24 tion of both Committees.

1 (f) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)
2 Except as provided in paragraph (2), the Secretary shall
3 not grant a preferential right to a concessioner to renew
4 a concessions contract executed pursuant to this Act.

5 (2)(A) Notwithstanding the provisions of paragraph
6 (1), the Secretary may grant a preferential right of re-
7 newal to a concessioner—

8 (i) for a concessions contract which—

9 (I) authorizes a concessioner to provide
10 outfitting or guide services (including, but not
11 limited to “river running” or other similar serv-
12 ices) within a park; and

13 (II) does not grant the concessioner any
14 interest in any structure, fixture, or improve-
15 ment pursuant to section 11 of this Act; and

16 (ii) where the Secretary determines that the
17 concessioner has operated satisfactorily on all eval-
18 uations conducted during the term of the previous
19 contract; and

20 (iii) where the Secretary determines that the
21 concessioner’s bid for the new contract satisfies the
22 minimum bid requirements established by the Sec-
23 retary.

24 (B) For the purpose of paragraph (2), the term
25 “preferential right of renewal” means that the Secretary

1 may allow a concessioner satisfying the requirements of
2 subparagraph (A) the opportunity to match any higher bid
3 submitted to the Secretary.

4 (g) NO PREFERENTIAL RIGHT TO ADDITIONAL
5 SERVICES.—The Secretary shall not grant a preferential
6 right to a concessioner to provide new or additional serv-
7 ices at a park.

8 **SEC. 7. FRANCHISE FEES.**

9 (a) IN GENERAL.—Franchise fees, however stated,
10 shall be determined competitively from among those bids
11 determined by the Secretary—

12 (1) to have satisfied the minimum bid require-
13 ments established pursuant to section 6(d); and

14 (2) to be responsive to the objectives of protect-
15 ing and preserving park resources and of providing
16 necessary and appropriate facilities or services to the
17 public at reasonable rates.

18 (b) MINIMUM FEE.—Such fee shall not be less than
19 the minimum fee established by the Secretary for each
20 contract. The minimum fee shall provide the concessioner
21 with a reasonable opportunity to realize a profit on the
22 operation as a whole, commensurate with the capital in-
23 vested and the obligations assumed.

24 (c) OBJECTIVES OF FEE.—Consideration of revenue
25 to the United States shall be subordinate to the objectives

1 of protecting and preserving park resources and of provid-
2 ing necessary and appropriate facilities or services to the
3 public at reasonable rates.

4 **SEC. 8. USE OF FRANCHISE FEES.**

5 All receipts collected pursuant to this Act shall be
6 covered into a special account established in the Treasury
7 of the United States. Amounts covered into such account
8 in a fiscal year shall be available for expenditure, subject
9 to appropriation, solely as follows:

10 (1) 50 percent shall be allocated among the
11 units of the National Park System in the same pro-
12 portion as franchise fees collected from a specific
13 unit bears to the total amount covered into the ac-
14 count for each fiscal year, to be used for resource
15 management and protection, maintenance activities,
16 interpretation, and research; and

17 (2) 50 percent shall be allocated among the
18 units of the National Park System on the basis of
19 need, in a manner to be determined by the Sec-
20 retary, to be used for resource management and pro-
21 tection, maintenance activities, interpretation, and
22 research.

1 **SEC. 9. DURATION OF CONTRACT.**

2 (a) **MAXIMUM TERM.**—A concessions contract en-
3 tered into pursuant to this Act shall be awarded for a term
4 not to exceed ten years.

5 (b) **TEMPORARY CONTRACT.**—A temporary conces-
6 sions contract awarded on a noncompetitive basis pursu-
7 ant to section 6(b) of this Act shall be for a term not
8 to exceed two years.

9 **SEC. 10. TRANSFER OF CONTRACT.**

10 (a) **IN GENERAL.**—(1) No concessions contract may
11 be transferred, assigned, sold, or otherwise conveyed by
12 a concessioner without prior written notification to, and
13 approval of the Secretary. The Secretary shall not approve
14 the transfer of a concessions contract to any individual,
15 corporation or other entity if the Secretary determines
16 that such individual, corporation or entity is, or will be,
17 unable to adequately provide the appropriate facilities or
18 services required by the contract.

19 (2) The Secretary shall reject any proposal to trans-
20 fer, assign, sell, or otherwise convey a concessions contract
21 if the Secretary determines that such transfer, assign-
22 ment, sale or conveyance is not consistent with the objec-
23 tives of protecting and preserving park resources, and of
24 providing necessary and appropriate facilities or services
25 to the public at reasonable rates.

1 (b) CONGRESSIONAL NOTIFICATION.—Within 30
2 days after receiving a proposal to transfer, assign, sell,
3 or otherwise convey a concessions contract, the Secretary
4 shall notify the Committee on Energy and Natural Re-
5 sources of the United States Senate and the Committee
6 on Natural Resources of the United States House of Rep-
7 resentatives of such proposal. Approval of such proposal,
8 if granted by the Secretary, shall not take effect until 60
9 days after the date of notification of both Committees.

10 **SEC. 11. PROTECTION OF CONCESSIONER INVESTMENT.**

11 (a) EXISTING STRUCTURES.—(1) A concessioner who
12 before the date of the enactment of this Act has acquired
13 or constructed, or has commenced acquisition or construc-
14 tion of any structure, fixture, or improvement upon land
15 owned by the United States within a park, pursuant to
16 a concessions contract, shall have a possessory interest
17 therein, to the extent provided by such contract.

18 (2) The provisions of this subsection shall not apply
19 to a concessioner whose contract in effect on the date of
20 enactment of this Act does not include recognition of a
21 possessory interest.

22 (3) With respect to a concessions contract entered
23 into on or after the date of enactment of this Act, the
24 provisions of subsection (b) shall apply to any existing
25 structure, fixture, or improvement as defined in paragraph

1 (a)(1), except that the actual original cost of such struc-
2 ture, fixture, or improvement shall be deemed to be the
3 value of the possessory interest as of the termination date
4 of the previous concessions contract.

5 (b) NEW STRUCTURES.—(1) On or after the date of
6 enactment of this Act, a concessioner who constructs or
7 acquires a new, additional, or replacement structure, fix-
8 ture, or improvement upon land owned by the United
9 States within a park, pursuant to a concessions contract,
10 shall have an interest in such structure, fixture, or im-
11 provement equivalent to the actual original cost of acquir-
12 ing or constructing such structure, fixture, or improve-
13 ment, less straight line depreciation over the estimated
14 useful life of the asset according to Generally Accepted
15 Accounting Principles: *Provided*, That in no event shall
16 the estimated useful life of such asset exceed 31.5 years.

17 (2) In the event that the contract expires or is termi-
18 nated prior to the recovery of such costs, the concessioner
19 shall be entitled to receive from the United States or the
20 successor concessioner payment equal to the value of the
21 concessioner's interest in such structure, fixture, or im-
22 provement. A successor concessioner may not revalue the
23 interest in such structure, fixture, or improvement, the
24 method of depreciation, or the estimated useful life of the
25 asset.

1 (3) Such costs shall be accounted for in the schedule
2 of rates and charges established pursuant to section 13
3 of this Act.

4 (4) Title to any such structure, fixture, or improve-
5 ment shall be vested in the United States.

6 (c) INSURANCE, MAINTENANCE AND REPAIR.—Noth-
7 ing in this section shall affect the obligation of each con-
8 cessioner to insure, maintain, and repair any structure,
9 fixture, or improvement assigned to such concessioner and
10 to insure that such structure, fixture, or improvement
11 fully complies with applicable safety and health laws and
12 regulations.

13 (d) PUBLIC REVIEW.—The construction of any new,
14 additional, or replacement structure, fixture, or improve-
15 ment involving costs of \$1,000,000 or more, provided or
16 financed by a concessioner, upon land owned by the Unit-
17 ed States within a park, shall be authorized only after
18 public review, including an opportunity for public hear-
19 ings, to determine whether such construction is appro-
20 priate and consistent with the purposes of the National
21 Park System, the laws relating generally to the adminis-
22 tration and management of the system, and the park's
23 general management plan. The requirements of this sub-
24 section may be satisfied by the public review and hearings

1 associated with the development of the general manage-
2 ment plan for the park.

3 **SEC. 12. UTILITY COSTS.**

4 (a) IN GENERAL.—A concessions contract entered
5 into pursuant to this Act shall provide that the conces-
6 sioner shall be responsible for all utility costs incurred by
7 the concessioner.

8 (b) CONFORMING AMENDMENT.—Section 1 of the
9 Act of August 8, 1953 (16 U.S.C. 1b) is amended in para-
10 graph 4 by striking “concessioners,”.

11 **SEC. 13. RATES AND CHARGES TO PUBLIC.**

12 The reasonableness of a concessioner’s rates and
13 charges to the public shall, unless otherwise provided in
14 the bid specifications and contract, be judged primarily
15 by comparison with those rates and charges for facilities
16 and services of comparable character under similar condi-
17 tions, with due consideration for length of season, seasonal
18 variance, average percentage of occupancy, accessibility,
19 availability and costs of labor and materials, type of pa-
20 tronage, and other factors deemed significant by the Sec-
21 retary.

22 **SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

23 (a) REGULATIONS.—Within 180 days after the date
24 of enactment of this Act, the Secretary shall publish in
25 the Federal Register after an appropriate period for public

1 comment, regulations establishing standards and criteria
2 for evaluating the performance of concessions operating
3 within parks.

4 (b) PERIODIC EVALUATION.—(1) The Secretary shall
5 periodically conduct an evaluation of each concessioner op-
6 erating under a concessions contract pursuant to this Act,
7 as appropriate, to determine whether such concessioner
8 has performed satisfactorily. If the Secretary's perform-
9 ance evaluation results in an unsatisfactory rating of the
10 concessioner's overall operation, the Secretary shall pre-
11 pare an analysis of the minimum requirements necessary
12 for the operation to be rated satisfactory, and shall so no-
13 tify the concessioner in writing.

14 (2) The concessioner shall be responsible for all costs
15 associated with any subsequent evaluations resulting from
16 an unsatisfactory rating.

17 (3) If the Secretary terminates a concessions contract
18 pursuant to this section, the Secretary shall solicit bids
19 for a new contract consistent with the provisions of this
20 Act.

21 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
22 shall notify the Committee on Energy and Natural Re-
23 sources of the United States Senate and the Committee
24 on Natural Resources of the United States House of Rep-

1 representatives of each unsatisfactory rating and of each con-
2 cessions contract terminated pursuant to this section.

3 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

4 (a) IN GENERAL.—Each concessioner shall keep such
5 records as the Secretary may prescribe to enable the Sec-
6 retary to determine that all terms of the concessioner's
7 contract have been, and are being faithfully performed,
8 and the Secretary or any of the Secretary's duly author-
9 ized representatives shall, for the purpose of audit and ex-
10 amination, have access to such records and to other books,
11 documents and papers of the concessioner pertinent to the
12 contract and all the terms and conditions thereof as the
13 Secretary deems necessary.

14 (b) GENERAL ACCOUNTING OFFICE REVIEW.—The
15 Comptroller General of the United States or any of his
16 or her duly authorized representatives shall, until the expi-
17 ration of five calendar years after the close of the business
18 year for each concessioner or subconcessioner, have access
19 to and the right to examine any pertinent books, docu-
20 ments, papers, and records of the concessioner or
21 subconcessioner related to the contracts or contract
22 involved.

1 **SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
2 **MENTS.**

3 The provisions of section 321 of the Act of June 30,
4 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
5 ing of buildings and properties of the United States, shall
6 not apply to contracts awarded by the Secretary pursuant
7 to this Act.

8 **SEC. 17. CONFORMING AMENDMENT.**

9 Subsection (h) of section 2 of the Act of August 21,
10 1935, the Historical Sites, Buildings and Antiquities Act
11 (49 Stat. 666; 16 U.S.C. 462(h)), is amended by striking
12 out the proviso therein.

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