

104TH CONGRESS
1ST SESSION

H. R. 773

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1995

Mrs. MEYERS (for herself, Mr. PORTMAN, Mr. SCHIFF, Mr. McHUGH, Mr. ROHRABACHER, Ms. MOLINARI, Ms. DANNER, Mr. ACKERMAN, Ms. ESHOO, Mr. OLVER, Mr. VISCLOSKY, Mr. MANTON, Mr. JOHNSTON, Mr. WELDON of Pennsylvania, Mr. ZIMMER, Mr. SAWYER, Mr. YATES, Mr. BRYANT, Mr. VENTO, Mr. BARRETT of Wisconsin, Mrs. KELLY, Mr. DINGELL, Mr. BROWN of Ohio, and Mr. PORTER) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reform the concession 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 Concession Policy Reform Act of 1995”.

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–

1 4), which directs the Secretary of the Interior to admin-
2 ister areas of the National Park System in accordance
3 with the fundamental purpose of preserving their scenery,
4 wildlife, natural and historic objects, and providing for
5 their enjoyment in a manner that will leave them
6 unimpaired for the enjoyment of future generations, the
7 Congress finds that the preservation and conservation of
8 park resources and values requires that such public ac-
9 commodations, facilities, and services as the Secretary de-
10 termines are necessary and appropriate in accordance with
11 this Act—

12 (1) should be provided only under carefully con-
13 trolled safeguards against unregulated and indis-
14 criminate use so that visitation will not unduly im-
15 pair these values; and

16 (2) should be limited to locations and designs
17 consistent to the highest practicable degree with the
18 preservation and conservation of park resources and
19 values.

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

21 (1) development on Federal lands within a park
22 shall be limited to those facilities and services that
23 the Secretary determines are necessary and appro-
24 priate for public use and enjoyment of the park in
25 which such facilities and services are located;

1 (2) development of such facilities and services
2 within a park should be consistent to the highest
3 practicable degree with the preservation and con-
4 servation of the park’s resources and values;

5 (3) such facilities and services should be pro-
6 vided by private persons, corporations, or other enti-
7 ties, except when no private interest is qualified and
8 willing to provide such facilities and services;

9 (4) if the Secretary determines that develop-
10 ment should be provided within a park, such devel-
11 opment shall be designed, located, and operated in
12 a manner that is consistent with the purposes for
13 which such park was established;

14 (5) the right to provide such services and to de-
15 velop or utilize such facilities should be awarded to
16 the person, corporation, or entity submitting the
17 best proposal through a competitive selection proc-
18 ess; and

19 (6) such facilities or services should be provided
20 to the public at reasonable rates.

21 **SEC. 3. DEFINITIONS.**

22 As used in this Act, the term—

23 (1) “concessioner” means a person, corporation,
24 or other entity to whom a concession contract has
25 been awarded;

1 (2) “concession contract” means a contract or
2 permit (but not a commercial use authorization is-
3 sued pursuant to section (6) to provide facilities or
4 services, or both, at a park;

5 (3) “facilities” means improvements to real
6 property within parks used to provide accommoda-
7 tions, facilities, or services to park visitors;

8 (4) “fund” means the Park Improvement Fund
9 established pursuant to section 9(b);

10 (5) “park” means a unit of the National Park
11 System;

12 (6) “disposal” means the complete proposal for
13 a concession contract offered by a potential or exist-
14 ing concessioner in response to the minimum re-
15 quirements for the contract established by the Sec-
16 retary; and

17 (7) “Secretary” means the Secretary of the
18 Interior.

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

20 (a) REPEAL.—The Act of October 9, 1965, Public
21 Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), entitled
22 “An Act relating to the establishment of concession poli-
23 cies administered in the areas administered by the Na-
24 tional Park Service and for other purposes”, is hereby re-
25 pealed. The repeal of such Act shall not affect the validity

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

5 (b) CONFORMING AMENDMENT.—The fourth sen-
6 tence of section 3 of the Act of August 25, 1916 (16
7 U.S.C. 3; 39 Stat. 535) is amended by striking all through
8 “no natural” and inserting in lieu thereof, “No natural”.

9 **SEC. 5. CONCESSION POLICY.**

10 Subject to the findings and policy stated in section
11 2, and upon a determination by the Secretary that facili-
12 ties or services are necessary and appropriate for the ac-
13 commodation of visitors at a park, the Secretary shall,
14 consistent with the provisions of this Act, laws relating
15 generally to the administration and management of units
16 of the National Park System, and the park’s general man-
17 agement plan, concession plan, and other applicable plans,
18 authorize private persons, corporations, or other entities
19 to provide and operate such facilities or services as the
20 Secretary deems necessary and appropriate.

21 **SEC. 6. COMMERCIAL USE AUTHORIZATIONS.**

22 (a) IN GENERAL.—To the extent specified in this sec-
23 tion, the Secretary, upon request, may authorize a private
24 person, corporation, or other entity to provide services to

1 park visitors otherwise than by award of a concession con-
2 tract or permit.

3 (b) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—

4 (1) The authority of this section may be used only to au-
5 thorize provision of services to park visitors that the Sec-
6 retary determines will have minimal impact on park re-
7 sources and values and which are consistent with the pur-
8 poses for which the park was established and with all ap-
9 plicable management plans for such park.

10 (2) The Secretary—

11 (A) shall require payment of a reasonable fee
12 for issuance of an authorization under this section,
13 such fees to remain available without further appro-
14 priation to be used to recover the costs of managing
15 and administering this section;

16 (B) shall require that the provision of services
17 under such an authorization be accomplished in a
18 manner consistent to the highest practicable degree
19 with the preservation and conservation of park re-
20 sources and values;

21 (C) shall take appropriate steps to limit the li-
22 ability of the United States arising from the provi-
23 sion of services under such an authorization; and

24 (D) shall have no authority under this section
25 to issue more authorizations than are consistent

1 with the preservation and proper management of
2 park resources and values, and shall establish such
3 other conditions for issuance of such an authoriza-
4 tion as the Secretary determines appropriate for the
5 protection of visitors, provision of adequate and ap-
6 propriate visitor services, and protection and proper
7 management of the resources and values of the park.

8 (c) LIMITATIONS.—Any authorization issued under
9 this section shall be limited to—

10 (1) commercial operations with annual gross
11 revenues of not more than \$25,000 resulting from
12 services originating and provided solely within a
13 park pursuant to such authorization; or

14 (2) the incidental use of park resources by com-
15 mercial operations which provide services originating
16 outside of the park's boundaries: *Provided*, That
17 such authorization shall not provide for the con-
18 struction of any structure, fixture, or improvement
19 on Federal lands within the park.

20 (d) DURATION.—The term of any authorization is-
21 sued under this section shall not exceed two years.

22 (e) A person, corporation, or other entity seeking or
23 obtaining an authorization pursuant to this section shall
24 not be precluded from also submitting proposals for con-
25 cession contracts.

1 **SEC. 7. COMPETITIVE SELECTION PROCESS.**

2 (a) IN GENERAL.—(1) Except as provided in sub-
3 section (b), and consistent with the provisions of sub-
4 section (g), any concession contract entered into pursuant
5 to this Act shall be awarded to the person, corporation,
6 or other entity submitting the best proposal as determined
7 by the Secretary, through a competitive selection process,
8 as provided in this section.

9 (2) Within one hundred and eighty days after the
10 date of enactment of this Act, the Secretary shall promul-
11 gate appropriate regulations establishing such process.
12 The regulations shall include provisions for establishing a
13 method or procedure for the resolution of disputes between
14 the Secretary and a concessioner in those instances where
15 the Secretary has been unable to meet conditions or re-
16 quirements or provide such services, if any, as set forth
17 in a prospectus pursuant to sections 7(c)(2) (D) and (E).

18 (b) TEMPORARY CONTRACT.—Notwithstanding the
19 provisions of subsection (a), the Secretary may award a
20 temporary concession contract in order to avoid interrup-
21 tion of services to the public at a park except that prior
22 to making such a determination, the Secretary shall take
23 all reasonable and appropriate steps to consider alter-
24 natives to avoid such an interruption.

25 (c) PROSPECTUS.—(1) Prior to soliciting proposals
26 for a concession contract at a park, the Secretary shall

1 prepare a prospectus soliciting proposals, and shall publish
2 a notice of its availability at least once in local or national
3 newspapers or trade publications, as appropriate, and
4 shall make such prospectus available upon request to all
5 interested parties.

6 (2) The prospectus shall include, but need not be lim-
7 ited to, the following information—

8 (A) the minimum requirements for such con-
9 tract, as set forth in subsection (d);

10 (B) the terms and conditions of the existing
11 concession contract awarded for such park, if any,
12 including all fees and other forms of compensation
13 provided to the United States by the concessioner;

14 (C) other authorized facilities or services which
15 may be provided in a proposal;

16 (D) facilities and services to be provided by the
17 Secretary to the concessioner, if any, including but
18 not limited to, public access, utilities, and buildings;

19 (E) minimum public services to be offered with-
20 in a park by the Secretary, including but not limited
21 to, interpretive programs, campsites, and visitor cen-
22 ters; and

23 (F) such other information related to the pro-
24 posed concession operation as is provided to the Sec-
25 retary pursuant to a concession contract or is other-

1 wise available to the Secretary, as the Secretary de-
2 termines is necessary to allow for the submission of
3 competitive proposals.

4 (d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No
5 proposal shall be considered which fails to meet the mini-
6 mum requirements as determined by the Secretary. Such
7 minimum requirements shall include, but need not be lim-
8 ited to—

9 (A) the minimum acceptable franchise fee;

10 (B) the duration of the contract;

11 (C) any facilities, services, or capital investment
12 required to be provided by the concessioner; and

13 (D) measures necessary to ensure the protec-
14 tion and preservation of park resources.

15 (2) The Secretary may reject any proposal, notwith-
16 standing the amount of franchise fee offered, if the Sec-
17 retary determines that the person, corporation, or entity
18 is not qualified, is likely to provide unsatisfactory service,
19 or that the proposal is not responsive to the objectives of
20 protecting and preserving park resources and of providing
21 necessary and appropriate facilities or services to the pub-
22 lic at reasonable rates.

23 (3) If all proposals submitted to the Secretary either
24 fail to meet the minimum requirements or are rejected by
25 the Secretary, the Secretary shall establish new minimum

1 contract requirements and re-initiate the competitive se-
2 lection process pursuant to this section.

3 (e) SELECTION OF BEST PROPOSAL.—(1) In select-
4 ing the best proposal, the Secretary shall consider the fol-
5 lowing principal factors:

6 (A) The responsiveness of the proposal to the
7 objectives of protecting and preserving park re-
8 sources and of providing necessary and appropriate
9 facilities and services to the public at reasonable
10 rates.

11 (B) The experience and related background of
12 the person, corporation, or entity submitting the
13 proposal, including but not limited to, the past per-
14 formance and expertise of such person, corporation,
15 or entity in providing the same or similar facilities
16 or services.

17 (C) The financial capability of the person, cor-
18 poration, or entity submitting the proposal.

19 (D) The proposed franchise fee: *Provided*, That
20 consideration of revenue to the United States shall
21 be subordinate to the objectives of protecting and
22 preserving park resources and of providing necessary
23 and appropriate facilities or services to the public at
24 reasonable rates.

1 (2) The Secretary may also consider such secondary
2 factors as the Secretary deems appropriate.

3 (3) In developing regulations to implement this Act,
4 the Secretary shall consider the extent to which plans for
5 employment of Indians (including Native Alaskans) and
6 involvement of businesses owned by Indians, Indian tribes,
7 or Native Alaskans in the operation of concession con-
8 tracts should be identified as a factor in the selection of
9 a best proposal under this section.

10 (f) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
11 retary shall submit any proposed concession contract with
12 anticipated annual gross receipts in excess of \$5,000,000
13 (indexed to 1995 constant dollars) or a duration of ten
14 or more years to the Committee on Energy and Natural
15 Resources of the United States Senate and the Committee
16 on Resources of the United States House of Representa-
17 tives.

18 (2) The Secretary shall not award any such proposed
19 contract until at least sixty days subsequent to the notifi-
20 cation of both Committees.

21 (g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)
22 Except as provided in paragraph (2), the Secretary shall
23 not grant a preferential right to a concessioner to renew
24 a concession contract entered into pursuant to this Act.

1 (2) The Secretary shall grant a preferential right of
2 renewal with respect to a concession contract covered by
3 subsections (h) and (i), subject to the requirements of sub-
4 sections (h) or (i), as appropriate.

5 (3) As used in this subsection, and subsections (h)
6 and (i), the term “preferential right of renewal” means
7 that the Secretary shall allow a concessioner satisfying the
8 requirements of this subsection (and subsections (h) and
9 (i), as appropriate) the opportunity to match the terms
10 and conditions of any competing proposal which the Sec-
11 retary determines to be the best proposal.

12 (4) A concessioner who exercises a preferential right
13 of renewal in accordance with the requirements of this
14 paragraph shall be entitled to award of the new concession
15 contract with respect to which such right is exercised.

16 (h) OUTFITTING AND GUIDE CONTRACTS.—(1) Ex-
17 cept as provided in subsection (i), the provisions of para-
18 graph (g)(2) shall apply only—

19 (A) to a concession contract—

20 (i) which solely authorizes a concessioner
21 to provide outfitting, guide, river running, or
22 other substantially similar services within a
23 park; and

1 (ii) which does not grant such concessioner
2 any interest in any structure, fixture, or im-
3 provement pursuant to section 12; and

4 (B) where the Secretary determines that the
5 concessioner has operated satisfactorily during the
6 term of the contract (including any extensions there-
7 of); and

8 (C) where the Secretary determines that the
9 concessioner has submitted a responsive proposal for
10 a new contract which satisfies the minimum require-
11 ments established by the Secretary pursuant to sec-
12 tion 7.

13 (2) With respect to a concession contract (or exten-
14 sion thereof) covered by this subsection which is in effect
15 on the date of enactment of this Act, the provisions of
16 this paragraph shall apply if the holder of such contract,
17 under the laws and policies in effect on the day before
18 the date of enactment of this Act, would have been entitled
19 to a preferential right to renew such contract upon its ex-
20 piration.

21 (i) CONTRACTS WITH ANNUAL GROSS RECEIPTS
22 UNDER \$500,000.—(1) The provisions of paragraph
23 (g)(2) shall also apply to a concession contract—

24 (A) which the Secretary estimates will result in
25 annual gross receipts of less than \$500,000;

1 (B) where the Secretary has determined that
2 the concessioner has operated satisfactorily during
3 the term of the contract (including any extensions
4 thereof); and

5 (C) that the concessioner has submitted a re-
6 sponsive proposal for a new concession contract
7 which satisfies the minimum requirements estab-
8 lished by the Secretary pursuant to section 7.

9 (2) The provisions of this subsection shall not apply
10 to a concession contract which solely authorizes a conces-
11 sioner to provide outfitting, guide, river running, or other
12 substantially similar services within a park pursuant to
13 subsection (h).

14 (3) Notwithstanding the limitations set forth in para-
15 graph (1)(A), the provisions of this subsection shall also
16 apply to any concession contract authorizing cruise ship
17 entries into Glacier Bay National Park.

18 (j) NO PREFERENTIAL RIGHT TO ADDITIONAL SERV-
19 ICES.—The Secretary shall not grant a preferential right
20 to a concessioner to provide new or additional services at
21 a park.

22 **SEC. 8. FRANCHISE FEES.**

23 (a) IN GENERAL.—Franchise fees, however, stated,
24 shall not be less than the minimum fee established by the
25 Secretary for each contract. The minimum fee shall be de-

1 terminated in a manner that will provide the concessioner
2 with a reasonable opportunity to realize a profit on the
3 operation as a whole, commensurate with the capital in-
4 vested and the obligations assumed under the contract.

5 (b) MULTIPLE CONTRACTS WITHIN A PARK.—If
6 multiple concession contracts are awarded to authorize
7 concessioners to provide the same or similar outfitting,
8 guide, river running, or other similar services at the same
9 approximate location or resource within a specific park,
10 the Secretary shall establish an identical franchise fee for
11 all such contracts, subject to periodic review and revision
12 by the Secretary. Such fee shall reflect fair market value.

13 **SEC. 9. USE OF FRANCHISE FEES.**

14 (a) SPECIAL ACCOUNT.—Except as provided in sub-
15 section (b), all receipts collected pursuant to this Act shall
16 be covered into a special account established in the Treas-
17 ury of the United States. Amounts covered into such ac-
18 count in a fiscal year shall be available for expenditure,
19 subject to appropriation, solely as follows:

20 (1) Fifty percent shall be allocated among the
21 units of the National Park System in the same pro-
22 portion as franchise fees collected from a specific
23 unit bears to the total amount covered into the ac-
24 count for each fiscal year, to be used for resource

1 management and protection, maintenance activities,
2 interpretation, and research.

3 (2) Fifty percent shall be allocated among the
4 units of the National Park System on the basis of
5 need, in a manner to be determined by the Sec-
6 retary, to be used for resource management and pro-
7 tection, maintenance activities, interpretation, and
8 research.

9 (b) PARK IMPROVEMENT FUND.—(1) In lieu of col-
10 lecting all or a portion of the franchise fees that would
11 otherwise be collected pursuant to the concession contract,
12 the Secretary shall, where the Secretary determines it to
13 be practicable, require a concessioner to establish a Park
14 Improvement Fund in which the concessioner shall deposit
15 the franchise fees that would otherwise be required by the
16 contract.

17 (2) The fund shall be maintained by the concessioner
18 in an interest bearing account in a federally-insured finan-
19 cial institution. The concessioner shall maintain the fund
20 separately from any other funds or accounts and shall not
21 co-mingle the monies in the fund with any other monies.
22 The Secretary may establish such other terms, conditions,
23 or requirements as the Secretary determines to be nec-
24 essary to ensure the financial integrity of such fund.

1 (3) Monies from the fund, including interest, shall be
2 expended by the concessioner solely as directed by the Sec-
3 retary for activities and projects within the park which
4 are consistent with the park's general management plan,
5 concession plan, and other applicable plans, and which the
6 Secretary determines will enhance public use, safety, and
7 enjoyment of the park, including but not limited to
8 projects which directly or indirectly support concession fa-
9 cilities or services required by the concession contract.
10 Projects paid for from the fund shall not include routine,
11 operational maintenance of facilities. A concessioner shall
12 not be allowed to make any advances or credits to the
13 fund.

14 (4) A concessioner shall not be granted any interest
15 in improvements made from fund expenditures, including
16 any interest granted pursuant to section 12.

17 (5) Nothing in this subsection shall affect the obliga-
18 tion of a concessioner to insure, maintain, and repair any
19 structure, fixture, or improvement assigned to such con-
20 cessioner and to insure that such structure, fixture, or im-
21 provement fully complies with applicable safety and health
22 laws and regulations.

23 (6) The concessioner shall maintain proper records
24 for all expenditures made from the fund. Such records
25 shall include, but not be limited to invoices, bank state-

1 ments, canceled checks, and such other information as the
2 Secretary determines to be necessary.

3 (7) The concessioner shall annually submit to the
4 Secretary a statement reflecting total activity in the fund
5 for the preceding financial year. The statement shall re-
6 flect monthly deposits, expenditures by project, interest
7 earned, and such other information as the Secretary re-
8 quires.

9 (8) Proceeds from the fund shall not be used for any
10 capital expenditure exceeding \$2,500,000 in any fiscal
11 year unless such expenditure has been approved in ad-
12 vance by Act of Congress.

13 (9) The Secretary shall annually report to the Com-
14 mittees on Appropriations and Energy and Natural Re-
15 sources of the United States Senate and the Committees
16 on Appropriations and Resources of the United States
17 House of Representatives concerning the actual and pro-
18 jected expenditures for each fund established pursuant to
19 this section.

20 (10) Upon the termination of a concession contract,
21 or upon the sale or transfer of such contract, any remain-
22 ing balance in the fund shall be transferred by the conces-
23 sioner to the successor concessioner, to be used solely as
24 set forth in this subsection. In the event there is not a

1 successor concessioner, the fund balance shall be deposited
2 into the special account established in subsection (a).

3 **SEC. 10. DURATION OF CONTRACT.**

4 (a) MAXIMUM TERM.—A concession contract entered
5 into pursuant to this Act shall be awarded for a term not
6 to exceed ten years: *Provided, however,* That the Secretary
7 may award a contract for a term not to exceed twenty
8 years if the Secretary determines that the contract terms
9 and conditions necessitate a longer term.

10 (b) TEMPORARY CONTRACT.—A temporary conces-
11 sion contract awarded on a non-competitive basis pursuant
12 to section 7(b) shall be for a term not to exceed two years.

13 **SEC. 11. TRANSFER OF CONTRACT.**

14 (a) IN GENERAL.—(1) No concession contract may
15 be transferred, assigned, sold, or otherwise conveyed by
16 a concessioner without prior written notification to, and
17 approval of the Secretary.

18 (2) The Secretary shall not unreasonably withhold
19 approval of a transfer, assignment, sale, or conveyance of
20 a concession contract, but shall not approve the transfer,
21 assignment, sale, or conveyance of a concession contract
22 to any individual, corporation or other entity if the Sec-
23 retary determines that—

1 (A) such individual, corporation or entity is, or
2 is likely to be, unable to completely satisfy all of the
3 requirements, terms, and conditions of the contract;

4 (B) such transfer, assignment, sale or convey-
5 ance is not consistent with the objectives of protect-
6 ing and preserving park resources, and of providing
7 necessary and appropriate facilities or services to the
8 public at reasonable rates;

9 (C) such transfer, assignment, sale, or convey-
10 ance relates to a concession contract which does not
11 provide to the United States consideration commensurate
12 with the probable value of the privileges
13 granted by the contract; or

14 (D) the terms of such transfer, assignment,
15 sale, or conveyance directly or indirectly attribute a
16 significant value to intangible assets or otherwise
17 may so reduce the opportunity for a reasonable profit
18 over the remaining term of the contract that the
19 United States may be required to make substantial
20 additional expenditures in order to avoid interrup-
21 tion of services to park visitors.

22 (b) CONGRESSIONAL NOTIFICATION.—Within thirty
23 days after receiving a completed proposal to transfer, as-
24 sign, sell, or otherwise convey a concession contract, the
25 Secretary shall notify the Committee on Energy and Natu-

1 ral Resources of the United States Senate and the Com-
2 mittee on Resources of the United States House of Rep-
3 resentatives of such proposal. Approval of such proposal,
4 if granted by the Secretary, shall not take effect until sixty
5 days after the date of notification of both Committees.

6 **SEC. 12. PROTECTION OF CONCESSIONER INVESTMENT.**

7 (a) CURRENT CONTRACT.—(1) A concessioner who
8 before the date of the enactment of this Act has acquired
9 or constructed, or is required under an existing concession
10 contract to commence acquisition or construction of any
11 structure, fixture, or improvement upon land owned by the
12 United States within a park, pursuant to such contract,
13 shall have a possessory interest therein, to the extent pro-
14 vided by such contract.

15 (2) Unless otherwise provided in such contract, said
16 possessory interest shall not be extinguished by the expira-
17 tion or termination of the contract and may not be taken
18 for public use without just compensation. Such possessory
19 interest may be assigned, transferred, encumbered, or re-
20 linquished.

21 (3) Upon the termination of a concession contract in
22 effect before the date of enactment of this Act, the Sec-
23 retary shall determine the value of any outstanding
24 possessory interest applicable to the contract, such value
25 to be determined for all purposes on the basis of applicable

1 laws and contracts in effect on the day before the date
2 of enactment of this Act.

3 (4) Nothing in this subsection shall be construed to
4 grant a possessory interest to a concessioner whose con-
5 tract in effect on the date of enactment of this Act does
6 not include recognition of a possessory interest.

7 (b) NEW CONTRACTS.—(1)(A) With respect to a con-
8 cession contract entered into on or after the date of enact-
9 ment of this Act, the value of any outstanding possessory
10 interest associated with such contract shall be set at the
11 value determined by the Secretary pursuant to subsection
12 (a)(3).

13 (B) As a condition of entering into a concession con-
14 tract, the value of any outstanding possessory interest
15 shall be reduced on an annual basis, in equal portions,
16 over the same number of years as the time period associ-
17 ated with the straight line depreciation of the structure,
18 fixture, or improvement associated with such possessory
19 interest, as provided by applicable Federal income tax laws
20 and regulations in effect on the day before the date of
21 enactment of this Act.

22 (C) In the event that the contract expires or is termi-
23 nated prior to the elimination of any outstanding
24 possessory interest, the concessioner shall be entitled to re-
25 ceive from the United States or the successor concessioner

1 payment equal to the remaining value of the possessory
2 interest.

3 (D) A successor concessioner may not revalue any
4 outstanding possessory interest, nor the period of time
5 over which such interest is reduced.

6 (E) Title to any structure, fixture, or improvement
7 associated with any outstanding possessory interest shall
8 be vested in the United States.

9 (2)(A) If the Secretary determines during the com-
10 petitive selection process that all proposals submitted ei-
11 ther fail to meet the minimum requirements or are re-
12 jected (as provided in section 7), the Secretary may, solely
13 with respect to any outstanding possessory interest associ-
14 ated with the contract and established pursuant to a con-
15 cession contract entered into prior to the date of enact-
16 ment of this Act, suspend the reduction provisions of sub-
17 section (b)(1)(B) for the duration of the contract, and
18 reinstate the competitive selection process as provided in
19 section 7.

20 (B) The Secretary may suspend such reduction provi-
21 sions only if the Secretary determines that the establish-
22 ment of other new minimum contract requirements is not
23 likely to result in the submission of satisfactory proposals,
24 and that the suspension of the reduction provisions is like-
25 ly to result in the submission of satisfactory proposals:

1 *Provided, however,* That nothing in this paragraph shall
2 be construed to require the Secretary to establish a mini-
3 mum franchise fee at a level below the franchise fee in
4 effect for such contract on the day before the expiration
5 date of the previous contract.

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

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

1 interest in such structure, fixture, or improvement, the
2 method of depreciation, or the estimated useful life of the
3 asset.

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

6 (d) INSURANCE, MAINTENANCE AND REPAIR.—
7 Nothing in this section shall affect the obligation of a 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 **SEC. 13. RATES AND CHARGES TO PUBLIC.**

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

1 **SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

2 (a) REGULATIONS.—Within one hundred and eighty
3 days after the date of enactment of this Act, the Secretary
4 shall publish, after an appropriate period for public com-
5 ment, regulations establishing standards and criteria for
6 evaluating the performance of concessions operating with-
7 in parks.

8 (b) PERIODIC EVALUATION.—(1) The Secretary shall
9 periodically conduct an evaluation of each concessioner op-
10 erating under a concession contract pursuant to this Act,
11 as appropriate, to determine whether such concessioner
12 has performed satisfactorily. In evaluating a conces-
13 sioner's performance, the Secretary shall seek and con-
14 sider applicable reports and comments from appropriate
15 Federal, State, and local regulatory agencies, and shall
16 seek and consider the applicable views of park visitors and
17 concession customers. If the Secretary's performance eval-
18 uation results in an unsatisfactory rating of the conces-
19 sioner's overall operation, the Secretary shall provide the
20 concessioner with a list of the minimum requirements nec-
21 essary for the operation to be rated satisfactory, and shall
22 so notify the concessioner in writing.

23 (2) The Secretary may terminate a concession con-
24 tract if the concessioner fails to meet the minimum oper-
25 ational requirements identified by the Secretary within the
26 time limitations established by the Secretary at the time

1 notice of the unsatisfactory rating is provided to the con-
2 cessioner.

3 (3) If the Secretary terminates a concession contract
4 pursuant to this section, the Secretary shall solicit propos-
5 als for a new contract consistent with the provisions of
6 this Act.

7 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
8 shall notify the Committee on Energy and Natural Re-
9 sources of the United States Senate and the Committee
10 on Resources of the United States House of Representa-
11 tives of each unsatisfactory rating and of each concession
12 contract terminated pursuant to this section.

13 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

14 (a) IN GENERAL.—Each concessioner shall keep such
15 records as the Secretary may prescribe to enable the Sec-
16 retary to determine that all terms of the concessioner's
17 contract have been, and are being faithfully performed,
18 and the Secretary or any of the Secretary's duly author-
19 ized representatives shall, for the purpose of audit and ex-
20 amination, have access to such records and to other books,
21 documents and papers of the concessioner pertinent to the
22 contract and all the terms and conditions thereof as the
23 Secretary deems necessary.

24 (b) GENERAL ACCOUNTING OFFICE REVIEW.—The
25 Comptroller General of the United States or any of his

1 or her duly authorized representatives shall, until the expi-
2 ration of five calendar years after the close of the business
3 year for each concessioner, have access to and the right
4 to examine any pertinent books, documents, papers, and
5 records of the concessioner related to the contracts or con-
6 tracts involved.

7 **SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
8 **MENTS.**

9 The provisions of section 321 of the Act of June 30,
10 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
11 ing of buildings and properties of the United States, shall
12 not apply to contracts awarded by the Secretary pursuant
13 to this Act.

14 **SEC. 17. NO EFFECT ON ANILCA PROVISIONS.**

15 Nothing in this Act shall be construed to amend, su-
16 persede, or otherwise affect any provision of the Alaska
17 National Interest Lands Conservation Act (16 U.S.C.
18 3101 et seq.).

19 **SEC. 18. IMPLEMENTATION REPORTS.**

20 Beginning on June 1, 1997, and biennially thereafter,
21 the Inspector General of the Department of the Interior
22 shall submit a report to the Committee on Energy and
23 Natural Resources of the United States Senate and the
24 Committee on Resources of the House of Representatives
25 on the implementation of this Act and the effect of such

1 implementation on facilities operated pursuant to conces-
2 sion contracts and on visitor services. Each report shall—

3 (1) identify any concession contracts which have
4 been renewed, renegotiated, terminated, or trans-
5 ferred during the year prior to the submission of the
6 report and identify any significant changes in the
7 terms of the new contract;

8 (2) state the amount of franchise fees the rates
9 which would be charged for services, and the level of
10 other services required to be provided by the conces-
11 sioner in comparison to that required in the previous
12 contract;

13 (3) assess the degree to which concession facili-
14 ties are being maintained using the condition of such
15 facilities on the date of enactment of this Act as a
16 baseline;

17 (4) determine whether competition has been in-
18 creased or decreased with respect to the awarding of
19 each contract; and

20 (5) set forth the amount of revenues received
21 and financial obligations incurred or reduced by the
22 Federal Government as a result of the comparison of
23 the Act for the reporting period and in comparison
24 with previous reporting periods and the baseline year

1 of 1995, including the costs, if any, associated with
2 the acquisition of possessory interests.

3 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated such sums as
5 may be necessary to carry out this Act.

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