

Calendar No. 360

103^D CONGRESS
2^D SESSION

S. 208

[Report No. 103-226]

A BILL

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

FEBRUARY 11 (legislative day, JANUARY 25), 1994
Reported with an amendment

Calendar No. 360103^D CONGRESS
2^D SESSION**S. 208****[Report No. 103-226]**

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

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 5), 1993

Mr. BUMPERS (for himself, Mr. PRYOR, Mr. AKAKA, Mr. METZENBAUM, Mr. SARBANES, Mr. BOND, Mr. PELL, Mr. EXON, Mr. LIEBERMAN, Mr. LEAHY, Mr. SIMON, Mr. DASCHLE, Mrs. KASSEBAUM, Mr. CHAFEE, Mr. KOHL, Mr. DANFORTH, Mr. DORGAN, Mr. JEFFORDS, Mr. KERRY, Mr. BRADLEY, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

FEBRUARY 11 (legislative day, JANUARY 25), 1994

Reported by Mr. JOHNSTON, with an amendment

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

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS AND POLICY.**

5 (a) **FINDINGS.**—In furtherance of the Act of August
6 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
7 4), which directs the Secretary of the Interior to admin-
8 ister areas of the National Park System in accordance
9 with the fundamental purpose of preserving their scenery,
10 wildlife, natural and historic objects, and providing for
11 their enjoyment in a manner that will leave them
12 unimpaired for the enjoyment of future generations, the
13 Congress finds that the preservation of park values re-
14 quires that public accommodations, facilities, and services
15 be limited to those necessary and appropriate to carry out
16 the approved management objectives for each park.

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

18 (1) public facilities or services shall be provided
19 within a park only when the private sector or other
20 public agencies cannot adequately provide such fa-
21 cilities or services in the vicinity of the park;

22 (2) if the Secretary determines that public fa-
23 cilities or services should be provided within a park,
24 such facilities or services shall be limited to locations
25 and designs consistent with the highest degree of re-

1 source preservation and protection of the aesthetic
2 values of the park;

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

5 ~~(4) such facilities or services should be provided~~
6 ~~to the public at reasonable rates.~~

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act, the term—

9 (1) ~~“bid” means the complete proposal for a~~
10 ~~concessions contract offered by a potential or exist-~~
11 ~~ing concessioner in response to the minimum re-~~
12 ~~quirements for the contract established by the Sec-~~
13 ~~retary;~~

14 (2) ~~“concessioner” means a private person, cor-~~
15 ~~poration, or other entity to whom a concessions con-~~
16 ~~tract has been awarded;~~

17 (3) ~~“concessions contract” means a contract,~~
18 ~~including permits, to provide facilities or services, or~~
19 ~~both, at a park;~~

20 (4) ~~“facilities” means improvements to real~~
21 ~~property within parks used to provide accommoda-~~
22 ~~tions, facilities, or services to park visitors;~~

23 (5) ~~“park” means a unit of the National Park~~
24 ~~System; and~~

1 (6) “Secretary” means the Secretary of the In-
2 terior.

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

4 The Act of October 9, 1965, Public Law 89–249 (79
5 Stat. 969, 16 U.S.C. 20–20g), entitled “An Act relating
6 to the establishment of concession policies administered in
7 the areas administered by the National Park Service, and
8 for other purposes”, is hereby repealed. The repeal of such
9 Act shall not affect the validity of any contract entered
10 into under such Act, but the provisions of this Act shall
11 apply to any such contract except to the extent such provi-
12 sions are inconsistent with the express terms and condi-
13 tions of the contract.

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

15 Subject to the findings and policy stated in section
16 2 of this Act, and upon a determination by the Secretary
17 that facilities or services are necessary and appropriate for
18 the accommodation of visitors at a park, the Secretary
19 shall, consistent with the provisions of this Act, laws relat-
20 ing generally to the administration and management of
21 units of the National Park System, and the park’s general
22 management plan, authorize private persons, corporations,
23 or other entities to provide and operate such facilities or
24 services as the Secretary deems necessary and appro-
25 priate.

1 **SEC. 6. COMPETITIVE BID PROCEDURES.**

2 (a) ~~IN GENERAL.~~—Except as provided in subsection
3 (b), and consistent with the provisions of subsection (f),
4 any concessions contract entered into pursuant to this Act
5 shall be awarded only through competitive bid procedures.
6 Within 180 days after the date of enactment of this Act,
7 the Secretary shall promulgate appropriate regulations es-
8 tablishing such procedures.

9 (b) ~~TEMPORARY CONTRACT.~~—Notwithstanding the
10 provisions of subsection (a), the Secretary may waive com-
11 petitive bid procedures and award a temporary concessions
12 contract in order to avoid interruption of services to the
13 public at a park.

14 (c) ~~PUBLICATION OF CONTRACT REQUIREMENTS.~~—
15 Prior to soliciting bids for a concessions contract at a
16 park, the Secretary shall publish in the Federal Register
17 the minimum bid requirements for such contract, as set
18 forth in subsection (d). The Secretary shall also publish
19 the terms and conditions of the previous concessions con-
20 tract awarded for such park, and such financial informa-
21 tion of the existing concessioner pertaining directly to the
22 operation of the affected concessions facilities and services
23 during the preceding contract period as the Secretary de-
24 termines is necessary to allow for the submission of com-
25 petitive bids. Any concessions contract entered into pursu-
26 ant to this Act shall provide that the concessioner shall

1 waive any claim of confidentiality with respect to the po-
2 tential disclosure of such information by the Secretary.

3 ~~(d) MINIMUM BID REQUIREMENTS.—(1) No bid shall~~
4 ~~be considered which fails to meet the minimum require-~~
5 ~~ments as determined by the Secretary. Such minimum re-~~
6 ~~quirements shall include, but need not be limited to, the~~
7 ~~amount of franchise fee, the duration of the contract, and~~
8 ~~facilities or services required to be provided by the conces-~~
9 ~~sioner.~~

10 ~~(2) The Secretary may reject any bid, notwithstand-~~
11 ~~ing the amount of franchise fee offered, if the Secretary~~
12 ~~determines that the bidder is not qualified, is likely to pro-~~
13 ~~vide unsatisfactory service, or that the bid is not respon-~~
14 ~~sive to the objectives of protecting and preserving park~~
15 ~~resources and of providing necessary and appropriate fa-~~
16 ~~cilities or services to the public at reasonable rates.~~

17 ~~(3) If all bids submitted to the Secretary either fail~~
18 ~~to meet the minimum bid requirements or are rejected by~~
19 ~~the Secretary, the Secretary shall establish new minimum~~
20 ~~bid requirements and reinitiate the competitive bid process~~
21 ~~pursuant to this section.~~

22 ~~(e) CONGRESSIONAL NOTIFICATION.—(1) The Sec-~~
23 ~~retary shall submit any proposed concessions contract with~~
24 ~~anticipated annual gross receipts in excess of \$1,000,000~~
25 ~~or a duration of greater than five years to the Committee~~

1 on Energy and Natural Resources of the United States
2 Senate and the Committee on Natural Resources of the
3 United States House of Representatives.

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

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

11 (2)(A) Notwithstanding the provisions of paragraph
12 (1), the Secretary may grant a preferential right of re-
13 newal to a concessioner—

14 (i) for a concessions contract which—

15 (I) authorizes a concessioner to provide
16 outfitting or guide services (including, but not
17 limited to “river running” or other similar serv-
18 ices) within a park; and

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

22 (ii) where the Secretary determines that the
23 concessioner has operated satisfactorily on all eval-
24 uations conducted during the term of the previous
25 contract; and

1 (iii) where the Secretary determines that the
2 concessioner's bid for the new contract satisfies the
3 minimum bid requirements established by the Sec-
4 retary.

5 (B) For the purpose of paragraph (2), the term
6 “preferential right of renewal” means that the Secretary
7 may allow a concessioner satisfying the requirements of
8 subparagraph (A) the opportunity to match any higher bid
9 submitted to the Secretary.

10 (g) ~~NO PREFERENTIAL RIGHT TO ADDITIONAL~~
11 SERVICES.—The Secretary shall not grant a preferential
12 right to a concessioner to provide new or additional serv-
13 ices at a park.

14 **SEC. 7. FRANCHISE FEES.**

15 (a) ~~IN GENERAL.~~—Franchise fees, however stated,
16 shall be determined competitively from among those bids
17 determined by the Secretary—

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

20 (2) to be responsive to the objectives of protect-
21 ing and preserving park resources and of providing
22 necessary and appropriate facilities or services to the
23 public at reasonable rates.

24 (b) ~~MINIMUM FEE.~~—Such fee shall not be less than
25 the minimum fee established by the Secretary for each

1 contract. The minimum fee shall 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.

5 (c) OBJECTIVES OF FEE.—Consideration of revenue
6 to the United States shall be subordinate to the objectives
7 of protecting and preserving park resources and of provid-
8 ing necessary and appropriate facilities or services to the
9 public at reasonable rates.

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

11 All receipts collected pursuant to this Act shall be
12 covered into a special account established in the Treasury
13 of the United States. Amounts covered into such account
14 in a fiscal year shall be available for expenditure, subject
15 to appropriation, solely as follows:

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

23 (2) 50 percent shall be allocated among the
24 units of the National Park System on the basis of
25 need, in a manner to be determined by the Sec-

1 retary, to be used for resource management and pro-
2 tection, maintenance activities, interpretation, and
3 research.

4 **SEC. 9. DURATION OF CONTRACT.**

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

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

12 **SEC. 10. TRANSFER OF CONTRACT.**

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

22 (2) The Secretary shall reject any proposal to trans-
23 fer, assign, sell, or otherwise convey a concessions contract
24 if the Secretary determines that such transfer, assign-
25 ment, sale or conveyance is not consistent with the objec-

1 tives of protecting and preserving park resources, and of
2 providing necessary and appropriate facilities or services
3 to the public at reasonable rates.

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

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

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

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

1 ~~(3)~~ With respect to a concessions contract entered
2 into on or after the date of enactment of this Act, the
3 provisions of subsection ~~(b)~~ shall apply to any existing
4 structure, fixture, or improvement as defined in paragraph
5 ~~(a)(1)~~, except that the actual original cost of such struc-
6 ture, fixture, or improvement shall be deemed to be the
7 value of the possessory interest as of the termination date
8 of the previous concessions contract.

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

21 ~~(2)~~ In the event that the contract expires or is termi-
22 nated prior to the recovery of such costs, the concessioner
23 shall be entitled to receive from the United States or the
24 successor concessioner payment equal to the value of the
25 concessioner's interest in such structure, fixture, or im-

1 improvement. A successor concessioner may not revalue the
2 interest in such structure, fixture, or improvement, the
3 method of depreciation, or the estimated useful life of the
4 asset.

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

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

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

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

1 tration and management of the system, and the park's
2 general management plan. The requirements of this sub-
3 section may be satisfied by the public review and hearings
4 associated with the development of the general manage-
5 ment plan for the park.

6 **SEC. 12. UTILITY COSTS.**

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

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

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

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

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

2 (a) REGULATIONS.—Within 180 days after the date
3 of enactment of this Act, the Secretary shall publish in
4 the Federal Register after an appropriate period for public
5 comment, regulations establishing standards and criteria
6 for evaluating the performance of concessions operating
7 within parks.

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

18 (2) The concessioner shall be responsible for all costs
19 associated with any subsequent evaluations resulting from
20 an unsatisfactory rating.

21 (3) If the Secretary terminates a concessions contract
22 pursuant to this section, the Secretary shall solicit bids
23 for a new contract consistent with the provisions of this
24 Act.

25 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
26 shall notify the Committee on Energy and Natural Re-

1 sources of the United States Senate and the Committee
2 on Natural Resources of the United States House of Rep-
3 resentatives of each unsatisfactory rating and of each con-
4 cessions contract terminated pursuant to this section.

5 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

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

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

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.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the "National Park Service*
15 *Concessions Policy Reform Act of 1994".*

16 **SEC. 2. FINDINGS AND POLICY.**

17 (a) *FINDINGS.*—*In furtherance of the Act of August 25,*
18 *1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–4), which*
19 *directs the Secretary of the Interior to administer areas of*
20 *the National Park System in accordance with the fun-*
21 *damental purpose of preserving their scenery, wildlife, nat-*
22 *ural and historic objects, and providing for their enjoyment*
23 *in a manner that will leave them unimpaired for the enjoy-*
24 *ment of future generations, the Congress finds that the pres-*
25 *ervation and conservation of park resources and values re-*
26 *quires that such public accommodations, facilities, and*

1 *services as the Secretary determines are necessary and ap-*
2 *propriate in accordance with this Act—*

3 *(1) should be provided only under carefully con-*
4 *trolled safeguards against unregulated and indis-*
5 *criminate use so that visitation will not unduly im-*
6 *pair these values; and*

7 *(2) should be limited to locations and designs*
8 *consistent to the highest practicable degree with the*
9 *preservation and conservation of park resources and*
10 *values.*

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

12 *(1) development within a park shall be limited*
13 *to those facilities and services that the Secretary de-*
14 *termines are necessary and appropriate for public use*
15 *and enjoyment of the park in which such facilities*
16 *and services are located;*

17 *(2) development within a park should be consist-*
18 *ent to the highest practicable degree with the preserva-*
19 *tion and conservation of the park's resources and val-*
20 *ues;*

21 *(3) such facilities and services should be provided*
22 *by private persons, corporations, or other entities, ex-*
23 *cept when no private interest is qualified and willing*
24 *to provide such facilities and services;*

1 (4) *if the Secretary determines that development*
2 *should be provided within a park, such development*
3 *shall be designed, located, and operated in a manner*
4 *that is consistent with the purposes for which such*
5 *park was established;*

6 (5) *such facilities and services should be awarded*
7 *to the person, corporation, or entity submitting the*
8 *best proposal through a competitive selection process;*
9 *and*

10 (6) *such facilities or services should be provided*
11 *to the public at reasonable rates.*

12 **SEC. 3. DEFINITIONS.**

13 *As used in this Act, the term—*

14 (1) *“concessioner” means a person, corporation,*
15 *or other entity to whom a concessions contract has*
16 *been awarded;*

17 (2) *“concessions contract” means a contract, in-*
18 *cluding permits, to provide facilities or services, or*
19 *both, at a park;*

20 (3) *“facilities” means improvements to real*
21 *property within parks used to provide accommoda-*
22 *tions, facilities, or services to park visitors;*

23 (4) *“park” means a unit of the National Park*
24 *System;*

1 (5) “proposal” means the complete proposal for
2 a concessions contract offered by a potential or exist-
3 ing concessioner in response to the minimum require-
4 ments for the contract established by the Secretary;
5 and

6 (6) “Secretary” means the Secretary of the Inte-
7 rior.

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

9 The Act of October 9, 1965, Public Law 89–249 (79
10 Stat. 969, 16 U.S.C. 20–20g), entitled “An Act relating to
11 the establishment of concession policies administered in the
12 areas administered by the National Park Service and for
13 other purposes”, is hereby repealed. The repeal of such Act
14 shall not affect the validity of any contract entered into
15 under such Act, but the provisions of this Act shall apply
16 to any such contract except to the extent such provisions
17 are inconsistent with the express terms and conditions of
18 the contract.

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

20 Subject to the findings and policy stated in section 2
21 of this Act, and upon a determination by the Secretary that
22 facilities or services are necessary and appropriate for the
23 accommodation of visitors at a park, the Secretary shall,
24 consistent with the provisions of this Act, laws relating gen-
25 erally to the administration and management of units of

1 *the National Park System, and the park's general manage-*
2 *ment plan, concessions plan, or other applicable plans, au-*
3 *thorize private persons, corporations, or other entities to*
4 *provide and operate such facilities or services as the Sec-*
5 *retary deems necessary and appropriate.*

6 **SEC. 6. COMPETITIVE SELECTION PROCESS.**

7 (a) *IN GENERAL.*—(1) *Except as provided in sub-*
8 *section (b), and consistent with the provisions of subsection*
9 *(g), any concessions contract entered into pursuant to this*
10 *Act shall be awarded to the person submitting the best pro-*
11 *posal as determined by the Secretary, through a competitive*
12 *selection process.*

13 (2) *Within 180 days after the date of enactment of this*
14 *Act, the Secretary shall promulgate appropriate regulations*
15 *establishing such process. The regulations shall include pro-*
16 *visions for establishing a method or procedure for the resolu-*
17 *tion of disputes between the Secretary and a concessioner*
18 *in those instances where the Secretary has been unable to*
19 *meet conditions or requirements or provide such services,*
20 *if any, as set forth in a prospectus pursuant to sections*
21 *6(c)(2) (D) and (E).*

22 (b) *TEMPORARY CONTRACT.*—*Notwithstanding the*
23 *provisions of subsection (a), the Secretary may award a*
24 *temporary concessions contract in order to avoid interrup-*
25 *tion of services to the public at a park.*

1 (c) *PROSPECTUS.*—(1) *Prior to soliciting proposals for*
2 *a concessions contract at a park, the Secretary shall publish*
3 *a notice of availability for a prospectus soliciting proposals*
4 *at least once in local or national newspapers or trade publi-*
5 *cations, as appropriate, and shall make such prospectus*
6 *available upon request to all interested parties.*

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

9 (A) *The minimum requirements for such con-*
10 *tract, as set forth in subsection (d).*

11 (B) *The terms and conditions of the existing con-*
12 *cessions contract awarded for such park, if any, in-*
13 *cluding all fees and other forms of compensation pro-*
14 *vided to the United States by the concessioner.*

15 (C) *Other authorized facilities or services which*
16 *may be provided in a proposal.*

17 (D) *Facilities and services to be provided by the*
18 *Secretary to the concessioner, if any, including but*
19 *not limited to, public access, utilities, and buildings.*

20 (E) *Minimum public services to be offered within*
21 *a park by the Secretary, including but not limited to,*
22 *interpretive programs, campsites, and visitor centers.*

23 (F) *Such other information related to the pro-*
24 *posed concessions operation which is not privileged or*
25 *otherwise exempt from disclosure under Federal law*

1 *as the Secretary determines is necessary to allow for*
2 *the submission of competitive proposals.*

3 *(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No*
4 *proposal shall be considered which fails to meet the mini-*
5 *imum requirements as determined by the Secretary. Such*
6 *minimum requirements shall include, but need not be lim-*
7 *ited to, the minimum acceptable franchise fee, the duration*
8 *of the contract, facilities, services, or capital investment re-*
9 *quired to be provided by the concessioner, and measures*
10 *needed to ensure the protection and preservation of park*
11 *resources.*

12 *(2) The Secretary may reject any proposal, notwith-*
13 *standing the amount of franchise fee offered, if the Secretary*
14 *determines that the person, corporation, or entity is not*
15 *qualified, is likely to provide unsatisfactory service, or that*
16 *the proposal is not responsive to the objectives of protecting*
17 *and preserving park resources and of providing necessary*
18 *and appropriate facilities or services to the public at rea-*
19 *sonable rates.*

20 *(3) If all proposals submitted to the Secretary either*
21 *fail to meet the minimum requirements or are rejected by*
22 *the Secretary, the Secretary shall establish new minimum*
23 *contract requirements and re-initiate the competitive selec-*
24 *tion process pursuant to this section.*

1 (e) *SELECTION OF BEST PROPOSAL.*—(1) *In selecting*
2 *the best proposal, the Secretary shall consider the following*
3 *principal factors:*

4 (A) *The responsiveness of the proposal to the ob-*
5 *jectives of protecting and preserving park resources*
6 *and of providing necessary and appropriate facilities*
7 *and services to the public at reasonable rates.*

8 (B) *The experience and related background of the*
9 *person, corporation, or entity submitting the pro-*
10 *posal, including but not limited to, the past perform-*
11 *ance and expertise of such person, corporation, or en-*
12 *tity in providing the same or similar facilities or*
13 *services.*

14 (C) *The financial capability of the person, cor-*
15 *poration, or entity submitting the proposal.*

16 (D) *The proposed franchise fee: Provided, That*
17 *consideration of revenue to the United States shall be*
18 *subordinate to the objectives of protecting and preserv-*
19 *ing park resources and of providing necessary and*
20 *appropriate facilities or services to the public at rea-*
21 *sonable rates.*

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

24 (f) *CONGRESSIONAL NOTIFICATION.*—(1) *The Sec-*
25 *retary shall submit any proposed concessions contract with*

1 *anticipated annual gross receipts in excess of \$5,000,000*
2 *(indexed to 1993 constant dollars) or a duration of ten or*
3 *more years to the Committee on Energy and Natural Re-*
4 *sources of the United States Senate and the Committee on*
5 *Natural Resources of the United States House of Represent-*
6 *atives.*

7 (2) *The Secretary shall not ratify any such proposed*
8 *contract until at least 60 days subsequent to the notification*
9 *of both Committees.*

10 (g) *NO PREFERENTIAL RIGHT OF RENEWAL.—(1) Ex-*
11 *cept as provided in paragraph (2), the Secretary shall not*
12 *grant a preferential right to a concessioner to renew a con-*
13 *cessions contract executed pursuant to this Act.*

14 (2)(A) *Notwithstanding the provisions of paragraph*
15 *(1), the Secretary shall grant a preferential right of renewal*
16 *to a concessioner—*

17 (i) *for a concessions contract which—*

18 (I) *primarily authorizes a concessioner to*
19 *provide outfitting, guide, river running, or other*
20 *similar services within a park; and*

21 (II) *does not grant the concessioner any in-*
22 *terest in any structure, fixture, or improvement*
23 *pursuant to section 11 of this Act; or*

1 (III) the Secretary estimates will have an-
2 nual gross revenues of no more than \$500,000;
3 and

4 (ii) where the Secretary determines that the con-
5 cessioner has operated satisfactorily during the term
6 of the previous contract; and

7 (iii) where the Secretary determines that the con-
8 cessioner submits a responsive proposal for the new
9 contract which satisfies the minimum requirements
10 established by the Secretary.

11 (B) For the purposes of paragraph (2), the term “pref-
12 erential right of renewal” means that the Secretary shall
13 allow a concessioner satisfying the requirements of subpara-
14 graph (A) the opportunity to match the terms and condi-
15 tions of any competing proposal which the Secretary deter-
16 mines to be the best offer.

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

21 **SEC. 7. FRANCHISE FEES.**

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

1 *with a reasonable opportunity to realize a profit on the op-*
2 *eration as a whole, commensurate with the capital invested*
3 *and the obligations assumed.*

4 (b) *MULTIPLE CONTRACTS WITHIN A PARK.*—*If mul-*
5 *multiple concessions contracts are awarded to authorize conces-*
6 *sioners to provide the same or similar outfitting, guide,*
7 *river running, or other similar services at the same approx-*
8 *imate location or resource within a specific park, the Sec-*
9 *retary shall establish an identical franchise fee for all such*
10 *contracts. Such fee shall reflect fair market value, as deter-*
11 *mined by the Secretary.*

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

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

19 (1) *50 percent shall be allocated among the units*
20 *of the National Park System in the same proportion*
21 *as franchise fees collected from a specific unit bears*
22 *to the total amount covered into the account for each*
23 *fiscal year, to be used for resource management and*
24 *protection, maintenance activities, interpretation,*
25 *and research.*

1 (2) 50 percent shall be allocated among the units
2 of the National Park System on the basis of need, in
3 a manner to be determined by the Secretary, to be
4 used for resource management and protection, main-
5 tenance activities, interpretation, and research.

6 (b) *PARK IMPROVEMENT FUND*.—(1) In lieu of collect-
7 ing all or a portion of the franchise fees that would other-
8 wise be collected pursuant to the concessions contract, the
9 Secretary shall, where the Secretary determines it to be
10 practicable, require a concessioner to establish a Park Im-
11 provement Fund (hereinafter in this section referred to as
12 the “fund”), in which the concessioner shall deposit the
13 franchise fees that would otherwise be required by the con-
14 tract.

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

23 (3) Monies from the fund, including interest, shall be
24 expended by the concessioner solely as directed by the Sec-
25 retary for activities and projects within the park which are

1 *consistent with the park's general management plan, con-*
2 *cessions plan, and other applicable plans, and which the*
3 *Secretary determines will enhance public use, safety, and*
4 *enjoyment of the park, including but not limited to projects*
5 *which directly or indirectly support concession facilities or*
6 *services required by the concessions contract. Projects paid*
7 *for from the fund shall not include routine, operational*
8 *maintenance of facilities. A concessioner shall not be al-*
9 *lowed to make any advances or credits to the fund.*

10 (4) *A concessioner shall not be granted any interest*
11 *in improvements made from fund expenditures, including*
12 *any interest granted pursuant to section 11 of this Act.*

13 (5) *Nothing in this subsection shall affect the obliga-*
14 *tion of a concessioner to insure, maintain, and repair any*
15 *structure, fixture, or improvement assigned to such conces-*
16 *sioner and to insure that such structure, fixture, or im-*
17 *provement fully complies with applicable safety and health*
18 *laws and regulations.*

19 (6) *The concessioner shall maintain proper records for*
20 *all expenditures made from the fund. Such records shall in-*
21 *clude, but not be limited to invoices, bank statements, can-*
22 *celed checks, and such other information as the Secretary*
23 *determines to be necessary.*

24 (7) *The concessioner shall annually submit to the Sec-*
25 *retary a statement reflecting total activity in the fund for*

1 *the preceding financial year. The statement shall reflect*
2 *monthly deposits, expenditures by project, interest earned,*
3 *and such other information as the Secretary requires.*

4 *(8) Upon the termination of a concessions contract, or*
5 *upon the sale or transfer of such contract, any remaining*
6 *balance in the fund shall be transferred by the concessioner*
7 *to the successor concessioner, to be used solely as set forth*
8 *in this subsection. In the event there is not a successor con-*
9 *cessioner, the fund balance shall be deposited into the spe-*
10 *cial account established in subsection (a).*

11 **SEC. 9. DURATION OF CONTRACT.**

12 *(a) MAXIMUM TERM.—A concessions contract entered*
13 *into pursuant to this Act shall be awarded for a term not*
14 *to exceed ten years: Provided, however, That the Secretary*
15 *may award a contract for a term not to exceed twenty years*
16 *if the Secretary determines that the contract terms and con-*
17 *ditions necessitate a longer term.*

18 *(b) TEMPORARY CONTRACT.—A temporary concessions*
19 *contract awarded on a non-competitive basis pursuant to*
20 *section 6(b) of this Act shall be for a term not to exceed*
21 *two years.*

22 **SEC. 10. TRANSFER OF CONTRACT.**

23 *(a) IN GENERAL.—(1) No concessions contract may be*
24 *transferred, assigned, sold, or otherwise conveyed by a con-*

1 *cessioner without prior written notification to, and ap-*
2 *proval of the Secretary.*

3 *(2) The Secretary shall not approve the transfer of a*
4 *concessions contract to any individual, corporation or other*
5 *entity if the Secretary determines that—*

6 *(A) such individual, corporation or entity is, or*
7 *is likely to be, unable to completely satisfy all of the*
8 *requirements, terms, and conditions of the contract; or*

9 *(B) such transfer, assignment, sale or conveyance*
10 *is not consistent with the objectives of protecting and*
11 *preserving park resources, and of providing necessary*
12 *and appropriate facilities or services to the public at*
13 *reasonable rates: Provided, That such approval shall*
14 *not be unreasonably withheld.*

15 *(b) CONGRESSIONAL NOTIFICATION.—Within thirty*
16 *days after receiving a proposal to transfer, assign, sell, or*
17 *otherwise convey a concessions contract, the Secretary shall*
18 *notify the Committee on Energy and Natural Resources of*
19 *the United States Senate and the Committee on Natural*
20 *Resources of the United States House of Representatives of*
21 *such proposal. Approval of such proposal, if granted by the*
22 *Secretary, shall not take effect until sixty days after the*
23 *date of notification of both Committees.*

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

2 (a) *EXISTING STRUCTURES.*—(1) *A concessioner who*
3 *before the date of the enactment of this Act has acquired*
4 *or constructed, or is required under an existing concessions*
5 *contract to commence acquisition or construction of any*
6 *structure, fixture, or improvement upon land owned by the*
7 *United States within a park, pursuant to a concessions con-*
8 *tract, shall have a possessory interest therein, to the extent*
9 *provided by such contract.*

10 (2) *The provisions of this subsection shall not apply*
11 *to a concessioner whose contract in effect on the date of en-*
12 *actment of this Act does not include recognition of a*
13 *possessory interest.*

14 (3) *With respect to a concessions contract entered into*
15 *on or after the date of enactment of this Act, the provisions*
16 *of subsection (b) shall apply to any existing structure, fix-*
17 *ture, or improvement as defined in paragraph (a)(1), except*
18 *that the actual original cost of such structure, fixture, or*
19 *improvement shall be deemed to be the value of the*
20 *possessory interest as of the termination date of the previous*
21 *concessions contract.*

22 (b) *NEW STRUCTURES.*—(1) *On or after the date of*
23 *enactment of this Act, a concessioner who constructs or ac-*
24 *quires a new, additional, or replacement structure, fixture,*
25 *or improvement upon land owned by the United States*
26 *within a park, pursuant to a concessions contract, shall*

1 *have an interest in such structure, fixture, or improvement*
2 *equivalent to the actual original cost of acquiring or con-*
3 *structing such structure, fixture, or improvement, less*
4 *straight line depreciation over the estimated useful life of*
5 *the asset according to Generally Accepted Accounting Prin-*
6 *ciples: Provided, That in no event shall the estimated useful*
7 *life of such asset exceed the depreciation period used for such*
8 *asset for Federal income tax purposes.*

9 (2) *In the event that the contract expires or is termi-*
10 *nated prior to the recovery of such costs, the concessioner*
11 *shall be entitled to receive from the United States or the*
12 *successor concessioner payment equal to the value of the con-*
13 *cessioner's interest in such structure, fixture, or improve-*
14 *ment. A successor concessioner may not revalue the interest*
15 *in such structure, fixture, or improvement, the method of*
16 *depreciation, or the estimated useful life of the asset.*

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

19 (c) *INSURANCE, MAINTENANCE AND REPAIR.—Nothing*
20 *in this section shall affect the obligation of a concessioner*
21 *to insure, maintain, and repair any structure, fixture, or*
22 *improvement assigned to such concessioner and to insure*
23 *that such structure, fixture, or improvement fully complies*
24 *with applicable safety and health laws and regulations.*

1 **SEC. 12. RATES AND CHARGES TO PUBLIC.**

2 *The reasonableness of a concessioner's rates and*
3 *charges to the public shall, unless otherwise provided in the*
4 *bid specifications and contract, be judged primarily by*
5 *comparison with those rates and charges for facilities and*
6 *services of comparable character under similar conditions,*
7 *with due consideration for length of season, seasonal vari-*
8 *ance, average percentage of occupancy, accessibility, avail-*
9 *ability and costs of labor and materials, type of patronage,*
10 *and other factors deemed significant by the Secretary.*

11 **SEC. 13. CONCESSIONER PERFORMANCE EVALUATION.**

12 *(a) REGULATIONS.—Within one hundred and eighty*
13 *days after the date of enactment of this Act, the Secretary*
14 *shall publish, after an appropriate period for public com-*
15 *ment, regulations establishing standards and criteria for*
16 *evaluating the performance of concessions operating within*
17 *parks.*

18 *(b) PERIODIC EVALUATION.—(1) The Secretary shall*
19 *periodically conduct an evaluation of each concessioner op-*
20 *erating under a concessions contract pursuant to this Act,*
21 *as appropriate, to determine whether such concessioner has*
22 *performed satisfactorily. In evaluating a concessioner's per-*
23 *formance, the Secretary shall seek and consider applicable*
24 *reports and comments from appropriate Federal, State, and*
25 *local regulatory agencies. If the Secretary's performance*
26 *evaluation results in an unsatisfactory rating of the conces-*

1 *cessioner's overall operation, the Secretary shall provide the*
2 *concessioner with a list of the minimum requirements nec-*
3 *essary for the operation to be rated satisfactory, and shall*
4 *so notify the concessioner in writing.*

5 (2) *The Secretary may terminate a concessions con-*
6 *tract if the concessioner fails to meet the minimum oper-*
7 *ational requirements identified by the Secretary within the*
8 *time limitations established by the Secretary at the time*
9 *notice of the unsatisfactory rating is provided to the conces-*
10 *sioner.*

11 (3) *If the Secretary terminates a concessions contract*
12 *pursuant to this section, the Secretary shall solicit propos-*
13 *als for a new contract consistent with the provisions of this*
14 *Act.*

15 (c) *CONGRESSIONAL NOTIFICATION.*—*The Secretary*
16 *shall notify the Committee on Energy and Natural Re-*
17 *sources of the United States Senate and the Committee on*
18 *Natural Resources of the United States House of Represent-*
19 *atives of each unsatisfactory rating and of each concessions*
20 *contract terminated pursuant to this section.*

21 **SEC. 14. RECORDKEEPING REQUIREMENTS.**

22 *Each concessioner shall keep such records as the Sec-*
23 *retary may prescribe to enable the Secretary to determine*
24 *that all terms of the concessioner's contract have been, and*
25 *are being faithfully performed, and the Secretary or any*

1 *of the Secretary's duly authorized representatives shall, for*
2 *the purpose of audit and examination, have access to such*
3 *records and to other books, documents and papers of the*
4 *concessioner pertinent to the contract and all the terms and*
5 *conditions thereof as the Secretary deems necessary.*

6 **SEC. 15. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
7 **MENTS.**

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

13 **SEC. 16. NO EFFECT ON ANILCA PROVISIONS.**

14 *Nothing in this Act shall be construed to amend, super-*
15 *sede, or otherwise affect any provision of the Alaska Na-*
16 *tional Interest Lands Conservation Act (16 U.S.C. 3101 et*
17 *seq.).*