

105TH CONGRESS
2D SESSION

H. R. 3934

To reform the concession programs of the National Park Service and to provide for the use of the revenues generated by such reforms to enhance resource protection and visitor use and enjoyment of the National Park System.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1998

Mr. MILLER of California (for himself, Mr. FALEOMAVAEGA, Mr. MARKEY, Mr. KENNEDY of Rhode Island, Mr. OLVER, Mr. FRANK of Massachusetts, Ms. ESHOO, Ms. FURSE, Mr. GEJDENSON, Mr. STARK, Mr. LEWIS of Georgia, and Mr. BARRETT of Wisconsin) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reform the concession programs of the National Park Service and to provide for the use of the revenues generated by such reforms to enhance resource protection and visitor use and enjoyment of the National Park System.

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 1998”.

1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) FINDINGS.—In furtherance of the Act of August
3 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1,
4 2–4), which directs the Secretary of the Interior to admin-
5 ister areas of the National Park System in accordance
6 with the fundamental purpose of preserving their scenery,
7 wildlife, natural and historic objects, and providing for
8 their enjoyment in a manner that will leave them
9 unimpaired for the enjoyment of future generations, the
10 Congress finds that the preservation and conservation of
11 park resources and values require that such public accom-
12 modations, facilities, and services as the Secretary deter-
13 mines are necessary and appropriate in accordance with
14 this Act—

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

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

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

24 (1) development on Federal lands within a park
25 shall be limited to those facilities and services that
26 the Secretary determines are necessary and appro-

1 appropriate for public use and enjoyment of the park in
2 which such facilities and services are located;

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

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

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

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

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

23 **SEC. 3. DEFINITIONS.**

24 As used in this Act, the term—

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

4 (2) “concession contract” means a contract or
5 permit (but not a commercial use authorization
6 issued pursuant to section 6) to provide facilities or
7 services, or both, at a park;

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

11 (4) “park” means a unit of the National Park
12 System;

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

18 (6) “Secretary” means the Secretary of the
19 Interior.

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

21 (a) REPEAL.—The Act of October 9, 1965, Public
22 Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), entitled
23 “An Act relating to the establishment of concession poli-
24 cies administered in the areas administered by the Na-
25 tional Park Service and for other purposes”, is hereby re-

1 pealed. The repeal of such Act shall not affect the validity
2 of any contract entered into under such Act, but the provi-
3 sions of this Act shall apply to any such contract except
4 to the extent such provisions are inconsistent with the ex-
5 press terms and conditions of the contract.

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

10 **SEC. 5. CONCESSION POLICY.**

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

22 **SEC. 6. COMMERCIAL USE AUTHORIZATIONS.**

23 (a) IN GENERAL.—To the extent specified in this sec-
24 tion, the Secretary, upon request, may authorize a private

1 person, corporation, or other entity to provide services to
2 park visitors through a commercial use authorization.

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 that the Secretary determines
6 will have minimal impact on park resources and values
7 and which are consistent with the purposes for which the
8 park was established and with all applicable management
9 plans for such park.

10 (2) The Secretary—

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

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
21 issued under this section shall not exceed two years.

22 (e) OTHER CONTRACTS.—A person, corporation, or
23 other entity seeking or obtaining an authorization pursu-
24 ant to this section shall not be precluded from also submit-
25 ting proposals for concession 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)(A) As soon as practicable after the date of enact-
10 ment of this Act, the Secretary shall promulgate appro-
11 priate regulations establishing the competitive selection
12 process.

13 (B) The regulations shall include provisions for estab-
14 lishing a procedure for the resolution of disputes between
15 the Secretary and a concessioner in those instances where
16 the Secretary has been unable to meet conditions or re-
17 quirements or provide such services, if any, as set forth
18 in a prospectus pursuant to sections 7(c)(2) (D) and (E).

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

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

8 (B) A prospectus shall assign a weight to each factor
9 identified therein related to the importance of such factor
10 in the selection process. Points shall be awarded for each
11 such factor, based on the relative strength of the proposal
12 concerning that factor.

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

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

17 (B) the terms and conditions of the existing
18 concession contract awarded for such park, if any,
19 including all fees and other forms of compensation
20 provided to the United States by the concessioner;

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

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

1 (E) minimum public services to be offered with-
2 in a park by the Secretary, including but not limited
3 to, interpretive programs, campsites, and visitor cen-
4 ters; and

5 (F) such other information related to the pro-
6 posed concession operation as is provided to the Sec-
7 retary pursuant to a concession contract or is other-
8 wise available to the Secretary, as the Secretary de-
9 termines is necessary to allow for the submission of
10 competitive proposals.

11 (d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No
12 proposal shall be considered which fails to meet the mini-
13 mum requirements as determined by the Secretary. Such
14 minimum requirements shall include, but need not be lim-
15 ited to—

16 (A) the minimum acceptable franchise fee;

17 (B) any facilities, services, or capital investment
18 required to be provided by the concessioner; and

19 (C) measures necessary to ensure the protection
20 and preservation of park resources.

21 (2) The Secretary shall reject any proposal, notwith-
22 standing the franchise fee offered, if the Secretary deter-
23 mines that the person, corporation, or entity is not quali-
24 fied, is likely to provide unsatisfactory service, or that the
25 proposal is not responsive to the objectives of protecting

1 and preserving park resources and of providing necessary
2 and appropriate facilities or services to the public at rea-
3 sonable rates.

4 (3) If all proposals submitted to the Secretary either
5 fail to meet the minimum requirements or are rejected by
6 the Secretary, the Secretary shall establish new minimum
7 contract requirements and re-initiate the competitive se-
8 lection process pursuant to this section.

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

12 (A) the responsiveness of the proposal to the
13 objectives of protecting and preserving park re-
14 sources and of providing necessary and appropriate
15 facilities and services to the public at reasonable
16 rates;

17 (B) the experience and related background of
18 the person, corporation, or entity submitting the
19 proposal, including but not limited to, the past per-
20 formance and expertise of such person, corporation,
21 or entity in providing the same or similar facilities
22 or services;

23 (C) the financial capability of the person, cor-
24 poration, or entity submitting the proposal; and

1 (D) the proposed franchise fee: *Provided*, That
2 consideration of revenue to the United States shall
3 be subordinate to the objectives of protecting and
4 preserving park resources and of providing necessary
5 and appropriate facilities or services to the public at
6 reasonable rates.

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

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

16 (f) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
17 retary shall submit any proposed concession contract with
18 anticipated annual gross receipts in excess of \$5,000,000
19 or a duration of ten or more years to the Committee on
20 Energy and Natural Resources of the United States Sen-
21 ate and the Committee on Resources of the United States
22 House of Representatives.

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

1 (g) 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 concession contract entered into pursuant to this Act.

5 (2) The Secretary shall grant a preferential right of
6 renewal with respect to a concession contract covered by
7 subsection (i), subject to the requirements of such sub-
8 section.

9 (A) As used in this subsection, and subsection
10 (i), the term “preferential right of renewal” means
11 that the Secretary shall allow a concessioner satisfy-
12 ing the requirements of this subsection (and sub-
13 section (i)) the opportunity to match the terms and
14 conditions of any competing proposal which the Sec-
15 retary determines to be the best proposal.

16 (B) A concessioner who exercises a preferential
17 right of renewal in accordance with the requirements
18 of this paragraph shall be entitled to award of the
19 new concession contract with respect to which such
20 right is exercised.

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

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

1 (2) 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 (3) 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 (i) **NO PREFERENTIAL RIGHT TO ADDITIONAL SERV-**
10 **ICES.**—The Secretary shall not grant a preferential right
11 to a concessioner to provide new or additional services at
12 a park.

13 **SEC. 8. FRANCHISE FEES.**

14 (a) **IN GENERAL.**—Franchise fees shall not be less
15 than the minimum fee established by the Secretary for
16 each contract. The minimum fee shall be determined in
17 a manner that will provide the concessioner with a reason-
18 able opportunity to realize a profit on the operation as
19 a whole, commensurate with the capital invested and the
20 obligations assumed under the contract.

21 (b) **MULTIPLE CONTRACTS WITHIN A PARK.**—If
22 multiple concession contracts are awarded to authorize
23 concessioners to provide the same or similar outfitting,
24 guide, river running, or other similar services at the same
25 approximate location or resource within a specific park,

1 the Secretary shall establish an identical franchise fee for
2 all such contracts, subject to periodic review and revision
3 by the Secretary. Such fee shall reflect fair market value.

4 (c) ADJUSTMENT OF FRANCHISE FEES.—The
5 amount of any franchise fee for the term of the concession
6 contract shall be specified in the concession contract and
7 may only be modified to reflect substantial changes from
8 the conditions specified or anticipated in the contract.

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

10 (a) DEPOSITS TO TREASURY.—All receipts collected
11 pursuant to this Act shall be covered into a special account
12 established in the Treasury of the United States. Amounts
13 covered into such account in a fiscal year shall be available
14 for expenditure by the Secretary, without further appro-
15 priation, solely as follows:

16 (1) Fifty 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.

23 (2) Fifty 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 (b) EXISTING CONCESSIONER IMPROVEMENT
5 FUNDS.—Nothing in this section shall affect or restrict
6 the use of funds maintained by a concessioner in an exist-
7 ing concessioner improvement account pursuant to a con-
8 cession contract in effect as of the date of enactment of
9 this Act. No new, renewed, or extended contracts entered
10 into after the date of enactment of this Act shall provide
11 for or authorize the use of such concessioner improvement
12 accounts.

13 (c) INSPECTOR GENERAL AUDITS.—Beginning in fis-
14 cal year 1998, the Inspector General of the Department
15 of the Interior shall conduct a biennial audit of the conces-
16 sion fees generated pursuant to this Act. The Inspector
17 General shall make a determination as to whether conces-
18 sion fees are being collected and expended in accordance
19 with this Act and shall submit copies of each audit to the
20 Committee on Energy and Natural Resources of the
21 United States Senate and the Committee on Resources of
22 the United States House of Representatives.

23 **SEC. 10. DURATION OF CONTRACT.**

24 (a) MAXIMUM TERM.—A concession contract entered
25 into pursuant to this Act shall be awarded for a term not

1 to exceed ten years: *Provided, however,* That the Secretary
2 may award a contract for a term of up to twenty years
3 if the Secretary determines that the contract terms and
4 conditions necessitate a longer term.

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

8 **SEC. 11. TRANSFER OF CONTRACT.**

9 (a) IN GENERAL.—No concession contract may be
10 transferred, assigned, sold, or otherwise conveyed by a
11 concessioner without prior written notification to, and ap-
12 proval of the Secretary.

13 (b) APPROVAL OF TRANSFER.—The Secretary shall
14 not unreasonably withhold approval of a transfer, assign-
15 ment, sale, or conveyance of a concession contract, but
16 shall not approve the transfer, assignment, sale, or convey-
17 ance of a concession contract to any individual, corpora-
18 tion or other entity if the Secretary determines that—

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

22 (2) such transfer, assignment, sale or convey-
23 ance is not consistent with the objectives of protect-
24 ing and preserving park resources, and of providing

1 necessary and appropriate facilities or services to the
2 public at reasonable rates;

3 (3) such transfer, assignment, sale, or convey-
4 ance relates to a concession contract which does not
5 provide to the United States consideration commensurate
6 with the probable value of the privileges
7 granted by the contract; or

8 (4) the terms of such transfer, assignment, sale,
9 or conveyance directly or indirectly attribute a significant
10 value to intangible assets or otherwise may
11 so reduce the opportunity for a reasonable profit
12 over the remaining term of the contract that the
13 United States may be required to make substantial
14 additional expenditures in order to avoid interruption
15 of services to park visitors.

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

17 (a) CURRENT CONTRACT.—(1) A concessioner who
18 before the date of the enactment of this Act has acquired
19 or constructed, or is required under an existing concession
20 contract to commence acquisition or construction of any
21 structure, fixture, or improvement upon land owned by the
22 United States within a park, pursuant to such contract,
23 shall have a possessory interest therein, to the extent pro-
24 vided by such contract.

1 (2) Unless otherwise provided in such contract, said
2 possessory interest shall not be extinguished by the expira-
3 tion or termination of the contract and may not be taken
4 for public use without just compensation. Such possessory
5 interest may be assigned, transferred, encumbered, or re-
6 linquished.

7 (3) Upon the termination of a concession contract in
8 effect before the date of enactment of this Act, the Sec-
9 retary shall determine the value of any outstanding
10 possessory interest applicable to the contract, such value
11 to be determined for all purposes on the basis of applicable
12 laws and contracts in effect on the day before the date
13 of enactment of this Act.

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

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

24 (B) As a condition of entering into a concession con-
25 tract, the value of any outstanding possessory interest

1 shall be reduced on an annual basis, in equal portions,
2 over the same number of years as the time period associ-
3 ated with the straight line depreciation of the structure,
4 fixture, or improvement associated with such possessory
5 interest, as provided by applicable Federal income tax laws
6 and regulations in effect on the day before the date of
7 enactment of this Act.

8 (C) In the event that the contract expires or is termi-
9 nated prior to the elimination of any outstanding
10 possessory interest, the concessioner shall be entitled to
11 receive from the United States or the successor conces-
12 sioner payment equal to the remaining value of the
13 possessory interest.

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

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

20 (2)(A) If the Secretary determines during the com-
21 petitive selection process that all proposals submitted ei-
22 ther fail to meet the minimum requirements or are re-
23 jected (as provided in section 7), the Secretary may, solely
24 with respect to any outstanding possessory interest associ-
25 ated with the contract and established pursuant to a con-

1 cession contract entered into prior to the date of enact-
2 ment of this Act, suspend the reduction provisions of sub-
3 section (b)(1)(B) for the duration of the contract, and re-
4 initiate the competitive selection process as provided in
5 section 7.

6 (B) The Secretary may suspend such reduction provi-
7 sions only if the Secretary determines that the establish-
8 ment of other new minimum contract requirements is not
9 likely to result in the submission of satisfactory proposals,
10 and that the suspension of the reduction provisions is like-
11 ly to result in the submission of satisfactory proposals:
12 *Provided, however,* That nothing in this paragraph shall
13 be construed to require the Secretary to establish a mini-
14 mum franchise fee at a level below the franchise fee in
15 effect for such contract on the day before the expiration
16 date of the previous contract.

17 (c) NEW STRUCTURES.—(1) On or after the date of
18 enactment of this Act, a concessioner who constructs or
19 acquires a new, additional, or replacement structure, fix-
20 ture, or improvement upon land owned by the United
21 States within a park, pursuant to a concession contract,
22 shall have an interest in such structure, fixture, or im-
23 provement equivalent to the actual original cost of acquir-
24 ing or constructing such structure, fixture, or improve-
25 ment, less straight line depreciation over the estimated

1 useful life of the asset according to Generally Accepted
2 Accounting Principles: *Provided*, That in no event shall
3 the estimated useful life of such asset exceed the deprecia-
4 tion period used for such asset for Federal income tax pur-
5 poses.

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

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

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

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

2 The reasonableness of a concessioner's rates and
3 charges to the public shall, unless otherwise provided in
4 the bid specifications and contract, be judged primarily
5 by comparison with those rates and charges for facilities
6 and services of comparable character under similar condi-
7 tions, with due consideration for length of season, seasonal
8 variance, average percentage of occupancy, accessibility,
9 availability and costs of labor and materials, type of pa-
10 tronage, and other factors deemed significant by the Sec-
11 retary.

12 **SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

13 (a) REGULATIONS.—As soon as practicable after the
14 date of enactment of this Act, the Secretary shall publish,
15 after an appropriate period for public comment, regula-
16 tions establishing standards and criteria for evaluating the
17 performance of concessions operating within parks.

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

1 concession customers. If the Secretary's performance eval-
2 uation results in an unsatisfactory rating of the conces-
3 sioner's overall operation, the Secretary shall provide the
4 concessioner with a list of the minimum requirements nec-
5 essary for the operation to be rated satisfactory, and shall
6 so notify the concessioner in writing.

7 (2) The Secretary may terminate a concession con-
8 tract if the concessioner fails to meet the minimum oper-
9 ational requirements identified by the Secretary within the
10 time limitations established by the Secretary at the time
11 notice of the unsatisfactory rating is provided to the con-
12 cessioner.

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

17 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

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

1 contract and all the terms and conditions thereof as the
2 Secretary deems necessary.

3 (b) **GENERAL ACCOUNTING OFFICE REVIEW.**—The
4 Comptroller General of the United States or any of his
5 or her duly authorized representatives shall, until the expi-
6 ration of five calendar years after the close of the business
7 year for each concessioner, have access to and the right
8 to examine any pertinent books, documents, papers, and
9 records of the concessioner related to the contracts or con-
10 tracts involved.

11 **SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
12 **MENTS.**

13 The provisions of section 321 of the Act of June 30,
14 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
15 ing of buildings and properties of the United States, shall
16 not apply to contracts awarded by the Secretary pursuant
17 to this Act.

18 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

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

○