

tract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) A concessioner that holds a concessions contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this subchapter if—

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concessions contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) New or additional services

The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a unit of the National Park System.

(10) Secretarial authority

Nothing in this subchapter shall be construed as limiting the authority of the Secretary to determine whether to issue a concessions contract or to establish its terms and conditions in furtherance of the policies expressed in this subchapter.

(11) Exceptions

Notwithstanding the provisions of this section, the Secretary may award, without public solicitation, the following:

(A) A temporary concessions contract or an extension of an existing concessions contract for a term not to exceed 3 years in order to avoid interruption of services to the public at a unit of the National Park System, except that prior to making such an award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such interruption.

(B) A concessions contract in extraordinary circumstances where compelling and equitable considerations require the award of a concessions contract to a particular party in the public interest. Such award of a concessions contract shall not be made by the Secretary until at least 30 days after publication in the Federal Register of notice of the Secretary's intention to do so and the reasons for such action, and submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(Pub. L. 105-391, title IV, §403, Nov. 13, 1998, 112 Stat. 3504.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 105-391, Nov. 13, 1998, 112 Stat. 3503, which is classified principally to this subchapter. For complete classification of title IV to the Code, see Short Title note set out under section 5901 of this title and Tables.

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House

of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 5953. Term of concessions contracts

A concessions contract entered into pursuant to this subchapter shall generally be awarded for a term of 10 years or less. However, the Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

(Pub. L. 105-391, title IV, §404, Nov. 13, 1998, 112 Stat. 3508; Pub. L. 106-176, title III, §311, Mar. 10, 2000, 114 Stat. 34.)

AMENDMENTS

2000—Pub. L. 106-176, which directed the substitution of "contract terms and conditions," for "contract terms and conditions," could not be executed because the words "contract terms and conditions," did not appear.

§ 5954. Protection of concessioner investment

(a) Leasehold surrender interest under new concessions contracts

On or after November 13, 1998, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concessions contract shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(1) A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concessions contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement.

(2) A leasehold surrender interest—

(A) may be pledged as security for financing of a capital improvement or the acquisition of a concessions contract when approved by the Secretary pursuant to this subchapter;

(B) shall be transferred by the concessioner in connection with any transfer of the concessions contract and may be relinquished or waived by the concessioner; and

(C) shall not be extinguished by the expiration or other termination of a concessions contract and may not be taken for public use except on payment of just compensation.

(3) The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) in the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(4) Effective 9 years after November 13, 1998, the Secretary may provide, in any particular

new concession contract the Secretary estimates will have a leasehold surrender interest of more than \$10,000,000, that the value of any leasehold surrender interest in a capital improvement shall be based on either (A) a reduction on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the initial value (construction cost of the capital improvement), as provided by applicable Federal income tax laws and regulations in effect on the day before November 13, 1998, or (B) such alternative formula that is consistent with the objectives of this subchapter. The Secretary may only use such an alternative formula if the Secretary determines, after scrutiny of the financial and other circumstances involved in this particular concession contract (including providing notice in the Federal Register and opportunity for comment), that such alternative formula is, compared to the standard method of determining value provided for in paragraph (3), necessary in order to provide a fair return to the Government and to foster competition for the new contract by providing a reasonable opportunity to make a profit under the new contract. If no responsive offers are received in response to a solicitation that includes such an alternative formula, the concession opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (3).

(5) Where a concessioner, pursuant to the terms of a concessions contract, makes a capital improvement to an existing capital improvement in which the concessioner has a leasehold surrender interest, the cost of such additional capital improvement shall be added to the then current value of the concessioner's leasehold surrender interest.

(b) Special rule for existing possessory interest

(1) A concessioner which has obtained a possessory interest as defined pursuant to Public Law 89-249 (commonly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.), as in effect on the day before November 13, 1998, under the terms of a concessions contract entered into before November 13, 1998, shall, upon the expiration or termination of such contract, be entitled to receive compensation for such possessory interest improvements in the amount and manner as described by such concessions contract. Where such a possessory interest is not described in the existing contract, compensation of possessory interest shall be determined in accordance with the laws in effect on the day before November 13, 1998.

(2) In the event such prior concessioner is awarded a new concessions contract after the effective date of this subchapter replacing an existing concessions contract, the existing concessioner shall, instead of directly receiving such possessory interest compensation, have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new contract and shall carry over as the initial value of such leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as

of the termination date of the previous contract. In the event of a dispute between the concessioner and the Secretary as to the value of such possessory interest, the matter shall be resolved through binding arbitration.

(3) In the event that a new concessioner is awarded a concessions contract and is required to pay a prior concessioner for possessory interest in prior improvements, the new concessioner shall have a leasehold surrender interest in such prior improvements and the initial value in such leasehold surrender interest (instead of construction cost), shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous contract.

(c) Transition to successor concessioner

Upon expiration or termination of a concessions contract entered into after the effective date of this subchapter, a concessioner shall be entitled under the terms of the concessions contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of such expiration or termination. A successor concessioner shall have a leasehold surrender interest in such capital improvement under the terms of a new contract and the initial value of the leasehold surrender interest in such capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concessions contract.

(d) Title to improvements

Title to any capital improvement constructed by a concessioner on lands owned by the United States in a unit of the National Park System shall be vested in the United States.

(e) Definitions

For purposes of this section:

(1) Consumer Price Index

The term "Consumer Price Index" means the "Consumer Price Index—All Urban Consumers" published by the Bureau of Labor Statistics of the Department of Labor, unless such index is not published, in which case another regularly published cost-of-living index approximating the Consumer Price Index shall be utilized by the Secretary; and

(2) Capital improvement

The term "capital improvement" means a structure, fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concessions contract and located on lands of the United States within a unit of the National Park System.

(f) Special reporting requirement

Not later than 7 years after November 13, 1998, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives containing a complete analysis of the concession program as well as—

(1) an assessment of competition in the solicitation of prospectuses, fair and/or increased return to the Government, and improvement of concession facilities and infrastructure; and

(2) an assessment of any problems with the management and administration of the concession program that are a direct result of the implementation of the provisions of this subchapter.

(Pub. L. 105-391, title IV, §405, Nov. 13, 1998, 112 Stat. 3508.)

REFERENCES IN TEXT

The National Park Service Concessions Policy Act, referred to in subsec. (b)(1), is Pub. L. 89-249, Oct. 9, 1965, 79 Stat. 969, which was classified generally to subchapter IV (§20 et seq.) of chapter 1 of this title prior to repeal by Pub. L. 105-391, title IV, §415(a), Nov. 13, 1998, 112 Stat. 3515.

The effective date of this subchapter, referred to in subsecs. (b)(2) and (c), probably means the date of enactment of this subchapter, which was approved Nov. 13, 1998.

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

DE NOVO REVIEW OF VALUE DETERMINATION DECISIONS BY UNITED STATES COURT OF FEDERAL CLAIMS

Pub. L. 110-161, div. F, title I, Dec. 26, 2007, 121 Stat. 2107, provided in part that: "For fiscal year 2008 and hereafter, if the Secretary of the Interior, or either party to a value determination proceeding conducted under a National Park Service concession contract issued prior to November 13, 1998, considers that the value determination decision issued pursuant to the proceeding misinterprets or misapplies relevant contractual requirements or their underlying legal authority, the Secretary or either party may seek, within 180 days of any such decision, the de novo review of the value determination decision by the United States Court of Federal Claims. This court may make an order affirming, vacating, modifying or correcting the determination decision."

§ 5955. Reasonableness of rates

(a) In general

Each concessions contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b) of this section.

(b) Approval by Secretary required

A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed

the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in the preceding sentence.

(c) Implementation of recommendations

Not later than 6 months after receiving recommendations from the Advisory Board established under section 5958(a) of this title regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to the Congress the reasons for not implementing the recommendations.

(Pub. L. 105-391, title IV, §406, Nov. 13, 1998, 112 Stat. 3510.)

§ 5956. Franchise fees

(a) In general

A concessions contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

(b) Amount of franchise fee

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concessions contract shall be specified in the concessions contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in concessions contracts with a term of more than 5 years a provision which allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

(c) Special account

All franchise fees (and other monetary consideration) paid to the United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended.

(d) Subaccount for each unit

There shall be established within the special account required under subsection (c) of this section a subaccount for each unit of the Na-