

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 National Park System. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single unit of the National Park System under concessions contracts. The funds credited to the subaccount for a unit of the National Park System shall be available for expenditure by the Secretary, without further appropriation, for use at the unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

(Pub. L. 105-391, title IV, §407, Nov. 13, 1998, 112 Stat. 3511.)

§ 5957. Transfer of concessions contracts

(a) Approval of Secretary

No concessions contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

(b) Conditions

The Secretary shall approve a transfer or conveyance described in subsection (a) of this section unless the Secretary finds that—

(1) the individual, corporation or entity seeking to acquire a concessions contract is not qualified or able to satisfy the terms and conditions of the concessions contract;

(2) such transfer or conveyance would have an adverse impact on (A) the protection, conservation, or preservation of the resources of the unit of the National Park System or (B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

(c) Transfer terms

The terms and conditions of any contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a) of this section, unless such transfer or conveyance would have an adverse impact as described in paragraph (2) of subsection (b) of this section.

(Pub. L. 105-391, title IV, §408, Nov. 13, 1998, 112 Stat. 3512.)

§ 5958. National Park Service Concessions Management Advisory Board

(a) Establishment

There is hereby established a National Park Service Concessions Management Advisory