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107TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–455

# LEASES, PERMITS, AND CONTRACTS FOR BUILDINGS, FACILITIES, AND PROPERTIES IN THE NATIONAL WILDLIFE REFUGE SYSTEM

MAY 14, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources, submitted the following

## R E P O R T

[To accompany H.R. 1370]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1370) to amend the National Wildlife Refuge System Administration Act of 1966 to authorize the Secretary of the Interior to provide for maintenance and repair of buildings and properties located on lands in the National Wildlife Refuge System by lessees of such facilities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. LEASES, PERMITS, AND CONTRACTS FOR BUILDINGS, FACILITIES, AND PROPERTIES IN THE NATIONAL WILDLIFE REFUGE SYSTEM.**

(a) IN GENERAL.—The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) is amended by—

(1) striking section 6 (relating to amendments to other laws, which have executed);

(2) redesignating section 5 (16 U.S.C. 668ee) as section 6; and

(3) inserting after section 4 the following:

**"SEC. 5. CONCESSION CONTRACTS.**

"(a) CONTRACT REQUIREMENT.—(1) The Secretary shall not award any concession that authorizes a person to use any land or water in the System for any activity described in subsection (b), except under a contract that complies with the requirements established under subsection (c).

"(2) The Secretary may not award a contract required under this subsection except under a competitive bidding process.

"(b) COVERED CONCESSION ACTIVITIES.—(1) The activity referred to in subsection (a) is any activity conducted to provide accommodations, facilities, or services to members of the public who are visiting lands or waters in the System, for the pur-

pose of providing such visitors recreational, educational, or interpretive enjoyment of lands or waters in the System.

"(2) Such activity does not include—

"(A) any activity carried out under a procurement contract, grant agreement, or cooperative agreement required under chapter 63 of title 31, United States Code;

"(B) the performance of volunteer services; and

"(C) any activity by a governmental entity.

"(c) STANDARDIZED CONTRACT.—(1) The Secretary, acting through the Director, shall issue regulations that establish a standardized contract for purposes of subsection (a).

"(2) Regulations under this subsection shall authorize a contract to use a provision other than those specified by the regulations only if—

"(A) the provision addresses extenuating circumstances that are specific to a refuge or the contract; and

"(B) the provision is approved by the Director in writing.

"(3) Regulations under this subsection shall require in each contract provisions that require that any activity conducted in the System under the contract—

"(A) must be a compatible use; and

"(B) must be designed to—

"(i) conserve the natural and cultural resources of the System;

"(ii) facilitate the enjoyment of the lands and waters of the System by visitors to the System; and

"(iii) enhance the such visitors' knowledge of the natural resources of the System.

"(d) MAINTENANCE AND REPAIR.—(1) Notwithstanding any other provision of law, the Secretary shall include, in each contract that authorizes a person to use any land or water in the System for any activity described in subsection (b), provisions that—

"(A) authorize the person to maintain or repair any improvement on or in such land or water that the person is authorized to use for such activity; and

"(B) treat costs incurred by the person for such maintenance or repair as consideration otherwise required to be paid to the United States for such use.

"(2) This subsection does not authorize any maintenance or repair that is not directly related to an activity described in subsection (b) that is authorized by the contract.

"(3) The United States shall retain title to all property that is maintained or repaired under this subsection.

"(e) NO COMPENSABLE INTEREST.—Nothing in this Act shall be considered to convey to any person any right to compensation for—

"(1) the value of any maintenance activities, repairs, construction, or improvements on or in land or water in the System; or

"(2) buildings, facilities, fixtures, and non-movable equipment that the person is authorized to use under this Act.

"(f) EXPENDITURE OF FEES AND OTHER PAYMENTS.—(1) Amounts received by the United States as fees or other payments required under any agreement, lease, permit, or contract for use of real property located in an area in the System shall be available to the Secretary for expenditure in accordance with this subsection, without further appropriation.

"(2) Amounts available for expenditure under this subsection may only be used—

"(A) at the refuge or refuge complex with respect to which the amounts were received as fees or other payments;

"(B) to increase the quality of the visitor experience; and

"(C) for purposes of—

"(i) backlogged repair and maintenance projects (including projects relating to health and safety);

"(ii) interpretation, signage, habitat, or facility enhancement;

"(iii) resource preservation; or

"(iv) administration of agreements, leases, permits, and contracts from which such amounts are derived.

"(3) Paragraph (1) shall not affect the application of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), commonly referred to as the Refuge Revenue Sharing Act, to amounts referred to in paragraph (1) that are not expended by the Secretary under paragraph (1).".

(b) APPLICATION.—Section 5(a) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section, shall apply only with respect to a concession that is—

(1) first awarded after the date of the publication of regulations under section 5(c) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section; or

(2) renewed after the end of the 3-year period beginning on the date of the enactment of this Act.

(c) DEADLINE FOR REGULATIONS ESTABLISHING STANDARDIZED CONTRACT REQUIREMENTS.—The Secretary of the Interior shall issue regulations under section 5(c) of the National Wildlife Refuge System Administration Act of 1966, as amended by this section, by not later than 18 months after the date of the enactment of this Act.

(d) COMPREHENSIVE CONSERVATION PLAN REQUIREMENT.—Section 4(e) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) is amended by adding at the end the following:

"(5) The Secretary shall include, in the comprehensive conservation plan for each refuge under this subsection, a description of the activities that may be conducted in the refuge, and the lands, waters, and facilities of the refuge that may be used, under concession contracts awarded under section 5(a).".

(e) PRIOR AMENDMENTS NOT AFFECTED.—Nothing in this section shall be construed to affect any amendment made by section 6 of the National Wildlife Refuge System Administration Act of 1966, as in effect before the enactment of this Act, or any provision of law amended by such section.

(f) ANNUAL REPORT ON NATIONAL WILDLIFE REFUGE CONCESSIONS.—

(1) REPORTING REQUIREMENT.—The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) is further amended by adding at the end the following:

**"SEC. 7. ANNUAL REPORT ON CONCESSION ACTIVITIES IN THE SYSTEM.**

"(a) IN GENERAL.—The Secretary shall submit by December 31 each year, to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report on concessions activities conducted in the System.

"(b) CONTENTS.—Each report under this section shall describe the following with respect to the period covered by the report:

"(1) The number of refuge units in which concessions activities were conducted.

"(2) The names and descriptions of services offered in the System by each concessionaire.

"(3) A listing of the different types of legal arrangements under which concessionaires operated in the System, including contracts, memoranda of understanding, permits, letters of agreement, and other arrangements.

"(4) Amounts of fees or other payments received by the United States with respect to such activities from each concessionaire, and the portion of such funds expended for purposes under this Act.

"(5) An accounting of the amount of monies deposited into the fund established by section 401 of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), popularly known as the refuge revenue sharing fund, and of the balance remaining in the fund at the end of the reporting period.

"(6) A listing of all concession contracts and other arrangements that were terminated or not renewed within the reporting period.

"(7) A summary of all improvements in visitor services in the System that were completed by concessionaires and volunteers during the reporting period.

"(8) A summary of all backlogged repair and maintenance, facility enhancement, and resource preservation projects completed by concessionaires and volunteers during the reporting period.".

(2) DEADLINE FOR FIRST REPORT.—The Secretary of the Interior shall submit the first report under the amendment made by paragraph (1) by not later than 1 year after the date of the enactment of this Act.

## Amend the title so as to read:

A bill to amend the National Wildlife Refuge System Administration Act of 1966 to establish requirements for the award of concessions in the National Wildlife Refuge System, to provide for maintenance and repair of properties located in the System by concessionaires authorized to use such properties, and for other purposes.

## PURPOSE OF THE BILL

The purpose of H.R. 1370 as ordered reported is to amend the National Wildlife Refuge System Administration Act of 1966 to es-

tablish requirements for the award of concessions in the National Wildlife Refuge System, to provide for maintenance and repair of properties located in the System by concessionaires authorized to use such property, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

The National Wildlife Refuge System is comprised of federal lands that have been acquired for the conservation and enhancement of fish and wildlife. The System is administered by the U.S. Fish and Wildlife Service, an agency within the Department of Interior. The Service manages the System in accordance with the National Wildlife Refuge System Administration Act of 1966. That Act was amended and updated by the National Wildlife Refuge Improvement Act of 1997 (Public Law 105–57).

The statutory mission of the System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans". Recreational and other uses of System lands are permitted if those uses are compatible with the mission of the System and the purposes for which the particular national wildlife refuge was established. Thirty-nine million people visited refuges last year, up from an estimated 27 million less than decade ago.

The System, totaling about 94 million acres and 538 refuges and 37 wetland management districts, provides habitat for hundreds of fish and wildlife species, including more than 258 species listed under the Endangered Species Act. The first wildlife refuge was established by President Theodore Roosevelt at Pelican Island, Florida in 1903. The vast majority of the System, 81 million acres, was reserved from the public domain. Roughly 4 million acres have been purchased. The primary sources of funding for refuge land acquisition are: (1) annual appropriations from the Land and Water Conservation Fund; and (2) the Migratory Bird Conservation Fund, which is funded from the purchase of annual duck stamps, import duties on arms and ammunition, and refuge entrance fees.

Unfortunately, the System is suffering from its popularity. For Fiscal Year 2002, the deferred maintenance backlog for the System includes 5086 projects. Completion of these projects is estimated to cost $663 million. Collectively, the replacement value of System property is nearly $7 billion. In the current fiscal year, the Service will spend roughly 1 percent of the value of refuge assets on maintenance. If spending continues at this rate, the deferred maintenance backlog will continue to grow. This is the primary reason why the U.S. Fish and Wildlife Service has not maintained various buildings and properties within the refuge system that are leased or utilized by private concessionaires.

For nearly 70 years, the Secretary of the Interior has been statutorily authorized by Section 401 of the Act of June 15, 1935, to grant privileges or concessions on units of the refuge system. Concessions are defined as businesses operated by a private enterprise that provides recreational, educational and interpretive enjoyment for the visiting public. A concession offers a public service and it generally requires some capital investment by the concessionaire for facilities and products. In 1966, the Secretary was authorized

by the National Wildlife Refuge System Administration Act to negotiate and enter into contracts with any person, public agency or private enterprise for public accommodations that are not inconsistent with the purposes for which the particular refuge was established.

Furthermore, the U.S. Fish and Wildlife Service retains title to all property utilized by concessionaires. By statute, the Service may only accept money for the rental and/or use of Service property and facilities. The Service alone is responsible for the maintenance and upkeep of all federal buildings and facilities found within the boundaries of the refuge system. Since the Service is facing a staggering maintenance backlog in excess of $660 million, it is not surprising to find that facilities used by concessionaires are given extremely low priority.

After completing a survey of the National Wildlife Refuge System, it appears that there are about 20 refuge units that have various concession services. These concessionaires have agreed to a number of arrangements including: five year contracts with a minimum payment of a 5 percent franchise fee, letters of agreement, memoranda of understandings, special use permits and leases. The services offered range from boat and canoe rentals, bookstores, campgrounds, ferries, gift shops, interpretive tours, sleigh rides and tour boat operators.

Based on the survey of refuge managers at the affected concession units, it is clear that a number of buildings, docks, restrooms and storage facilities are in extremely poor condition. For instance, during this survey it was learned that the Ding Darling Refuge in Sanibel, Florida, has a two-story house that is used for office space, rental facilities and a gift shop. Four years ago, money was spent to restore the structure but the roof of the house still needs to be replaced. While the building is in fair to good condition, there is only one set of restrooms for the 175,000 visitors that travel to Ding Darling each year. These restrooms are not handicapped accessible. The concessionaire has been unable to repair these facilities because of the current statutory restrictions. This is a problem that faces the entire refuge system. It is regrettable that these refuge facilities have not been properly maintained.

Federal law (40 U.S.C. 303 (b)) is currently an impediment to the efficient maintenance of a concession facility. The Service has been unable to return refuge incurred expenses for the administration, capital improvement and maintenance expenses involved with providing concession opportunities as is allowed in subsection (b) of 16 U.S.C. 715s. The operation of concessions on refuge land has been viewed as a low priority issue. Refuge managers have no incentives or desire to enter into concession contracts. It is too costly to run a quality concession program.

As the size of the refuge system has increased, there has been a decrease in the amount of funding available to provide quality recreational opportunities, staff to provide interpretation and environmental education and to modernize facilities. One option for providing wildlife dependent recreational opportunities such as hunting, fishing, wildlife observation, wildlife photography, interpretation and environmental education, which are priority uses of the National Wildlife Refuge System, is to allow private businesses or concessionaires to provide those services.

The fundamental goal of H.R. 1370 is to authorize the Secretary of the Interior to include in any future contract with a concessionaire the following stipulations: the lessee may maintain or repair any structure within the refuge unit and the costs incurred in such maintenance and repair are to be treated by the Service as compensation for using those facilities. Furthermore, the measure limits private expenditures within the refuge system to a specific lists of authorized items including backlogged repair and maintenance projects, interpretation, signage, habitat, facility enhancement, and resource protection. The Fish and Wildlife Service will retain the right to determine whether a specific repair is warranted and they will obtain estimates for any repair or maintenance work.

This new refuge concession policy will allow the Fish and Wildlife Service to enter into negotiations with concessionaires for the purpose of allowing them to repair or maintain property which they lease for the benefit of the American people. This will enhance their viewing experience, give the public a greater sense of ownership in the system and allow the Service to spend it limited resources on other high priority maintenance projects.

## COMMITTEE ACTION

H.R. 1370 was introduced on April 3, 2001, by Congressman Mark E. Souder (R-IN). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On September 20, 2001, the Subcommittee held a hearing on the bill. On December 6, 2001, the Subcommittee met to mark up the bill. Congressman Wayne Gilchrest (R-MD) offered an amendment that made a number of clarifying changes to ensure that a concessionaire may obtain credit for repair work and that the resources of an affected refuge are enhanced. The amendment was adopted by voice vote. Congressman Robert A. Underwood (D-GU) offered an amendment to require an annual report of the number, location, services and contractual arrangements involving concessionaires within the refuge system. This amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the Full Committee by voice vote. On April 24, 2002, the Full Resources Committee met to consider the bill. Mr. Souder offered an amendment in the nature of a substitute that requires the development of standard concession contract language for the National Wildlife Refuge System; mandates that all existing and new refuge concessionaires utilize that contract language in the future; stipulates that the Comprehensive Conservation Plan of each refuge address activities and facilities used by a concessionaire and ensure that concession maintenance funds are spent on projects that are directly related to visitors services. It was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Leases, permits and contracts for buildings, facilities and properties in the National Wildlife Refuge System*

This section provides that all amendments are to the National Wildlife Refuge System Administration Act of 1966.

Subsection (a) creates a new Section 5, Concession Contracts, within the National Wildlife Refuge System Administration Act of 1966. The new Section 5 would specify the following new policies:

Section 5(a). Contract Requirement. The Secretary of the Interior shall not award any concession unless the agreement utilizes the standard concession contract and requires all concession contracts to be awarded under a competitive bidding process.

Section 5(b). Covered Concession Activities. This subsection defines a concession activity as one that provides modestly scaled accommodations, facilities or services to members of the public visiting the refuge system to enhance the recreational, educational or interpretive enjoyment of the lands and waters of the system.

The Committee anticipates that future concessions will be similar to those currently offered. Such activities would include: canoe or boat rentals; horse liveries; small bait, outdoor equipment, sandwich or soft drink shops; kiosks selling books, coffee cups or sweatshirts or other sundries at a visitors center; ferries to inaccessible refuge areas; and guided nature and back country tours. The Committee does not envision the construction of large structures that would be considered attractions by themselves, or which would detract from the wildlife-first mission of the refuge system, like convention centers, lodges, stadiums or amusement parks operated by concessionaires within any refuge. The refuge system has a conservation mandate that is unique among the federal land management systems. Concession activities that occur in the National Park System, on Bureau of Land Management lands, or in the National Forest System are not necessarily appropriate for refuges. Compatible wildlife dependent recreation and where appropriate concession activities are allowed in the refuge system, but are not the System's mission.

Section 5(c). Standardized Contract. The Director of the U.S. Fish and Wildlife Service must issue regulations establishing a standard concession contract. The subsection stipulates that any additional provisions to that standard contract agreed to by the affected refuge manager must be because of extenuating circumstances. All additional provisions must be approved in writing by the Director of the U.S. Fish and Wildlife Service. This subsection also requires that any concession activity must be a compatible use with the mission of the refuge system and the purpose(s) of the specific refuge unit and designed to conserve natural and cultural resources, facilitate the enjoyment of the visiting public and enhance the visiting public's knowledge of the natural resources of the system.

Section 5(d). Maintenance and Repair. This subsection would allow a concessionaire with the concurrence of the Fish and Wildlife Service to maintain or repair any structure within the refuge unit and to treat those costs as consideration for the fees they pay to the Service for using concession buildings, facilities, fixtures and non-movable equipment. The subsection stipulates that the federal government retains title to all property maintained or repaired by concessionaires.

Section 5(e). No Compensable Interest. This subsection clarifies that nothing in H.R. 1370 will convey to any person the right to compensation for costs of construction, or for interests in buildings,

facilities, and fixed and non-movable equipment that is used by a concessionaire under a concession contract.

Section 5(f). Expenditure of Fees and other Payments. This subsection clarifies that fees paid by a concessionaire are retained at the local refuge unit may only be used for the following activities: backlogged repairs and maintenance projects; interpretation, signage, habitat or facility enhancement; resource preservation; and administrative costs.

The Committee recognizes that the processing of new concession contracts will create some additional administrative expenses, and believes that the Service should be able to recover the costs of processing a concession contract. The Committee does not expect such costs to ever exceed five percent of the value of the contract fee. In addition, it is not the intent of this language to provide authority to allow the Fish and Wildlife Service to hire concession contract officers or to establish a new division of concession services.

Subsection (b). Application. This subsection requires any new concession activity to utilize the new standard concession contract after its final publication in the Federal Register and requires that any existing concession or renewal of a concession be converted to the standard contract beginning three years after the date of enactment of this act.

Subsection (c). Deadline for Regulations Establishing Standardized Contract Requirements. This subsection specifies that the Director of the Fish and Wildlife Service will establish through regulations a standard concession contract within 18 months after the date of enactment of H.R. 1370.

Subsection (d). Comprehensive Conservation Plan Requirement. This subsection stipulates that Comprehensive Conservation Plans, which are required to be completed for each refuge or refuge complex by 2012, address and describe the types of compatible activities and services that might be offered by a concessionaire in the affected refuge unit.

Subsection (e). Amendments Not Affected. This subsection clarifies that any amendments made by Section 6 of the National Wildlife Refuge Administration Act of 1966, as in effect before the enactment of this bill, remain in effect.

Subsection (f). Annual Report on National Wildlife Refuge Concessions. This subsection amends Section 7 of the National Wildlife Refuge Administration Act of 1966 to require that by December 31st of each year, the Secretary of the Interior will submit to the House Committee on Resources and the Senate Committee on Environment and Public Works a report on concession activities conducted in the system. This report would provide the following information: number of refuge units with concession activities; names and description of concession services; amounts of fees or other payments received by the U.S. Government; accounting of monies deposited in the Refuge Revenue Sharing Fund; list of all contracts terminated or not renewed each year; summary of all improvements in visitors services and a summary of all repair and maintenance, facility enhancement and resources preservation projects completed by concessionaires and volunteers within the System. The Committee believes this annual report is an important document which will describe changing concession activities within the National Wildlife Refuge System, progress in reducing the Refuge

System maintenance budget backlog, and fulfillment of the refuge system's goal to improve visitor services and public education and resource interpretation. The Committee urges the Secretary to make every effort to comply with the statutory deadlines for submission of this report to Congress.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill would reduce revenues and corresponding direct spending by less than $500,000 per year.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, May 10, 2002.*

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1370, a bill to amend the National Wildlife Refuge System Administration Act of 1966 to authorize the Secretary of the Interior to provide for maintenance and repair of buildings and properties located on lands in the National Wildlife Refuge System by lessees of such facilities.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 1370—A bill to amend the National Wildlife Refuge System Administration Act of 1966 to authorize the Secretary of the Interior to provide for maintenance and repair of buildings and properties located on lands in the National Wildlife Refuge System by lessees of such facilities*

Summary: H.R. 1370 would establish a new policy governing the use of private concessioners to provide public accommodations and services at National Wildlife Refuges. CBO estimates that enacting the bill would have no significant impact on the federal budget. Because the bill would affect direct spending, pay-as-you-go procedures would apply, but we estimate that the changes would be less than $500,000 a year.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

H.R. 1370 would require the U.S. Fish and Wildlife Service (USFWS) to enter into agreements with concessioners only through formal contracts. The bill would require that each standardized contract contain a provision allowing the concessioner to provide maintenance or other work directly benefiting the facilities it use in exchange for paying a lower fee to the government. Any fees that are received from concessioners could be spent without further appropriation by the refuge manager for contract administration, refuge maintenance or improvements, and resource preservation. The new contract requirements would apply only to concession agreements entered into after enactment of the bill or renewed within three years after that time. Current law prohibits the agency from accepting services from contractors in favor of reduced leasing or other types of concession fees.

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 1370 would have no significant net effect on the federal budget in any year.

At present, agreements between the USFWS and concessioners (including nonprofit organizations) take several different forms, including contracts, special-use permits, and memoranda of understanding. Few of these agreements result in any receipts to the government. The offsetting receipts presently collected (less than $500,000 a year) are deposited into the National Wildlife Refuge Fund (NWRF), and later period, without further appropriation, to local governments.

CBO expects that the bill would reduce offsetting receipts and subsequent spending over the next few years because both the USFWS and its current contractors would probably find it advantageous to renegotiate existing fee-generating agreements as quickly as the bill would allow. Because both deposits and spending would fall correspondingly, there would be no net effect on the federal budget.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 1370 would result in small changes in direct spending, but these would have a net impact less than $500,000 annually.

Intergovernmental and private-sector impact: H.R. 1370 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966

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SEC. 4. (a) * * *

* * * * * * *

(e)(1) * * *

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*(5) The Secretary shall include, in the comprehensive conservation plan for each refuge under this subsection, a description of the activities that may be conducted in the refuge, and the lands, waters, and facilities of the refuge that may be used, under concession contracts awarded under section 5(a).*

* * * * * * *

***SEC. 5. CONCESSION CONTRACTS.***

*(a) CONTRACT REQUIREMENT.—(1) The Secretary shall not award any concession that authorizes a person to use any land or water in the System for any activity described in subsection (b), except under a contract that complies with the requirements established under subsection (c).*

*(2) The Secretary may not award a contract required under this subsection except under a competitive bidding process.*

*(b) COVERED CONCESSION ACTIVITIES.—(1) The activity referred to in subsection (a) is any activity conducted to provide accommodations, facilities, or services to members of the public who are visiting lands or waters in the System, for the purpose of providing such visitors recreational, educational, or interpretive enjoyment of lands or waters in the System.*

*(2) Such activity does not include—*

*(A) any activity carried out under a procurement contract, grant agreement, or cooperative agreement required under chapter 63 of title 31, United States Code;*

*(B) the performance of volunteer services; and*

*(C) any activity by a governmental entity.*

*(c) STANDARDIZED CONTRACT.—(1) The Secretary, acting through the Director, shall issue regulations that establish a standardized contract for purposes of subsection (a).*

*(2) Regulations under this subsection shall authorize a contract to use a provision other than those specified by the regulations only if—*

*(A) the provision addresses extenuating circumstances that are specific to a refuge or the contract; and*

*(B) the provision is approved by the Director in writing.*

*(3) Regulations under this subsection shall require in each contract provisions that require that any activity conducted in the System under the contract—*

*(A) must be a compatible use; and*

*(B) must be designed to—*

*(i) conserve the natural and cultural resources of the System;*

*(ii) facilitate the enjoyment of the lands and waters of the System by visitors to the System; and*

*(iii) enhance the such visitors' knowledge of the natural resources of the System.*

*(d) MAINTENANCE AND REPAIR.—(1) Notwithstanding any other provision of law, the Secretary shall include, in each contract that authorizes a person to use any land or water in the System for any activity described in subsection (b), provisions that—*

*(A) authorize the person to maintain or repair any improvement on or in such land or water that the person is authorized to use for such activity; and*

*(B) treat costs incurred by the person for such maintenance or repair as consideration otherwise required to be paid to the United States for such use.*

*(2) This subsection does not authorize any maintenance or repair that is not directly related to an activity described in subsection (b) that is authorized by the contract.*

*(3) The United States shall retain title to all property that is maintained or repaired under this subsection.*

*(e) NO COMPENSABLE INTEREST.—Nothing in this Act shall be considered to convey to any person any right to compensation for—*

*(1) the value of any maintenance activities, repairs, construction, or improvements on or in land or water in the System; or*

*(2) buildings, facilities, fixtures, and non-movable equipment that the person is authorized to use under this Act.*

*(f) EXPENDITURE OF FEES AND OTHER PAYMENTS.—(1) Amounts received by the United States as fees or other payments required*

*under any agreement, lease, permit, or contract for use of real property located in an area in the System shall be available to the Secretary for expenditure in accordance with this subsection, without further appropriation.*

*(2) Amounts available for expenditure under this subsection may only be used—*

*(A) at the refuge or refuge complex with respect to which the amounts were received as fees or other payments;*

*(B) to increase the quality of the visitor experience; and*

*(C) for purposes of—*

*(i) backlogged repair and maintenance projects (including projects relating to health and safety);*

*(ii) interpretation, signage, habitat, or facility enhancement;*

*(iii) resource preservation; or*

*(iv) administration of agreements, leases, permits, and contracts from which such amounts are derived.*

*(3) Paragraph (1) shall not affect the application of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), commonly referred to as the Refuge Revenue Sharing Act, to amounts referred to in paragraph (1) that are not expended by the Secretary under paragraph (1).*

**SEC. [5] *6*. DEFINITIONS.**

For purposes of this Act:

(1) * * *

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[SEC. 6. Section 4(b) of the Act of March 16, 1934 (48 Stat. 451), as amended (16 U.S.C. 718d(b)), is further amended by changing the colon after the word "areas" to a period and striking the provisos, which relate to hunting at certain wildlife refuges and which are now covered by section 4 of this Act.]

***SEC. 7. ANNUAL REPORT ON CONCESSION ACTIVITIES IN THE SYSTEM.***

*(a) IN GENERAL.—The Secretary shall submit by December 31 each year, to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report on concessions activities conducted in the System.*

*(b) CONTENTS.—Each report under this section shall describe the following with respect to the period covered by the report:*

*(1) The number of refuge units in which concessions activities were conducted.*

*(2) The names and descriptions of services offered in the System by each concessionaire.*

*(3) A listing of the different types of legal arrangements under which concessionaires operated in the System, including contracts, memoranda of understanding, permits, letters of agreement, and other arrangements.*

*(4) Amounts of fees or other payments received by the United States with respect to such activities from each concessionaire, and the portion of such funds expended for purposes under this Act.*

*(5) An accounting of the amount of monies deposited into the fund established by section 401 of the Act of June 15, 1935 (chapter 261; 16 U.S.C. 715s), popularly known as the refuge*

*revenue sharing fund, and of the balance remaining in the fund at the end of the reporting period.*

*(6) A listing of all concession contracts and other arrangements that were terminated or not renewed within the reporting period.*

*(7) A summary of all improvements in visitor services in the System that were completed by concessionaires and volunteers during the reporting period.*

*(8) A summary of all backlogged repair and maintenance, facility enhancement, and resource preservation projects completed by concessionaires and volunteers during the reporting period.*

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