

111TH CONGRESS
2^D SESSION

S. 1275

AN ACT

To establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Foundation
3 on Fitness, Sports, and Nutrition Establishment Act”.

4 **SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.**

5 (a) ESTABLISHMENT.—There is established the Na-
6 tional Foundation on Fitness, Sports, and Nutrition (here-
7 inafter in this Act referred to as the “Foundation”). The
8 Foundation is a charitable and nonprofit corporation and
9 is not an agency or establishment of the United States.

10 (b) PURPOSES.—The purposes of the Foundation
11 are—

12 (1) in conjunction with the Office of the Presi-
13 dent’s Council on Fitness, Sports and Nutrition, to
14 develop a list and description of programs, events
15 and other activities which would further the pur-
16 poses and functions outlined in Executive Order
17 13265, as amended, and with respect to which com-
18 bined private and governmental efforts would be
19 beneficial;

20 (2) to encourage and promote the participation
21 by private organizations in the activities referred to
22 in subsection (b)(1) and to encourage and promote
23 private gifts of money and other property to support
24 those activities; and

1 (3) in consultation with such Office, to under-
2 take and support activities to further the purposes
3 and functions of such Executive Order.

4 (c) PROHIBITION ON FEDERAL FUNDING.—The
5 Foundation may not accept any Federal funds.

6 **SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.**

7 (a) ESTABLISHMENT AND MEMBERSHIP.—The
8 Foundation shall have a governing Board of Directors
9 (hereinafter referred to in this Act as the “Board”), which
10 shall consist of 9 members each of whom shall be a United
11 States citizen and—

12 (1) 3 of whom should be knowledgeable or expe-
13 rienced in one or more fields directly connected with
14 physical fitness, sports, nutrition, or the relationship
15 between health status and physical exercise; and

16 (2) 6 of whom should be leaders in the private
17 sector with a strong interest in physical fitness,
18 sports, nutrition, or the relationship between health
19 status and physical exercise.

20 The membership of the Board, to the extent practicable,
21 should represent diverse professional specialties relating to
22 the achievement of physical fitness through regular par-
23 ticipation in programs of exercise, sports, and similar ac-
24 tivities, or to nutrition. The Assistant Secretary for
25 Health, the Executive Director of the President’s Council

1 on Fitness, Sports and Nutrition, the Director for the Na-
2 tional Center for Chronic Disease Prevention and Health
3 Promotion, the Director of the National Heart, Lung, and
4 Blood Institute, and the Director for the Centers for Dis-
5 ease Control and Prevention shall be ex officio, nonvoting
6 members of the Board. Appointment to the Board or its
7 staff shall not constitute employment by, or the holding
8 of an office of, the United States for the purposes of laws
9 relating to Federal employment.

10 (b) APPOINTMENTS.—Within 90 days from the date
11 of enactment of this Act, the members of the Board shall
12 be appointed by the Secretary in accordance with this sub-
13 section. In selecting individuals for appointments to the
14 Board, the Secretary should consult with—

15 (1) the Speaker of the House of Representa-
16 tives concerning the appointment of one member;

17 (2) the Majority Leader of the House of Rep-
18 resentatives concerning the appointment of one
19 member;

20 (3) the Majority Leader of the Senate con-
21 cerning the appointment of one member;

22 (4) the President Pro Tempore concerning the
23 appointment of one member;

1 (5) the Minority Leader of the House of Rep-
2 representatives concerning the appointment of one
3 member; and

4 (6) the Minority Leader of the Senate con-
5 cerning the appointment of one member.

6 (c) TERMS.—The members of the Board shall serve
7 for a term of 6 years, except that the original members
8 of the Board shall be appointed for staggered terms as
9 determined appropriate by the Secretary. A vacancy on the
10 Board shall be filled within 60 days of the vacancy in the
11 same manner in which the original appointment was made
12 and shall be for the balance of the term of the individual
13 who was replaced. No individual may serve more than 2
14 consecutive terms as a member.

15 (d) CHAIRMAN.—The Chairman shall be elected by
16 the Board from its members for a 2-year term and shall
17 not be limited in terms or service, other than as provided
18 in subsection (c).

19 (e) QUORUM.—A majority of the current membership
20 of the Board shall constitute a quorum for the transaction
21 of business.

22 (f) MEETINGS.—The Board shall meet at the call of
23 the Chairman at least once a year. If a member misses
24 3 consecutive regularly scheduled meetings, that member

1 may be removed from the Board and the vacancy filled
2 in accordance with subsection (c).

3 (g) REIMBURSEMENT OF EXPENSES.—Members of
4 the Board shall serve without pay, but may be reimbursed
5 for the actual and necessary traveling and subsistence ex-
6 penses incurred by them in the performance of the duties
7 of the Foundation, subject to the same limitations on re-
8 imbursement that are imposed upon employees of Federal
9 agencies.

10 (h) LIMITATIONS.—The following limitations apply
11 with respect to the appointment of employees of the Foun-
12 dation:

13 (1) Employees may not be appointed until the
14 Foundation has sufficient funds to pay them for
15 their service. No individual so appointed may receive
16 a salary in excess of the annual rate of basic pay in
17 effect for Executive Level V in the Federal service.
18 A member of the Board may not receive compensa-
19 tion for serving as an employee of the Foundation.

20 (2) The first employee appointed by the Board
21 shall be the Secretary of the Board who shall serve,
22 at the direction of the Board, as its chief operating
23 officer and shall be knowledgeable and experienced
24 in matters relating to physical fitness, sports, and
25 nutrition.

1 (3) No Public Health Service employee nor the
2 spouse or dependent relative of such an employee
3 may serve as a member of the Board of Directors
4 or as an employee of the Foundation.

5 (4) Any individual who is an employee or mem-
6 ber of the Board of the Foundation may not (in ac-
7 cordance with the policies developed under sub-
8 section (i)) personally or substantially participate in
9 the consideration or determination by the Founda-
10 tion of any matter that would directly or predictably
11 affect any financial interest of—

12 (A) the individual or a relative (as such
13 term is defined in section 109(16) of the Ethics
14 in Government Act, 1978) of the individual; or

15 (B) any business organization, or other en-
16 tity, of which the individual is an officer or em-
17 ployee, is negotiating for employment, or in
18 which the individual has any other financial in-
19 terest.

20 (i) GENERAL POWERS.—The Board may complete
21 the organization of the Foundation by—

22 (1) appointing employees;

23 (2) adopting a constitution and bylaws con-
24 sistent with the purposes of the Foundation and the
25 provision of this Act; and

1 (3) undertaking such other acts as may be nec-
2 essary to carry out the provisions of this Act.

3 In establishing bylaws under this subsection, the Board
4 shall provide for policies with regard to financial conflicts
5 of interest and ethical standards for the acceptance, solici-
6 tation and disposition of donations and grants to the
7 Foundation.

8 **SEC. 4. POWERS AND DUTIES OF THE FOUNDATION.**

9 (a) IN GENERAL.—The Foundation—

10 (1) shall have perpetual succession;

11 (2) may conduct business throughout the sev-
12 eral States, territories, and possessions of the
13 United States;

14 (3) shall have its principal offices in or near the
15 District of Columbia; and

16 (4) shall at all times maintain a designated
17 agent authorized to accept service of process for the
18 Foundation.

19 The serving of notice to, or service of process upon, the
20 agent required under paragraph (4), or mailed to the busi-
21 ness address of such agent, shall be deemed as service
22 upon or notice to the Foundation.

23 (b) SEAL.—The Foundation shall have an official seal
24 selected by the Board which may be used as provided for
25 in section 5.

1 (c) INCORPORATION; NONPROFIT STATUS.—To carry
2 out the purposes of the Foundation under section 2, the
3 Board shall—

4 (1) incorporate the Foundation in the District
5 of Columbia; and

6 (2) establish such policies and bylaws as may be
7 necessary to ensure that the Foundation maintains
8 status as an organization that is described in section
9 501(c)(3) of the Internal Revenue Code of 1986.

10 (d) POWERS.—Subject to the specific provisions of
11 section 2, the Foundation, in consultation with the Office
12 of the President’s Council on Fitness, Sports, and Nutri-
13 tion, shall have the power, directly or by the awarding of
14 contracts or grants, to carry out or support activities for
15 the purposes described in such section.

16 (e) TREATMENT OF PROPERTY.—For purposes of
17 this Act, an interest in real property shall be treated as
18 including easements or other rights for preservation, con-
19 servation, protection, or enhancement by and for the pub-
20 lic of natural, scenic, historic, scientific, educational inspi-
21 rational or recreational resources. A gift, devise, or be-
22 quest may be accepted by the Foundation even though it
23 is encumbered, restricted, or subject to beneficial interests
24 of private persons if any current or future interest therein
25 is for the benefit of the Foundation.

1 **SEC. 5. PROTECTION AND USES OF TRADEMARKS AND**
2 **TRADE NAMES.**

3 (a) TRADEMARKS OF THE FOUNDATION.—Authoriza-
4 tion for a contributor, or a supplier of goods or services,
5 to use, in advertising regarding the contribution, goods,
6 or services, the trade name of the Foundation, or any
7 trademark, seal, symbol, insignia, or emblem of the Foun-
8 dation may be provided only by the Foundation with the
9 concurrence of the Secretary or the Secretary's designee.

10 (b) TRADEMARKS OF THE COUNCIL.—Authorization
11 for a contributor or supplier described in subsection (a)
12 to use, in such advertising, the trade name of the Presi-
13 dent's Council on Fitness, Sports, and Nutrition, or any
14 trademark, seal, symbol, insignia, or emblem of such
15 Council, may be provided—

16 (1) by the Secretary or the Secretary's des-
17 ignee; or

18 (2) by the Foundation with the concurrence of
19 the Secretary or the Secretary's designee.

20 **SEC. 6. AUDIT, REPORT REQUIREMENTS, AND PETITION OF**
21 **ATTORNEY GENERAL FOR EQUITABLE RE-**
22 **LIEF.**

23 (a) AUDITS.—For purposes of the Act entitled “An
24 Act for audit of accounts of private corporations estab-
25 lished under Federal law”, approved August 30, 1964
26 (Public Law 88–504, 36 U.S.C. 1101–1103), the Founda-

1 tion shall be treated as a private corporation under Fed-
2 eral law. The Inspector General of the Department of
3 Health and Human Services and the Comptroller General
4 of the United States shall have access to the financial and
5 other records of the Foundation, upon reasonable notice.

6 (b) REPORT.—The Foundation shall, not later than
7 60 days after the end of each fiscal year, transmit to the
8 Secretary and to Congress a report of its proceedings and
9 activities during such year, including a full and complete
10 statement of its receipts, expenditures, and investments.

11 (c) RELIEF WITH RESPECT TO CERTAIN FOUNDA-
12 TION ACTS OR FAILURE TO ACT.—If the Foundation—

13 (1) engages in, or threatens to engage in, any
14 act, practice or policy that is inconsistent with its
15 purposes set forth in section 2(b); or

16 (2) refuses, fails, or neglects to discharge its
17 obligations under this Act, or threaten to do so;

18 the Attorney General of the United States may petition
19 in the United States District Court for the District of Co-

- 1 lumbia for such equitable relief as may be necessary or
- 2 appropriate.

Passed the Senate December 9, 2010.

Attest:

Secretary.

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