

Calendar No. 709

107TH CONGRESS
2^D SESSION

S. 1651

To establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2001

Mr. DORGAN (for himself, Mr. BROWNBACK, Mr. CONRAD, Mr. CARPER, Mr. JOHNSON, Mr. SANTORUM, Ms. COLLINS, Mr. LEAHY, Mr. JEFFORDS, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

OCTOBER 15, 2002

Reported by Mr. LIEBERMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

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 “United States Con-~~
5 ~~sensus Council Act of 2001”.~~

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) throughout the Nation there is increasing
4 success in the use of collaborative and consensus-
5 building approaches to address critical public policy
6 issues at the national, State, and local levels;

7 (2) there is a need for a national Council that
8 can promote and conduct consensus-building pro-
9 cesses that primarily address legislative policy issues
10 of national importance;

11 (3) such a Council may enroll specific stake-
12 holders, both public and private, to build agreements
13 that ultimately may be implemented by Congress,
14 Federal agencies, or other policymaking bodies;

15 (4) such a Council will strive to create public
16 policy agreements that integrate differing perspec-
17 tives into highest common denominator solutions;

18 (5) the establishment of such a Council is an
19 appropriate investment by the people of this Nation
20 in a capacity that works in cooperation with Con-
21 gress, the executive branch, and others and com-
22 plements current public policymaking processes on
23 selected issues;

24 (6) the existence of such a Council could con-
25 tribute especially to resolving differences on conten-
26 tious policy issues, preventing polarization on emerg-

1 ing policy issues and addressing issues of complexity
 2 that involve multiple parties and perspectives;

3 ~~(7) the establishment of such a Council may~~
 4 ~~contribute significantly to a renewed sense of civility~~
 5 ~~and respect for differences, while at the same time~~
 6 ~~promoting vigorous interchange and open commu-~~
 7 ~~nications among those with differing points of view;~~
 8 ~~and~~

9 ~~(8) the Council may become a repository of wis-~~
 10 ~~dom and experience on public policy collaboration~~
 11 ~~and consensus-building that can be shared with pub-~~
 12 ~~lic and private sector policymakers and the public in~~
 13 ~~the interest of promoting more effective public policy~~
 14 ~~and the increased use of collaborative processes.~~

15 ~~(b) PURPOSE.—The purpose of this Act is to estab-~~
 16 ~~lish an independent, nonprofit, national Council to serve~~
 17 ~~the people and the Government by constructing an adjunct~~
 18 ~~to the existing legislative and regulatory process that seeks~~
 19 ~~to produce consensus on Federal policy issues through col-~~
 20 ~~laborative processes open to key stakeholders.~~

21 **SEC. 3. DEFINITIONS.**

22 In this Act, the term—

23 (1) “Board” means the Board of Directors of
 24 the Council;

1 (2) “Council” means the United States Con-
2 sensus Council established under this Act; and

3 (3) “Director” means an individual appointed
4 to the Board of Directors of the Council.

5 **SEC. 4. UNITED STATES CONSENSUS COUNCIL.**

6 (a) **ESTABLISHMENT.**—There is established the
7 United States Consensus Council.

8 (b) **STATUS; RESTRICTIONS.**—The Council is an
9 independent nonprofit corporation and shall be treated as
10 an organization described under 170(e)(2)(B) of the Inter-
11 nal Revenue Code of 1986. The Council does not have the
12 power to issue any shares of stock or to declare or pay
13 any dividends. The Council is not an agency or instrumen-
14 tality of the United States.

15 (c) **ESTABLISHMENT OF OR AFFILIATION WITH A**
16 **UNITED STATES CONSENSUS COUNCIL FOUNDATION.**—
17 As determined by the Board, the Council may establish
18 or affiliate with a nonprofit legal entity which is capable
19 of receiving, holding, expending, and investing public or
20 private funds for purposes in furtherance of the Council
21 under this Act. Such legal entity may be designated as
22 the “United States Consensus Council Foundation”.

23 (d) **TRADE NAME AND TRADEMARK RIGHTS; VESTED**
24 **RIGHTS PROTECTED; CONDITION FOR USE OF FEDERAL**
25 **IDENTITY.**—

1 (1) IN GENERAL.—The Council has the sole
 2 and exclusive right to use and to allow or refuse oth-
 3 ers the use of the terms “United States Consensus
 4 Council” and “United States Consensus Council
 5 Foundation” and the use of any official United
 6 States Consensus Council emblem, badge, seal, and
 7 other mark of recognition or any colorable simula-
 8 tion thereof.

9 (2) UNITED STATES REFERENCES.—The Coun-
 10 cil may use “United States” or “U.S.” or any other
 11 reference to the United States Government or Na-
 12 tion in its title or in its corporate seal, emblem,
 13 badge, or other mark of recognition or colorable sim-
 14 ulation thereof in any fiscal year only if there is an
 15 authorization of appropriations, or appropriations,
 16 for the Council for such fiscal year provided by law.

17 **SEC. 5. POWERS AND DUTIES.**

18 (a) DISTRICT OF COLUMBIA NONPROFIT CORPORATE
 19 POWERS.—The Council may exercise the powers conferred
 20 upon a nonprofit corporation by the District of Columbia
 21 Nonprofit Corporation Act (D.C. Code, sec. 29–301 et
 22 seq.) consistent with this Act.

23 (b) DESCRIPTION OF SPECIFIC ACTIVITIES.—

24 (1) IN GENERAL.—Acting through the Board,
 25 the Council may—

1 (A) promote and advance programs based
2 on consensus building as a complement to the
3 current deliberative processes employed by Con-
4 gress and the executive branch;

5 (B) enter into formal and informal rela-
6 tionships with other institutions, public and pri-
7 vate, for purposes not inconsistent with this
8 Act;

9 (C) receive referrals from Congress, the
10 President, executive departments, agencies, pri-
11 vate groups, or organizations that request the
12 Council's expertise in building a consensus on a
13 particular public policy issue;

14 (D) coordinate with, make referrals to and
15 receive referrals from, other consensus-building
16 instrumentalities of the United States, includ-
17 ing the United States Institute for Environ-
18 mental Conflict Resolution or the Federal Medi-
19 ation and Conciliation Service; and

20 (E) develop and apply assessment plans for
21 the purpose of reviewing such referrals.

22 (2) ~~CONSENSUS-BUILDING PROCESS.~~—Acting
23 through the Board, the Council may, for each con-
24 sensus-building process—

1 (A) consider such factors as issue com-
2 plexity, cost, ripeness, likelihood of participation
3 by key stakeholders, and any other relevant in-
4 dices that may assist the Council in deter-
5 mining whether to accept a referral;

6 (B) identify any appropriate facilitator for
7 the negotiation process;

8 (C) identify the key stakeholders involved
9 or interested in the outcome of a particular
10 issue, including those individuals who have the
11 authority to implement the Council's rec-
12 ommendations;

13 (D) develop and publish a common set of
14 facts to inform and assist consensus-building
15 processes;

16 (E) establish ground rules, including mat-
17 ters related to confidentiality, representation of
18 counsel, and ex parte communications;

19 (F) work to promote consensus among the
20 stakeholders by methods such as negotiation,
21 discussion, meetings, and any other process of
22 dispute resolution;

23 (G) build and construct agreements among
24 stakeholders;

1 (H) draft, present, and submit rec-
2 ommendations to the legislative, executive, or
3 judicial body with oversight of the particular
4 issue; and

5 (I) provide training and technical assist-
6 ance in response to the request of a depart-
7 ment, agency, or instrumentality of the Govern-
8 ment to investigate, examine, study, and report
9 on any issue within the Council's competence.

10 ~~(3) OTHER ACTIVITIES.~~—The Council also may
11 engage in any other activity consistent with its mis-
12 sion.

13 ~~(c) GENERAL AUTHORITY.~~—The Council may do any
14 and all lawful acts necessary or desirable to carry out the
15 objectives and purposes of this Act.

16 ~~(d) GUIDELINES FOR COUNCIL OPERATIONS.~~—As
17 necessary, the Council shall develop guidelines, through its
18 bylaws or otherwise, to address—

19 ~~(1) policies relating to personal service con-~~
20 ~~tracts;~~

21 ~~(2) standards to ensure that the Council, its Di-~~
22 ~~rectors, employees, and agents, avoid conflicts of in-~~
23 ~~terest that may arise;~~

1 ~~(3)~~ fundraising policies, donor development pro-
 2 grams, and matters related to the acceptance of pri-
 3 vate donations;

4 ~~(4)~~ the duties and responsibilities of the Coun-
 5 cil, its Board, officers, employees, and agents; and

6 ~~(5)~~ the establishment of advisory committees,
 7 councils, or other bodies, as the efficient administra-
 8 tion of the business and purposes of the Council may
 9 require.

10 ~~(c)~~ ADMINISTRATIVE SERVICES FROM GENERAL
 11 SERVICES ADMINISTRATION.—The Council may obtain
 12 administrative support services from the Administrator of
 13 General Services and use all sources of supply and services
 14 of the General Services Administration on a reimbursable
 15 basis.

16 **SEC. 6. BOARD OF DIRECTORS.**

17 ~~(a)~~ VESTED POWERS.—The powers of the Council
 18 shall be vested in a Board of Directors unless otherwise
 19 specified in this Act.

20 ~~(b)~~ APPOINTMENTS.—The Board of Directors shall
 21 consist of 16 voting members as follows:

22 ~~(1)~~ Eight individuals, including private citizens,
 23 State or local employees, or officers or employees of
 24 the United States, appointed by the President, ex-

1 cept that no more than 4 of such individuals may
2 share the same political party affiliation.

3 ~~(2) Two individuals, including private citizens,~~
4 ~~State or local employees, Senators, or officers or em-~~
5 ~~ployees of the United States, appointed by the Ma-~~
6 ~~jority Leader of the Senate.~~

7 ~~(3) Two individuals, including private citizens,~~
8 ~~State or local employees, Senators, or officers or em-~~
9 ~~ployees of the United States appointed by the Minor-~~
10 ~~ity Leader of the Senate.~~

11 ~~(4) Two individuals, including private citizens,~~
12 ~~State or local employees, Members of the House of~~
13 ~~Representatives, or officers or employees of the~~
14 ~~United States appointed by the Speaker of the~~
15 ~~House of Representatives.~~

16 ~~(5) Two individuals, including private citizens,~~
17 ~~State or local employees, Members of the House of~~
18 ~~Representatives, or officers or employees of the~~
19 ~~United States appointed by the Minority Leader of~~
20 ~~the House of Representatives.~~

21 ~~(c) TERM OF OFFICE: COMMENCEMENT AND TERMI-~~
22 ~~NATION; INTERIM AND REMAINDER SERVICE; LIMITA-~~
23 ~~TION.—~~

24 ~~(1) TERM OF OFFICE.—~~Directors appointed
25 under subsection (b) of this section shall be ap-

1 pointed to 4-year terms, with no Director serving
2 more than 2 consecutive terms except that—

3 (A) as designated by the President, the
4 terms of 4 of the Directors initially appointed
5 under subsection (b)(1) shall be 2 years, subject
6 to appointment to no more than 2 additional 4-
7 year terms in the manner set forth in this sec-
8 tion;

9 (B) as designated by the Speaker of the
10 House of Representatives, the terms of the 2
11 Directors initially appointed under subsection
12 (b)(4) shall be 2 years, subject to appointment
13 to no more than 2 additional 4-year terms in
14 the manner set forth in this section; and

15 (C) as designated by the Minority Leader
16 of the House of Representatives, the terms of
17 the 2 Directors initially appointed under sub-
18 section (b)(5) shall be 2 years, subject to ap-
19 pointment to no more than 2 additional 4-year
20 terms in the manner set forth in this section.

21 (2) INTERIM SERVICE.—Any Director appointed
22 to the Board may continue to serve until his or her
23 successor is appointed.

24 (3) REMAINDER SERVICE.—Any Director ap-
25 pointed to the Board to replace a Director whose

1 term has not expired shall be appointed to serve the
2 remainder of that term.

3 (4) PRESIDENT OF COUNCIL.—The President of
4 the Council shall serve as a nonvoting Director of
5 the Board.

6 (d) QUALIFICATIONS.—A demonstrated interest in
7 the mission of the Council or expertise in consensus build-
8 ing may be considered in appointments made under this
9 section.

10 (e) REMOVAL FROM OFFICE.—A Director may be re-
11 moved by a process to be determined by the Council's by-
12 laws.

13 (f) MEETINGS; NOTICE IN FEDERAL REGISTER.—
14 Meetings of the Board shall be conducted pursuant to the
15 Council's bylaws, except as provided in the following:

16 (1) MEETINGS; QUORUM.—The Board shall
17 meet at least semiannually. A majority of the Direc-
18 tors in office shall constitute a quorum for any
19 Board meeting.

20 (2) OPEN MEETINGS.—All official governing
21 meetings of the Board shall be open to public obser-
22 vation and shall be preceded by reasonable public
23 notice. Notice in the Federal Register shall be
24 deemed to be reasonable public notice for purposes
25 of the preceding sentence. In exceptional cir-

1 circumstances, the Board may close those portions of
 2 a meeting, upon a majority vote of Directors present
 3 and with the vote taken in public session, which are
 4 likely to disclose information or that may adversely
 5 affect any ongoing proceeding or activity or to dis-
 6 close information or matters exempted from public
 7 disclosure under subsection (c) of section 552b of
 8 title 5.

9 (g) COMPENSATION.—Directors shall be compensated
 10 at a rate not to exceed the daily equivalent of the rate
 11 payable for a position at level IV of the Executive Schedule
 12 under section 5315 of title 5, United States Code, for each
 13 day during which they are engaged in the performance of
 14 the duties of the Council. The Directors shall not be em-
 15 ployees of the United States.

16 (h) TRAVEL EXPENSES.—While away from home or
 17 regular place of business in the performance of duties for
 18 the Board, a Director may receive reasonable travel, sub-
 19 sistence, and other necessary expenses.

20 **SEC. 7. OFFICERS AND EMPLOYEES.**

21 (a) APPOINTMENT, COMPENSATION, AND STATUS OF
 22 PRESIDENT OF COUNCIL AND OTHER OFFICERS.—There
 23 shall be a President who shall be appointed by the Board.
 24 The President shall be the chief executive officer of the
 25 Council and shall carry out or cause to be carried out the

1 functions of the Council subject to the supervision and di-
2 rection of the Board.

3 (1) COMPENSATION OF PRESIDENT OF THE
4 COUNCIL.—The President of the Council shall be
5 compensated at an annual rate of pay not to exceed
6 the rate payable for a position at level II of the Ex-
7 ecutive Schedule under section 5313 of title 5,
8 United States Code.

9 (2) ASSIGNMENT OF FEDERAL OFFICERS OR
10 EMPLOYEES TO THE COUNCIL.—The Council may
11 request the assignment of any Federal officer or em-
12 ployee to the Council by an appropriate executive de-
13 partment, agency, or congressional official or Mem-
14 ber of Congress and may enter into an agreement
15 for such assignment, if the affected officer or em-
16 ployee agrees to such assignment and such assign-
17 ment causes no prejudice to the salary, benefits, sta-
18 tus, or advancement within the department, agency,
19 or congressional staff of such officer or employee.

20 (3) PERSONNEL.—The President of the Coun-
21 cil, with the approval of the Board, may appoint and
22 fix the compensation of such additional personnel as
23 determined necessary. The President and employees
24 of the Council shall not be employees of the United
25 States.

1 (4) ~~COMPENSATION FOR SERVICES OR EX-~~
2 ~~PENSES; PROHIBITION ON LOANS TO COUNCIL DI-~~
3 ~~RECTORS AND PERSONNEL.—~~

4 (A) ~~IN GENERAL.—~~No part of the financial
5 resources, income, or assets of the Council or of
6 any legal entity created by the Council shall
7 inure to any agent, employee, officer, or Direc-
8 tor or be distributable to any such person dur-
9 ing the life of the corporation or upon dissolu-
10 tion or final liquidation. Nothing in this section
11 may be construed to prevent the payment of
12 reasonable compensation for services or ex-
13 penses to the Directors, officers, employees, and
14 agents of the Council in amounts approved in
15 accordance with this Act.

16 (B) ~~LOANS.—~~The Council shall not make
17 loans to its Directors, officers, employees, or
18 agents.

19 **SEC. 8. PROCEDURES AND RECORDS.**

20 (a) ~~MONITORING AND EVALUATION OF PROGRAMS.—~~

21 The Council shall monitor and evaluate and provide for
22 independent evaluation if necessary of programs supported
23 in whole or in part under this Act to ensure that the provi-
24 sions of this Act and the bylaws, rules, regulations, and
25 guidelines promulgated under this Act are adhered to.

1 (b) ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;
 2 FINANCIAL REPORTS.—The Council shall keep correct
 3 and complete books and records of accounts, including
 4 separate and distinct accounts of receipts and disburse-
 5 ments of Federal funds. The Council's annual financial
 6 report shall identify the use of such funding and shall
 7 present a clear description of the full financial situation
 8 of the Council.

9 (c) MINUTES OF PROCEEDINGS.—The Council shall
 10 keep minutes of the proceedings of its Board and of any
 11 committees having authority under the Board.

12 (d) RECORD AND INSPECTION OF REQUIRED
 13 ITEMS.—

14 (1) IN GENERAL.—The Council shall keep a
 15 record of—

16 (A) the names and addresses of its Direc-
 17 tors, copies of this Act, and any other Act relat-
 18 ing to the Council;

19 (B) all Council bylaws, rules, regulations,
 20 and guidelines;

21 (C) required minutes of proceedings;

22 (D) all applications and proposals and
 23 issued or received contracts and grants; and

24 (E) financial records of the Council.

1 (2) INSPECTION.—All items required by this
2 subsection may be inspected by any Director or any
3 agent or attorney of a Director for any proper pur-
4 pose at any reasonable time.

5 (e) AUDITS.—The accounts of the Council shall be
6 audited annually in accordance with generally accepted au-
7 diting standards by independent certified public account-
8 ants or independent licensed public accountants, certified
9 or licensed by a regulatory authority of a State or other
10 political subdivision of the United States. The audit shall
11 be conducted at the place or places where the accounts
12 of the Council are normally kept. All books, accounts, fi-
13 nancial records, files, and other papers, things, and prop-
14 erty belonging to or in use by the Council and necessary
15 to facilitate the audit shall be made available to the person
16 or persons conducting the audit, and full facilities for
17 verifying transactions with the balances or securities held
18 by depositories, fiscal agents, and custodians shall be af-
19 forded to such person or persons.

20 (f) REPORT TO CONGRESS; COPIES FOR PUBLIC.—
21 The Council shall provide a report to the President and
22 to each House of Congress not later than 6 months fol-
23 lowing the close of the fiscal year for which the audit is
24 made. The report shall set forth such statements of the

1 Council's activities for the prior year. The report shall be
2 made available to the public.

3 **SEC. 9. FUNDING.**

4 ~~(a) AUTHORIZATION OF APPROPRIATIONS.—~~

5 ~~(1) IN GENERAL.—~~For the purpose of carrying
6 out this Act, there are authorized to be appropriated
7 \$5,000,000 for fiscal year 2002 and such sums as
8 may be necessary for succeeding fiscal years.

9 ~~(2) AVAILABILITY.—~~Funds appropriated under
10 the authority of paragraph ~~(1)~~ shall remain available
11 until expended.

12 ~~(b) TRANSFER OF UNOBLIGATED FUNDS; REPORTS~~
13 ~~OF USE OF FUNDS TO CONGRESS AND PRESIDENT.—~~The
14 Board may transfer to the legal entity authorized to be
15 established under section 4(c) any funds not obligated or
16 expended from appropriations to the Council for a fiscal
17 year, and such funds shall remain available for obligation
18 or expenditure for the purposes of such legal entity with-
19 out regard to fiscal year limitations. Any use by such legal
20 entity of appropriated funds shall be reported to each
21 House of Congress and to the President.

22 **SEC. 10. DISSOLUTION OR LIQUIDATION.**

23 Upon dissolution or final liquidation of the Council,
24 all income and assets appropriated by the United States

1 to the Council, but not any other funds, shall revert to
2 the United States Treasury.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “United States Consensus*
5 *Council Act of 2002”.*

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 *(a) FINDINGS.—Congress finds that—*

8 *(1) throughout the Nation there is increasing*
9 *success in the use of collaborative and consensus-*
10 *building approaches to address critical public policy*
11 *issues at the national, State, and local levels;*

12 *(2) there is a need for a national Council that*
13 *serves the Nation by promoting and conducting con-*
14 *sensus-building processes that primarily address legis-*
15 *lative policy issues of national importance;*

16 *(3) such a Council may enroll specific stake-*
17 *holders, both public and private, to build agreements*
18 *that ultimately may be implemented by Congress,*
19 *Federal agencies, or other policymaking bodies;*

20 *(4) such a Council will strive to create public*
21 *policy agreements that integrate differing perspectives*
22 *into highest common denominator solutions;*

23 *(5) the establishment of such a Council is an ap-*
24 *propriate investment by the people of this Nation in*
25 *a capacity that works in cooperation with Congress*

1 *and others to assist the current public policymaking*
2 *processes on selected issues;*

3 *(6) the existence of such a Council could con-*
4 *tribute especially to resolving differences on conten-*
5 *tious policy issues, preventing polarization on emerg-*
6 *ing policy issues and addressing issues of complexity*
7 *that involve multiple parties and perspectives;*

8 *(7) the establishment of such a Council may con-*
9 *tribute significantly to a renewed sense of civility and*
10 *respect for differences, while at the same time pro-*
11 *moting vigorous interchange and open communica-*
12 *tions among those with differing points of view; and*

13 *(8) the Council may become a repository of wis-*
14 *dom and experience on public policy collaboration*
15 *and consensus-building that can be shared with public*
16 *and private sector policymakers and the public in the*
17 *interest of promoting more effective public policy and*
18 *the increased use of collaborative processes.*

19 *(b) PURPOSE.—The purpose of this Act is to establish*
20 *an independent, nonprofit, national Council to serve the*
21 *Nation by seeking to produce consensus on policy issues of*
22 *national importance through collaborative processes.*

23 **SEC. 3. DEFINITIONS.**

24 *In this Act, the term—*

1 (1) “Board” means the Board of Directors of the
2 Council;

3 (2) “Council” means the United States Con-
4 sensus Council established under this Act; and

5 (3) “Director” means an individual appointed to
6 the Board of Directors of the Council.

7 **SEC. 4. UNITED STATES CONSENSUS COUNCIL.**

8 (a) *ESTABLISHMENT.*—There is established the United
9 States Consensus Council.

10 (b) *DISTRICT OF COLUMBIA NONPROFIT CORPORA-*
11 *TION; STATUS; RESTRICTIONS.*—The Council shall be estab-
12 *lished as an independent nonprofit corporation under the*
13 *District of Columbia Nonprofit Corporation Act (D.C. Code,*
14 *section 29–301 et seq.). Upon establishment under that Act,*
15 *the Council shall conform to all the requirements applicable*
16 *to a nonprofit corporation so established in the District and*
17 *shall be subject to such oversight by the District of Columbia*
18 *as is applicable to a nonprofit corporation so established.*
19 *The Council is not an agency or instrumentality of the*
20 *United States.*

21 (c) *TRADE NAME AND TRADEMARK RIGHTS; VESTED*
22 *RIGHTS PROTECTED; CONDITION FOR USE OF FEDERAL*
23 *IDENTITY.*—

24 (1) *IN GENERAL.*—The Council has the sole and
25 exclusive right to use and to allow or refuse others the

1 *use of the term “United States Consensus Council”*
 2 *and the use of any official United States Consensus*
 3 *Council emblem, badge, seal, and other mark of rec-*
 4 *ognition or any colorable simulation thereof.*

5 (2) *UNITED STATES REFERENCES.—The Council*
 6 *may use “United States” or “U.S.” or any other ref-*
 7 *erence to the United States Government or Nation in*
 8 *its title or in its corporate seal, emblem, badge, or*
 9 *other mark of recognition or colorable simulation*
 10 *thereof in any fiscal year only if there is an author-*
 11 *ization of appropriations, or appropriations, for the*
 12 *Council for such fiscal year provided by law.*

13 **SEC. 5. POWERS AND DUTIES.**

14 (a) *IN GENERAL.—The Council may exercise the pow-*
 15 *ers conferred upon a nonprofit corporation by the District*
 16 *of Columbia Nonprofit Corporation Act (D.C. Code, section*
 17 *29–301 et seq.) consistent with this Act.*

18 (b) *DESCRIPTION OF SPECIFIC ACTIVITIES.—*

19 (1) *IN GENERAL.—The Council may—*

20 (A) *develop and conduct processes to build*
 21 *consensus on national policy issues;*

22 (B) *enter into formal and informal rela-*
 23 *tionships with other institutions, public and pri-*
 24 *vate, for purposes not inconsistent with this Act;*

1 (C) identify particular public policy issues
2 as to which the Council's expertise would be use-
3 ful in building a consensus;

4 (D) subject to paragraph (2), coordinate
5 with, make referrals to and receive referrals
6 from, other consensus-building instrumentalities
7 of the United States, including the United States
8 Institute for Environmental Conflict Resolution
9 or the Federal Mediation and Conciliation Serv-
10 ice; and

11 (E) develop and apply criteria for the pur-
12 pose of determining whether the Council will
13 enter into a consensus-building process on a par-
14 ticular issue.

15 (2) *LIMITATIONS ON CERTAIN ACTIVITIES.*—The
16 Council may not take any action relating to a matter
17 within the authority of the United States Institute for
18 Environmental Conflict Resolution or the Federal Me-
19 diation and Conciliation Service without the consent
20 of the Institute or Service, as applicable.

21 (3) *CONSENSUS-BUILDING PROCESS.*—The Coun-
22 cil may, for each consensus-building process—

23 (A) consider such factors as the degree of
24 congressional interest in the issue, as well as
25 issue complexity, cost, ripeness, likelihood of par-

1 *ticipation by key stakeholders, and any other rel-*
2 *evant indices that may assist the Council in de-*
3 *termining whether to enter into a particular*
4 *consensus process;*

5 *(B) identify any appropriate facilitator for*
6 *the negotiation process;*

7 *(C) identify the key stakeholders involved or*
8 *interested in the outcome of a particular issue,*
9 *including those individuals who have the author-*
10 *ity to implement the Council's recommendations;*

11 *(D) develop and publish a common set of*
12 *facts to inform and assist consensus-building*
13 *processes;*

14 *(E) establish ground rules, including mat-*
15 *ters related to confidentiality, representation of*
16 *counsel, and ex parte communications;*

17 *(F) work to promote consensus among the*
18 *stakeholders by methods such as negotiation, dis-*
19 *cussion, meetings, and any other process of dis-*
20 *pute resolution;*

21 *(G) build and construct agreements among*
22 *stakeholders;*

23 *(H) issue a report reflecting the results of*
24 *consideration by the Council on consensus-build-*
25 *ing efforts; and*

1 (I) *provide training and technical assist-*
2 *ance on any issue within the Council's com-*
3 *petence.*

4 (4) *OTHER ACTIVITIES.—The Council also may*
5 *engage in any other activity consistent with its mis-*
6 *sion.*

7 (c) *GENERAL AUTHORITY.—The Council may do any*
8 *and all lawful acts necessary or desirable to carry out the*
9 *objectives and purposes of this Act.*

10 (d) *GUIDELINES FOR COUNCIL OPERATIONS.—As nec-*
11 *essary, the Council shall develop guidelines, through its by-*
12 *laws or otherwise, to address—*

13 (1) *policies relating to personal service contracts;*

14 (2) *standards to ensure that the Council, its Di-*
15 *rectors, employees, and agents, avoid conflicts of in-*
16 *terest that may arise;*

17 (3) *fundraising policies, donor development pro-*
18 *grams, and matters related to the acceptance of pri-*
19 *vate donations;*

20 (4) *the duties and responsibilities of the Council,*
21 *its Board, officers, employees, and agents; and*

22 (5) *the establishment of advisory committees,*
23 *councils, or other bodies, as the efficient administra-*
24 *tion of the business and purposes of the Council may*
25 *require.*

1 **SEC. 6. BOARD OF DIRECTORS.**

2 (a) *VESTED POWERS.*—*The powers of the Council shall*
 3 *be vested in a Board of Directors unless otherwise specified*
 4 *in this Act or delegated by the Board.*

5 (b) *APPOINTMENTS.*—*The Board of Directors shall*
 6 *consist of 8 voting members as follows:*

7 (1) *Two individuals, including private citizens*
 8 *or State or local employees, appointed by the Major-*
 9 *ity Leader of the Senate.*

10 (2) *Two individuals, including private citizens*
 11 *or State or local employees, appointed by the Minor-*
 12 *ity Leader of the Senate.*

13 (3) *Two individuals, including private citizens*
 14 *or State or local employees, appointed by the Speaker*
 15 *of the House of Representatives.*

16 (4) *Two individuals, including private citizens*
 17 *or State or local employees, appointed by the Minor-*
 18 *ity Leader of the House of Representatives.*

19 (c) *TERM OF OFFICE: COMMENCEMENT AND TERMI-*
 20 *NATION, INTERIM AND REMAINDER SERVICE, LIMITA-*
 21 *TION.*—

22 (1) *TERM OF OFFICE.*—*Directors appointed*
 23 *under subsection (b) of this section shall be appointed*
 24 *to 4-year terms, with no Director serving more than*
 25 *2 consecutive terms, except that—*

1 (A) as designated by the Speaker of the
2 House of Representatives, the terms of the 2 Di-
3 rectors initially appointed under subsection
4 (b)(3) shall be 2 years, subject to appointment to
5 no more than 2 additional 4-year terms in the
6 manner set forth in this section; and

7 (B) as designated by the Minority Leader of
8 the House of Representatives, the terms of the 2
9 Directors initially appointed under subsection
10 (b)(4) shall be 2 years, subject to appointment to
11 no more than 2 additional 4-year terms in the
12 manner set forth in this section.

13 (2) *INTERIM SERVICE.*—Any Director appointed
14 to the Board may continue to serve until his or her
15 successor is appointed.

16 (3) *REMAINDER SERVICE.*—Any Director ap-
17 pointed to the Board to replace a Director whose term
18 has not expired shall be appointed to serve the re-
19 mainder of that term.

20 (4) *PRESIDENT OF COUNCIL.*—The President of
21 the Council shall serve as a nonvoting Director of the
22 Board.

23 (d) *QUALIFICATIONS.*—

24 (1) *IN GENERAL.*—A demonstrated interest in
25 the mission of the Council or expertise in consensus

1 *building shall be considered in appointments made*
2 *under this section.*

3 (2) *NON-FEDERAL EMPLOYEES.—No Director*
4 *may be an officer or employee of the Federal Govern-*
5 *ment, including a Member of Congress.*

6 (e) *REMOVAL FROM OFFICE.—A Director may be re-*
7 *placed by the appointing official or may be removed by a*
8 *process to be established in the Council's bylaws.*

9 (f) *MEETINGS; NOTICE IN FEDERAL REGISTER.—*
10 *Meetings of the Board shall be conducted pursuant to the*
11 *Council's bylaws, except as provided in the following:*

12 (1) *MEETINGS; QUORUM.—The Board shall meet*
13 *at least semiannually. A majority of the Directors in*
14 *office shall constitute a quorum for any Board meet-*
15 *ing.*

16 (2) *OPEN MEETINGS.—All official governing*
17 *meetings of the Board shall be open to public observa-*
18 *tion and shall be preceded by reasonable public notice.*
19 *Notice in the Federal Register shall be deemed to be*
20 *reasonable public notice for purposes of the preceding*
21 *sentence. In exceptional circumstances, the Board*
22 *may close those portions of a meeting, upon a major-*
23 *ity vote of Directors present and with the vote taken*
24 *in public session, which are likely to disclose informa-*
25 *tion affecting or relating to the status of individual*

1 *Directors or employees of the Council or to ongoing*
 2 *litigation to which the Council is a party.*

3 *(g) COMPENSATION.—*

4 *(1) IN GENERAL.—Subject to paragraphs (2) and*
 5 *(3), a Director may be compensated at a rate not to*
 6 *exceed the daily equivalent of the rate payable for a*
 7 *position at level IV of the Executive Schedule under*
 8 *section 5315 of title 5, United States Code, for each*
 9 *day during which that Director is engaged in the per-*
 10 *formance of the duties of the Council.*

11 *(2) DIRECTORS WHO MAY BE COMPENSATED.—A*
 12 *Director may be compensated under paragraph (1), if*
 13 *that Director notifies the Board of an election to re-*
 14 *ceive compensation.*

15 *(3) EFFECTIVE DATE.—A Director shall be com-*
 16 *pensated under this subsection for the performance of*
 17 *duties after the date of notification under paragraph*
 18 *(2).*

19 *(h) TRAVEL EXPENSES.—While away from home or*
 20 *regular place of business in the performance of duties for*
 21 *the Board, a Director may receive reasonable travel, subsist-*
 22 *ence, and other necessary expenses.*

23 **SEC. 7. OFFICERS AND EMPLOYEES.**

24 *(a) APPOINTMENT, COMPENSATION, AND STATUS OF*
 25 *PRESIDENT OF COUNCIL AND OTHER OFFICERS.—There*

1 *shall be a President who shall be appointed by the Board.*
2 *The President shall be the chief executive officer of the Coun-*
3 *cil and shall carry out or cause to be carried out the func-*
4 *tions of the Council subject to the supervision and direction*
5 *of the Board.*

6 (1) *COMPENSATION OF PRESIDENT OF THE*
7 *COUNCIL.—The President of the Council shall be com-*
8 *pensated at an annual rate of pay not to exceed the*
9 *rate payable for a position at level II of the Executive*
10 *Schedule under section 5313 of title 5, United States*
11 *Code.*

12 (2) *ASSIGNMENT OF FEDERAL OFFICERS OR EM-*
13 *PLOYEES TO THE COUNCIL.—The Council may re-*
14 *quest the assignment of any Federal officer or em-*
15 *ployee to the Council by an appropriate executive de-*
16 *partment, agency, or congressional official or Member*
17 *of Congress and may enter into an agreement for such*
18 *assignment, if the affected officer or employee agrees*
19 *to such assignment and such assignment causes no*
20 *prejudice to the salary, benefits, status, or advance-*
21 *ment within the department, agency, or congressional*
22 *staff of such officer or employee. The assigning office*
23 *shall be fully reimbursed by the Council for the costs*
24 *associated with such an assignment. The assigned of-*
25 *ficer or employee shall remain an officer or employee*

1 *of the United States during the course of such assign-*
2 *ment.*

3 (3) *PERSONNEL.—The President of the Council,*
4 *with the approval of the Board, may appoint and fix*
5 *the compensation of such additional personnel as de-*
6 *termined necessary. The President and employees of*
7 *the Council shall not be employees of the United*
8 *States.*

9 (4) *COMPENSATION FOR SERVICES OR EXPENSES;*
10 *PROHIBITION ON LOANS TO COUNCIL DIRECTORS AND*
11 *PERSONNEL.—*

12 (A) *IN GENERAL.—No part of the financial*
13 *resources, income, or assets of the Council or of*
14 *any legal entity created by the Council shall*
15 *inure to any agent, employee, officer, or Director*
16 *or be distributable to any such person during the*
17 *life of the corporation or upon dissolution or*
18 *final liquidation. Nothing in this section may be*
19 *construed to prevent the payment of reasonable*
20 *compensation for services or expenses to the Di-*
21 *rectors, officers, employees, and agents of the*
22 *Council in amounts approved in accordance*
23 *with this Act.*

1 (B) *LOANS.*—*The Council shall not make*
2 *loans to its Directors, officers, employees, or*
3 *agents.*

4 **SEC. 8. PROCEDURES AND RECORDS.**

5 (a) *MONITORING AND EVALUATION OF PROGRAMS.*—
6 *The Council shall monitor and evaluate and provide for*
7 *independent evaluation if necessary of programs supported*
8 *in whole or in part under this Act to ensure that the provi-*
9 *sions of this Act and the bylaws, rules, regulations, and*
10 *guidelines promulgated under this Act are adhered to.*

11 (b) *ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;*
12 *FINANCIAL REPORTS.*—*The Council shall keep correct and*
13 *complete books and records of accounts, including separate*
14 *and distinct accounts of receipts and disbursements of Fed-*
15 *eral funds. The Council's annual financial report shall*
16 *identify the use of such funding and shall present a clear*
17 *description of the full financial situation of the Council.*

18 (c) *MINUTES OF PROCEEDINGS.*—*The Council shall*
19 *keep minutes of the proceedings of its Board and of any*
20 *committees having authority under the Board.*

21 (d) *RECORD AND INSPECTION OF REQUIRED ITEMS.*—

22 (1) *IN GENERAL.*—*The Council shall keep a*
23 *record of—*

1 (A) *the names and addresses of its Direc-*
2 *tors, copies of this Act, and any other Act relat-*
3 *ing to the Council;*

4 (B) *all Council bylaws, rules, regulations,*
5 *and guidelines;*

6 (C) *required minutes of proceedings;*

7 (D) *all applications and proposals and*
8 *issued or received contracts and grants; and*

9 (E) *financial records of the Council.*

10 (2) *INSPECTION.—All items required by this sub-*
11 *section may be inspected by any Director or any*
12 *agent or attorney of a Director for any proper pur-*
13 *pose at any reasonable time.*

14 (e) *AUDITS.—The accounts of the Council shall be au-*
15 *dited annually in accordance with generally accepted au-*
16 *ditting standards by independent certified public account-*
17 *ants or independent licensed public accountants, certified*
18 *or licensed by a regulatory authority of a State or other*
19 *political subdivision of the United States. The audit shall*
20 *be conducted at the place or places where the accounts of*
21 *the Council are normally kept. All books, accounts, finan-*
22 *cial records, files, and other papers, things, and property*
23 *belonging to or in use by the Council and necessary to fa-*
24 *cilitate the audit shall be made available to the person or*
25 *persons conducting the audit, and full facilities for*

1 *verifying transactions with the balances or securities held*
2 *by depositories, fiscal agents, and custodians shall be af-*
3 *forded to such person or persons.*

4 (f) *ANNUAL REPORT TO CONGRESS; COPIES FOR PUB-*
5 *LIC.—*

6 (1) *IN GENERAL.—The Council shall provide a*
7 *report to the President and to each House of Congress*
8 *not later than 6 months following the close of the fis-*
9 *cal year for which the audit is made.*

10 (2) *CONTENTS.—Each report under this sub-*
11 *section shall include—*

12 (A) *a statement of the Council's activities*
13 *for the prior year;*

14 (B) *a copy of the audit report prepared*
15 *under subsection (e); and*

16 (C) *a disclosure statement of—*

17 (i) *the source of all funds received by*
18 *the Council in the prior year; and*

19 (ii) *the purpose for which the funds*
20 *were contributed or made available.*

21 (3) *PUBLIC AVAILABILITY.—Each report under*
22 *this subsection shall be made available to the public.*

23 (g) *GAO REVIEW.—The annual report submitted*
24 *under subsection (f) shall be submitted simultaneously to*
25 *the General Accounting Office for its review.*

1 **SEC. 9. FUNDING.**

2 (a) *AUTHORIZATION OF APPROPRIATIONS.*—For the
3 purpose of carrying out this Act, there are authorized to
4 be appropriated \$2,000,000 for fiscal year 2003 and such
5 sums as may be necessary for succeeding fiscal years.

6 (b) *AVAILABILITY.*—Funds appropriated under the au-
7 thority of subsection (a) shall remain available until ex-
8 pended.

9 (c) *INVESTMENT OF FUNDS.*—Funds appropriated to
10 the Council shall be invested only in instruments backed
11 by the full faith and credit of the United States or in a
12 federally insured financial institution. Any interest earned
13 on such investments shall be used only for the purposes set
14 out in this Act.

15 **SEC. 10. DISSOLUTION OR LIQUIDATION.**

16 Upon dissolution or final liquidation of the Council,
17 all funds appropriated by the United States to the Council
18 including any interest attributable to such funds, but not
19 any other funds, shall revert to the United States Treasury.
20 Other funds held by the Council shall be handled under the
21 laws of the District of Columbia applicable to nonprofit cor-
22 porations.

Calendar No. 709

107TH CONGRESS
2^D SESSION

S. 1651

A BILL

To establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

OCTOBER 15, 2002

Reported with an amendment