

110TH CONGRESS  
2D SESSION

# S. 2926

To amend title 38, United States Code, to modify and update provisions of law relating to nonprofit research and education corporations, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 28, 2008

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to modify and update provisions of law relating to nonprofit research and education corporations, 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 “Veterans Nonprofit  
5 Research and Education Corporations Enhancement Act  
6 of 2008”.

1 **SEC. 2. GENERAL AUTHORITIES ON ESTABLISHMENT OF**  
2 **CORPORATIONS.**

3 (a) AUTHORIZATION OF MULTI-MEDICAL CENTER  
4 RESEARCH CORPORATIONS.—

5 (1) IN GENERAL.—Section 7361 of such title is  
6 amended—

7 (A) by redesignating subsection (b) as sub-  
8 section (e); and

9 (B) by inserting after subsection (a) the  
10 following new subsection (b):

11 “(b)(1) Subject to paragraph (2), a corporation es-  
12 tablished under this subchapter may facilitate the conduct  
13 of research, education, or both at more than one medical  
14 center. Such a corporation shall be known as a ‘multi-med-  
15 ical center research corporation’.

16 “(2) The board of directors of a multi-medical center  
17 research corporation under this subsection shall include  
18 the official at each Department medical center concerned  
19 who is, or who carries out the responsibilities of, the med-  
20 ical center director of such center as specified in section  
21 7363(a)(1)(A)(i) of this title.

22 “(3) In facilitating the conduct of research, edu-  
23 cation, or both at more than one Department medical cen-  
24 ter under this subchapter, a multi-medical center research  
25 corporation may administer receipts and expenditures re-

1 lating to such research, education, or both, as applicable,  
 2 performed at the Department medical centers concerned.”.

3 (2) EXPANSION OF EXISTING CORPORATIONS TO  
 4 MULTI-MEDICAL CENTER RESEARCH CORPORA-  
 5 TIONS.—Such section is further amended by adding  
 6 at the end the following new subsection:

7 “(f) A corporation established under this subchapter  
 8 may act as a multi-medical center research corporation  
 9 under this subchapter in accordance with subsection (b)  
 10 if—

11 “(1) the board of directors of the corporation  
 12 approves a resolution permitting facilitation by the  
 13 corporation of the conduct of research, education, or  
 14 both at the other Department medical center or  
 15 medical centers concerned; and

16 “(2) the Secretary approves the resolution of  
 17 the corporation under paragraph (1).”.

18 (b) RESTATEMENT AND MODIFICATION OF AUTHORI-  
 19 TIES ON APPLICABILITY OF STATE LAW.—

20 (1) IN GENERAL.—Section 7361 of such title,  
 21 as amended by subsection (a) of this section, is fur-  
 22 ther amended by inserting after subsection (b) the  
 23 following new subsection (c):

24 “(c) Any corporation established under this sub-  
 25 chapter shall be established in accordance with the non-

1 profit corporation laws of the State in which the applicable  
2 Department medical center is located and shall, to the ex-  
3 tent not inconsistent with any Federal law, be subject to  
4 the laws of such State. In the case of any multi-medical  
5 center research corporation that facilitates the conduct of  
6 research, education, or both at Department medical cen-  
7 ters located in different States, the corporation shall be  
8 established in accordance with the nonprofit corporation  
9 laws of the State in which one of such Department medical  
10 centers is located.”.

11 (2) CONFORMING AMENDMENT.—Section 7365  
12 of such title is repealed.

13 (c) CLARIFICATION OF STATUS OF CORPORATIONS.—  
14 Section 7361 of such title, as amended by this section,  
15 is further amended—

16 (1) in subsection (a), by striking the second  
17 sentence; and

18 (2) by inserting after subsection (c) the fol-  
19 lowing new subsection (d):

20 “(d)(1) Except as otherwise provided in this sub-  
21 chapter or under regulations prescribed by the Secretary,  
22 any corporation established under this subchapter, and its  
23 officers, directors, and employees, shall be required to  
24 comply only with those Federal laws, regulations, and ex-

1 executive orders and directives that apply generally to pri-  
2 vate nonprofit corporations.

3 “(2) A corporation under this subchapter is not—

4 “(A) owned or controlled by the United States;

5 or

6 “(B) an agency or instrumentality of the  
7 United States.”.

8 (d) REINSTATEMENT OF REQUIREMENT FOR  
9 501(C)(3) STATUS OF CORPORATIONS.—Subsection (e) of  
10 section 7361 of such title, as redesignated by subsection  
11 (a)(1) of this section, is further amended by inserting  
12 “section 501(c)(3) of” after “exempt from taxation  
13 under”.

14 **SEC. 3. CLARIFICATION OF PURPOSES OF CORPORATIONS.**

15 (a) CLARIFICATION OF PURPOSES.—Subsection (a)  
16 of section 7362 of title 38, United States Code, is amend-  
17 ed—

18 (1) by striking “Any corporation” and all that  
19 follows through “facilitate” and inserting “A cor-  
20 poration established under this subchapter shall be  
21 established to provide a flexible funding mechanism  
22 for the conduct of approved research and education  
23 at one or more Department medical centers and to  
24 facilitate functions related to the conduct of”; and

1           (2) by inserting before the period at the end the  
2 following: “or centers”.

3           (b) **MODIFICATION OF DEFINED TERM RELATING TO**  
4 **EDUCATION AND TRAINING.**—Subsection (b) of such sec-  
5 tion is amended in the matter preceding paragraph (1)  
6 by striking “the term ‘education and training’” and in-  
7 serting “the term ‘education’ includes education and train-  
8 ing and”.

9           (c) **REPEAL OF ROLE OF CORPORATIONS WITH RE-**  
10 **SPECT TO FELLOWSHIPS.**—Paragraph (1) of subsection  
11 (b) of such section is amended by striking the flush matter  
12 following subparagraph (C).

13           (d) **AVAILABILITY OF EDUCATION FOR FAMILIES OF**  
14 **VETERAN PATIENTS.**—Paragraph (2) of subsection (b) of  
15 such section is amended by striking “to patients and to  
16 the families” and inserting “and includes education and  
17 training for patients and families”.

18 **SEC. 4. MODIFICATION OF REQUIREMENTS FOR BOARDS**  
19 **OF DIRECTORS OF CORPORATIONS.**

20           (a) **REQUIREMENTS FOR DEPARTMENT BOARD MEM-**  
21 **BERS.**—Paragraph (1) of section 7363(a) of title 38,  
22 United States Code, is amended to read as follows:

23           “(1) with respect to the Department medical  
24 center—

1           “(A)(i) the director (or directors of each  
2           Department medical center, in the case of a  
3           multi-medical center research corporation);

4           “(ii) the chief of staff; and

5           “(iii) as appropriate for the activities of  
6           such corporation, the associate chief of staff for  
7           research and the associate chief of staff for  
8           education; or

9           “(B) in the case of a Department medical  
10          center at which one or more of the positions re-  
11          ferred to in subparagraph (A) do not exist, the  
12          official or officials who are responsible for car-  
13          rying out the responsibilities of such position or  
14          positions at the Department medical center;  
15          and”.

16          (b) REQUIREMENTS FOR NON-DEPARTMENT BOARD  
17 MEMBERS.—Paragraph (2) of such section is amended—

18           (1) by inserting “not less than two” before  
19           “members”; and

20           (2) by striking “and who” and all that follows  
21           through the period at the end and inserting “and  
22           who have backgrounds, or business, legal, financial,  
23           medical, or scientific expertise, of benefit to the op-  
24           erations of the corporation.”.

1           (c) CONFLICTS OF INTEREST.—Subsection (c) of sec-  
 2 tion 7363 of such title is amended by striking “, employed  
 3 by, or have any other financial relationship with” and in-  
 4 serting “or employed by”.

5 **SEC. 5. CLARIFICATION OF POWERS OF CORPORATIONS.**

6           (a) IN GENERAL.—The text of section 7364 of title  
 7 38, United States Code, is amended to read as follows:  
 8           “(a)(1) A corporation established under this sub-  
 9 chapter may, solely to carry out the purposes of this sub-  
 10 chapter—

11                   “(A) accept, administer, retain, and spend  
 12 funds derived from gifts, contributions, grants, fees,  
 13 reimbursements, and bequests from individuals and  
 14 public and private entities;

15                   “(B) enter into contracts and agreements with  
 16 individuals and public and private entities;

17                   “(C) subject to paragraph (2), set fees for edu-  
 18 cation and training facilitated under section 7362 of  
 19 this title, and receive, retain, administer, and spend  
 20 funds in furtherance of such education and training;

21                   “(D) reimburse amounts to the appropriation  
 22 account of the Department for the Office of General  
 23 Counsel for any expenses of that Office in providing  
 24 legal services attributable to research and education  
 25 agreements under this subchapter; and

1           “(E) employ such employees as the corporation  
2           considers necessary for such purposes and fix the  
3           compensation of such employees.

4           “(2) Fees charged under paragraph (1)(C) for edu-  
5           cation and training described in that paragraph to individ-  
6           uals who are officers or employees of the Department may  
7           not be paid for by any funds appropriated to the Depart-  
8           ment.

9           “(3) Amounts reimbursed to the Office of General  
10          Counsel under paragraph (1)(D) shall be available for use  
11          by the Office of the General Counsel only for staff and  
12          training, and related travel, for the provision of legal serv-  
13          ices described in that paragraph.

14          “(b)(1) Except as provided in paragraph (2), any  
15          funds received by the Secretary for the conduct of research  
16          or education at a Department medical center or centers,  
17          other than funds appropriated to the Department, may be  
18          transferred to and administered by a corporation estab-  
19          lished under this subchapter for such purposes.

20          “(2) A Department medical center may reimburse the  
21          corporation for all or a portion of the pay, benefits, or  
22          both of an employee of the corporation who is assigned  
23          to the Department medical center if the assignment is car-  
24          ried out pursuant to subchapter VI of chapter 33 of title  
25          5.

1       “(c) Except for reasonable and usual preliminary  
2 costs for project planning before its approval, a corpora-  
3 tion established under this subchapter may not spend  
4 funds for a research project unless the project is approved  
5 in accordance with procedures prescribed by the Under  
6 Secretary for Health for research carried out with Depart-  
7 ment funds. Such procedures shall include a scientific re-  
8 view process.

9       “(d) Except for reasonable and usual preliminary  
10 costs for activity planning before its approval, a corpora-  
11 tion established under this subchapter may not spend  
12 funds for an education activity unless the activity is ap-  
13 proved in accordance with procedures prescribed by the  
14 Under Secretary for Health.

15       “(e) The Under Secretary for Health may prescribe  
16 policies and procedures to guide the spending of funds by  
17 corporations established under this subchapter that are  
18 consistent with the purpose of such corporations as flexible  
19 funding mechanisms and with Federal and State laws and  
20 regulations, and executive orders, circulars, and directives  
21 that apply generally to the receipt and expenditure of  
22 funds by nonprofit organizations exempt from taxation  
23 under section 501(c)(3) of the Internal Revenue Code of  
24 1986.”.

1 (b) CONFORMING AMENDMENT.—Section 7362(a) of  
2 such title, as amended by section 3(a)(1) of this Act, is  
3 further amended by striking the last sentence.

4 **SEC. 6. REDESIGNATION OF SECTION 7364A OF TITLE 38,**  
5 **UNITED STATES CODE.**

6 (a) REDESIGNATION.—Section 7364A of title 38,  
7 United States Code, is redesignated as section 7365 of  
8 such title.

9 (b) CLERICAL AMENDMENTS.—The table of sections  
10 at the beginning of chapter 73 of such title is amended—

11 (1) by striking the item relating to section  
12 7364A; and

13 (2) by striking the item relating to section 7365  
14 and inserting the following new item:

“7365. Coverage of employees under certain Federal tort claims laws.”.

15 **SEC. 7. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF**  
16 **CORPORATIONS.**

17 (a) ADDITIONAL INFORMATION IN ANNUAL RE-  
18 PORTS.—Subsection (b) of section 7366 of title 38, United  
19 States Code, is amended to read as follows:

20 “(b)(1) Each corporation shall submit to the Sec-  
21 retary each year a report providing a detailed statement  
22 of the operations, activities, and accomplishments of the  
23 corporation during that year.

1       “(2)(A) A corporation with revenues in excess of  
2 \$300,000 for any year shall obtain an audit of the cor-  
3 poration for that year.

4       “(B) A corporation with annual revenues between  
5 \$10,000 and \$300,000 shall obtain an audit of the cor-  
6 poration at least once every three years.

7       “(C) Any audit under this paragraph shall be per-  
8 formed by an independent auditor.

9       “(3) The corporation shall include in each report to  
10 the Secretary under paragraph (1) the following:

11           “(A) The most recent audit of the corporation  
12 under paragraph (2).

13           “(B) The most recent Internal Revenue Service  
14 Form 990 ‘Return of Organization Exempt from In-  
15 come Tax’ or equivalent and the applicable schedules  
16 under such form.”.

17       (b) CONFIRMATION OF APPLICATION OF CONFLICT  
18 OF INTEREST REGULATIONS TO APPROPRIATE CORPORA-  
19 TION POSITIONS.—Subsection (c) of such section is  
20 amended—

21           (1) by striking “laws and” each place it ap-  
22 pears;

23           (2) in paragraph (1)—

24               (A) by inserting “each officer and” after  
25 “under this subchapter,”; and

1 (B) by striking “, and each employee of  
2 the Department” and all that follows through  
3 “during any year”; and

4 (3) in paragraph (2)—

5 (A) by inserting “officer,” after “verifying  
6 that each”; and

7 (B) by striking “in the same manner” and  
8 all that follows before the period at the end.

9 (c) ESTABLISHMENT OF APPROPRIATE PAYEE RE-  
10 PORTING THRESHOLD.—Subsection (d)(3)(C) of such sec-  
11 tion is amended by striking “\$35,000” and inserting  
12 “\$50,000”.

13 **SEC. 8. REPEAL OF SUNSET.**

14 (a) REPEAL.—Section 7368 of title 38, United States  
15 Code, is repealed.

16 (b) CLERICAL AMENDMENT.—The table of sections  
17 at the beginning of chapter 73 of such title is amended  
18 by striking the item relating to section 7368.

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