

105TH CONGRESS  
1ST SESSION

# H. R. 756

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1997

Mr. EHRLICH introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To establish a National Physical Fitness and Sports Foundation to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports, 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 “National Physical Fit-  
5       ness and Sports Foundation Establishment Act”.

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

2 (a) ESTABLISHMENT.—There is established the Na-  
3 tional Physical Fitness and Sports Foundation (herein-  
4 after in this Act referred to as the “Foundation”). The  
5 Foundation shall be a charitable and not-for-profit cor-  
6 poration and shall not be an agency or establishment of  
7 the United States.

8 (b) PURPOSES.—It is the purpose of the Foundation  
9 to—

10 (1) in conjunction with the President’s Council  
11 on Physical Fitness and Sports, develop a list and  
12 description of programs, events and other activities  
13 which would further the goals outlined in Executive  
14 Order 12345 and with respect to which combined  
15 private and governmental efforts would be beneficial;  
16 and

17 (2) encourage and promote the participation by  
18 private organizations in the activities referred to in  
19 paragraph (1) and to encourage and promote private  
20 gifts of money and other property to support those  
21 activities.

22 (c) DISPOSITION OF MONEY AND PROPERTY.—At  
23 least annually the Foundation shall transfer, after the de-  
24 duction of the administrative expenses of the Foundation,  
25 the balance of any contributions received for the activities  
26 referred to in subsection (b), to the Public Health Service

1 Gift Fund pursuant to section 231 of the Public Health  
2 Service Act (42 U.S.C. 238) for expenditure pursuant to  
3 the provisions of that section and consistent with the pur-  
4 poses for which the funds were donated.

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

6 (a) ESTABLISHMENT AND MEMBERSHIP.—

7 (1) IN GENERAL.—The Foundation shall have a  
8 governing Board of Directors (hereinafter referred  
9 to in this Act as the “Board”), which shall consist  
10 of nine Directors, to be appointed not later than 90  
11 days after the date of the enactment of this Act,  
12 each of whom shall be a United States citizen and—

13 (A) three of whom must be knowledgeable  
14 or experienced in one or more fields directly  
15 connected with physical fitness, sports, or the  
16 relationship between health status and physical  
17 exercise; and

18 (B) six of whom must be leaders in the  
19 private sector with a strong interest in physical  
20 fitness, sports, or the relationship between  
21 health status and physical exercise (one of  
22 whom shall be a representative of the United  
23 States Olympic Committee).

1       The membership of the Board, to the extent prac-  
2       ticable, shall represent diverse professional special-  
3       ties relating to the achievement of physical fitness  
4       through regular participation in programs of exer-  
5       cise, sports, and similar activities.

6               (2) EX OFFICIO MEMBERS.—The Assistant Sec-  
7       retary for Health, the Executive Director of the  
8       President’s Council on Physical Fitness and Sports,  
9       the Director for the National Center for Chronic  
10      Disease Prevention and Health Promotion, the Di-  
11      rector of the National Heart, Lung, and Blood Insti-  
12      tute and the Director for the Centers for Disease  
13      Control and Prevention shall serve as ex officio, non-  
14      voting members of the Board.

15             (3) NOT FEDERAL EMPLOYMENT.—Appoint-  
16      ment to the Board or service as a member of the  
17      staff of the Board shall not constitute employment  
18      by, or the holding of an office of, the United States  
19      for the purposes of any Federal employment or other  
20      law.

21             (b) APPOINTMENT AND TERMS.—

22               (1) APPOINTMENT.—Of the members of the  
23      Board appointed under subsection (a)(1), three shall  
24      be appointed by the Secretary of Health and Human  
25      Services (hereinafter referred to in this Act as the

1       “Secretary”), two shall be appointed by the majority  
2       leader of the Senate, one shall be appointed by the  
3       minority leader of the Senate, two shall be appointed  
4       by the Speaker of the House of Representatives, and  
5       one shall be appointed by the minority leader of the  
6       House of Representatives. The three members ap-  
7       pointed by the Secretary shall include the represent-  
8       ative of the United States Olympic Committee.

9           (2) TERMS.—Members appointed to the Board  
10       under subsection (a)(1) shall serve for a term of 6  
11       years. A vacancy on the Board shall be filled within  
12       60 days of the date on which such vacancy occurred  
13       in the manner in which the original appointment was  
14       made. A member appointed to fill a vacancy shall  
15       serve for the balance of the term of the individual  
16       who was replaced. No individual may serve more  
17       than two consecutive terms as a Director.

18       (c) CHAIRPERSON.—A Chairperson shall be elected  
19       by the Board from among its members and serve for a  
20       2-year term. The Chairperson shall not be limited in terms  
21       or service. The Chairman of the President’s Council on  
22       Physical Fitness and Sports shall serve as Chairperson  
23       until a Chairperson is elected by the Board.

1 (d) QUORUM.—A majority of the sitting members of  
2 the Board shall constitute a quorum for the transaction  
3 of business.

4 (e) MEETINGS.—The Board shall meet at the call of  
5 the Chairperson, but in no event less than once each year.  
6 If a Director misses three consecutive regularly scheduled  
7 meetings, that individual may be removed from the Board  
8 and the vacancy filled in accordance with subsection  
9 (b)(2).

10 (f) REIMBURSEMENT OF EXPENSES.—The members  
11 of the Board shall serve without pay. The members of the  
12 Board shall be allowed travel expenses, including per diem  
13 in lieu of subsistence, at rates authorized for employees  
14 of agencies under subchapter I of chapter 57 of title 5,  
15 United States Code, while away from their homes or regu-  
16 lar places of business in the performance of services for  
17 the Board.

18 (g) GENERAL POWERS.—

19 (1) ORGANIZATION.—The Board may complete  
20 the organization of the Foundation by—

21 (A) appointing officers and employees;

22 (B) adopting a constitution and bylaws  
23 consistent with the purposes of the Foundation  
24 and the provisions of this Act; and

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

4 In establishing bylaws under this paragraph, the  
5 Board shall provide for policies with regard to finan-  
6 cial conflicts of interest and ethical standards for the  
7 acceptance, solicitation, and disposition of donations  
8 and grants to the Foundation.

9 (2) LIMITATIONS ON OFFICERS AND EMPLOY-  
10 EES.—The following limitations apply with respect  
11 to the appointment of officers and employees of the  
12 Foundation:

13 (A) Officers and employees may not be ap-  
14 pointed until the Foundation has sufficient  
15 funds to compensate such individuals for their  
16 service. No individual so appointed may receive  
17 pay in excess of the annual rate of basic pay in  
18 effect for Executive Level V in the Federal  
19 service.

20 (B) The first officer or employee appointed  
21 by the Board shall be the secretary of the  
22 Board who—

23 (i) shall serve, at the direction of the  
24 Board, as its chief operating officer; and

1 (ii) shall be knowledgeable and experi-  
2 enced in matters relating to physical fit-  
3 ness and sports.

4 (C) No Public Health Service employee nor  
5 the spouse or dependent relative of such an em-  
6 ployee may serve as an officer or member of the  
7 Board of Directors or as an employee of the  
8 Foundation.

9 (D) Any individual who is an officer, em-  
10 ployee, or member of the Board of the Founda-  
11 tion may not (in accordance with the policies  
12 developed under paragraph (1)(B)) personally  
13 or substantially participate in the consideration  
14 or determination by the Foundation of any mat-  
15 ter that would directly or predictably affect any  
16 financial interest of the individual or a relative  
17 (as such term is defined in section 109(16) of  
18 the Ethics in Government Act of 1978) of the  
19 individual, of any business organization or other  
20 entity, or of which the individual is an officer  
21 or employee, or is negotiating for employment,  
22 or in which the individual has any other finan-  
23 cial interest.

24 **SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.**

25 (a) IN GENERAL.—The Foundation—



1 (1) shall have perpetual succession;

2 (2) may conduct business throughout the sev-  
3 eral States, territories, and possessions of the Unit-  
4 ed States;

5 (3) shall locate its principal offices in or near  
6 the District of Columbia; and

7 (4) shall at all times maintain a designated  
8 agent authorized to accept service of process for the  
9 Foundation.

10 The serving of notice to, or service of process upon, the  
11 agent required under paragraph (4), or mailed to the busi-  
12 ness address of such agent, shall be deemed as service  
13 upon or notice to the Foundation.

14 (b) SEAL.—The Foundation shall have an official seal  
15 selected by the Board which shall be judicially noticed.

16 (c) POWERS.—To carry out the purposes under sec-  
17 tion 2, the Foundation shall have the usual powers of a  
18 corporation acting as a trustee in the District of Columbia,  
19 including the power—

20 (1) except as otherwise provided herein, to ac-  
21 cept, receive, solicit, hold, administer, and use any  
22 gift, devise, or bequest, either absolutely or in trust,  
23 of real or personal property or any income therefrom  
24 or other interest therein;

1           (2) to acquire by purchase or exchange any real  
2           or personal property or interest therein;

3           (3) unless otherwise required by the instrument  
4           of transfer, to sell, donate, lease, invest, reinvest, re-  
5           tain, or otherwise dispose of any property or income  
6           therefrom;

7           (4) to sue and be sued, and complain and de-  
8           fend itself in any court of competent jurisdiction, ex-  
9           cept for gross negligence;

10          (5) to enter into contracts or other arrange-  
11          ments with public agencies and private organizations  
12          and persons and to make such payments as may be  
13          necessary to carry out its functions; and

14          (6) to do any and all acts necessary and proper  
15          to carry out the purposes of the Foundation.

16 For purposes of this Act, an interest in real property shall  
17 be treated as including, among other things, easements or  
18 other rights for preservation, conservation, protection, or  
19 enhancement by and for the public of natural, scenic, his-  
20 toric, scientific, educational, inspirational, or recreational  
21 resources. A gift, devise, or bequest may be accepted by  
22 the Foundation even though it is encumbered, restricted,  
23 or subject to beneficial interests of private persons if any  
24 current or future interest therein is for the benefit of the  
25 Foundation.

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

3 (a) PROTECTION.—Without the consent of the Foun-  
4 dation, in conjunction with the President’s Council on  
5 Physical Fitness and Sports, any person who uses for the  
6 purpose of trade, to induce the sale of any goods or serv-  
7 ices, or to promote any theatrical exhibition, athletic per-  
8 formance, or competition—

9 (1) the official seal of the President’s Council  
10 on Physical Fitness and Sports consisting of the  
11 eagle holding an olive branch and arrows with shield  
12 breast encircled by the name “President’s Council on  
13 Physical Fitness and Sports”;

14 (2) the official seal of the Foundation; and

15 (3) any trademark, trade name, sign, symbol,  
16 or insignia falsely representing association with, or  
17 authorization by, the President’s Council on Physical  
18 Fitness and Sports or the Foundation;

19 shall be subject in a civil action by the Foundation for  
20 the remedies provided for in the Act of July 5, 1946 (60  
21 Stat. 427; commonly known as the Trademark Act of  
22 1946).

23 (b) USES.—The Foundation, in conjunction with the  
24 President’s Council on Physical Fitness and Sports, may  
25 authorize contributors and suppliers of goods or services

1 to use the trade name of the President's Council on Phys-  
2 ical Fitness and Sports and the Foundation, as well as  
3 any trademark, seal, symbol, insignia, or emblem of the  
4 President's Council on Physical Fitness and Sports or the  
5 Foundation, in advertising that the contributions, goods  
6 or services when donated, supplied, furnished to or for the  
7 use of, approved, selected, or used by the President's  
8 Council on Physical Fitness and Sports or the Founda-  
9 tion.

10 **SEC. 6. VOLUNTEER STATUS.**

11 The Foundation may accept, without regard to the  
12 civil service classification laws, rules, or regulations, the  
13 services of volunteers in the performance of the functions  
14 authorized herein, in the same manner as provided for  
15 under section 7(c) of the Fish and Wildlife Act of 1956  
16 (16 U.S.C. 742f(c)).

17 **SEC. 7. AUDIT, REPORT REQUIREMENTS, AND PETITION OF**

18 **ATTORNEY GENERAL FOR EQUITABLE RE-**

19 **LIEF.**

20 (a) AUDITS.—For purposes of Public Law 88–504  
21 (36 U.S.C. 1101 et seq.), the Foundation shall be treated  
22 as a private corporation under Federal law. The Inspector  
23 General of the Department of Health and Human Services  
24 and the Comptroller General of the United States shall

1 have access to the financial and other records of the Foun-  
2 dation, upon reasonable notice.

3 (b) REPORT.—The Foundation shall, as soon as prac-  
4 ticable after the end of each fiscal year, transmit to the  
5 Secretary and to Congress a report of its proceedings and  
6 activities during such year, including a full and complete  
7 statement of its receipts, expenditures, and investments.

8 (c) RELIEF WITH RESPECT TO CERTAIN FOUNDA-  
9 TION ACTS OR FAILURE TO ACT.—If the Foundation—  
10 (1) engages in, or threatens to engage in, any  
11 act, practice, or policy that is inconsistent with the  
12 purposes described in section 2(b); or

13 (2) refuses, fails, or neglects to discharge its  
14 obligations under this Act, or threatens to do so;  
15 the Attorney General may petition in the United States  
16 District Court for the District of Columbia for such equi-  
17 table relief as may be necessary or appropriate.

