

105TH CONGRESS  
1ST SESSION

# S. 905

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 SENATE OF THE UNITED STATES

JUNE 16, 1997

Mr. MCCAIN (for himself and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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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”.

### 6 **SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.**

7 (a) ESTABLISHMENT.—There is established the Na-  
8 tional Physical Fitness and Sports Foundation (herein-

1 after in this Act referred to as the “Foundation”). The  
2 Foundation shall be a charitable and not for profit cor-  
3 poration and shall not be an agency or establishment of  
4 the United States.

5 (b) PURPOSES.—It is the purpose of the Foundation  
6 to—

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

14 (2) encourage and promote the participation by  
15 private organizations in the activities referred to in  
16 subsection (b)(1) and to encourage and promote pri-  
17 vate gifts of money and other property to support  
18 those activities.

19 (c) DISPOSITION OF MONEY AND PROPERTY.—At  
20 least annually the Foundation shall transfer, after the de-  
21 duction of the administrative expenses of the Foundation,  
22 the balance of any contributions received for the activities  
23 referred to in subsection (b), to the Public Health Service  
24 Gift Fund pursuant to section 231 of the Public Health  
25 Service Act (42 U.S.C. 238) for expenditure pursuant to

1 the provisions of that section and consistent with the pur-  
2 poses for which the funds were donated.

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

4 (a) ESTABLISHMENT AND MEMBERSHIP.—

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

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

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

22 The membership of the Board, to the extent prac-  
23 ticable, shall represent diverse professional specialities  
24 relating to the achievement of physical fitness

1 through regular participation in programs of exer-  
2 cise, sports and similar activities.

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

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

18 (b) APPOINTMENT AND TERMS.—

19 (1) APPOINTMENT.—Of the members of the  
20 Board appointed under subsection (a)(1), three shall  
21 be appointed by the Secretary of Health and Human  
22 Services (hereinafter referred to in this Act as the  
23 “Secretary”), two shall be appointed by the Majority  
24 Leader of the Senate, one shall be appointed by the  
25 Minority Leader of the Senate, two shall be ap-

1 pointed by the Speaker of the House of representa-  
2 tives, and one shall be appointed by the Minority  
3 Leader of the House of Representatives. The three  
4 members appointed by the Secretary shall include  
5 the representative of the United States Olympic  
6 Committee.

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

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

22 (d) QUORUM.—A majority of the sitting members of  
23 the Board shall constitute a quorum for the transaction  
24 of business.

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

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

15       (g) GENERAL POWERS.—

16               (1) ORGANIZATION.—The Board may complete  
 17 the organization of the Foundation by—

18                       (A) appointing officers and employees;

19                       (B) adopting a constitution and bylaws  
 20 consistent with the purposes of the Foundation  
 21 and the provision of this Act; and

22                       (C) undertaking such other acts as may be  
 23 necessary to carry out the provisions of this  
 24 Act.

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

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

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

17 (B) The first officer or employee appointed  
18 by the Board shall be the secretary of the  
19 Board who—

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

22 (ii) shall be knowledgeable and experi-  
23 enced in matters relating to physical fit-  
24 ness and sports.

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

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

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

22 (a) IN GENERAL.—The Foundation—  
23 (1) shall have perpetual succession;



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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) the official seal of the Foundation;

15 (3) any trademark, trade name, sign, symbol or  
16 insignia falsely representing association with or au-  
17 thorization 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 9, 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  
26 to use the trade name of the President's Council on Phys-

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

9 **SEC. 6. VOLUNTEER STATUS.**

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

16 **SEC. 7. AUDIT, REPORT REQUIREMENTS, AND PETITION OF**  
17 **ATTORNEY GENERAL FOR EQUITABLE RE-**  
18 **LIEF.**

19 (a) AUDITS.—For purposes of Public Law 88–504  
20 (36 U.S.C. 1101 et seq.), the Foundation shall be treated  
21 as a private corporation under Federal law. The Inspector  
22 General of the Department of Health and Human Services  
23 and the Comptroller General of the United States shall  
24 have access to the financial and other records of the Foun-  
25 dation, upon reasonable notice.

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

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

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

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