

107TH CONGRESS
1ST SESSION

H. R. 3305

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 HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2001

Mr. REHBERG (for himself, Mr. EDWARDS, and Mrs. EMERSON) introduced the following bill; which was referred to the Committee on Government Reform

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”.

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-

1 building approaches to address critical public policy
2 issues at the national, State, and local levels;

3 (2) there is a need for a national Council that
4 can promote and conduct consensus-building proc-
5 esses that primarily address legislative policy issues
6 of national importance;

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

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

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

20 (6) the existence of such a Council could con-
21 tribute especially to resolving differences on conten-
22 tious policy issues, preventing polarization on emerg-
23 ing policy issues and addressing issues of complexity
24 that involve multiple parties and perspectives;

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

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

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

19 **SEC. 3. DEFINITIONS.**

20 In this Act, the term—

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

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

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

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

4 (a) ESTABLISHMENT.—There is established the
5 United States Consensus Council.

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

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

21 (d) 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
25 and exclusive right to use and to allow or refuse oth-

1 ers the use of the terms “United States Consensus
2 Council” and “United States Consensus Council
3 Foundation” and the use of any official United
4 States Consensus Council emblem, badge, seal, and
5 other mark of recognition or any colorable simula-
6 tion thereof.

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

15 **SEC. 5. POWERS AND DUTIES.**

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

21 (b) DESCRIPTION OF SPECIFIC ACTIVITIES.—

22 (1) IN GENERAL.—Acting through the Board,
23 the Council may—

24 (A) promote and advance programs based
25 on consensus building as a complement to the

1 current deliberative processes employed by Con-
2 gress and the executive branch;

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

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

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

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

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

23 (A) consider such factors as issue com-
24 plexity, cost, ripeness, likelihood of participation
25 by key stakeholders, and any other relevant in-

1 dices that may assist the Council in deter-
2 mining whether to accept a referral;

3 (B) identify any appropriate facilitator for
4 the negotiation process;

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

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

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

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

20 (G) build and construct agreements among
21 stakeholders;

22 (H) draft, present, and submit rec-
23 ommendations to the legislative, executive, or
24 judicial body with oversight of the particular
25 issue; and

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

6 (3) OTHER ACTIVITIES.—The Council also may
7 engage in any other activity consistent with its mis-
8 sion.

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

12 (d) GUIDELINES FOR COUNCIL OPERATIONS.—As
13 necessary, the Council shall develop guidelines, through its
14 bylaws or otherwise, to address—

15 (1) policies relating to personal service con-
16 tracts;

17 (2) standards to ensure that the Council, its Di-
18 rectors, employees, and agents, avoid conflicts of in-
19 terest that may arise;

20 (3) fundraising policies, donor development pro-
21 grams, and matters related to the acceptance of pri-
22 vate donations;

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

1 (5) the establishment of advisory committees,
2 councils, or other bodies, as the efficient administra-
3 tion of the business and purposes of the Council may
4 require.

5 (e) ADMINISTRATIVE SERVICES FROM GENERAL
6 SERVICES ADMINISTRATION.—The Council may obtain
7 administrative support services from the Administrator of
8 General Services and use all sources of supply and services
9 of the General Services Administration on a reimbursable
10 basis.

11 **SEC. 6. BOARD OF DIRECTORS.**

12 (a) VESTED POWERS.—The powers of the Council
13 shall be vested in a Board of Directors unless otherwise
14 specified in this Act.

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

17 (1) Eight individuals, including private citizens,
18 State or local employees, or officers or employees of
19 the United States, appointed by the President, ex-
20 cept that no more than 4 of such individuals may
21 share the same political party affiliation.

22 (2) Two individuals, including private citizens,
23 State or local employees, Senators, or officers or em-
24 ployees of the United States, appointed by the Ma-
25 jority Leader of the Senate.

1 (3) Two individuals, including private citizens,
2 State or local employees, Senators, or officers or em-
3 ployees of the United States appointed by the Minor-
4 ity Leader of the Senate.

5 (4) Two individuals, including private citizens,
6 State or local employees, Members of the House of
7 Representatives, or officers or employees of the
8 United States appointed by the Speaker of the
9 House of Representatives.

10 (5) Two individuals, including private citizens,
11 State or local employees, Members of the House of
12 Representatives, or officers or employees of the
13 United States appointed by the Minority Leader of
14 the House of Representatives.

15 (c) TERM OF OFFICE: COMMENCEMENT AND TERMI-
16 NATION, INTERIM AND REMAINDER SERVICE, LIMITA-
17 TION.—

18 (1) TERM OF OFFICE.—Directors appointed
19 under subsection (b) of this section shall be ap-
20 pointed to 4-year terms, with no Director serving
21 more than 2 consecutive terms except that—

22 (A) as designated by the President, the
23 terms of 4 of the Directors initially appointed
24 under subsection (b)(1) shall be 2 years, subject
25 to appointment to no more than 2 additional 4-

1 year terms in the manner set forth in this sec-
2 tion;

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

9 (C) as designated by the Minority Leader
10 of the House of Representatives, the terms of
11 the 2 Directors initially appointed under sub-
12 section (b)(5) shall be 2 years, subject to ap-
13 pointment to no more than 2 additional 4-year
14 terms in the manner set forth in this section.

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

18 (3) REMAINDER SERVICE.—Any Director ap-
19 pointed to the Board to replace a Director whose
20 term has not expired shall be appointed to serve the
21 remainder of that term.

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

1 (d) QUALIFICATIONS.—A demonstrated interest in
2 the mission of the Council or expertise in consensus build-
3 ing may be considered in appointments made under this
4 section.

5 (e) REMOVAL FROM OFFICE.—A Director may be re-
6 moved by a process to be determined by the Council’s by-
7 laws.

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

11 (1) MEETINGS; QUORUM.—The Board shall
12 meet at least semiannually. A majority of the Direc-
13 tors in office shall constitute a quorum for any
14 Board meeting.

15 (2) OPEN MEETINGS.—All official governing
16 meetings of the Board shall be open to public obser-
17 vation and shall be preceded by reasonable public
18 notice. Notice in the Federal Register shall be
19 deemed to be reasonable public notice for purposes
20 of the preceding sentence. In exceptional cir-
21 cumstances, the Board may close those portions of
22 a meeting, upon a majority vote of Directors present
23 and with the vote taken in public session, which are
24 likely to disclose information or that may adversely
25 affect any ongoing proceeding or activity or to dis-

1 close information or matters exempted from public
2 disclosure under subsection (c) of section 552b of
3 title 5.

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

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

15 **SEC. 7. OFFICERS AND EMPLOYEES.**

16 (a) APPOINTMENT, COMPENSATION, AND STATUS OF
17 PRESIDENT OF COUNCIL AND OTHER OFFICERS.—There
18 shall be a President who shall be appointed by the Board.
19 The President shall be the chief executive officer of the
20 Council and shall carry out or cause to be carried out the
21 functions of the Council subject to the supervision and di-
22 rection of the Board.

23 (1) COMPENSATION OF PRESIDENT OF THE
24 COUNCIL.—The President of the Council shall be
25 compensated at an annual rate of pay not to exceed

1 the rate payable for a position at level II of the Ex-
2 ecutive Schedule under section 5313 of title 5,
3 United States Code.

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

15 (3) PERSONNEL.—The President of the Coun-
16 cil, with the approval of the Board, may appoint and
17 fix the compensation of such additional personnel as
18 determined necessary. The President and employees
19 of the Council shall not be employees of the United
20 States.

21 (4) COMPENSATION FOR SERVICES OR EX-
22 PENSES; PROHIBITION ON LOANS TO COUNCIL DI-
23 RECTORS AND PERSONNEL.—

24 (A) IN GENERAL.—No part of the financial
25 resources, income, or assets of the Council or of

1 any legal entity created by the Council shall
2 inure to any agent, employee, officer, or Direc-
3 tor or be distributable to any such person dur-
4 ing the life of the corporation or upon dissolu-
5 tion or final liquidation. Nothing in this section
6 may be construed to prevent the payment of
7 reasonable compensation for services or ex-
8 penses to the Directors, officers, employees, and
9 agents of the Council in amounts approved in
10 accordance with this Act.

11 (B) LOANS.—The Council shall not make
12 loans to its Directors, officers, employees, or
13 agents.

14 **SEC. 8. PROCEDURES AND RECORDS.**

15 (a) MONITORING AND EVALUATION OF PROGRAMS.—
16 The Council shall monitor and evaluate and provide for
17 independent evaluation if necessary of programs supported
18 in whole or in part under this Act to ensure that the provi-
19 sions of this Act and the bylaws, rules, regulations, and
20 guidelines promulgated under this Act are adhered to.

21 (b) ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;
22 FINANCIAL REPORTS.—The Council shall keep correct
23 and complete books and records of accounts, including
24 separate and distinct accounts of receipts and disburse-
25 ments of Federal funds. The Council's annual financial

1 report shall identify the use of such funding and shall
2 present a clear description of the full financial situation
3 of the Council.

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

7 (d) RECORD AND INSPECTION OF REQUIRED
8 ITEMS.—

9 (1) IN GENERAL.—The Council shall keep a
10 record of—

11 (A) the names and addresses of its Direc-
12 tors, copies of this Act, and any other Act relat-
13 ing to the Council;

14 (B) all Council bylaws, rules, regulations,
15 and guidelines;

16 (C) required minutes of proceedings;

17 (D) all applications and proposals and
18 issued or received contracts and grants; and

19 (E) financial records of the Council.

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

24 (e) AUDITS.—The accounts of the Council shall be
25 audited annually in accordance with generally accepted au-

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

14 (f) REPORT TO CONGRESS; COPIES FOR PUBLIC.—
15 The Council shall provide a report to the President and
16 to each House of Congress not later than 6 months fol-
17 lowing the close of the fiscal year for which the audit is
18 made. The report shall set forth such statements of the
19 Council’s activities for the prior year. The report shall be
20 made available to the public.

21 **SEC. 9. FUNDING.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—For the purpose of carrying
24 out this Act, there are authorized to be appropriated

1 \$5,000,000 for fiscal year 2002 and such sums as
2 may be necessary for succeeding fiscal years.

3 (2) AVAILABILITY.—Funds appropriated under
4 the authority of paragraph (1) shall remain available
5 until expended.

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

16 **SEC. 10. DISSOLUTION OR LIQUIDATION.**

17 Upon dissolution or final liquidation of the Council,
18 all income and assets appropriated by the United States
19 to the Council, but not any other funds, shall revert to
20 the United States Treasury.

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