

# Calendar No. 709

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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.

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## 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*]

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## 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(c)(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               diting 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  
2D SESSION

**S. 1651**

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**A BILL**

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

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OCTOBER 15, 2002

Reported with an amendment