

108TH CONGRESS
1ST SESSION

H. R. 2459

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

JUNE 12, 2003

Mr. REHBERG (for himself, Mr. EDWARDS, Mrs. EMERSON, Mr. WALSH, Mr. PLATTS, Mr. TOWNS, and Mr. STENHOLM) 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 2003”.

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 serves the Nation by promoting and conducting con-
5 sensus-building processes that primarily address leg-
6 islative policy issues 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 and others to assist the current public policy-
18 making processes on selected issues;

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

24 (7) the establishment of such a Council may
25 contribute significantly to a renewed sense of civility

1 and respect for differences, while at the same time
2 promoting vigorous interchange and open commu-
3 nications among those with differing points of view;
4 and

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

11 (b) PURPOSE.—The purpose of this Act is to estab-
12 lish an independent, nonprofit, national Council to serve
13 the Nation by seeking to produce consensus on policy
14 issues of national importance through collaborative proc-
15 esses.

16 **SEC. 3. DEFINITIONS.**

17 In this Act, the term—

18 (1) “Board” means the Board of Directors of
19 the Council;

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

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

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

2 (a) ESTABLISHMENT.—There is established the
3 United States Consensus Council.

4 (b) DISTRICT OF COLUMBIA NONPROFIT CORPORA-
5 TION; STATUS; RESTRICTIONS.—The Council shall be es-
6 tablished as an independent nonprofit corporation under
7 the District of Columbia Nonprofit Corporation Act (D.C.
8 Code, section 29–301 et seq.). Upon establishment under
9 that Act, the Council shall conform to all the requirements
10 applicable to a nonprofit corporation so established in the
11 District and shall be subject to such oversight by the Dis-
12 trict of Columbia as is applicable to a nonprofit corpora-
13 tion so established. The Council is not an agency or instru-
14 mentality of the United States.

15 (c) TRADE NAME AND TRADEMARK RIGHTS; VESTED
16 RIGHTS PROTECTED; CONDITION FOR USE OF FEDERAL
17 IDENTITY.—

18 (1) IN GENERAL.—The Council has the sole
19 and exclusive right to use and to allow or refuse oth-
20 ers the use of the term “United States Consensus
21 Council” and the use of any official United States
22 Consensus Council emblem, badge, seal, and other
23 mark of recognition or any colorable simulation
24 thereof.

25 (2) UNITED STATES REFERENCES.—The Coun-
26 cil may use “United States” or “U.S.” or any other

1 reference to the United States Government or Na-
2 tion in its title or in its corporate seal, emblem,
3 badge, or other mark of recognition or colorable sim-
4 ulation thereof in any fiscal year only if there is an
5 authorization of appropriations, or appropriations,
6 for the Council for such fiscal year provided by law.

7 **SEC. 5. POWERS AND DUTIES.**

8 (a) IN GENERAL.—The Council may exercise the
9 powers conferred upon a nonprofit corporation by the Dis-
10 trict of Columbia Nonprofit Corporation Act (D.C. Code,
11 section 29–301 et seq.) consistent with this Act.

12 (b) DESCRIPTION OF SPECIFIC ACTIVITIES.—

13 (1) IN GENERAL.—The Council may—

14 (A) develop and conduct processes to build
15 consensus on national policy issues;

16 (B) enter into formal and informal rela-
17 tionships with other institutions, public and pri-
18 vate, for purposes not inconsistent with this
19 Act;

20 (C) identify particular public policy issues
21 as to which the Council’s expertise would be
22 useful in building a consensus;

23 (D) subject to paragraph (2), coordinate
24 with, make referrals to and receive referrals
25 from, other conflict or dispute resolution instru-

1 mentalities of the United States, including the
2 United States Institute for Environmental Con-
3 flict Resolution or the Federal Mediation and
4 Conciliation Service; and

5 (E) develop and apply criteria for the pur-
6 pose of determining whether the Council will
7 enter into a consensus-building process on a
8 particular issue.

9 (2) LIMITATIONS ON CERTAIN ACTIVITIES.—

10 The Council shall not—

11 (A) duplicate the activities of the United
12 States Institute for Environmental Conflict
13 Resolution or the Federal Mediation and Con-
14 ciliation Service; or

15 (B) interfere with the Institute or Service
16 in carrying out their respective statutory re-
17 sponsibilities.

18 (3) CONSENSUS-BUILDING PROCESS.—With re-
19 spect to each consensus-building process, the Coun-
20 cil—

21 (A) shall consider such factors as the de-
22 gree of congressional interest in the issue, as
23 well as issue complexity, cost, ripeness, likeli-
24 hood of participation by key stakeholders, and
25 any other relevant indices that may assist the

1 Council in determining whether to enter into a
2 particular consensus process;

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

5 (C) may identify the key stakeholders in-
6 volved or interested in the outcome of a par-
7 ticular issue, including those individuals who
8 have the authority to implement the rec-
9 ommendations that result from the Council's
10 consensus building processes;

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

14 (E) may establish ground rules, including
15 matters related to confidentiality, representa-
16 tion of counsel, and ex parte communications;

17 (F) may work to promote consensus among
18 the stakeholders by methods such as negotia-
19 tion, discussion, meetings, and any other proc-
20 ess of dispute resolution;

21 (G) may build and construct agreements
22 among stakeholders;

23 (H) may issue a report reflecting the re-
24 sults of consideration by the Council on con-
25 sensus-building efforts; and

1 (I) may provide training and technical as-
2 sistance 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
11 necessary, the Council shall develop guidelines, through its
12 bylaws or otherwise, to address—

13 (1) policies relating to personal service con-
14 tracts;

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

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

21 (4) procedures to ensure that all participants in
22 a consensus-building process are informed of—

23 (A) the sources of funding of the Council;
24 and

1 (B) the source and purpose of any dona-
2 tion for which a purpose is specified when do-
3 nated to the Council;

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

6 (6) 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 **SEC. 6. BOARD OF DIRECTORS.**

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

14 (b) APPOINTMENTS.—The Board of Directors shall
15 consist of 12 voting members as follows:

16 (1) Four individuals, including private citizens
17 or State or local employees, no more than 2 of whom
18 shall be of the same political party, appointed by the
19 President. The President shall appoint members of
20 the opposing party only on the recommendation of
21 the leaders of Congress from that party. The Presi-
22 dent shall make all 4 of the initial appointments
23 under this paragraph on the same date.

1 (2) Two individuals, including private citizens
2 or State or local employees, appointed by the Major-
3 ity Leader of the Senate.

4 (3) Two individuals, including private citizens
5 or State or local employees, appointed by the Minor-
6 ity Leader of the Senate.

7 (4) Two individuals, including private citizens
8 or State or local employees, appointed by the Speak-
9 er of the House of Representatives.

10 (5) Two individuals, including private citizens
11 or State or local employees, appointed by the Minor-
12 ity Leader of the House of Representatives.

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

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

20 (A) as designated by the President, the
21 terms of 2 of the 4 Directors initially appointed
22 under subsection (b)(1) shall be 2 years, subject
23 to appointment to no more than 2 additional 4-
24 year terms in the manner set forth in this sec-
25 tion;

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

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

13 (2) REMAINDER SERVICE.—Any Director ap-
14 pointed to the Board to replace a Director whose
15 term has not expired shall be appointed to serve the
16 remainder of that term.

17 (3) PRESIDENT OF COUNCIL.—The President of
18 the Council shall serve as a nonvoting Director of
19 the Board.

20 (d) QUALIFICATIONS.—

21 (1) IN GENERAL.—A demonstrated interest in
22 the mission of the Council or expertise in consensus
23 building shall be considered in appointments made
24 under this section.

1 (2) NON-FEDERAL EMPLOYEES.—No Director
2 may be an officer or employee of the Federal Gov-
3 ernment, including a Member of Congress.

4 (e) REMOVAL FROM OFFICE.—A Director may be re-
5 placed by the appointing official or may be removed by
6 a process to be established in the Council’s bylaws.

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

10 (1) INITIAL ORGANIZATIONAL MEETING.—

11 (A) IN GENERAL.—The Board shall hold
12 an initial organizational meeting within 60 days
13 after the appointment of at least $\frac{1}{3}$ of the
14 members under this section. The initial organi-
15 zational meeting may be held only if equal num-
16 bers of members from each of the 2 major polit-
17 ical parties are appointed to the Board as of
18 the date of that meeting. The purpose of the
19 meeting shall be to provide for the incorpora-
20 tion of the Council as a non-profit corporation
21 in the District of Columbia as provided under
22 section 4 and to adopt the interim bylaws and
23 guidelines required under this section for its op-
24 eration.

1 (B) REQUIRED RATIFICATION OF ACTIONS
2 OF ORGANIZATIONAL MEETING.—The Articles
3 of Incorporation and the interim bylaws and
4 guidelines adopted in the initial organizational
5 meeting shall be effective only until the first
6 meeting of the Board after the appointment of
7 all members under this section, at which time
8 the articles, bylaws, or guidelines may be rati-
9 fied or modified by the Board.

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

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

1 the Council or to ongoing litigation to which the
2 Council is a party.

3 (g) COMPENSATION.—

4 (1) IN GENERAL.—Subject to paragraphs (2)
5 and (3), a Director may be compensated at a rate
6 not to exceed the daily equivalent of the rate payable
7 for a position at level IV of the Executive Schedule
8 under section 5315 of title 5, United States Code,
9 for each day during which that Director is engaged
10 in the performance of the duties of the Council.

11 (2) DIRECTORS WHO MAY BE COMPENSATED.—
12 A Director may be compensated under paragraph
13 (1), if that Director notifies the Board of an election
14 to receive compensation.

15 (3) EFFECTIVE DATE.—A Director shall be
16 compensated under this subsection for the perform-
17 ance of duties after the date of notification under
18 paragraph (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, sub-
22 sistence, and other necessary expenses.

23 **SEC. 7. OFFICERS AND EMPLOYEES.**

24 (a) PRESIDENT OF THE COUNCIL.—There shall be
25 a President who shall be appointed by the Board. The

1 President shall be the chief executive officer of the Council
2 and shall carry out or cause to be carried out the functions
3 of the Council subject to the supervision and direction of
4 the Board.

5 (b) COMPENSATION OF PRESIDENT OF THE COUN-
6 CIL.—The President of the Council shall be compensated
7 at an annual rate of pay not to exceed the rate payable
8 for a position at level II of the Executive Schedule under
9 section 5313 of title 5, United States Code.

10 (c) ASSIGNMENT OF FEDERAL OFFICERS OR EM-
11 PLOYEES TO THE COUNCIL.—The Council may request
12 the assignment of any Federal officer or employee to the
13 Council by an appropriate executive department, agency,
14 or congressional official or Member of Congress and may
15 enter into an agreement for such assignment, if the af-
16 fected officer or employee agrees to such assignment and
17 such assignment causes no prejudice to the salary, bene-
18 fits, status, or advancement within the department, agen-
19 cy, or congressional staff of such officer or employee. The
20 assigning office shall be fully reimbursed by the Council
21 for the costs associated with such an assignment. The as-
22 signed officer or employee shall remain an officer or em-
23 ployee of the United States during the course of such as-
24 signment.

1 (d) PERSONNEL.—The President of the Council, with
2 the approval of the Board, may appoint and fix the com-
3 pensation of such additional personnel as determined nec-
4 essary. The President and employees of the Council shall
5 not be employees of the United States.

6 (e) COMPENSATION FOR SERVICES OR EXPENSES;
7 PROHIBITION ON LOANS TO COUNCIL DIRECTORS AND
8 PERSONNEL.—

9 (1) IN GENERAL.—No part of the financial re-
10 sources, income, or assets of the Council or of any
11 legal entity created by the Council shall inure to any
12 agent, employee, officer, or Director or be distribut-
13 able to any such person during the life of the cor-
14 poration or upon dissolution or final liquidation.
15 Nothing in this section may be construed to prevent
16 the payment of reasonable compensation for services
17 or expenses to the Directors, officers, employees, and
18 agents of the Council in amounts approved in ac-
19 cordance with this Act.

20 (2) LOANS.—The Council shall not make loans
21 to its Directors, officers, employees, or agents.

22 **SEC. 8. PROCEDURES AND RECORDS.**

23 (a) MONITORING AND EVALUATION OF PROGRAMS.—
24 The Council shall monitor and evaluate and provide for
25 independent evaluation if necessary of programs supported

1 in whole or in part under this Act to ensure that the provi-
2 sions of this Act and the bylaws, rules, regulations, and
3 guidelines promulgated under this Act are adhered to.

4 (b) ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;
5 FINANCIAL REPORTS.—

6 (1) IN GENERAL.—The Council shall keep com-
7 plete books and records of accounts, including—

8 (A) separate and distinct accounts of re-
9 cepts and disbursements of Federal funds and
10 donations; and

11 (B) records of the purpose of any donation
12 for which a purpose is specified when donated
13 to the Council.

14 (2) ANNUAL FINANCIAL REPORTS.—The Coun-
15 cil's annual financial report shall identify the use of
16 all funding and shall present a clear description of
17 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
22 ITEMS.—

23 (1) IN GENERAL.—The Council shall keep a
24 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
11 subsection 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
15 audited 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
21 of the Council are normally kept. All books, accounts, fi-
22 nancial records, files, and other papers, things, and prop-
23 erty belonging to or in use by the Council and necessary
24 to facilitate the audit shall be made available to the person
25 or 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 forced to such person or persons.

4 (f) ANNUAL REPORT TO CONGRESS; COPIES FOR
5 PUBLIC.—

6 (1) IN GENERAL.—The Council shall provide a
7 report to the President and to each House of Con-
8 gress not later than 6 months following the close of
9 the fiscal 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. PROHIBITION ON LOBBYING ACTIVITIES.**

2 (a) DEFINITIONS.—In this section—

3 (1) the terms “covered executive branch offi-
4 cial”, “covered legislative branch official”, and “cli-
5 ent” have the meanings given under section 3 of the
6 Lobbying Disclosure Act of 1995 (2 U.S.C. 1602);

7 (2) the term “lobbying activities” has the
8 meaning given under section 3(7) of the Lobbying
9 Disclosure Act of 1995 (2 U.S.C. 1602(7)), except
10 the definition of the term “lobbying contact” shall
11 be applied as modified under this section; and

12 (3) the term “lobbying contact”—

13 (A) has the meaning given under para-
14 graph (8) of section 3 of the Lobbying Discl-
15 sure Act of 1995 (2 U.S.C. 1602(8)), except
16 that a communication made on behalf of a cli-
17 ent referred to under subparagraph (A) of that
18 paragraph shall apply instead to a communica-
19 tion made on behalf of the Council; and

20 (B) does not include a communication be-
21 tween the Council and a covered executive
22 branch official or covered legislative branch offi-
23 cial relating to—

24 (i) appropriations for the Council; or

25 (ii) proposed legislation directly af-
26 fecting the Council.

1 (b) PROHIBITIONS.—The Council may not—

2 (1) engage in lobbying activities; or

3 (2) be a client.

4 **SEC. 10. FUNDING.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—For the
6 purpose of carrying out this Act, there are authorized to
7 be appropriated \$2,000,000 for fiscal year 2003 and such
8 sums as may be necessary for fiscal years 2004 through
9 2008.

10 (b) AVAILABILITY.—Funds appropriated under the
11 authority of subsection (a) shall remain available until ex-
12 pended.

13 (c) AVAILABILITY OF FUNDS FROM FISCAL YEAR
14 2003.—Any funds authorized to be made available
15 through the General Services Administration during fiscal
16 year 2003 for the purpose of carrying out this Act shall
17 remain available until expended.

18 (d) INVESTMENT OF FUNDS.—Funds appropriated to
19 the Council shall be invested only in instruments backed
20 by the full faith and credit of the United States or in a
21 federally insured financial institution. Any interest earned
22 on such investments shall be used only for the purposes
23 set out in this Act.

1 **SEC. 11. DISSOLUTION OR LIQUIDATION.**

2 Upon dissolution or final liquidation of the Council,
3 all funds appropriated by the United States to the Council
4 including any interest attributable to such funds, but not
5 any other funds, shall revert to the United States Treas-
6 ury. Other funds held by the Council shall be handled
7 under the laws of the District of Columbia applicable to
8 nonprofit corporations.

○