

108TH CONGRESS  
2D SESSION

# S. 2551

To reduce and prevent childhood obesity by encouraging schools and school districts to develop and implement local, school-based programs designed to reduce and prevent childhood obesity, promote increased physical activity, and improve nutritional choices.

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## IN THE SENATE OF THE UNITED STATES

JUNE 21, 2004

Mr. FRIST (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To reduce and prevent childhood obesity by encouraging schools and school districts to develop and implement local, school-based programs designed to reduce and prevent childhood obesity, promote increased physical activity, and improve nutritional choices.

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 “Childhood Obesity Re-  
5       duction Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) According to the Centers for Disease Con-  
2           trol and Prevention, obesity may soon overtake to-  
3           bacco as the leading preventable cause of death.

4           (2) In 1999, 13 percent of children aged 6 to  
5           11 years and 14 percent of adolescents aged 12 to  
6           19 years in the United States were overweight. This  
7           prevalence has nearly tripled for adolescents in the  
8           past 2 decades.

9           (3) Risk factors for heart disease, such as high  
10          cholesterol and high blood pressure, occur with in-  
11          creased frequency in overweight children and adoles-  
12          cents compared to children with a healthy weight.

13          (4) Type 2 diabetes, previously considered an  
14          adult disease, has increased dramatically in children  
15          and adolescents. Overweight and obesity are closely  
16          linked to type 2 diabetes.

17          (5) Obesity in children and adolescents is gen-  
18          erally caused by a lack of physical activity,  
19          unhealthy eating patterns, or a combination of the  
20          2, with genetics and lifestyle both playing important  
21          roles in determining a child's weight.

22          (6) Overweight adolescents have a 70 percent  
23          chance of becoming overweight or obese adults.

24          (7) The 2001 report "The Surgeon General's  
25          Call to Action to Prevent and Decrease Overweight

1 and Obesity” suggested that obesity and its com-  
 2 plications were already costing the United States  
 3 \$117,000,000,000 annually.

4 (8) Substantial evidence shows that public  
 5 health risks can be reduced through increased public  
 6 awareness and community involvement.

7 (9) Congress needs to challenge students, teach-  
 8 ers, school administrators, and local communities to  
 9 voluntarily participate in the development and imple-  
 10 mentation of activities to successfully reduce and  
 11 prevent childhood obesity.

12 **TITLE I—CONGRESSIONAL**  
 13 **COUNCIL ON CHILDHOOD**  
 14 **OBESITY**

15 **SEC. 101. CONGRESSIONAL COUNCIL ON CHILDHOOD OBE-**  
 16 **SITY.**

17 (a) ESTABLISHMENT OF COUNCIL.—There is estab-  
 18 lished a “Congressional Council on Childhood Obesity”  
 19 (referred to in this title as the “Council”).

20 (b) PURPOSES.—The purposes of the Council shall  
 21 be—

22 (1) to encourage every elementary school and  
 23 middle school in the United States, whether public  
 24 or private, to develop and implement a plan to re-  
 25 duce and prevent obesity, promote improved nutri-

1 tional choices, and promote increased physical activ-  
 2 ity among students; and

3 (2) to provide information as necessary to sec-  
 4 ondary schools.

5 **SEC. 102. MEMBERSHIP OF THE COUNCIL.**

6 (a) COMPOSITION OF THE COUNCIL.—The Council  
 7 shall be composed of 8 members as follows:

8 (1) The majority leader of the Senate or the  
 9 designee of the majority leader of the Senate.

10 (2) The minority leader of the Senate or the  
 11 designee of the minority leader of the Senate.

12 (3) The Speaker of the House of Representa-  
 13 tives or the designee of the Speaker of the House of  
 14 Representatives.

15 (4) The minority leader of the House of Rep-  
 16 resentatives or the designee of the minority leader of  
 17 the House of Representatives.

18 (5) 4 citizen members to be appointed in ac-  
 19 cordance with subsection (b).

20 (b) APPOINTMENT OF CITIZEN COUNCIL MEM-  
 21 BERS.—

22 (1) METHOD OF APPOINTMENT.—For the pur-  
 23 pose of subsection (a)(5), each of the 4 members de-  
 24 scribed in paragraphs (1) through (4) of subsection  
 25 (a) shall appoint to the Council a citizen who is an

1 expert on children's health, nutrition, or physical ac-  
2 tivity.

3 (2) DATE OF APPOINTMENT.—The appoint-  
4 ments made under paragraph (1) shall be made not  
5 later than 120 days after the date of enactment of  
6 this Act.

7 (c) VACANCIES.—Any vacancy in the Council shall  
8 not affect its powers, but shall be filled in the manner  
9 in which the original appointment was made under sub-  
10 section (a).

11 (d) CHAIRPERSON.—The members of the Council  
12 shall elect, from among the members of the Council, a  
13 Chairperson.

14 (e) INITIAL MEETING.—The Council shall hold its  
15 first meeting not later than 120 days after the date of  
16 enactment of this Act.

17 **SEC. 103. RESPONSIBILITIES OF THE COUNCIL.**

18 (a) IN GENERAL.—The Council shall engage in the  
19 following activities:

20 (1) Work with outside experts to develop the  
21 Congressional Challenge to Reduce and prevent  
22 Childhood Obesity, which shall include the develop-  
23 ment of model plans to reduce and prevent childhood  
24 obesity that can be adopted or adapted by elemen-  
25 tary schools or middle schools that participate.

1           (2) Develop and maintain a website that is up-  
2           dated not less than once a month on best practices  
3           in the United States for reducing and preventing  
4           childhood obesity.

5           (3) Assist in helping elementary schools and  
6           middle schools in establishing goals for the healthy  
7           reduction and prevention of childhood obesity.

8           (4) Consult and coordinate with the President's  
9           Council on Physical Fitness and other Federal Gov-  
10          ernment initiatives conducting activities to reduce  
11          and prevent childhood obesity.

12          (5) Reward elementary schools, middle schools,  
13          and local educational agencies promoting innovative,  
14          successful strategies in reducing and preventing  
15          childhood obesity.

16          (6) Provide information to secondary schools.

17          (b) CONGRESSIONAL CHALLENGE WINNERS.—

18               (1) IN GENERAL.—The Council shall—

19                   (A) evaluate plans submitted by elemen-  
20                   tary schools, middle schools, and local edu-  
21                   cational agencies under paragraph (2);

22                   (B) designate the plans submitted under  
23                   paragraph (2) that meet the criteria under  
24                   paragraph (3) as Congressional Challenge win-  
25                   ners; and

1 (C) post the plans of the Congressional  
2 Challenge winners designated under subpara-  
3 graph (B) on the website of the Council as  
4 model plans for reducing and preventing child-  
5 hood obesity.

6 (2) SUBMISSION OF PLANS.—Each elementary  
7 school, middle school, or local educational agency  
8 that desires to have the plan to reduce and prevent  
9 childhood obesity of such entity designated as a Con-  
10 gressional Challenge winner shall submit to the  
11 Council such plan at such time, in such manner, and  
12 accompanied by such information as the Council  
13 may reasonably require.

14 (3) SELECTION CRITERIA.—

15 (A) IN GENERAL.—The Council shall  
16 evaluate plans submitted by elementary schools,  
17 middle schools, and local educational agencies  
18 under paragraph (2) and shall designate as  
19 Congressional Challenge winners the plans  
20 that—

21 (i) show promise in successfully in-  
22 creasing physical activity, improving nutri-  
23 tion, and reducing and preventing obesity;  
24 or

1 (ii) have maintained efforts in assist-  
2 ing children in increasing physical activity,  
3 improving nutrition, and reducing and pre-  
4 venting obesity.

5 (B) CRITERIA.—The Council shall make  
6 the determination under subparagraph (A)  
7 based on the following criteria:

8 (i) Strategies based on evaluated  
9 interventions.

10 (ii) The number of children in the  
11 community in need of assistance in ad-  
12 dressing obesity and the potential impact  
13 of the proposed plan.

14 (iii) The involvement in the plan of  
15 the community served by the school or  
16 local educational agency.

17 (iv) Other criteria as determined by  
18 the Council.

19 (c) MEETINGS.—The Council shall hold not less than  
20 1 meeting each year, and all meetings of the Council shall  
21 be public meetings, preceded by a publication of notice in  
22 the Federal Register.

23 **SEC. 104. ADMINISTRATIVE MATTERS.**

24 (a) PAY AND TRAVEL EXPENSES.—



1           (1) PROHIBITION OF PAY.—Members of the  
2       Council shall receive no pay, allowances, or benefits  
3       by reason of their service on the Council.

4           (2) TRAVEL EXPENSES.—

5                (A) COMPENSATION FOR TRAVEL.—Each  
6       member of the Council shall be allowed travel  
7       expenses, including per diem in lieu of subsist-  
8       ence, at rates authorized for employees of agen-  
9       cies under subchapter I of chapter 57 of title 5,  
10      United States Code, while away from their  
11      homes or regular places of business in the per-  
12      formance of services for the Council, to the ex-  
13      tent funds are available under subparagraph  
14      (B) for such expenses.

15               (B) LIMIT ON TRAVEL EXPENSES.—Travel  
16      expenses under subparagraph (A) shall be ap-  
17      propriated from the amounts appropriated to  
18      the legislative branch and shall not exceed  
19      \$1,000,000.

20      (b) STAFF.—The Chairperson of the Council may ap-  
21      point and terminate, as may be necessary to enable the  
22      Council to perform its duties, not more than 5 staff per-  
23      sonnel, all of whom shall be considered employees of the  
24      Senate.

1 **SEC. 105. TERMINATION OF COUNCIL.**

2       The Council shall terminate on September 30 of the  
3 second full fiscal year following the date of enactment of  
4 this Act.

5 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

6       There are authorized to be appropriated to carry out  
7 this title \$2,200,000 for each of fiscal years 2005 and  
8 2006.

9 **TITLE II—NATIONAL FOUNDA-**  
10 **TION FOR THE PREVENTION**  
11 **AND REDUCTION OF CHILD-**  
12 **HOOD OBESITY**

13 **SEC. 201. ESTABLISHMENT AND DUTIES OF FOUNDATION.**

14       (a) IN GENERAL.—There shall be established in ac-  
15 cordance with this section a nonprofit private corporation  
16 to be known as the National Foundation for the Preven-  
17 tion and Reduction of Childhood Obesity (referred to in  
18 this title as the “Foundation”). The Foundation shall not  
19 be an agency or instrumentality of the Federal Govern-  
20 ment, and officers, employees, and members of the board  
21 of the Foundation shall not be officers or employees of  
22 the Federal Government.

23       (b) PURPOSE OF FOUNDATION.—The purpose of the  
24 Foundation shall be to support and carry out activities  
25 for the prevention and reduction of childhood obesity  
26 through school-based activities.

1 (c) ENDOWMENT FUND.—

2 (1) IN GENERAL.—In carrying out subsection  
 3 (b), the Foundation shall establish a fund for pro-  
 4 viding endowments for positions that are associated  
 5 with the Congressional Council on Childhood Obesity  
 6 and the Department of Health and Human Services  
 7 (referred to in this title as the “Department”) and  
 8 dedicated to the purpose described in such sub-  
 9 section. Subject to subsection (g)(1)(B), the fund  
 10 shall consist of such donations as may be provided  
 11 by non-Federal entities and such non-Federal assets  
 12 of the Foundation (including earnings of the Foun-  
 13 dation and the fund) as the Foundation may elect  
 14 to transfer to the fund.

15 (2) AUTHORIZED EXPENDITURES OF FUND.—

16 The provision of endowments under paragraph (1)  
 17 shall be the exclusive function of the fund estab-  
 18 lished under such paragraph. Such endowments may  
 19 be expended only for the compensation of individuals  
 20 holding the positions, for staff, equipment, quarters,  
 21 travel, and other expenditures that are appropriate  
 22 in supporting the positions, and for recruiting indi-  
 23 viduals to hold the positions endowed by the fund.

24 (d) CERTAIN ACTIVITIES OF FOUNDATION.—In car-  
 25 rying out subsection (b), the Foundation may provide for

1 the following with respect to the purpose described in such  
 2 subsection:

3 (1) Evaluate and make known the effectiveness  
 4 of model plans used by schools to reduce and pre-  
 5 vent childhood obesity.

6 (2) Create a website to assist in the distribution  
 7 of successful plans, best practices, and other infor-  
 8 mation to assist elementary schools, middle schools,  
 9 and the public to develop and implement efforts to  
 10 reduce and prevent childhood obesity.

11 (3) Participate in meetings, conferences,  
 12 courses, and training workshops.

13 (4) Assist in the distribution of data concerning  
 14 childhood obesity.

15 (5) Make Challenge awards, pursuant to sub-  
 16 section (e), to elementary schools, middle schools,  
 17 and local educational agencies for the successful de-  
 18 velopment and implementation of school-based plans.

19 (6) Other activities to carry out the purpose de-  
 20 scribed in subsection (b).

21 (e) CHALLENGE AWARDS.—

22 (1) PROGRAM AUTHORIZED.—The Foundation  
 23 may provide Challenge awards to elementary schools,  
 24 middle schools, and local educational agencies that  
 25 submit applications under paragraph (2).

1           (2) APPLICATION.—Each elementary school,  
 2 middle school, or local educational agency that de-  
 3 sires to receive a Challenge award under this sub-  
 4 section shall submit an application that includes a  
 5 plan to reduce and prevent childhood obesity to the  
 6 Foundation at such time, in such manner, and ac-  
 7 companied by such additional information as the  
 8 Foundation may reasonably require.

9           (3) SELECTION CRITERIA.—In the program au-  
 10 thorized under paragraph (1), the Foundation shall  
 11 provide Challenge awards based on—

12                 (A) the success of the plans of the elemen-  
 13 tary schools, middle schools, and local edu-  
 14 cational agencies in meeting the plans' stated  
 15 goals;

16                 (B) the number of children in the commu-  
 17 nity served by the elementary school, middle  
 18 school, or local educational agency who are in  
 19 need of assistance in addressing obesity; and

20                 (C) other criteria as determined by the  
 21 Foundation.

22           (f) GENERAL STRUCTURE OF FOUNDATION; NON-  
 23 PROFIT STATUS.—

24                 (1) BOARD OF DIRECTORS.—The Foundation  
 25 shall have a board of directors (referred to in this

1 title as the “Board”), which shall be established and  
2 conducted in accordance with subsection (g). The  
3 Board shall establish the general policies of the  
4 Foundation for carrying out subsection (b), includ-  
5 ing the establishment of the bylaws of the Founda-  
6 tion.

7 (2) EXECUTIVE DIRECTOR.—The Foundation  
8 shall have an executive director (referred to in this  
9 title as the “Director”), who shall be appointed by  
10 the Board, who shall serve at the pleasure of the  
11 Board, and for whom the Board shall establish the  
12 rate of compensation. Subject to compliance with the  
13 policies and bylaws established by the Board pursu-  
14 ant to paragraph (1), the Director shall be respon-  
15 sible for the daily operations of the Foundation in  
16 carrying out subsection (b).

17 (3) NONPROFIT STATUS.—In carrying out sub-  
18 section (b), the Board shall establish such policies  
19 and bylaws under paragraph (1), and the Director  
20 shall carry out such activities under paragraph (2),  
21 as may be necessary to ensure that the Foundation  
22 maintains status as an organization that—

23 (A) is described in subsection (c)(3) of sec-  
24 tion 501 of the Internal Revenue Code of 1986;  
25 and

1 (B) is, under subsection (a) of such sec-  
 2 tion, exempt from taxation.

3 (g) BOARD OF DIRECTORS.—

4 (1) CERTAIN BYLAWS.—

5 (A) INCLUSIONS.—In establishing bylaws  
 6 under subsection (f)(1), the Board shall ensure  
 7 that the bylaws of the Foundation include by-  
 8 laws for the following:

9 (i) Policies for the selection of the of-  
 10 ficers, employees, agents, and contractors  
 11 of the Foundation.

12 (ii) Policies, including ethical stand-  
 13 ards, for the acceptance and disposition of  
 14 donations to the Foundation and for the  
 15 disposition of the assets of the Foundation.

16 (iii) Policies for the conduct of the  
 17 general operations of the Foundation.

18 (iv) Policies for writing, editing, print-  
 19 ing, and publishing of books and other ma-  
 20 terials, and the acquisition of patents and  
 21 licenses for devices and procedures devel-  
 22 oped by the Foundation.

23 (B) EXCLUSIONS.—In establishing bylaws  
 24 under subsection (f)(1), the Board shall ensure

1 that the bylaws of the Foundation (and activities  
2 carried out under the bylaws) do not—

3 (i) reflect unfavorably upon the ability  
4 of the Foundation, or the Department, to  
5 carry out its responsibilities or official du-  
6 ties in a fair and objective manner; or

7 (ii) compromise, or appear to com-  
8 promise, the integrity of any governmental  
9 program or any officer or employee in-  
10 volved in such program.

11 (2) COMPOSITION.—

12 (A) IN GENERAL.—Subject to subpara-  
13 graph (B), the Board shall be composed of 7 in-  
14 dividuals, appointed in accordance with para-  
15 graph (4), who collectively possess education or  
16 experience appropriate for representing the  
17 fields of children’s health, nutrition, and phys-  
18 ical fitness or organizations active in reducing  
19 and preventing childhood obesity. Each such in-  
20 dividual shall be a voting member of the Board.

21 (B) GREATER NUMBER.—The Board may,  
22 through amendments to the bylaws of the  
23 Foundation, provide that the number of mem-  
24 bers of the Board shall be a greater number  
25 than the number specified in subparagraph (A).



1           (3) CHAIRPERSON.—The Board shall, from  
2           among the members of the Board, designate an indi-  
3           vidual to serve as the Chairperson of the Board (re-  
4           ferred to in this subsection as the “Chairperson”).

5           (4) APPOINTMENTS, VACANCIES, AND TERMS.—  
6           Subject to subsection (k) (regarding the initial mem-  
7           bership of the Board), the following shall apply to  
8           the Board:

9                   (A) Any vacancy in the membership of the  
10           Board shall be filled by appointment by the  
11           Board, after consideration of suggestions made  
12           by the Chairperson and the Director regarding  
13           the appointments. Any such vacancy shall be  
14           filled not later than the expiration of the 180-  
15           day period beginning on the date on which the  
16           vacancy occurs.

17                   (B) The term of office of each member of  
18           the Board appointed under subparagraph (A)  
19           shall be 5 years. A member of the Board may  
20           continue to serve after the expiration of the  
21           term of the member until the expiration of the  
22           180-day period beginning on the date on which  
23           the term of the member expires.

24                   (C) A vacancy in the membership of the  
25           Board shall not affect the power of the Board

1 to carry out the duties of the Board. If a mem-  
 2 ber of the Board does not serve the full term  
 3 applicable under subparagraph (B), the indi-  
 4 vidual appointed to fill the resulting vacancy  
 5 shall be appointed for the remainder of the  
 6 term of the predecessor of the individual.

7 (5) COMPENSATION.—Members of the Board  
 8 may not receive compensation for service on the  
 9 Board. The members may be reimbursed for travel,  
 10 subsistence, and other necessary expenses incurred  
 11 in carrying out the duties of the Board.

12 (h) CERTAIN RESPONSIBILITIES OF EXECUTIVE DI-  
 13 RECTOR.—In carrying out subsection (f)(2), the Director  
 14 shall carry out the following functions:

15 (1) Hire, promote, compensate, and discharge  
 16 officers and employees of the Foundation, and define  
 17 the duties of the officers and employees.

18 (2) Accept and administer donations to the  
 19 Foundation, and administer the assets of the Foun-  
 20 dation.

21 (3) Establish a process for the selection of can-  
 22 didates for holding endowed positions under sub-  
 23 section (c).

1           (4) Enter into such financial agreements as are  
2           appropriate in carrying out the activities of the  
3           Foundation.

4           (5) Take such action as may be necessary to ac-  
5           quire patents and licenses for devices and procedures  
6           developed by the Foundation and the employees of  
7           the Foundation.

8           (6) Adopt, alter, and use a corporate seal,  
9           which shall be judicially noticed.

10          (7) Commence and respond to judicial pro-  
11          ceedings in the name of the Foundation.

12          (8) Other functions that are appropriate in the  
13          determination of the Director.

14          (i) GENERAL PROVISIONS.—

15           (1) AUTHORITY FOR ACCEPTING FUNDS.—The  
16           Secretary of Health and Human Services (referred  
17           to in this title as the “Secretary”) may accept and  
18           utilize, on behalf of the Federal Government, any  
19           gift, donation, bequest, or devise of real or personal  
20           property from the Foundation for the purpose of  
21           aiding or facilitating the work of the Department.  
22           Funds may be accepted and utilized by the Sec-  
23           retary under the preceding sentence without regard  
24           to whether the funds are designated as general-pur-  
25           pose funds or special-purpose funds.

1           (2) AUTHORITY FOR ACCEPTANCE OF VOL-  
2           UNTARY SERVICES.—

3           (A) IN GENERAL.—The Secretary may ac-  
4           cept, on behalf of the Federal Government, any  
5           voluntary services provided to the Department  
6           by the Foundation for the purpose of aiding or  
7           facilitating the work of the Department. In the  
8           case of an individual, the Secretary may accept  
9           the services provided under the preceding sen-  
10          tence by the individual for not more than 2  
11          years.

12          (B) NON-FEDERAL GOVERNMENT EMPLOY-  
13          EES.—The limitation established in subpara-  
14          graph (A) regarding the period of time in which  
15          services may be accepted applies to each indi-  
16          vidual who is not an employee of the Federal  
17          Government and who serves in association with  
18          the Department pursuant to financial support  
19          from the Foundation.

20          (3) ADMINISTRATIVE CONTROL.—No officer,  
21          employee, or member of the Board may exercise any  
22          administrative or managerial control over any Fed-  
23          eral employee.

24          (4) APPLICABILITY OF CERTAIN STANDARDS TO  
25          NON-FEDERAL EMPLOYEES.—In the case of any in-

dividual who is not an employee of the Federal Government and who serves in association with the Department pursuant to financial support from the Foundation, the Foundation shall negotiate a memorandum of understanding with the individual and the Secretary specifying that the individual—

(A) shall be subject to the ethical and procedural standards regulating Federal employment, scientific investigation, and research findings (including publications and patents) that are required of individuals employed by the Department, including standards under this Act, the Ethics in Government Act of 1978 (5 U.S.C. App.), and the Federal Technology Transfer Act of 1986 (Public Law 99–502; 100 Stat. 1785); and

(B) shall be subject to such ethical and procedural standards under chapter 11 of title 18, United States Code (relating to conflicts of interest), as the Secretary determines is appropriate, except such memorandum may not provide that the individual shall be subject to the standards of section 209 of such chapter.

(5) FINANCIAL CONFLICTS OF INTEREST.—Any individual who is an officer, employee, or member of

1 the Board may not directly or indirectly participate  
 2 in the consideration or determination by the Founda-  
 3 tion of any question affecting—

4 (A) any direct or indirect financial interest  
 5 of the individual; or

6 (B) any direct or indirect financial interest  
 7 of any business organization or other entity of  
 8 which the individual is an officer or employee or  
 9 in which the individual has a direct or indirect  
 10 financial interest.

11 (6) AUDITS; AVAILABILITY OF RECORDS.—The  
 12 Foundation shall—

13 (A) provide for biennial audits of the fi-  
 14 nancial condition of the Foundation; and

15 (B) make such audits, and all other  
 16 records, documents, and other papers of the  
 17 Foundation, available to the Secretary and the  
 18 Comptroller General of the United States for  
 19 examination or audit.

20 (7) REPORTS.—

21 (A) IN GENERAL.—Not later than Feb-  
 22 ruary 1 of each fiscal year, the Foundation  
 23 shall publish a report describing the activities of  
 24 the Foundation during the preceding fiscal  
 25 year. Each such report shall include for the fis-

1 cal year involved a comprehensive statement of  
2 the operations, activities, financial condition,  
3 and accomplishments of the Foundation.

4 (B) INCLUSIONS.—With respect to the fi-  
5 nancial condition of the Foundation, each re-  
6 port under subparagraph (A) shall include the  
7 source, and a description, of all gifts to the  
8 Foundation of real or personal property, and  
9 the source and amount of all gifts to the Foun-  
10 dation of money. Each such report shall include  
11 a specification of any restrictions on the pur-  
12 poses for which gifts to the Foundation may be  
13 used.

14 (C) PUBLIC INSPECTION.—The Founda-  
15 tion shall make copies of each report submitted  
16 under subparagraph (A) available for public in-  
17 spection, and shall upon request provide a copy  
18 of the report to any individual for a charge not  
19 exceeding the cost of providing the copy.

20 (8) LIAISONS.—The Secretary shall appoint li-  
21 aisons to the Foundation from relevant Federal  
22 agencies, including the Office of the Surgeon Gen-  
23 eral and the Centers for Disease Control and Pre-  
24 vention. The Secretary of Agriculture shall designate  
25 liaisons to the Foundation as appropriate.

1           (9) INCLUSION OF THE PRESIDENT’S COUN-  
2           CIL.—The Foundation shall ensure that the Presi-  
3           dent’s Council on Physical Fitness is included in the  
4           activities of the Foundation.

5           (j) FEDERAL FUNDING.—

6           (1) AUTHORITY FOR ANNUAL GRANTS.—

7           (A) IN GENERAL.—The Secretary shall—

8                   (i) for fiscal year 2005, make a grant  
9                   to an entity described in subsection (k)(9)  
10                  (relating to the establishment of a com-  
11                  mittee to establish the Foundation);

12                  (ii) for fiscal years 2006 and 2007,  
13                  make a grant to the committee established  
14                  under such subsection, or if the Founda-  
15                  tion has been established, to the Founda-  
16                  tion; and

17                  (iii) for fiscal year 2008 and each sub-  
18                  sequent fiscal year, make a grant to the  
19                  Foundation.

20           (B) RULES ON EXPENDITURES.—A grant  
21           under subparagraph (A) may be expended—

22                   (i) in the case of an entity receiving  
23                   the grant under subparagraph (A)(i), only  
24                   for the purpose of carrying out the duties



1 established in subsection (k)(9) for the en-  
 2 tity;

3 (ii) in the case of the committee es-  
 4 tablished under subsection (k)(9), only for  
 5 the purpose of carrying out the duties es-  
 6 tablished in subsection (k) for the com-  
 7 mittee; and

8 (iii) in the case of the Foundation,  
 9 only for the purpose of the administrative  
 10 expenses of the Foundation.

11 (C) RESTRICTION.—A grant under sub-  
 12 paragraph (A) may not be expended to provide  
 13 amounts for the fund established under sub-  
 14 section (c).

15 (D) UNOBLIGATED GRANT FUNDS.—For  
 16 the purposes described in subparagraph (B)—

17 (i) any portion of the grant made  
 18 under subparagraph (A)(i) for fiscal year  
 19 2005 that remains unobligated after the  
 20 entity receiving the grant completes the  
 21 duties established in subsection (k)(9) for  
 22 the entity shall be available to the com-  
 23 mittee established under such subsection;  
 24 and

1 (ii) any portion of a grant under sub-  
 2 paragraph (A) made for fiscal year 2005  
 3 or 2006 that remains unobligated after  
 4 such committee completes the duties estab-  
 5 lished in such subsection for the committee  
 6 shall be available to the Foundation.

7 (2) FUNDING FOR GRANTS.—

8 (A) IN GENERAL.—For the purpose of  
 9 grants under paragraph (1), there is authorized  
 10 to be appropriated \$2,200,000 for each fiscal  
 11 year.

12 (B) PROGRAMS OF THE DEPARTMENT.—

13 For the purpose of grants under paragraph (1),  
 14 the Secretary may for each fiscal year make  
 15 available not more than \$2,200,000 from the  
 16 amounts appropriated for the fiscal year for the  
 17 programs of the Department. Such amounts  
 18 may be made available without regard to wheth-  
 19 er amounts have been appropriated under sub-  
 20 paragraph (A).

21 (3) CERTAIN RESTRICTION.—If the Foundation  
 22 receives Federal funds for the purpose of serving as  
 23 a fiscal intermediary between Federal agencies, the  
 24 Foundation may not receive such funds for the indi-  
 25 rect costs of carrying out such purpose in an amount

1 exceeding 10 percent of the direct costs of carrying  
 2 out such purpose. The preceding sentence may not  
 3 be construed as authorizing the expenditure of any  
 4 grant under paragraph (1) for such purpose.

5 (k) COMMITTEE FOR ESTABLISHMENT OF FOUNDA-  
 6 TION.—

7 (1) IN GENERAL.—There shall be established,  
 8 in accordance with this subsection and subsection  
 9 (j)(1), a committee to carry out the functions de-  
 10 scribed in paragraph (2) (referred to in this sub-  
 11 section as the “Committee”).

12 (2) FUNCTIONS.—The functions referred to in  
 13 paragraph (1) for the Committee are as follows:

14 (A) To carry out such activities as may be  
 15 necessary to incorporate the Foundation under  
 16 the laws of the State involved, including serving  
 17 as incorporators for the Foundation. Such ac-  
 18 tivities shall include ensuring that the articles  
 19 of incorporation for the Foundation require  
 20 that the Foundation be established and oper-  
 21 ated in accordance with the applicable provi-  
 22 sions of this title (or any successor to this title),  
 23 including such provisions as may be in effect  
 24 pursuant to amendments enacted after the date  
 25 of enactment of this Act.

1 (B) To ensure that the Foundation quali-  
 2 fies for and maintains the status described in  
 3 subsection (f)(3) (regarding taxation).

4 (C) To establish the general policies and  
 5 initial bylaws of the Foundation, which bylaws  
 6 shall include the bylaws described in subsections  
 7 (f)(3) and (g)(1).

8 (D) To provide for the initial operation of  
 9 the Foundation, including providing for quar-  
 10 ters, equipment, and staff.

11 (E) To appoint the initial members of the  
 12 Board in accordance with the requirements es-  
 13 tablished in subsection (g)(2)(A) for the com-  
 14 position of the Board, and in accordance with  
 15 such other qualifications as the Committee may  
 16 determine to be appropriate regarding such  
 17 composition. Of the members so appointed—

18 (i) 2 shall be appointed to serve for a  
 19 term of 3 years;

20 (ii) 2 shall be appointed to serve for  
 21 a term of 4 years; and

22 (iii) 3 shall be appointed to serve for  
 23 a term of 5 years.

24 (3) COMPLETION OF FUNCTIONS OF COM-  
 25 MITTEE; INITIAL MEETING OF BOARD.—

1 (A) COMPLETION OF FUNCTIONS.—The  
 2 Committee shall complete the functions re-  
 3 quired in paragraph (1) not later than Sep-  
 4 tember 30, 2007. The Committee shall termi-  
 5 nate upon the expiration of the 30-day period  
 6 beginning on the date on which the Secretary  
 7 determines that the functions have been com-  
 8 pleted.

9 (B) INITIAL MEETING.—The initial meet-  
 10 ing of the Board shall be held not later than  
 11 November 1, 2007.

12 (4) COMPOSITION.—The Committee shall be  
 13 composed of 5 members, each of whom shall be a  
 14 voting member. Of the members of the Committee—

15 (A) no fewer than 2 of the members shall  
 16 have expertise in children’s health, nutrition,  
 17 and physical activity; and

18 (B) no fewer than 2 of the members shall  
 19 have broad, general experience in nonprofit pri-  
 20 vate organizations (without regard to whether  
 21 the individuals have experience in children’s  
 22 health, nutrition, and physical activity).

23 (5) CHAIRPERSON.—The Committee shall, from  
 24 among the members of the Committee, designate an

1 individual to serve as the Chairperson of the Com-  
2 mittee.

3 (6) TERMS; VACANCIES.—The term of members  
4 of the Committee shall be for the duration of the  
5 Committee. A vacancy in the membership of the  
6 Committee shall not affect the power of the Com-  
7 mittee to carry out the duties of the Committee. If  
8 a member of the Committee does not serve the full  
9 term, the individual appointed by the Secretary to  
10 fill the resulting vacancy shall be appointed for the  
11 remainder of the term of the predecessor of the indi-  
12 vidual.

13 (7) COMPENSATION.—Members of the Com-  
14 mittee may not receive compensation for service on  
15 the Committee. Members of the Committee may be  
16 reimbursed for travel, subsistence, and other nec-  
17 essary expenses incurred in carrying out the duties  
18 of the Committee.

19 (8) COMMITTEE SUPPORT.—The Secretary  
20 may, from amounts available to the Secretary for  
21 the general administration of the Department, pro-  
22 vide staff and financial support to assist the Com-  
23 mittee with carrying out the functions described in  
24 paragraph (2). In providing such staff and support,

1 the Director may both detail employees and contract  
2 for assistance.

3 (9) GRANT FOR ESTABLISHMENT OF COM-  
4 MITTEE.—

5 (A) IN GENERAL.—With respect to a grant  
6 under paragraph (1)(A)(i) of subsection (j) for  
7 fiscal year 2005, an entity described in this  
8 paragraph is a private nonprofit entity with sig-  
9 nificant experience in children’s health, nutri-  
10 tion, and physical activity. Not later than 180  
11 days after the date of enactment of this Act,  
12 the Secretary shall make the grant to such an  
13 entity (subject to the availability of funds under  
14 paragraph (2) of such subsection).

15 (B) CONDITIONS.—The grant referred to  
16 in subparagraph (A) may be made to an entity  
17 only if the entity agrees that—

18 (i) the entity will establish a com-  
19 mittee that is composed in accordance with  
20 paragraph (4); and

21 (ii) the entity will not select an indi-  
22 vidual for membership on the Committee  
23 unless the individual agrees that the Com-  
24 mittee will operate in accordance with each

1 of the provisions of this subsection that re-  
2 late to the operation of the Committee.

3 (C) AGREEMENT.—The Secretary may  
4 make a grant referred to in subparagraph (A)  
5 only if the applicant for the grant makes an  
6 agreement that the grant will not be expended  
7 for any purpose other than carrying out sub-  
8 paragraph (B). Such a grant may be made only  
9 if an application for the grant is submitted to  
10 the Secretary containing such agreement, and  
11 the application is in such form, is made in such  
12 manner, and contains such other agreements  
13 and such assurances and information as the  
14 Secretary determines to be necessary to carry  
15 out this paragraph.

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