

# Calendar No. 221

108TH CONGRESS  
1ST SESSION

# S. 908

**[Report No. 108-110]**

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

APRIL 11, 2003

Ms. COLLINS (for herself, Mr. DORGAN, Mr. SANTORUM, Mr. CONRAD, Mr. LEAHY, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 22 (legislative day, JULY 21), 2003

Reported by Ms. COLLINS, with amendments

[Omit the part struck through 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 Representatives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “United States Con-  
3 sensus Council Act of 2003”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5       (a) FINDINGS.—Congress finds that—

6               (1) throughout the Nation there is increasing  
7               success in the use of collaborative and consensus-  
8               building approaches to address critical public policy  
9               issues at the national, State, and local levels;

10              (2) there is a need for a national Council that  
11              serves the Nation by promoting and conducting con-  
12              sensus-building processes that primarily address leg-  
13              islative policy issues of national importance;

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

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

21              (5) the establishment of such a Council is an  
22              appropriate investment by the people of this Nation  
23              in a capacity that works in cooperation with Con-  
24              gress and others to assist the current public policy-  
25              making processes on selected issues;

18 (b) PURPOSE.—The purpose of this Act is to estab-  
19 lish an independent, nonprofit, national Council to serve  
20 the Nation by seeking to produce consensus on policy  
21 issues of national importance through collaborative proc-  
22 esses.

### 23 SEC. 3. DEFINITIONS.

24 In this Act, the term—

5 (3) "Director" means an individual appointed  
6 to the Board of Directors of the Council.

## 7 SEC. 4. UNITED STATES CONSENSUS COUNCIL.

8 (a) ESTABLISHMENT.—There is established the  
9 United States Consensus Council.

(b) DISTRICT OF COLUMBIA NONPROFIT CORPORATION; STATUS; RESTRICTIONS.—The Council shall be established as an independent nonprofit corporation under the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29–301 et seq.). Upon establishment under that Act, the Council shall conform to all the requirements applicable to a nonprofit corporation so established in the District and shall be subject to such oversight by the District of Columbia as is applicable to a nonprofit corporation so established. The Council is not an agency or instrumentality of the 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  
25 and exclusive right to use and to allow or refuse oth-

1       ers the use of the term “United States Consensus  
2       Council” and the use of any official United States  
3       Consensus Council emblem, badge, seal, and other  
4       mark of recognition or any colorable simulation  
5       thereof.

## 14 SEC. 5. POWERS AND DUTIES.

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

19 (b) DESCRIPTION OF SPECIFIC ACTIVITIES.—

20 (1) IN GENERAL.—The Council may—

21 (A) develop and conduct processes to build  
22 consensus on national policy issues;  
23 (B) enter into formal and informal rela-  
24 tionships with other institutions, public and pri-

1 vate, for purposes not inconsistent with this  
2 Act;

3 (C) identify particular public policy issues  
4 as to which the Council's expertise would be  
5 useful in building a consensus;

6 (D) subject to paragraph (2), coordinate  
7 with, make referrals to and receive referrals  
8 from, other conflict or dispute resolution instru-  
9 mentalities of the United States, including the  
10 United States Institute for Environmental Con-  
11 flict Resolution or the Federal Mediation and  
12 Conciliation Service; and

13 (E) develop and apply criteria for the pur-  
14 pose of determining whether the Council will  
15 enter into a consensus-building process on a  
16 particular issue.

17 (2) LIMITATIONS ON CERTAIN ACTIVITIES.—

18 The Council shall consult and coordinate with the  
19 United States Institute for Environmental Conflict  
20 Resolution and the Federal Mediation and Concilia-  
21 tion Service to ensure that the activities of the  
22 Council do not—

23 (A) duplicate the activities of the Institute  
24 or Service; or

1 (B) interfere with the Institute or Service  
2 in carrying out their respective statutory re-  
3 sponsibilities.

24 (C) RESPONSE TO REQUEST FOR CON-  
25 SENT.—*The Institute or Service shall respond to*

1           *a request for consent described under subparagraph (B)(i), not later than 30 days after the date of receiving a request, unless the Council and the Institute or Service agree otherwise.*

5           *(D) CONSULTATION.—The Council, Institute, and Service shall consult among each other to identify opportunities for collaboration in fulfillment of their respective purposes and programs.*

10          (3) CONSENSUS-BUILDING PROCESS.—With respect to each consensus-building process, the Council—

13           (A) shall consider such factors as the degree of congressional interest in the issue, as well as issue complexity, cost, ripeness, likelihood of participation by key stakeholders, and any other relevant indices that may assist the Council in determining whether to enter into a particular consensus process;

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

22           (C) may identify the key stakeholders involved or interested in the outcome of a particular issue, including those individuals who have the authority to implement the rec-

1                   ommendations that result from the Council's  
2                   consensus building processes;

3 (D) may develop and publish a common set  
4 of facts to inform and assist consensus-building  
5 processes;

6 (E) may establish ground rules, including  
7 matters related to confidentiality, representa-  
8 tion of counsel, and ex parte communications;

9 (F) may work to promote consensus among  
10 the stakeholders by methods such as negotia-  
11 tion, discussion, meetings, and any other proc-  
12 ess of dispute resolution;

13 (G) may build and construct agreements  
14 among stakeholders;

15 (H) may issue a report reflecting the re-  
16 sults of consideration by the Council on con-  
17 sensus-building efforts; and

18 (I) may provide training and technical as-  
19 sistance on any issue within the Council's com-  
20 petence.

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

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

7               (1) policies relating to personal service con-  
8 tracts;

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

12               (3) fundraising policies, donor development pro-  
13 grams, and matters related to the acceptance of pri-  
14 vate donations;

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

17                       (A) the sources of funding of the Council;  
18                       and

19                       (B) the source and purpose of any dona-  
20 tion for which a purpose is specified when do-  
21 nated to the Council;

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

24               (6) the establishment of advisory committees,  
25 councils, or other bodies, as the efficient administra-

1       tion of the business and purposes of the Council may  
2       require.

3 **SEC. 6. BOARD OF DIRECTORS.**

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

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

9               (1) Four individuals, including private citizens  
10          or State or local employees, no more than 2 of whom  
11          shall be of the same political party, appointed by the  
12          President. The President shall appoint members of  
13          the opposing party only on the recommendation of  
14          the leaders of Congress from that party. *The President  
15          shall make all 4 of the initial appointments  
16          under this paragraph on the same date.*

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

20               (3) Two individuals, including private citizens  
21          or State or local employees, appointed by the Minor-  
22          ity Leader of the Senate.

23               (4) Two individuals, including private citizens  
24          or State or local employees, appointed by the Speak-  
25          er of the House of Representatives.

4 (c) TERM OF OFFICE: COMMENCEMENT AND TERMINATION,  
5 NATION, INTERIM AND REMAINDER SERVICE, LIMITATION.—  
6

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

(C) as designated by the Minority Leader of the House of Representatives, the terms of the 2 Directors initially appointed under sub-

1           section (b)(5) shall be 2 years, subject to ap-  
2           pointment to no more than 2 additional 4-year  
3           terms in the manner set forth in this section.

4           (2) REMAINDER SERVICE.—Any Director ap-  
5           pointed to the Board to replace a Director whose  
6           term has not expired shall be appointed to serve the  
7           remainder of that term.

8           (3) PRESIDENT OF COUNCIL.—The President of  
9           the Council shall serve as a nonvoting Director of  
10           the Board.

11           (d) QUALIFICATIONS.—

12           (1) IN GENERAL.—A demonstrated interest in  
13           the mission of the Council or expertise in consensus  
14           building shall be considered in appointments made  
15           under this section.

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

19           (e) REMOVAL FROM OFFICE.—A Director may be re-  
20           placed by the appointing official or may be removed by  
21           a process to be established in the Council's bylaws.

22           (f) MEETINGS; NOTICE IN FEDERAL REGISTER.—  
23           Meetings of the Board shall be conducted pursuant to the  
24           Council's bylaws, except as provided in the following:

25           (1) INITIAL ORGANIZATIONAL MEETING.—

15 (B) REQUIRED RATIFICATION OF ACTIONS  
16 OF ORGANIZATIONAL MEETING.—The Articles  
17 of Incorporation and the interim bylaws and  
18 guidelines adopted in the initial organizational  
19 meeting shall be effective only until the first  
20 meeting of the Board after the appointment of  
21 all members under this section, at which time  
22 the articles, bylaws, or guidelines may be rati-  
23 fied or modified by the Board.

24 (2) MEETINGS; QUORUM.—The Board shall  
25 meet at least semiannually. A majority of the Direc-

1       tors in office shall constitute a quorum for any  
2       Board meeting.

## 16 (g) COMPENSATION.—

1       (1), if that Director notifies the Board of an election  
2       to receive compensation.

3                   (3) EFFECTIVE DATE.—A Director shall be  
4       compensated under this subsection for the perform-  
5       ance of duties after the date of notification under  
6       paragraph (2).

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

11      **SEC. 7. OFFICERS AND EMPLOYEES.**

12       (a) PRESIDENT OF THE COUNCIL.—There shall be  
13      a President who shall be appointed by the Board. The  
14      President shall be the chief executive officer of the Council  
15      and shall carry out or cause to be carried out the functions  
16      of the Council subject to the supervision and direction of  
17      the Board.

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

23       (c) ASSIGNMENT OF FEDERAL OFFICERS OR EM-  
24      PLOYEES TO THE COUNCIL.—The Council may request  
25      the assignment of any Federal officer or employee to the

1 Council by an appropriate executive department, agency,  
2 or congressional official or Member of Congress and may  
3 enter into an agreement for such assignment, if the af-  
4 fected officer or employee agrees to such assignment and  
5 such assignment causes no prejudice to the salary, bene-  
6 fits, status, or advancement within the department, agen-  
7 cy, or congressional staff of such officer or employee. The  
8 assigning office shall be fully reimbursed by the Council  
9 for the costs associated with such an assignment. The as-  
10 signed officer or employee shall remain an officer or em-  
11 ployee of the United States during the course of such as-  
12 signment.

13 (d) PERSONNEL.—The President of the Council, with  
14 the approval of the Board, may appoint and fix the com-  
15 pensation of such additional personnel as determined nec-  
16 essary. The President and employees of the Council shall  
17 not be employees of the United States.

18 (e) COMPENSATION FOR SERVICES OR EXPENSES;  
19 PROHIBITION ON LOANS TO COUNCIL DIRECTORS AND  
20 PERSONNEL.—

21 (1) IN GENERAL.—No part of the financial re-  
22 sources, income, or assets of the Council or of any  
23 legal entity created by the Council shall inure to any  
24 agent, employee, officer, or Director or be distribut-  
25 able to any such person during the life of the cor-

1 poration or upon dissolution or final liquidation.  
2 Nothing in this section may be construed to prevent  
3 the payment of reasonable compensation for services  
4 or expenses to the Directors, officers, employees, and  
5 agents of the Council in amounts approved in ac-  
6 cordance with this Act.

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

9 **SEC. 8. PROCEDURES AND RECORDS.**

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

16 (b) ACCOUNTS OF RECEIPTS AND DISBURSEMENTS;  
17 FINANCIAL REPORTS.—

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

20 (A) separate and distinct accounts of re-  
21 ceipts and disbursements of Federal funds and  
22 donations; and

23 (B) records of the purpose of any donation  
24 for which a purpose is specified when donated  
25 to the Council.

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

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

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

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

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

17 (C) required minutes of proceedings:

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

20 (E) financial records of the Council.

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

16       (f) ANNUAL REPORT TO CONGRESS; COPIES FOR  
17 PUBLIC.—

18           (1) IN GENERAL.—The Council shall provide a  
19 report to the President and to each House of Con-  
20 gress not later than 6 months following the close of  
21 the fiscal year for which the audit is made.

22           (2) CONTENTS.—Each report under this sub-  
23 section shall include—

24                   (A) a statement of the Council's activities  
25 for the prior year;

3 (C) a disclosure statement of—

4 (i) the source of all funds received by  
5 the Council in the prior year; and

6 (ii) the purpose for which the funds

7 were contributed or made available.

8 (3) PUBLIC AVAILABILITY.—Each report under

9 this subsection shall be made available to the public.

10 (g) GAO REVIEW.—The annual report submitted  
11 under subsection (f) shall be submitted simultaneously to  
12 the General Accounting Office for its review.

## 13 SEC. 9. PROHIBITION ON LOBBYING ACTIVITIES.

14 (a) DEFINITIONS.—In this section—

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

24 (3) the term "lobbying contact"—

1 (A) has the meaning given under para-  
2 graph (8) of section 3 of the Lobbying Disclo-  
3 sure Act of 1995 (2 U.S.C. 1602(8)), except  
4 that a communication made on behalf of a cli-  
5 ent referred to under subparagraph (A) of that  
6 paragraph shall apply instead to a communica-  
7 tion made on behalf of the Council; and

8 (B) does not include a communication be-  
9 tween the Council and a covered executive  
10 branch official or covered legislative branch offi-  
11 cial relating to—

12 (i) appropriations for the Council; or  
13 (ii) proposed legislation directly af-  
14 fecting the Council.

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

16 (1) engage in lobbying activities; or  
17 (2) be a client.

## 18 SEC. 10. FUNDING.

19 (a) AUTHORIZATION OF APPROPRIATIONS.—For the  
20 purpose of carrying out this Act, there are authorized to  
21 be appropriated \$2,000,000 for fiscal year 2003 and such  
22 sums as may be necessary for fiscal years 2004 through  
23 2008.

1       (b) AVAILABILITY.—Funds appropriated under the  
2 authority of subsection (a) shall remain available until ex-  
3 pended.

4       (c) AVAILABILITY OF FUNDS FROM FISCAL YEAR  
5 2003.—Any funds authorized to be made available  
6 through the General Services Administration during fiscal  
7 year 2003 for the purpose of carrying out this Act shall  
8 remain available until expended.

9       (d) 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  
14 set out in this Act.

15 **SEC. 11. 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 Treas-  
20 ury. Other funds held by the Council shall be handled  
21 under the laws of the District of Columbia applicable to  
22 nonprofit corporations.

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**A BILL**

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JULY 22 (legislative day, JULY 21), 2003

Reported with amendments