

109TH CONGRESS
1ST SESSION

S. 1324

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.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2005

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

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 2006 and
8 2007.

9 **TITLE II—NATIONAL FOUNDATION FOR THE PREVENTION**
10 **AND REDUCTION OF CHILD-**
11 **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 activi-
2 ties 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-

1 dividual who is not an employee of the Federal Gov-
2 ernment and who serves in association with the De-
3 partment pursuant to financial support from the
4 Foundation, the Foundation shall negotiate a memo-
5 randum of understanding with the individual and
6 the Secretary specifying that the individual—

7 (A) shall be subject to the ethical and pro-
8 cedural standards regulating Federal employ-
9 ment, scientific investigation, and research find-
10 ings (including publications and patents) that
11 are required of individuals employed by the De-
12 partment, including standards under this Act,
13 the Ethics in Government Act of 1978 (5
14 U.S.C. App.), and the Federal Technology
15 Transfer Act of 1986 (Public Law 99–502; 100
16 Stat. 1785); and

17 (B) shall be subject to such ethical and
18 procedural standards under chapter 11 of title
19 18, United States Code (relating to conflicts of
20 interest), as the Secretary determines is appro-
21 priate, except such memorandum may not pro-
22 vide that the individual shall be subject to the
23 standards of section 209 of such chapter.

24 (5) FINANCIAL CONFLICTS OF INTEREST.—Any
25 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 Foun-
3 dation 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 2006, 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 2007 and 2008,
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 2009 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 2006 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 2006
3 or 2007 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, 2008. 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, 2008.

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 2006, 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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