

One Hundred Eleventh Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Foundation on Fitness, Sports, and Nutrition Establishment Act”.

SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Foundation on Fitness, Sports, and Nutrition (hereinafter in this Act referred to as the “Foundation”). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Foundation are—

(1) in conjunction with the Office of the President's Council on Fitness, Sports and Nutrition, to develop a list and description of programs, events and other activities which would further the purposes and functions outlined in Executive Order 13265, as amended, and with respect to which combined private and governmental efforts would be beneficial;

(2) to encourage and promote the participation by private organizations in the activities referred to in subsection (b)(1) and to encourage and promote private gifts of money and other property to support those activities; and

(3) in consultation with such Office, to undertake and support activities to further the purposes and functions of such Executive Order.

(c) PROHIBITION ON FEDERAL FUNDING.—The Foundation may not accept any Federal funds.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to in this Act as the “Board”), which shall consist of 9 members each of whom shall be a United States citizen and—

(1) 3 of whom should be knowledgeable or experienced in one or more fields directly connected with physical fitness, sports, nutrition, or the relationship between health status and physical exercise; and

(2) 6 of whom should be leaders in the private sector with a strong interest in physical fitness, sports, nutrition, or the relationship between health status and physical exercise. The membership of the Board, to the extent practicable, should represent diverse professional specialties relating to the achievement of physical fitness through regular participation in programs of exercise, sports, and similar activities, or to nutrition. The Assistant Secretary for Health, the Executive Director of the President's Council on Fitness, Sports and Nutrition, the Director for the National Center for Chronic Disease Prevention and Health Promotion, the Director of the National Heart, Lung, and Blood Institute, and the Director for the Centers for Disease Control and Prevention shall be ex officio, nonvoting members of the Board. Appointment to the Board or its staff shall not constitute employment by, or the holding of an office of, the United States for the purposes of laws relating to Federal employment.

(b) APPOINTMENTS.—Within 90 days from the date of enactment of this Act, the members of the Board shall be appointed by the Secretary in accordance with this subsection. In selecting individuals for appointments to the Board, the Secretary should consult with—

(1) the Speaker of the House of Representatives concerning the appointment of one member;

(2) the Majority Leader of the House of Representatives concerning the appointment of one member;

(3) the Majority Leader of the Senate concerning the appointment of one member;

(4) the President Pro Tempore concerning the appointment of one member;

(5) the Minority Leader of the House of Representatives concerning the appointment of one member; and

(6) the Minority Leader of the Senate concerning the appointment of one member.

(c) TERMS.—The members of the Board shall serve for a term of 6 years, except that the original members of the Board shall be appointed for staggered terms as determined appropriate by the Secretary. A vacancy on the Board shall be filled within 60 days of the vacancy in the same manner in which the original appointment was made and shall be for the balance of the term of the individual who was replaced. No individual may serve more than 2 consecutive terms as a member.

(d) CHAIRMAN.—The Chairman shall be elected by the Board from its members for a 2-year term and shall not be limited in terms or service, other than as provided in subsection (c).

(e) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(f) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a member misses 3 consecutive regularly scheduled meetings, that member may be removed from the Board and the vacancy filled in accordance with subsection (c).

(g) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation, subject to the same limitations on reimbursement that are imposed upon employees of Federal agencies.

(h) **LIMITATIONS.**—The following limitations apply with respect to the appointment of employees of the Foundation:

(1) Employees may not be appointed until the Foundation has sufficient funds to pay them for their service. No individual so appointed may receive a salary in excess of the annual rate of basic pay in effect for Executive Level V in the Federal service. A member of the Board may not receive compensation for serving as an employee of the Foundation.

(2) The first employee appointed by the Board shall be the Secretary of the Board who shall serve, at the direction of the Board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to physical fitness, sports, and nutrition.

(3) No Public Health Service employee nor the spouse or dependent relative of such an employee may serve as a member of the Board of Directors or as an employee of the Foundation.

(4) Any individual who is an employee or member of the Board of the Foundation may not (in accordance with the policies developed under subsection (i)) personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of—

(A) the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act, 1978) of the individual; or

(B) any business organization, or other entity, of which the individual is an officer or employee, is negotiating for employment, or in which the individual has any other financial interest.

(i) **GENERAL POWERS.**—The Board may complete the organization of the Foundation by—

(1) appointing employees;

(2) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provision of this Act; and

(3) undertaking such other acts as may be necessary to carry out the provisions of this Act.

In establishing bylaws under this subsection, the Board shall provide for policies with regard to financial conflicts of interest and ethical standards for the acceptance, solicitation and disposition of donations and grants to the Foundation.

SEC. 4. POWERS AND DUTIES OF THE FOUNDATION.

(a) **IN GENERAL.**—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in or near the District of Columbia; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) **SEAL.**—The Foundation shall have an official seal selected by the Board which may be used as provided for in section 5.

(c) INCORPORATION; NONPROFIT STATUS.—To carry out the purposes of the Foundation under section 2, the Board shall—

(1) incorporate the Foundation in the District of Columbia; and

(2) establish such policies and bylaws as may be necessary to ensure that the Foundation maintains status as an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986.

(d) POWERS.—Subject to the specific provisions of section 2, the Foundation, in consultation with the Office of the President's Council on Fitness, Sports, and Nutrition, shall have the power, directly or by the awarding of contracts or grants, to carry out or support activities for the purposes described in such section.

(e) TREATMENT OF PROPERTY.—For purposes of this Act, an interest in real property shall be treated as including easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational inspirational or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

SEC. 5. PROTECTION AND USES OF TRADEMARKS AND TRADE NAMES.

(a) TRADEMARKS OF THE FOUNDATION.—Authorization for a contributor, or a supplier of goods or services, to use, in advertising regarding the contribution, goods, or services, the trade name of the Foundation, or any trademark, seal, symbol, insignia, or emblem of the Foundation may be provided only by the Foundation with the concurrence of the Secretary or the Secretary's designee.

(b) TRADEMARKS OF THE COUNCIL.—Authorization for a contributor or supplier described in subsection (a) to use, in such advertising, the trade name of the President's Council on Fitness, Sports, and Nutrition, or any trademark, seal, symbol, insignia, or emblem of such Council, may be provided—

(1) by the Secretary or the Secretary's designee; or

(2) by the Foundation with the concurrence of the Secretary or the Secretary's designee.

SEC. 6. AUDIT, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled “An Act for audit of accounts of private corporations established under Federal law”, approved August 30, 1964 (Public Law 88–504, 36 U.S.C. 1101–1103), the Foundation shall be treated as a private corporation under Federal law. The Inspector General of the Department of Health and Human Services and the Comptroller General of the United States shall have access to the financial and other records of the Foundation, upon reasonable notice.

(b) REPORT.—The Foundation shall, not later than 60 days after the end of each fiscal year, transmit to the Secretary and to Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—If the Foundation—

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(1) engages in, or threatens to engage in, any act, practice or policy that is inconsistent with its purposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threaten to do so;
the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*