

The focus of this resolution is on that extradition, and why those conditions should be waived by the Brazilian Government to see that justice is fully served. You see, Mr. President, under the extradition treaty we have with Brazil, criminal suspects may only be extradited to face charges for crimes that exist in both countries. In Brazil, murder as a result of arson is not a crime. It is in the United States.

Martin Pang's pretrial hearing is scheduled for October 8, 1996. Under the conditions of our extradition treaty, the Brazilian Supreme Court ruled that Pang could be returned to the States to face arson charges only. Murder, a crime of which he has been accused and which he should stand trial for, is not an option. There is recourse, however. The United States Government believes that under our extradition treaty, the executive branch of Brazil has the authority to consent to the prosecution of Martin Pang on felony murder charges, despite the Brazilian Supreme Court's ruling. By doing so in this case, Brazil would give its consent for the United States to try Pang on all of the charges which have been brought against him.

This resolution sends a strong message to the Brazilian Government. Four firefighters died doing their job honorably. It is no less our responsibility to see that the accused be tried for the full scope of his crime.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the resolution be deemed agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 132) was agreed to.

#### RAILROAD UNEMPLOYMENT INSURANCE AMENDMENTS ACT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2594, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2594) to amend the Railroad Unemployment Insurance Act to reduce the waiting period for benefits payable under that act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2594) was deemed read a third time, and passed.

#### MEDICARE AND MEDICAID COVERAGE DATA BANK

Mr. GRASSLEY. I ask unanimous consent that the Finance Committee be discharged of H.R. 2685, and further the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2685) to repeal the Medicare and Medicaid Coverage Data Bank.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. I ask unanimous consent that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2685) was deemed read for a third time and passed.

#### SOCIAL SECURITY ACT AMENDMENT

Mr. GRASSLEY. I ask unanimous consent the Finance Committee be discharged of H.R. 2366, and further the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2366) to repeal an unnecessary medical device reporting requirement.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. I ask unanimous consent that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2366) was deemed read for a third time and passed.

#### CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 AMENDMENT

Mr. GRASSLEY. I ask unanimous consent the Finance Committee be discharged of H.R. 3056, and further the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3056) to permit a county-operated health insuring organization to qualify as an organization exempt from certain requirements otherwise applicable to health

ensuring organizations under the Medicaid Program notwithstanding that the organization enrolls Medicaid beneficiaries residing in another county.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. I ask unanimous consent that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements pertaining to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3056) was deemed read for a third time and passed.

#### NATIONAL PHYSICAL FITNESS AND SPORTS FOUNDATION ES- TABLISHMENT ACT

Mr. GRASSLEY. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 550, and that happens to be S. 1311.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1311) to establish a National Fitness and Sports Foundation to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

#### AMENDMENT NO. 5403

(Purpose: To make minor and technical changes in the bill as reported)

Mr. GRASSLEY. Senator PRESSLER has an amendment at the desk that would make technical corrections. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. PRESSLER, proposes an amendment numbered 5403.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 8, strike "nonprofit" and insert "not for profit".

On page 2, line 10, after the period insert the following: "The Foundation shall be established as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and shall be presumed, for purposes of such Code, to be such an organization until the Secretary of the Treasury determines that the Foundation does not meet the requirements applicable to such an organization. Section 508(a) of such Code does not apply to the Foundation."

On page 5, line 8, after the period, insert the following: "The three members appointed by the Secretary shall include the representative of the United States Olympic Committee."

On page 5, line 21, after the period insert the following: "The Chairman of the President's Council on Physical Fitness shall

serve as Chairperson until a Chairperson is elected by the Board.”.

On page 12, line 4, strike “contributions,” and insert “contributions.”.

Mr. PRESSLER. Mr. President, I am pleased to bring to the Senate S. 1311, the National Physical Fitness and Sports Foundation Establishment Act. S. 1311, would create a charitable, not-for-profit foundation to actively raise private funds to support the activities of the President's Council on Physical Fitness, President's Council.

In the past, the President's Council has relied on Federal appropriations to support its activities. Future appropriations for the President's Council are unlikely as we strive to balance the Federal budget.

The Foundation created by this bill would raise private funds to sustain the President's Council on Physical Fitness. To facilitate fund-raising, the Foundation is permitted to offer the use of the seal of the President's Council for promotional purposes in exchange for sponsorship funds. The bill does not authorize the expenditure of Federal funds.

The goals of the President's Council are identified in Executive Order 12345. The primary goal is to foster programs that encourage people of all ages to participate regularly in sports and physical activities. Perhaps the Council's most well known activity is the President's Challenge Physical Fitness Awards Program which is administered by teachers and youth programs in every State. We should act to preserve the President's Council. Its activities are particularly important because our Nation's children are becoming increasingly less physically fit even as we learn that physical fitness in one's youth is important to living a healthy life during adulthood.

Senators CAMPBELL and BRADLEY introduced this bill in October 1995. The Committee on Commerce, Science, and Transportation unanimously ordered the bill reported on June 6, 1996. I have an amendment that makes certain technical modifications to the bill. I urge my colleagues to support this worthy legislation.

Mr. GRASSLEY. I ask unanimous consent the amendment be agreed to, the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5403) was agreed to.

The bill (S. 1311), as amended, was deemed read for a third time and passed as follows:

S. 1311

*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 Physical Fitness and Sports Foundation Establishment Act”.

#### SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Physical Fitness and Sports Foundation (hereinafter in this Act referred to as the “Foundation”). The Foundation shall be a charitable and not for profit corporation and shall not be an agency or establishment of the United States. The Foundation shall be established as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and shall be presumed, for purposes of such Code, to be such an organization until the Secretary of the Treasury determines that the Foundation does not meet the requirements applicable to such an organization. Section 508(a) of such Code does not apply to the Foundation.

(b) PURPOSES.—It is the purpose of the Foundation to—

(1) in conjunction with the President's Council on Physical Fitness and Sports, develop a list and description of programs, events and other activities which would further the goals outlined in Executive Order 12345 and with respect to which combined private and governmental efforts would be beneficial; and

(2) 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.

(c) DISPOSITION OF MONEY AND PROPERTY.—At least annually the Foundation shall transfer, after the deduction of the administrative expenses of the Foundation, the balance of any contributions received for the activities referred to in subsection (b), to the Public Health Service Gift Fund pursuant to section 231 of the Public Health Service Act (42 U.S.C. 238) for expenditure pursuant to the provisions of that section and consistent with the purposes for which the funds were donated.

#### SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—

(1) IN GENERAL.—The Foundation shall have a governing Board of Directors (hereinafter referred to in this Act as the “Board”), which shall consist of nine Directors, to be appointed not later than 90 days after the date of enactment of this Act, each of whom shall be a United States citizen and—

(A) three of whom must be knowledgeable or experienced in one or more fields directly connected with physical fitness, sports or the relationship between health status and physical exercise; and

(B) six of whom must be leaders in the private sector with a strong interest in physical fitness, sports or the relationship between health status and physical exercise (one of which shall be a representative of the United States Olympic Committee).

The membership of the Board, to the extent practicable, shall represent diverse professional specialties relating to the achievement of physical fitness through regular participation in programs of exercise, sports and similar activities.

(2) EX OFFICIO MEMBERS.—The Assistant Secretary for Health, the Executive Director of the President's Council on Physical Fitness and Sports, 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 serve as ex officio, nonvoting members of the Board.

(3) NOT FEDERAL EMPLOYMENT.—Appointment to the Board or serving as a member of the staff of the Board shall not constitute employment by, or the holding of an office

of, the United States for the purposes of any Federal employment or other law.

(b) APPOINTMENT AND TERMS.—

(1) APPOINTMENT.—Of the members of the Board appointed under subsection (a)(1), three shall be appointed by the Secretary of Health and Human Services (hereinafter referred to in this Act as the “Secretary”), two shall be appointed by the Majority Leader of the Senate, one shall be appointed by the Minority Leader of the Senate, two shall be appointed by the Speaker of the House of Representatives, and one shall be appointed by the Minority Leader of the House of Representatives. The three members appointed by the Secretary shall include the representative of the United States Olympic Committee.

(2) TERMS.—Members appointed to the Board under subsection (a)(1) shall serve for a term of 6 years. A vacancy on the Board shall be filled within 60 days of the date on which such vacancy occurred in the manner in which the original appointment was made. A member appointed to fill a vacancy shall serve for the balance of the term of the individual who was replaced. No individual may serve more than two consecutive terms as a Director.

(c) CHAIRPERSON.—A Chairperson shall be elected by the Board from among its members and serve for a 2-year term. The Chairperson shall not be limited in terms or service. The Chairman of the President's Council on Physical Fitness shall serve as Chairperson until a Chairperson is elected by the Board.

(d) QUORUM.—A majority of the sitting members of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairperson, but in no event less than once each year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and the vacancy filled in accordance with subsection (b)(2).

(f) REIMBURSEMENT OF EXPENSES.—The members of the Board shall serve without pay. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(g) GENERAL POWERS.—

(1) ORGANIZATION.—The Board may complete the organization of the Foundation by—

(A) appointing officers and employees;

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

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

In establishing bylaws under this paragraph, 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.

(2) LIMITATIONS ON OFFICERS AND EMPLOYEES.—The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(A) Officers and employees may not be appointed until the Foundation has sufficient funds to compensate such individuals for their service. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for Executive Level V in the Federal service.

(B) The first officer or employee appointed by the Board shall be the secretary of the Board who—

(i) shall serve, at the direction of the Board, as its chief operating officer; and

(ii) shall be knowledgeable and experienced in matters relating to physical fitness and sports.

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

(D) Any individual who is an officer, employee, or member of the Board of the Foundation may not (in accordance with the policies developed under paragraph (1)(B)) 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 the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act of 1978) of the individual, of any business organization or other entity, or of which the individual is an officer or employee, or is negotiating for employment, or in which the individual has any other financial interest.

#### SEC. 4. RIGHTS AND OBLIGATIONS 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 locate 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 shall be judicially noticed.

(c) POWERS.—To carry out the purposes under section 2, the Foundation shall have the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) except as otherwise provided herein, to accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except for gross negligence;

(5) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(6) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

For purposes of this Act, an interest in real property shall be treated as including, among other things, 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) PROTECTION.—Without the consent of the Foundation, in conjunction with the President's Council on Physical Fitness and Sports, any person who uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance or competition—

(1) the official seal of the President's Council on Physical Fitness and Sports consisting of the eagle holding an olive branch and arrows with shield breast encircled by name "President's Council on Physical Fitness and Sports";

(2) the official seal of the Foundation;

(3) any trademark, trade name, sign, symbol or insignia falsely representing association with or authorization by the President's Council on Physical Fitness and Sports or the Foundation;

shall be subject in a civil action by the Foundation for the remedies provided for in the Act of July 9, 1946 (60 Stat. 427; commonly known as the Trademark Act of 1946).

(b) USES.—The Foundation, in conjunction with the President's Council on Physical Fitness and Sports, may authorize contributors and suppliers of goods or services to use the trade name of the President's Council on Physical Fitness and Sports and the Foundation, as well as any trademark, seal, symbol, insignia, or emblem of the President's Council on Physical Fitness and Sports or the Foundation, in advertising that the contributions, goods or services when donated, supplied, or furnished to or for the use of, approved, selected, or used by the President's Council on Physical Fitness and Sports or the Foundation.

#### SEC. 6. VOLUNTEER STATUS.

The Foundation may accept, without regard to the civil service classification laws, rules, or regulations, the services of volunteers in the performance of the functions authorized herein, in the same manner as provided for under section 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)).

#### SEC. 7. AUDIT, REPORT REQUIREMENTS, AND PETERITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of Public Law 88-504 (36 U.S.C. 1101 et seq.), 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, as soon as practicable 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—

(1) engages in, or threatens to engage in, any act, practice or policy that is inconsistent with the purposes described 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 may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. GRASSLEY. Mr. President, I ask unanimous consent the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar, en bloc: Calendar Nos. 747 through 755, and all nominations placed on the Secretary's desk in the Air Force, the Army, the Marine Corps, and the Navy. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

#### AIR FORCE

The following-named officer for appointment to the grade of lieutenant general in the U.S. Air Force while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

#### To be lieutenant general

Maj. Gen. Joseph J. Redden, 000-00-0000.

The following-named officers for appointment in the Reserve of the Air Force, to the grade indicated, under the provisions of title 10 United States Code, sections 8374, 12201, and 12212:

#### To be brigadier general

Col. William J. Broadley, 000-00-0000, Air National Guard of the United States.

Col. Walter R. Ernst II, 000-00-0000, Air National Guard of the United States.

Col. Dennis A. Higdon, 000-00-0000, Air National Guard of the United States.

Col. Enrique J. Lanz, 000-00-0000, Air National Guard of the United States.

Col. Thomas P. Lauppe, 000-00-0000, Air National Guard of the United States.

Col. James A. McDevitt, 000-00-0000, Air National Guard of the United States.

Col. Joseph I. Mensching, 000-00-0000, Air National Guard of the United States.

Col. Fisk Outwater, 000-00-0000, Air National Guard of the United States.

Col. Lawrence L. Paulson, 000-00-0000, Air National Guard of the United States.

Col. Maxey J. Phillips, 000-00-0000, Air National Guard of the United States.

Col. Wallace F. Pickard, Jr., 000-00-0000, Air National Guard of the United States.

Col. Richard A. Platt, 000-00-0000, Air National Guard of the United States.

Col. John C. Schnell, 000-00-0000, Air National Guard of the United States.

Col. Allen J. Smith, 000-00-0000, Air National Guard of the United States.

Col. Paul J. Sullivan, 000-00-0000, Air National Guard of the United States.

Col. Michael H. Tice, 000-00-0000, Air National Guard of the United States.

#### ARMY

The following-named officers for promotion in the Regular Army of the United States to the grade indicated, under title 10, United States Code, sections 611(a) and 624:

#### To be brigadier general

Col. John P. Abizaid, 000-00-0000, U.S. Army.

Col. Daniel L. Montgomery, 000-00-0000, U.S. Army.

The following U.S. Army National Guard officer for promotion in the Reserve of the