

111TH CONGRESS
1ST SESSION

H. R. 4322

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.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2009

Mr. SARBANES introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

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.

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 “National Foundation
5 on Physical Fitness and Sports Establishment Act”.

6 **SEC. 2. ESTABLISHMENT AND PURPOSE OF FOUNDATION.**

7 (a) ESTABLISHMENT.—There is established the Na-
8 tional Foundation on Physical Fitness and Sports (herein-

1 after in this Act referred to as the “Foundation”). The
2 Foundation is a charitable and nonprofit corporation and
3 is not an agency or establishment of the United States.

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

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

13 (2) to encourage and promote the participation
14 by private organizations in the activities referred to
15 in subsection (b)(1) and to encourage and promote
16 private gifts of money and other property to support
17 those activities.

18 (c) DISPOSITION OF MONEY AND PROPERTY.—At
19 least annually the Foundation shall transfer, after the de-
20 duction of the administrative expenses of the Foundation,
21 the balance of any contributions received for the activities
22 referred to in subsection (b), to the United States Public
23 Health Service Gift Fund pursuant to section 2701 of the
24 Public Health Service Act (42 U.S.C. 300aaa) for expendi-
25 ture pursuant to the provisions of that section and con-

1 sistent with the purposes for which the funds were do-
2 nated.

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

4 (a) ESTABLISHMENT AND MEMBERSHIP.—The
5 Foundation shall have a governing Board of Directors
6 (hereinafter referred to in this Act as the “Board”), which
7 shall consist of 11 members each of whom shall be a
8 United States citizen and—

9 (1) 4 of whom must be knowledgeable or experi-
10 enced in one or more fields directly connected with
11 physical fitness, sports, or the relationship between
12 health status and physical exercise; and

13 (2) 7 of whom must be leaders in the private
14 sector with a strong interest in physical fitness,
15 sports, or the relationship between health status and
16 physical exercise.

17 The membership of the Board, to the extent practicable,
18 shall represent diverse professional specialties relating to
19 the achievement of physical fitness through regular par-
20 ticipation in programs of exercise, sports, and similar ac-
21 tivities. The Assistant Secretary for Health, the Executive
22 Director of the President’s Council on Physical Fitness
23 and Sports, the Director for the National Center for
24 Chronic Disease Prevention and Health Promotion, the
25 Director of the National Heart, Lung, and Blood Insti-

1 tute, and the Director for the Centers for Disease Control
2 and Prevention shall be ex officio, nonvoting members of
3 the Board. Appointment to the Board or its staff shall
4 not constitute employment by, or the holding of an office
5 of, the United States for the purposes of any Federal em-
6 ployment or other law.

7 (b) APPOINTMENTS.—Within 90 days from the date
8 of enactment of this Act, the members of the Board will
9 be appointed. Three members of the Board will be ap-
10 pointed by the Secretary (hereinafter referred to in this
11 Act as the “Secretary”), 2 by the majority leader of the
12 Senate, 1 by the minority leader of the Senate, 1 by the
13 President Pro Tempore of the Senate, 2 by the Speaker
14 of the House of Representatives, 1 by the majority leader
15 of the House of Representatives, 1 by the minority leader
16 of the House of Representatives.

17 (c) TERMS.—The members of the Board shall serve
18 for a term of 6 years. A vacancy on the Board shall be
19 filled within 60 days of the vacancy in the same manner
20 in which the original appointment was made and shall be
21 for the balance of the term of the individual who was re-
22 placed. No individual may serve more than 2 consecutive
23 terms as a member.

1 (d) CHAIRMAN.—The Chairman shall be elected by
2 the Board from its members for a 2-year term and will
3 not be limited in terms or service.

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

7 (f) MEETINGS.—The Board shall meet at the call of
8 the Chairman at least once a year. If a member misses
9 3 consecutive regularly scheduled meetings, that member
10 may be removed from the Board and the vacancy filled
11 in accordance with subsection (c).

12 (g) REIMBURSEMENT OF EXPENSES.—Members of
13 the Board shall serve without pay, but may be reimbursed
14 for the actual and necessary traveling and subsistence ex-
15 penses incurred by them in the performance of the duties
16 of the Foundation, subject to the same limitations on re-
17 imbursement that are imposed upon employees of Federal
18 agencies.

19 (h) LIMITATIONS.—The following limitations apply
20 with respect to the appointment of officers and employees
21 of the Foundation:

22 (1) Officers and employees may not be ap-
23 pointed until the Foundation has sufficient funds to
24 pay them for their service. No individual so ap-
25 pointed may receive pay in excess of the annual rate

1 of basic pay in effect for Executive Level V in the
2 Federal service.

3 (2) The first officer or employee appointed by
4 the Board shall be the Secretary of the Board who
5 shall serve, at the direction of the Board, as its chief
6 operating officer and shall be knowledgeable and ex-
7 perience in matters relating to physical fitness and
8 sports.

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

13 (4) Any individual who is an officer, employee,
14 or member of the Board of the Foundation may not
15 (in accordance with the policies developed under sub-
16 section (i)) personally or substantially participate in
17 the consideration or determination by the Founda-
18 tion of any matter that would directly or predictably
19 affect any financial interest of the individual or a
20 relative (as such term is defined in section 109(16)
21 of the Ethics in Government Act, 1978) of the indi-
22 vidual, of any business organization, or other entity,
23 or of which the individual is an officer or employee,
24 is negotiating for employment, or in which the indi-
25 vidual has any other financial interest.

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

3 (1) appointing officers and employees;

4 (2) adopting a constitution and bylaws con-
5 sistent with the purposes of the Foundation and the
6 provision of this Act; and

7 (3) undertaking such other acts as may be nec-
8 essary to carry out the provisions of this Act.

9 In establishing bylaws under this subsection, the Board
10 shall provide for policies with regard to financial conflicts
11 of interest and ethical standards for the acceptance, solici-
12 tation and disposition of donations and grants to the
13 Foundation.

14 **SEC. 4. RIGHTS AND OBLIGATIONS OF THE FOUNDATION.**

15 (a) IN GENERAL.—The Foundation—

16 (1) shall have perpetual succession;

17 (2) may conduct business throughout the sev-
18 eral States, territories, and possessions of the
19 United States;

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

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

1 The serving of notice to, or service of process upon, the
2 agent required under paragraph (4), or mailed to the busi-
3 ness address of such agent, shall be deemed as service
4 upon or notice to the Foundation.

5 (b) SEAL.—The Foundation shall have an official seal
6 selected by the Board which shall be judicially noticed.

7 (c) POWERS.—To carry out its purposes under sec-
8 tion 2, and subject to the specific provisions thereof, the
9 Foundation shall have the usual powers of a corporation
10 acting as a trustee in the District of Columbia, including
11 the power—

12 (1) except as otherwise provided herein, to ac-
13 cept, receive, solicit, hold, administer and use any
14 gift, devise, or bequest, either absolutely or in trust,
15 of real or personal property or any income therefrom
16 or other interest therein;

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

19 (3) unless otherwise required by the instrument
20 of transfer, to sell, donate, lease, invest, reinvest, re-
21 tain or otherwise dispose of any property or income
22 therefrom;

23 (4) to sue and be sued, and complain and de-
24 fend itself in any court of competent jurisdiction, ex-
25 cept for gross negligence;

1 (5) to enter into contracts or other arrange-
2 ments with public agencies and private organizations
3 and persons and to make such payments as may be
4 necessary to carry out its functions; and

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

7 For purposes of this Act, an interest in real property shall
8 be treated as including easements or other rights for pres-
9 ervation, conservation, protection, or enhancement by and
10 for the public of natural, scenic, historic, scientific, edu-
11 cational inspirational or recreational resources. A gift, de-
12 vise, or bequest may be accepted by the Foundation even
13 though it is encumbered, restricted, or subject to beneficial
14 interests of private persons if any current or future inter-
15 est therein is for the benefit of the Foundation.

16 **SEC. 5. PROTECTION AND USES OF TRADEMARKS AND**
17 **TRADE NAMES.**

18 (a) PROTECTION.—Without the consent of the Foun-
19 dation in conjunction with the President’s Council on
20 Physical Fitness and Sports, any person who uses for the
21 purpose of trade, uses to induce the sale of any goods or
22 services, or uses to promote any theatrical exhibition, ath-
23 letic performance or competition—

24 (1) the official seal of the President’s Council
25 on Physical Fitness and Sports consisting of the

1 eagle holding an olive branch and arrows with shield
2 breast encircled by name “President’s Council on
3 Physical Fitness and Sports” and consisting, de-
4 pending upon placement, of diagonal stripes;

5 (2) the official seal of the Foundation; or

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

10 shall be subject in a civil action by the Foundation for
11 the remedies provided in the Act of July 9, 1946 (60 Stat.
12 427; popularly known as the Trademark Act of 1946).

13 (b) USES.—The Foundation, in conjunction with the
14 President’s Council on Physical Fitness and Sports, may
15 authorize contributors and suppliers of goods or services
16 to use the trade name or the President’s Council on Phys-
17 ical Fitness and Sports and the Foundation as well as any
18 trademark, seal, symbol, insignia, or emblem of the Presi-
19 dent’s Council on Physical Fitness and Sports or the
20 Foundation in advertising that the contributors, goods, or
21 services when donated, supplied, or furnished to or for the
22 use of, or approved, selected, or used by the President’s
23 Council on Physical Fitness and Sports or the Founda-
24 tion.

1 **SEC. 6. VOLUNTEER STATUS.**

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

8 **SEC. 7. AUDIT, REPORT REQUIREMENTS, AND PETITION OF**

9 **ATTORNEY GENERAL FOR EQUITABLE RE-**
10 **LIEF.**

11 (a) AUDITS.—For purposes of the Act entitled “An
12 Act for audit of accounts of private corporations estab-
13 lished under Federal law”, approved August 30, 1964
14 (Public Law 88–504, 36 U.S.C. 1101–1103) the Founda-
15 tion shall be treated as a private corporation under Fed-
16 eral law. The Inspector General of the Department of
17 Health and Human Services and the Comptroller General
18 of the United States shall have access to the financial and
19 other records of the Foundation, upon reasonable notice.

20 (b) REPORT.—The Foundation shall, as soon as prac-
21 ticable after the end of each fiscal year, transmit to the
22 Secretary of Health and Human Services and to Congress
23 a report of its proceedings and activities during such year,
24 including a full and complete statement of its receipts, ex-
25 penditures, and investments.

1 (c) RELIEF WITH RESPECT TO CERTAIN FOUNDA-
2 TION ACTS OR FAILURE TO ACT.—If the Foundation—

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

6 (2) refuses, fails, or neglects to discharge its
7 obligations under this Act, or threaten to do so;

8 the Attorney General of the United States may petition
9 in the United States District Court for the District of Co-
10 lumbia for such equitable relief as may be necessary or
11 appropriate.

12 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

13 For fiscal year 2011, there are authorized to be ap-
14 propriated such sums as may be necessary, to be made
15 available to the Foundation for organizational costs.

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