

**Calendar No. 709**

107TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
107-330 }

UNITED STATES CONSENSUS COUNCIL ACT  
OF 2001

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1651

TO ESTABLISH THE UNITED STATES CONSENSUS COUNCIL TO  
PROVIDE FOR A CONSENSUS BUILDING PROCESS IN ADDRESS-  
ING NATIONAL PUBLIC POLICY ISSUES, AND FOR OTHER PUR-  
POSES



NOVEMBER 4, 2002.—Ordered to be printed

Filed under authority of the order of the Senate of October 17, 2002

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### UNITED STATES CONSENSUS COUNCIL ACT OF 2001

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Mr. LIEBERMAN, from the Committee on Governmental Affairs,  
submitted the following

### R E P O R T

[To accompany S. 1651]

The Committee on Governmental Affairs, to which was referred the bill (S. 1651) to establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

#### I. PURPOSE AND SUMMARY

S. 1651 is a bill to establish the United States Consensus Council (Council), an independent nonprofit entity that will provide professional mediation services in cooperation with Congress (and perhaps others) to help resolve difficult policy issues by building consensus agreements among stakeholders. Following the completion of a consensus-building process, the Council will issue a report reflecting the results of its consideration and efforts. This report is advisory and will not be binding on the decision-makers, but should contain policy solutions that would be acceptable to key stakeholders involved in the issue.

#### II. BACKGROUND

The United States Consensus Council is modeled upon similar entities that have operated in several states, including the Montana Consensus Council and the Consensus Council, Inc. in North Dakota. These Councils have addressed a wide variety of issues at the state level, such as hazardous waste treatment, mental health care, and urban sprawl.

Although it is the role of Congress to find solutions to the country's important public policy issues, the creation of the United States Consensus Council may be useful to Congress when it is faced with issues that are particularly complex or contentious, or that cross committee jurisdictional lines. In such cases, the Council may identify the range of stakeholders, assist those stakeholders to clarify and narrow their differences, and find areas of common ground on which they can agree. The Council will address only issues that are chosen in cooperation with appropriate leaders of Congress from both parties and the results reported by the Council based on its efforts will be solely advisory, subject to the normal legislative process.

### III. DISCUSSION OF LEGISLATION

Senator Lieberman offered a substitute amendment to S. 1651 at the Committee's October 9, 2002 markup, which was co-sponsored by Senator Carper. The substitute, which was adopted by the Committee, clarifies the focus of the Council's work on policy issues before Congress, ensures that the Council is appropriately constituted and operated as an independent nonprofit organization, and provides for disclosure of the sources of funding received by the Council.

As revised by the substitute, S. 1651 establishes the United States Consensus Council as an independent nonprofit corporation under the District of Columbia Nonprofit Corporation Act. The Council will not be an agency or instrumentality of the United States.

The Council's powers are vested in an 8 member part-time Board of Directors. Each of the leaders of the majority and minority in the House of Representatives and the Senate may select two Board members, who will not be subject to Senate confirmation. Members of the Board will not be federal officers or employees, and may not be selected from among those who are federal officers or employees or Members of Congress. Directors will serve no more than two four year terms, except that the first Directors selected by the Speaker and the Minority Leader of the House of Representatives will be initially appointed to terms of two years, and may then be reappointed to no more than two additional four-year terms.

The Council will also be headed by a President, selected by the Board, who will be the chief executive officer of the Council and carry out the functions of the Council subject to the supervision of the Board. The Council may request that federal employees be detailed to the Council from any federal department or agency or from any Congressional office on a reimbursable basis. The Council will work with existing federal agencies that provide consensus-building services, such as the Federal Mediation and Conciliation Service and the U.S. Institute for Environmental Conflict Resolution, to ensure that the Council avoids duplicating the mission of those agencies.

The Council may receive appropriated funds from Congress and may also accept private sector contributions for its activities. It must report annually to Congress and the President on its activities to disclose the sources of funding it receives and the purposes for which the funds were contributed. The report must also include a copy of the Council's audited annual financial statement. GAO

will review the annual report. On dissolution of the Council, all funds received from appropriations, including any interest earned on appropriated funds, will revert to the United States Treasury.

#### IV. LEGISLATIVE HISTORY

S. 1651 was introduced on November 7, 2001 by Senator Dorgan and was referred to the Committee on Governmental Affairs. The bill was co-sponsored by a bipartisan group of nine Senators. At the Committee's markup on October 9, 2002, S. 1651 was reported out with a Lieberman/Carper substitute amendment by a roll call vote of 9–0. Members present were Levin, Akaka, Cleland, Durbin, Torricelli, Carper, Carnahan, Dayton and Lieberman.

A companion bill, H.R. 3305, was introduced in the House of Representatives on November 15, 2001 by Representative Dennis Rehberg and was referred to the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations of the House Committee on Government Reform.

#### V. SECTION BY SECTION ANALYSIS

##### *Sec. 1. Short title*

This section states that the Act may be cited as the “United States Consensus Council Act of 2002.”

##### *Sec. 2. Findings and purpose*

Paragraph (a). Findings. Paragraph (a) sets forth congressional findings which: (1) recognize that there is increasing success in addressing critical public policy issues through consensus building approaches; (2) state the need for a national Council to use such approaches on legislative policy issues of national importance; (3) assert that such a Council may enroll specific stakeholders, both public and private, to build agreements that may be implemented by appropriate authorities; (4) conclude that such a Council will strive to create agreements that integrate differing perspectives into highest common denominator solutions; (5) state that such a Council is an appropriate investment by the people of this Nation; (6) state that such a Council could prevent polarization on emerging policy issues; (7) recognize that such a Council may contribute to a renewed sense of civility and respect for different points of view; and (8) state that the Council may become a repository of wisdom and experience on public policy collaboration.

Paragraph (b). Purpose. This paragraph states that the purpose of this Act is to establish an independent, nonprofit, national Council to serve the Nation by seeking to produce consensus on policy issues of national importance.

##### *Sec. 3. Definitions*

This section provides the definition of three terms. “Board” means the Board of Directors of the Council. “Council” refers to the United States Consensus Council. “Director” means an individual appointed to the Council’s Board of Directors.

##### *Sec. 4. United States Consensus Council*

Paragraph (a). Establishment. Paragraph (a) provides for the establishment of the United States Consensus Council.

Paragraph (b). District of Columbia Nonprofit Corporation; Status; Restrictions. Paragraph (b) requires that the Council be incorporated as an independent, nonprofit corporation under the District of Columbia Nonprofit Corporation Act, and that the Council shall be subject to all the requirements and oversight applicable pursuant to this Act. It further states that the Council is not an agency or instrumentality of the United States.

Paragraph (c). Trade Name and Trademark Rights; Vested Rights Protected; Condition for Use of Federal Identity. Subsection (c)(1) authorizes the Council to have the sole and exclusive right to use and to authorize the use of the term “United States Consensus Council,” as well as any emblem, badge, seal, or other mark of recognition adopted by the Council. Subsection (c)(2) restricts the Council’s ability to reference the United States Government or Nation in its name or in any mark of recognition to those fiscal years in which the Council has received an authorization of appropriations, or appropriations, by law.

#### *Sec. 5. Powers and duties*

Paragraph (a). In General. Paragraph (a) states that the Council may exercise all the authorities conferred by the District of Columbia Nonprofit Corporation Act that are consistent with this Act.

Paragraph (b). Description of Specific Activities. Subsection (b)(1) describes some of the specific activities that the Council may undertake in carrying out its purpose of assisting in the development of consensus on national policy issues. These activities include designing consensus processes, establishing relationships with other institutions, both private and public, that will be able to assist in such processes, and coordinating with existing federal entities to avoid duplication. Subsection (b)(2) requires that the Council avoid taking action that would conflict with the authority of the United States Institute for Environmental Conflict Resolution or the Federal Mediation and Conciliation Service, unless the Institute or the Service consents. The Council may wish to enter into memoranda of understanding with these agencies that will delineate the situations in which potential conflicts may arise so that the circumstances under which consent must be sought are clear. The Institute or Service may also refer matters to the Council or ask the Council to partner with them on a particular matter. Subsection (b)(3) sets out some of the steps the Council may take in designing a consensus process for a specific policy issue, such as considering the ripeness of the issue and identifying the stakeholders and appropriate facilitators for the particular issue. It also allows the Council to undertake a full range of activities to support its consensus building efforts. Subsection (b)(4) authorizes the Council to engage in any other activity that is consistent with its mission.

Paragraph (c). General Authority. Paragraph (c) grants the Council the authority to do any and all lawful acts necessary or desirable to carry out the objectives and purposes of this Act.

Paragraph (d). Guidelines for Council Operations. Paragraph (d) directs the Council to develop guidelines, as necessary, for matters related to: (1) personal service contracts; (2) standards for Directors, employees, and agents to avoid conflicts of interest; (3) fundraising policies; (4) duties and responsibilities of the Council, its



Board, officers, employees, and agents; and (5) the establishment of advisory committees or similar working groups.

*Sec. 6. Board of Directors*

Paragraph (a). Vested Powers. Paragraph (a) vests the powers of the Council in the Board of Directors unless otherwise specified in the Act or delegated by the Board.

Paragraph (b). Appointments. Paragraph (b) provides for the appointment of the 8 voting members of the Board, who may be private citizens or state or local employees. Two appointments each are given to the Speaker of the House of Representatives and the Minority Leader of the House of Representatives, and two appointments each are given to the Senate Majority and Minority Leaders.

Paragraph (c). Term of Office: Commencement and Termination, Interim and Remainder Service, Limitation. Subsection (c)(1) provides that the terms of Directors are four years, with a limit of two consecutive terms. The initial appointees of the Speaker and Minority Leader of the House will have a two-year term with the possibility of serving two additional four-year terms. This will allow for the “staggering” of appointments to avoid turnover of the entire Board in any given year. Subsection (c)(2) provides that a Board member may continue to serve until a replacement is appointed. Subsection (c)(3) states that a Director who is appointed to replace another Director whose term has not expired shall be appointed to serve the remainder of that term. Subsection (c)(4) provides that the President of the Council will serve as a nonvoting Director of the Board.

Paragraph (d). Qualifications. Subsection (d)(1) provides that a demonstrated interest in the mission of the Council or expertise in consensus-building shall be considered in making appointments to the Board of Directors. Subsection (d)(2) precludes any person who is a federal officer or employee or a Member of Congress from serving as a Director to avoid the potential for conflicts such individuals might have with matters that could be addressed by the Council.

Paragraph (e). Removal From Office. Paragraph (e) provides that a Director may be removed at any time by the appointing official (or his or her successor in office) or by a process to be established in the bylaws of the Council.

Paragraph (f). Meetings; Notice in Federal Register. Paragraph (f) requires the Board to establish bylaws governing its meetings.

Subsection (f)(1) mandates that the Council shall meet at least semi-annually with a majority of the Directors in office constituting a quorum. Subsection (f)(2) requires that all governing meetings of the Board be noticed in the Federal Register and remain open to the public, subject to narrow exceptions relating to personnel issues, litigation and matters involving the status of individual Directors.

Paragraph (g). Compensation. Subsection (g)(1) provides that a Director may be compensated at the daily rate payable for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day in which the Director is engaged in the performance of duties of the Council. Subsection (g)(2) makes clear that a Director may be compensated under this paragraph if he or she notifies the Board of an election to receive

compensation. Subsection (g)(3) states that such compensation will be available only for duties performed after the date of this notification.

Paragraph (h). Travel Expenses. Paragraph (h) provides that a Director may receive reasonable travel, subsistence, and other necessary expenses while away from home or regular place of business in the performance of duties for the Board.

#### *Sec. 7. Officers and employees*

Paragraph (a). Appointment, Compensation, and Status of President of Council and Other Officers. Paragraph (a) requires the Board to appoint a President to be the chief executive officer of the Council. The President will carry out the functions of the Council under the supervision and direction of the Board. Subsection (a)(1) provides that the annual rate of pay of the President may not exceed the rate payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code. Subsection (a)(2) permits federal officers or employees to be detailed to the Council on a fully reimbursable basis. There will be no impact on the federal employment benefits and rights of such an officer or employee during the course of the detail. Subsection (a)(3) authorizes the President of the Council to appoint and fix the compensation of such additional personnel as is determined necessary, and states that neither the President nor any other employees of the Council will be employees of the United States. Subsection (a)(4) prohibits inurement of any Council resources to any employee, agent, or member of the Council, either during the life of the Council or upon dissolution, and prohibits the Council from making loans to such persons.

#### *Sec. 8. Procedures and records*

Paragraph (a). Monitoring and Evaluation of Programs. Paragraph (a) directs the Council to monitor and evaluate Council programs to ensure compliance with the provisions of this Act and all other legal requirements.

Paragraph (b). Accounts of Receipts and Disbursements; Financial Reports. Paragraph (b) requires the Council to keep correct and complete records of accounts, with separate and distinct accounts of receipts and disbursement of Federal funds. This paragraph also requires the Council's annual financial report to specify how it used these federal funds and to give a clear description of the full financial situation of the Council.

Paragraph (c). Minutes of Proceedings. Paragraph (c) requires the Council to keep minutes of the proceedings of the Board and of any committees having authority under the Board.

Paragraph (d). Record and Inspection of Required Items. Paragraph (d) delineates some of the specific records that the Council must maintain and make available to any Director. Subsection (d)(1) specifies that these records include the names and addresses of Directors, legal documents pertaining to the Council, minutes of proceedings, documents relating to applications and proposals or to grants or contracts issued or received, and financial records of the Council. Subsection (d)(2) provides that any Director or attorney of a Director may inspect these records at any reasonable time for any proper purpose.

Paragraph (e). Audits. Paragraph (e) requires that the accounts of the Council be audited annually in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant. The person(s) conducting the audit must have full access to all records and documents necessary to conduct the audit.

Paragraph (f). Annual Report to Congress; Copies for Public. Subsection (f)(1) requires the Council to provide an annual report to the Congress and the President, within six months after the close of the fiscal year. Subsection (f)(2) specifies that the report must include a description of the Council's activities for the prior year, a copy of the independent audit conducted pursuant to paragraph (e), and a disclosure statement indicating the source of all funds received in the prior year and the purposes for which the funds were contributed. Subsection (f)(3) requires that the report be made publicly available.

Paragraph (g). GAO Review. Paragraph (g) requires that the annual report submitted to Congress pursuant to paragraph (f) be simultaneously submitted to the General Accounting Office for its review.

#### *Sec. 9. Funding*

Paragraph (a). Authorization of Appropriations. Paragraph (a) authorizes the appropriation of \$2 million for FY 2003 and such sums as are necessary for succeeding years to carry out the purposes of this Act.

Paragraph (b). Availability. Paragraph (b) provides that the funds authorized in paragraph (a) will remain available to the Council until they are expended.

Paragraph (c). Investment of Funds. Paragraph (c) permits the funds appropriated under paragraph (a) to be invested only in instruments backed by the full faith and credit of the United States or in a federally insured financial institution. The interest earned on such funds may be used only for the purposes provided under this Act.

#### *Sec. 10. Dissolution*

This section provides that upon dissolution or final liquidation of the Council, all funds appropriated by the United States, including any interest attributable to such funds, shall be returned to the United States Treasury. Any other funds held by the Council will be handled under the laws of the District of Columbia applicable to nonprofit corporations.

### VI. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out this bill."

The enactment of this legislation will not have significant regulatory impact.

## VII. CBO COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, October 16, 2002.

Hon. JOSEPH I. LIEBERMAN,  
*Chairman, Committee on Governmental Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1651, the United States Consensus Council Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*S. 1651—United States Consensus Council Act of 2002*

S. 1651 would establish the United States Consensus Council, consisting of eight members to be appointed by the Senate Majority and Minority Leaders and the Speaker and Minority Leader of the House of Representatives. The council would provide advice to the Congress on policy issues of national importance through a collaborative process. The bill would authorize the commission to accept and spend private donations and would direct the General Accounting Office to review the council's annual report. The bill would authorize the appropriation of \$2 million in 2003 and such sums as may be necessary in subsequent fiscal years to carry out its provisions.

CBO estimates that implementing the legislation would cost about \$2 million annually, assuming appropriation of the necessary amounts. The bill would authorize the commission to earn interest on unspent appropriated funds and spend that amount without further appropriation. CBO estimates that direct spending funded by private contributions and interest earnings would be insignificant.

S. 1651 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 1651 would not allow any business or individual to use the term "United States Consensus Council" or mark of recognition without the consent of the council. If a company or individual is found to be using the name currently and the council does not grant permission for such usage, then the bill would impose a mandate on the private-sector entity. The cost of such a mandate would be equal to the fair market value of the name. In such an instance, the federal government would be required to compensate the owner. A search through the Internet and the U.S. Trademark and Patent Office database found no other use of that name. Although such a search is not exhaustive, CBO expects that the bill would probably not impose a private-sector mandate.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

## VIII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that the legislation is a free standing bill that will make no changes to any existing law.

