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108TH CONGRESS *1st Session*	SENATE	REPORT 108–110

UNITED STATES CONSENSUS COUNCIL ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 908

TO ESTABLISH THE UNITED STATES CONSENSUS COUNCIL TO PROVIDE FOR A CONSENSUS BUILDING PROCESS IN ADDRESSING NATIONAL PUBLIC POLICY ISSUES, AND FOR OTHER PURPOSES



JULY 22 (legislative day, JULY 21), 2003.—Ordered to be printed

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Ms. COLLINS, from the Committee on Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 908]

The Committee on Governmental Affairs, to which was referred the bill (S. 908) 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 amendments and recommends that the bill as amended do pass.

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I. PURPOSE AND SUMMARY

S. 908 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 Collins offered an amendment to S. 908 at the Committee's markup on June 17, 2003. The amendment, which was adopted by the Committee, clarifies the relationship of the Council with the United States Institute for Environmental Conflict Resolution (USIECR) and the Federal Mediation and Conciliation Service (FMCS); modifies the procedure for making presidential appointees to the Council's board of directors; and changes the requirement for the initial meeting of the board of directors.

As amended, S. 908 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 a 12 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. The President may select four board members, two members from each political party. The President's appointment of members of the opposing party shall only be on the recommendation of the congressional leaders from that party. All of the President's initial appointments to the board must be made on the same date. The members of the board 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 two of the first directors selected by the President and 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 is required to have its initial board meeting within sixty days of the appointment of at least one-third of the board. However, this meeting may be held only when equal numbers of

board members from each of the major political parties have been appointed as of the date of this meeting. At the initial meeting, the board is required to provide for the incorporation of the Council and to adopt interim bylaws and guidelines. The articles of incorporation, bylaws and guidelines will be effective only until the first board meeting after the appointment of all board members at which time these articles, bylaws and guidelines will be ratified or modified. The purpose of this provision is to establish a process for the expeditious establishment of the Council.

The Board will select a President, 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 President will serve as a non-voting member of the Board and will be compensated at a rate not to exceed level II of the Executive Schedule. 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 Committee has amended the bill in order to express unequivocally the intent of its sponsors and the Committee to limit the purpose and programs of the Council to ensure that there is no duplication, redundancy, or conflict in the Council's activities with the purposes and programs of the United States Institute for Environmental Conflict Resolution or the Federal Mediation and Conciliation Service. The Institute and Service each provide services that are valuable to the legislative, executive, and judicial branches of the U.S. government, as well to the states, Indian tribes, local governments, and members of the public. It is the Committee's intent that the Council carry forward its activities in a manner that supports and does not conflict with, duplicate, or otherwise impede the activities of the Institute or Service. In this regard, the Committee has directed that the Council consult with the Institute and Service to identify opportunities for collaboration in fulfillment of their respective purposes and programs and has required that the Council seek the consent of the Institute or Service as a precondition to undertaking any activity that relates to a matter within the authority of the Institute or Service. The Committee expects the Institute and Service and Council to work in a collaborative manner as appropriate to advance the central purpose shared by all three entities, namely, avoiding, reducing, and resolving societal conflicts.

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.

The Council is prohibited from carrying out any lobbying activities except on matters related to its own appropriation and authorization. It is the intention of the Committee that the Council remain neutral on substantive policy issues.

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. 908 was introduced on April 17, 2003, by Senator Collins and was referred to the Committee on Governmental Affairs. The bill was co-sponsored by a bipartisan group of Senators: Daschle, Conrad, Santorum, Dorgan and Leahy. At the Committee's markup on June 17, 2003, S. 908 was reported out with a Collins amendment by voice vote. Members present were Collins, Lieberman, Akaka, Coleman, Durbin, Fitzgerald, Lautenberg, Levin, Pryor, Sununu and Voinovich.

A companion bill, H.R. 2459, was introduced in the House of Representatives on June 12, 2003, by Representative Dennis Rehberg and was referred to 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 2003."

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, as applicable, pur-

suant 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) provides that the Council may not take any action relating to a matter within the authority of the U.S. Institute for Environmental Conflict Resolution and the Federal Mediation and Conciliation Service without the consent of the Institute or Service; duplicate the activities of the Institute or Service; or interfere with the Institute or Service in carrying out their respective statutory responsibilities. The Institute or Service is required to respond to a request for consent within 30 days, unless the Council and the Institute or Service agree otherwise. Subsection (b)(3) sets out some of the steps the Council may take in designing a consensus process for a specific policy issue, and requires the Council to consider such factors as the degree of congressional interest in the 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) procedures to ensure that participants in the Council's consensus-building processes are informed of the Council's sources [and purpose] of funding and any specified purpose of such donations; (5) duties and responsibilities of the Council, its Board, officers, employees, and agents; and (6) 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 12 voting members of the Board, who may be private citizens or state or local employees. Four appointments are given to the President, no more than 2 of whom shall be of the same political party. Members of the opposing party shall only be appointed by the President on the recommendation of the leaders of Congress from that party. The President shall make all four of the initial appointments on the same date. 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 and two of the President's appointees will each 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) 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)(3) 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) provides for an initial organization meeting to be held within 60 days after the appointment of at least one-third of the members to adopt interim bylaws and guidelines, which shall be effective only until the first board meeting after the appointment of all members. The initial meeting may be held only if equal numbers of members from each of the two major political parties are appointed to the board as of the date of that meeting. Subsection (f)(2) mandates that the Council shall meet at least semiannually with a majority of the Directors in office constituting a quorum. Subsection (f)(3) 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). President of Council. 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.

Paragraph (b). Compensation of President of the Council. Paragraph (b) 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.

Paragraph (c). Assignment of Federal Officers or Employees. Paragraph (c) 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.

Paragraph (d). Personnel. Paragraph (d) 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.

Paragraph (e). Compensation for Services or Expenses; Prohibition on Loans to Council Directors and Personnel. Paragraph (e) 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 complete records of accounts, with separate and distinct accounts of receipts and disbursement of Federal funds, and records of the purpose of any donation for which a purpose is specified. This paragraph also requires the Council's annual financial report to identify the use of

all funding 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. Prohibition on lobbying activities

Paragraph (a) provides that the terms "covered executive branch official," "covered legislative branch official," "client," "lobbying activities," and "lobbying contact" have the meaning given in the Lobbying Disclosure Act of 1995, and provides an exemption for communications with covered executive and legislative branch officials relating to the appropriations for the Council or other legislation directly affecting the Council.

Paragraph (b) prohibits the Council from engaging in lobbying activities.

Sec. 10. Funding

Paragraph (a). Authorization of Appropriations. Paragraph (a) authorizes the appropriation of $2 million for FY 2003 and such sums as are necessary for FY 2004 through 2008.

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). Availability of Funds from FY2003. Paragraph (c) provides that any funds authorized to be made available through the General Services Administration during fiscal year 2003 for the purposes of this Act shall remain available until expended.

Paragraph (d). Investment of Funds. Paragraph (d) 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. 11. 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, June 23, 2003.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 908, the United States Consensus Council Act of 2003.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 908—United States Consensus Council Act of 2003

S. 908 would establish the United States Consensus Council, consisting of 12 members to be appointed by the President, 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.

For this estimate, CBO assumes that the bill be enacted near the end of fiscal year 2003. CBO estimates that implementing the legislation would cost about $2 million annually beginning in 2004, 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. 908 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 908 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 Peter H. Fontaine, Deputy 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.

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