

One Hundred Tenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the fourth day of January, two thousand and seven*

An Act

To amend the Congressional Charter of The American National Red Cross to modernize its governance structure, to enhance the ability of the board of governors of The American National Red Cross to support the critical mission of The American National Red Cross in the 21st century, and for other purposes.

*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 “The American National Red Cross Governance Modernization Act of 2007”.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) Substantive changes to the Congressional Charter of The American National Red Cross have not been made since 1947.

(2) In February 2006, the board of governors of The American National Red Cross (the “Board of Governors”) commissioned an independent review and analysis of the Board of Governors’ role, composition, size, relationship with management, governance relationship with chartered units of The American National Red Cross, and whistle blower and audit functions.

(3) In an October 2006 report of the Board of Governors, entitled “American Red Cross Governance for the 21st Century” (the “Governance Report”), the Board of Governors recommended changes to the Congressional Charter, bylaws, and other governing documents of The American National Red Cross to modernize and enhance the effectiveness of the Board of Governors and governance structure of The American National Red Cross.

(4) It is in the national interest to create a more efficient governance structure of The American National Red Cross and to enhance the Board of Governors’ ability to support the critical mission of The American National Red Cross in the 21st century.

(5) It is in the national interest to clarify the role of the Board of Governors as a governance and strategic oversight board and for The American National Red Cross to amend its bylaws, consistent with the recommendations described in the Governance Report, to clarify the role of the Board of Governors and to outline the areas of its responsibility, including—

(A) reviewing and approving the mission statement for The American National Red Cross;

(B) approving and overseeing the corporation's strategic plan and maintaining strategic oversight of operational matters;

(C) selecting, evaluating, and determining the level of compensation of the corporation's chief executive officer;

(D) evaluating the performance and establishing the compensation of the senior leadership team and providing for management succession;

(E) overseeing the financial reporting and audit process, internal controls, and legal compliance;

(F) holding management accountable for performance;

(G) providing oversight of the financial stability of the corporation;

(H) ensuring the inclusiveness and diversity of the corporation;

(I) ensuring the chapters of the corporation are geographically and regionally diverse;

(J) providing oversight of the protection of the brand of the corporation; and

(K) assisting with fundraising on behalf of the corporation.

(6)(A) The selection of members of the Board of Governors is a critical component of effective governance for The American National Red Cross, and, as such, it is in the national interest that The American National Red Cross amend its bylaws to provide a method of selection consistent with that described in the Governance Report.

(B) The new method of selection should replace the current process by which—

(i) 30 chartered unit-elected members of the Board of Governors are selected by a non-Board committee which includes 2 members of the Board of Governors and other individuals elected by the chartered units themselves;

(ii) 12 at-large members of the Board of Governors are nominated by a Board committee and elected by the Board of Governors; and

(iii) 8 members of the Board of Governors are appointed by the President of the United States.

(C) The new method of selection described in the Governance Report reflects the single category of members of the Board of Governors that will result from the implementation of this Act:

(i) All Board members (except for the chairman of the Board of Governors) would be nominated by a single committee of the Board of Governors taking into account the criteria outlined in the Governance Report to assure the expertise, skills, and experience of a governing board.

(ii) The nominated members would be considered for approval by the full Board of Governors and then submitted to The American National Red Cross annual meeting of delegates for election, in keeping with the standard corporate practice whereby shareholders of a corporation elect members of a board of directors at its annual meeting.

(7) The United States Supreme Court held The American National Red Cross to be an instrumentality of the United

States, and it is in the national interest that the Congressional Charter confirm that status and that any changes to the Congressional Charter do not affect the rights and obligations of The American National Red Cross to carry out its purposes.

(8) Given the role of The American National Red Cross in carrying out its services, programs, and activities, and meeting its various obligations, the effectiveness of The American National Red Cross will be promoted by the creation of an organizational ombudsman who—

(A) will be a neutral or impartial dispute resolution practitioner whose major function will be to provide confidential and informal assistance to the many internal and external stakeholders of The American National Red Cross;

(B) will report to the chief executive officer and the audit committee of the Board of Governors; and

(C) will have access to anyone and any documents in The American National Red Cross.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) charitable organizations are an indispensable part of American society, but these organizations can only fulfill their important roles by maintaining the trust of the American public;

(2) trust is fostered by effective governance and transparency, which are the principal goals of the recommendations of the Board of Governors in the Governance Report and this Act;

(3) Federal and State action play an important role in ensuring effective governance and transparency by setting standards, rooting out violations, and informing the public;

(4) while The American National Red Cross is and will remain a Federally chartered instrumentality of the United States, and it has the rights and obligations consistent with that status, The American National Red Cross nevertheless should maintain appropriate communications with State regulators of charitable organizations and should cooperate with them as appropriate in specific matters as they arise from time to time; and

(5) while The American National Red Cross is and will remain a Federally chartered instrumentality of the United States, and it has the rights and obligations consistent with that status, The American National Red Cross nevertheless should maintain appropriate communications and collaborations with local, community, and faith-based non-profit organizations, including those organizations that work within minority communities.

SEC. 3. ORGANIZATION.

Section 300101 of title 36, United States Code, is amended—

(1) in subsection (a), by inserting “a Federally chartered instrumentality of the United States and” before “a body corporate and politic”; and

(2) in subsection (b), by inserting at the end the following new sentence: “The corporation may conduct its business and affairs, and otherwise hold itself out, as the ‘American Red Cross’ in any jurisdiction.”.

SEC. 4. PURPOSES.

Section 300102 of title 36, United States Code, is amended—

- (1) by striking “and” at the end of paragraph (3);
- (2) by striking the period at the end of paragraph (4) and inserting “; and”; and
- (3) by adding at the end the following paragraph:
“(5) to conduct other activities consistent with the foregoing purposes.”.

SEC. 5. MEMBERSHIP AND CHAPTERS.

Section 300103 of title 36, United States Code, is amended—

- (1) in subsection (a), by inserting “, or as otherwise provided,” before “in the bylaws”;
- (2) in subsection (b)(1)—
 - (A) by striking “board of governors” and inserting “corporation”; and
 - (B) by inserting “policies and” before “regulations related”; and
- (3) in subsection (b)(2)—
 - (A) by inserting “policies and” before “regulations shall require”; and
 - (B) by striking “national convention” and inserting “annual meeting”.

SEC. 6. BOARD OF GOVERNORS.

Section 300104 of title 36, United States Code, is amended to read as follows:

“§ 300104. Board of governors

“(a) BOARD OF GOVERNORS.—

“(1) IN GENERAL.—The board of governors is the governing body of the corporation with all powers of governing and directing, and of overseeing the management of the business and affairs of, the corporation.

“(2) NUMBER.—The board of governors shall fix by resolution, from time to time, the number of members constituting the entire board of governors, provided that—

“(A) as of March 31, 2009, and thereafter, there shall be no fewer than 12 and no more than 25 members; and

“(B) as of March 31, 2012, and thereafter, there shall be no fewer than 12 and no more than 20 members constituting the entire board.

Procedures to implement the preceding sentence shall be provided in the bylaws.

“(3) APPOINTMENT.—The governors shall be appointed or elected in the following manner:

“(A) CHAIRMAN.—

“(i) IN GENERAL.—The board of governors, in accordance with procedures provided in the bylaws, shall recommend to the President an individual to serve as chairman of the board of governors. If such recommendation is approved by the President, the President shall appoint such individual to serve as chairman of the board of governors.

“(ii) VACANCIES.—Vacancies in the office of the chairman, including vacancies resulting from the resignation, death, or removal by the President of the chairman, shall be filled in the same manner described in clause (i).

“(iii) DUTIES.—The chairman shall be a member of the board of governors and, when present, shall preside at meetings of the board of governors and shall have such other duties and responsibilities as may be provided in the bylaws or a resolution of the board of governors.

“(B) OTHER MEMBERS.—

“(i) IN GENERAL.—Members of the board of governors other than the chairman shall be elected at the annual meeting of the corporation in accordance with such procedures as may be provided in the bylaws.

“(ii) VACANCIES.—Vacancies in any such elected board position and in any newly created board position may be filled by a vote of the remaining members of the board of governors in accordance with such procedures as may be provided in the bylaws.

“(b) TERMS OF OFFICE.—

“(1) IN GENERAL.—The term of office of each member of the board of governors shall be 3 years, except that—

“(A) the board of governors may provide under the bylaws that the terms of office of members of the board of governors elected to the board of governors before March 31, 2012, may be less than 3 years in order to implement the provisions of subparagraphs (A) and (B) of subsection (a)(2); and

“(B) any member of the board of governors elected by the board to fill a vacancy in a board position arising before the expiration of its term may, as determined by the board, serve for the remainder of that term or until the next annual meeting of the corporation.

“(2) STAGGERED TERMS.—The terms of office of members of the board of governors (other than the chairman) shall be staggered such that, by March 31, 2012, and thereafter, $\frac{1}{3}$ of the entire board (or as near to $\frac{1}{3}$ as practicable) shall be elected at each successive annual meeting of the corporation with the term of office of each member of the board of governors elected at an annual meeting expiring at the third annual meeting following the annual meeting at which such member was elected.

“(3) TERM LIMITS.—No person may serve as a member of the board of governors for more than such number of terms of office or years as may be provided in the bylaws.

“(c) COMMITTEES AND OFFICERS.—The board—

“(1) may appoint, from its own members, an executive committee to exercise such powers of the board when the board is not in session as may be provided in the bylaws;

“(2) may appoint such other committees or advisory councils with such powers as may be provided in the bylaws or a resolution of the board of governors;

“(3) shall appoint such officers of the corporation, including a chief executive officer, with such duties, responsibilities, and terms of office as may be provided in the bylaws or a resolution of the board of governors; and

“(4) may remove members of the board of governors (other than the chairman), officers, and employees under such procedures as may be provided in the bylaws or a resolution of the board of governors.

“(d) ADVISORY COUNCIL.—

“(1) ESTABLISHMENT.—There shall be an advisory council to the board of governors.

“(2) MEMBERSHIP; APPOINTMENT BY PRESIDENT.—

“(A) IN GENERAL.—The advisory council shall be composed of no fewer than 8 and no more than 10 members, each of whom shall be appointed by the President from principal officers of the executive departments and senior officers of the Armed Forces whose positions and interests qualify them to contribute to carrying out the programs and purposes of the corporation.

“(B) MEMBERS FROM THE ARMED FORCES.—At least 1, but not more than 3, of the members of the advisory council shall be selected from the Armed Forces.

“(3) DUTIES.—The advisory council shall advise, report directly to, and meet, at least 1 time per year with the board of governors, and shall have such name, functions and be subject to such procedures as may be provided in the bylaws.

“(e) ACTION WITHOUT MEETING.—Any action required or permitted to be taken at any meeting of the board of governors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

“(f) VOTING BY PROXY.—

“(1) IN GENERAL.—Voting by proxy is not allowed at any meeting of the board, at the annual meeting, or at any meeting of a chapter.

“(2) EXCEPTION.—The board may allow the election of governors by proxy during any emergency.

“(g) BYLAWS.—

“(1) IN GENERAL.—The board of governors may—

“(A) at any time adopt bylaws; and

“(B) at any time adopt bylaws to be effective only in an emergency.

“(2) EMERGENCY BYLAWS.—Any bylaws adopted pursuant to paragraph (1)(B) may provide special procedures necessary for managing the corporation during the emergency. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency.

“(h) DEFINITIONS.—For purposes of this section—

“(1) the term ‘entire board’ means the total number of members of the board of governors that the corporation would have if there were no vacancies; and

“(2) the term ‘emergency’ shall have such meaning as may be provided in the bylaws.”.

SEC. 7. POWERS.

Subsection (a)(1) of section 300105 of title 36, United States Code, is amended by striking “bylaws” and inserting “policies”.

SEC. 8. ANNUAL MEETING.

Section 300107 of title 36, United States Code, is amended to read as follows:

“§ 300107. Annual meeting

“(a) IN GENERAL.—The annual meeting of the corporation is the annual meeting of delegates of the chapters.

“(b) TIME OF MEETING.—The annual meeting shall be held as determined by the board of governors.

“(c) PLACE OF MEETING.—The board of governors is authorized to determine that the annual meeting shall not be held at any place, but may instead be held solely by means of remote communication subject to such procedures as are provided in the bylaws.

“(d) VOTING.—

“(1) IN GENERAL.—In matters requiring a vote at the annual meeting, each chapter is entitled to at least 1 vote, and voting on all matters may be conducted by mail, telephone, telegram, cablegram, electronic mail, or any other means of electronic or telephone transmission, provided that the person voting shall state, or submit information from which it can be determined, that the method of voting chosen was authorized by such person.

“(2) ESTABLISHMENT OF NUMBER OF VOTES.—

“(A) IN GENERAL.—The board of governors shall determine on an equitable basis the number of votes that each chapter is entitled to cast, taking into consideration the size of the membership of the chapters, the populations served by the chapters, and such other factors as may be determined by the board.

“(B) PERIODIC REVIEW.—The board of governors shall review the allocation of votes at least every 5 years.”.

SEC. 9. ENDOWMENT FUND.

Section 300109 of title 36, United States Code, is amended—

(1) by striking “nine” from the first sentence thereof; and

(2) by striking the second sentence and inserting the following: “The corporation shall prescribe policies and regulations on terms and tenure of office, accountability, and expenses of the board of trustees.”.

SEC. 10. ANNUAL REPORT AND AUDIT.

Subsection (a) of section 300110 of title 36, United States Code, is amended to read as follows:

“(a) SUBMISSION OF REPORT.—As soon as practicable after the end of the corporation’s fiscal year, which may be changed from time to time by the board of governors, the corporation shall submit a report to the Secretary of Defense on the activities of the corporation during such fiscal year, including a complete, itemized report of all receipts and expenditures.”.

SEC. 11. COMPTROLLER GENERAL OF THE UNITED STATES AND OFFICE OF THE OMBUDSMAN.

(a) IN GENERAL.—Chapter 3001 of title 36, United States Code, is amended by redesignating section 300111 as section 300113 and by inserting after section 300110 the following new sections:

“§ 300111. Authority of the Comptroller General of the United States

“The Comptroller General of the United States is authorized to review the corporation’s involvement in any Federal program or activity the Government carries out under law.

“§ 300112. Office of the Ombudsman

“(a) ESTABLISHMENT.—The corporation shall establish an Office of the Ombudsman with such duties and responsibilities as may be provided in the bylaws or a resolution of the board of governors.

“(b) REPORT.—

“(1) IN GENERAL.—The Office of the Ombudsman shall submit annually to the appropriate Congressional committees a report concerning any trends and systemic matters that the Office of the Ombudsman has identified as confronting the corporation.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of paragraph (1), the appropriate Congressional committees are the following committees of Congress:

“(A) SENATE COMMITTEES.—The appropriate Congressional committees of the Senate are—

“(i) the Committee on Finance;

“(ii) the Committee on Foreign Relations;

“(iii) the Committee on Health, Education, Labor, and Pensions;

“(iv) the Committee on Homeland Security and Governmental Affairs; and

“(v) the Committee on the Judiciary.

“(B) HOUSE COMMITTEES.—The appropriate Congressional committees of the House of Representatives are—

“(i) the Committee on Energy and Commerce;

“(ii) the Committee on Foreign Affairs;

“(iii) the Committee on Homeland Security;

“(iv) the Committee on the Judiciary; and

“(v) the Committee on Ways and Means.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 3001 of title 36, United States Code, is amended by striking the item relating to section 300111 and inserting the following:

“300111. Authority of the Comptroller General of the United States.

“300112. Office of the Ombudsman.

“300113. Reservation of right to amend or repeal.”.

Speaker of the House of Representatives.

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