

110TH CONGRESS  
1ST SESSION

# S. 655

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2007

Mr. GRASSLEY (for himself, Mr. KENNEDY, Mr. ENZI, Mr. MARTINEZ, Mr. AKAKA, Mrs. DOLE, Mr. BROWN, Mr. LIEBERMAN, Mr. ISAKSON, Mr. NELSON of Florida, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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.

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 “The American Na-  
5 tional Red Cross Governance Modernization Act of 2007”.

1 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

2 (a) FINDINGS.—Congress makes the following find-  
3 ings:

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

7 (2) In February 2006, the board of governors  
8 of The American National Red Cross (the “Board of  
9 Governors”) commissioned an independent review  
10 and analysis of the Board of Governors’ role, com-  
11 position, size, relationship with management, govern-  
12 ance relationship with chartered units of The Amer-  
13 ican National Red Cross, and whistleblower and  
14 audit functions.

15 (3) In an October 2006 report of the Board of  
16 Governors, entitled “American Red Cross Govern-  
17 ance for the 21st Century” (the “Governance Re-  
18 port”), the Board of Governors recommended  
19 changes to the Congressional Charter, bylaws, and  
20 other governing documents of The American Na-  
21 tional Red Cross to modernize and enhance the ef-  
22 fectiveness of the Board of Governors and govern-  
23 ance structure of The American National Red Cross.

24 (4) It is in the national interest to create a  
25 more efficient governance structure of The American  
26 National Red Cross and to enhance the Board of

1       Governors' ability to support the critical mission of  
2       The American National Red Cross in the 21st cen-  
3       tury.

4           (5) It is in the national interest to clarify the  
5       role of the Board of Governors as a governance and  
6       strategic oversight board and for The American Na-  
7       tional Red Cross to amend its bylaws, consistent  
8       with the recommendations described in the Govern-  
9       ance Report, to clarify the role of the Board of Gov-  
10      ernors and to outline the areas of its responsibility,  
11      including—

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

15           (B) approving and overseeing the corpora-  
16      tion's strategic plan and maintaining strategic  
17      oversight of operational matters;

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

21           (D) evaluating the performance and estab-  
22      lishing the compensation of the senior leader-  
23      ship team and providing for management suc-  
24      cession;

1 (E) overseeing the financial reporting and  
2 audit process, internal controls, and legal com-  
3 pliance;

4 (F) holding management accountable for  
5 performance;

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

8 (H) ensuring the inclusiveness and diver-  
9 sity of the corporation;

10 (I) providing oversight of the protection of  
11 the brand of the corporation; and

12 (J) assisting with fundraising on behalf of  
13 the corporation.

14 (6)(A) The selection of members of the Board  
15 of Governors is a critical component of effective gov-  
16 ernance for The American National Red Cross, and,  
17 as such, it is in the national interest that The Amer-  
18 ican National Red Cross amend its bylaws to provide  
19 a method of selection consistent with that described  
20 in the Governance Report.

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

23 (i) 30 chartered unit-elected members of  
24 the Board of Governors are selected by a non-  
25 Board committee which includes 2 members of

1 the Board of Governors and other individuals  
2 elected by the chartered units themselves;

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

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

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

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

20 (ii) The nominated members would be con-  
21 sidered for approval by the full Board of Gov-  
22 ernors and then submitted to The American  
23 National Red Cross annual meeting of delegates  
24 for election, in keeping with the standard cor-  
25 porate practice whereby shareholders of a cor-

1           poration elect members of a board of directors  
2           at its annual meeting.

3           (7) The United States Supreme Court held The  
4           American National Red Cross to be an instrumen-  
5           tality of the United States, and it is in the national  
6           interest that the Congressional Charter confirm that  
7           status and that any changes to the Congressional  
8           Charter do not affect the rights and obligations of  
9           The American National Red Cross to carry out its  
10          purposes.

11          (8) Given the role of The American National  
12          Red Cross in carrying out its services, programs,  
13          and activities, and meeting its various obligations,  
14          the effectiveness of The American National Red  
15          Cross will be promoted by the creation of an organi-  
16          zational ombudsman who—

17                (A) will be a neutral or impartial dispute  
18                resolution practitioner whose major function  
19                will be to provide confidential and informal as-  
20                sistance to the many internal and external  
21                stakeholders of The American National Red  
22                Cross;

23                (B) will report to the chief executive officer  
24                and the audit committee of the Board of Gov-  
25                ernors; and

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

4 (b) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that—

6 (1) charitable organizations are an indispen-  
7 sable part of American society, but these organiza-  
8 tions can only fulfill their important roles by main-  
9 taining the trust of the American public;

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

14 (3) Federal and State action play an important  
15 role in ensuring effective governance and trans-  
16 parency by setting standards, rooting out violations,  
17 and informing the public; and

18 (4) while The American National Red Cross is  
19 and will remain a Federally chartered instrumen-  
20 tality of the United States, and it has the rights and  
21 obligations consistent with that status, The Amer-  
22 ican National Red Cross nevertheless should main-  
23 tain appropriate communications with State regu-  
24 lators of charitable organizations and should cooper-

1       ate with them as appropriate in specific matters as  
 2       they arise from time to time.

3   **SEC. 3. ORGANIZATION.**

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

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

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

14   **SEC. 4. PURPOSES.**

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

17           (1) by striking “and” at the end of paragraph  
 18      (3);

19           (2) by striking the period at the end of para-  
 20      graph (4) and inserting “; and”; and

21           (3) by adding at the end the following para-  
 22      graph:

23           “(5) to conduct other activities consistent with  
 24      the foregoing purposes.”.

1 **SEC. 5. MEMBERSHIP AND CHAPTERS.**

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

4 (1) in subsection (a), by inserting “, or as oth-  
5 erwise provided,” before “in the bylaws”;

6 (2) in subsection (b)(1)—

7 (A) by striking “board of governors” and  
8 inserting “corporation”; and

9 (B) by inserting “policies and” before  
10 “regulations related”; and

11 (3) in subsection (b)(2)—

12 (A) by inserting “policies and” before  
13 “regulations shall require”; and

14 (B) by striking “national convention” and  
15 inserting “annual meeting”.

16 **SEC. 6. BOARD OF GOVERNORS.**

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

19 **“§ 300104. Board of governors**

20 **“(a) BOARD OF GOVERNORS.—**

21 **“(1) IN GENERAL.—**The board of governors is  
22 the governing body of the corporation with all pow-  
23 ers of governing and directing, and of overseeing the  
24 management of the business and affairs of, the cor-  
25 poration.

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

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

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

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

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

15           “(A) CHAIRMAN.—

16           “(i) IN GENERAL.—The board of gov-  
17      ernors, in accordance with procedures pro-  
18      vided in the bylaws, shall recommend to  
19      the President an individual to serve as  
20      chairman of the board of governors. If  
21      such recommendation is approved by the  
22      President, the President shall appoint such  
23      individual to serve as chairman of the  
24      board of governors.

1           “(ii) VACANCIES.—Vacancies in the  
2 office of the chairman, including vacancies  
3 resulting from the resignation, death, or  
4 removal by the President of the chairman,  
5 shall be filled in the same manner de-  
6 scribed in clause (i).

7           “(iii) DUTIES.—The chairman shall  
8 be a member of the board of governors  
9 and, when present, shall preside at meet-  
10 ings of the board of governors and shall  
11 have such other duties and responsibilities  
12 as may be provided in the bylaws or a res-  
13 olution of the board of governors.

14       “(B) OTHER MEMBERS.—

15           “(i) IN GENERAL.—Members of the  
16 board of governors other than the chair-  
17 man shall be elected at the annual meeting  
18 of the corporation in accordance with such  
19 procedures as may be provided in the by-  
20 laws.

21           “(ii) VACANCIES.—Vacancies in any  
22 such elected board position and in any  
23 newly created board position may be filled  
24 by a vote of the remaining members of the  
25 board of governors in accordance with such

1                   procedures as may be provided in the by-  
2                   laws.

3           “(b) TERMS OF OFFICE.—

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

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

14                  “(B) any member of the board of gov-  
15          ernors elected by the board to fill a vacancy in  
16          a board position arising before the expiration of  
17          its term may, as determined by the board, serve  
18          for the remainder of that term or until the next  
19          annual meeting of the corporation.

20                  “(2) STAGGERED TERMS.—The terms of office  
21          of members of the board of governors (other than  
22          the chairman) shall be staggered such that, by  
23          March 31, 2012, and thereafter,  $\frac{1}{3}$  of the entire  
24          board (or as near to  $\frac{1}{3}$  as practicable) shall be elect-  
25          ed at each successive annual meeting of the corpora-

1       tion with the term of office of each member of the  
 2       board of governors elected at an annual meeting ex-  
 3       piring at the third annual meeting following the an-  
 4       nual meeting at which such member was elected.

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

9           “(c) COMMITTEES AND OFFICERS.—The board—  
 10       “(1) may appoint, from its own members, an  
 11       executive committee to exercise such powers of the  
 12       board when the board is not in session as may be  
 13       provided in the bylaws;

14       “(2) may appoint such other committees or ad-  
 15       visory councils with such powers as may be provided  
 16       in the bylaws or a resolution of the board of gov-  
 17       ernors;

18       “(3) shall appoint such officers of the corpora-  
 19       tion, including a chief executive officer, with such  
 20       duties, responsibilities, and terms of office as may be  
 21       provided in the bylaws or a resolution of the board  
 22       of governors; and

23       “(4) may remove members of the board of gov-  
 24       ernors (other than the chairman), officers, and em-

1        ployees under such procedures as may be provided in  
2        the bylaws or a resolution of the board of governors.

3        “(d) ADVISORY COUNCIL.—

4                “(1) ESTABLISHMENT.—There shall be an advi-  
5        sory council to the board of governors.

6                “(2) MEMBERSHIP; APPOINTMENT BY PRESI-  
7        DENT.—

8                “(A) IN GENERAL.—The advisory council  
9        shall be composed of no fewer than 8 and no  
10       more than 10 members, each of whom shall be  
11       appointed by the President from principal offi-  
12       cers of the executive departments and senior of-  
13       ficers of the Armed Forces whose positions and  
14       interests qualify them to contribute to carrying  
15       out the programs and purposes of the corpora-  
16       tion.

17                “(B) MEMBERS FROM THE ARMED  
18        FORCES.—At least 1, but not more than 3, of  
19       the members of the advisory council shall be se-  
20       lected from the Armed Forces.

21                “(3) DUTIES.—The advisory council shall ad-  
22        vise, report directly to, and meet, at least 1 time per  
23        year with the board of governors, and shall have  
24        such name, functions and be subject to such proce-  
25        dures as may be provided in the bylaws.

1       “(e) ACTION WITHOUT MEETING.—Any action re-  
 2       quired or permitted to be taken at any meeting of the  
 3       board of governors or of any committee thereof may be  
 4       taken without a meeting if all members of the board or  
 5       committee, as the case may be, consent thereto in writing,  
 6       or by electronic transmission and the writing or writings  
 7       or electronic transmission or transmissions are filed with  
 8       the minutes of proceedings of the board or committee.  
 9       Such filing shall be in paper form if the minutes are main-  
 10      tained in paper form and shall be in electronic form if  
 11      the minutes are maintained in electronic form.

12      “(f) VOTING BY PROXY.—

13           “(1) IN GENERAL.—Voting by proxy is not al-  
 14      lowed at any meeting of the board, at the annual  
 15      meeting, or at any meeting of a chapter.

16           “(2) EXCEPTION.—The board may allow the  
 17      election of governors by proxy during any emer-  
 18      gency.

19      “(g) BYLAWS.—

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

22           “(A) at any time adopt bylaws; and

23           “(B) at any time adopt bylaws to be effec-  
 24      tive only in an emergency.

1           “(2) EMERGENCY BYLAWS.—Any bylaws adopt-  
 2           ed pursuant to paragraph (1)(B) may provide spe-  
 3           cial procedures necessary for managing the corpora-  
 4           tion during the emergency. All provisions of the reg-  
 5           ular bylaws consistent with the emergency bylaws re-  
 6           main effective during the emergency.

7           “(h) DEFINITIONS.—For purposes of this section—  
 8           “(1) the term ‘entire board’ means the total  
 9           number of members of the board of governors that  
 10          the corporation would have if there were no vacan-  
 11          cies; and

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

14 **SEC. 7. POWERS.**

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

18 **SEC. 8. ANNUAL MEETING.**

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

21 **“§ 300107. Annual meeting**

22          “(a) IN GENERAL.—The annual meeting of the cor-  
 23          poration is the annual meeting of delegates of the chap-  
 24          ters.

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

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

8       “(d) VOTING.—

9               “(1) IN GENERAL.—In matters requiring a vote  
10 at the annual meeting, each chapter is entitled to at  
11 least 1 vote, and voting on all matters may be con-  
12 ducted by mail, telephone, telegram, cablegram, elec-  
13 tronic mail, or any other means of electronic or tele-  
14 phone transmission, provided that the person voting  
15 shall state, or submit information from which it can  
16 be determined, that the method of voting chosen was  
17 authorized by such person.

18               “(2) ESTABLISHMENT OF NUMBER OF  
19 VOTES.—

20               “(A) IN GENERAL.—The board of gov-  
21 ernors shall determine on an equitable basis the  
22 number of votes that each chapter is entitled to  
23 cast, taking into consideration the size of the  
24 membership of the chapters, the populations

1           served by the chapters, and such other factors  
2           as may be determined by the board.

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

6 **SEC. 9. ENDOWMENT FUND.**

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

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

11          (2) by striking the second sentence and insert-  
12          ing the following: “The corporation shall prescribe  
13          policies and regulations on terms and tenure of of-  
14          fice, accountability, and expenses of the board of  
15          trustees.”.

16 **SEC. 10. ANNUAL REPORT AND AUDIT.**

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

19          “(a) SUBMISSION OF REPORT.—As soon as prac-  
20          ticable after the end of the corporation’s fiscal year, which  
21          may be changed from time to time by the board of gov-  
22          ernors, the corporation shall submit a report to the Sec-  
23          retary of Defense on the activities of the corporation dur-  
24          ing such fiscal year, including a complete, itemized report  
25          of all receipts and expenditures.”.

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

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

7 **“§ 300111. Authority of the Comptroller General of**  
 8 **the United States**

9 “The Comptroller General of the United States is au-  
 10 thorized to review the corporation’s involvement in any  
 11 Federal program or activity the Government carries out  
 12 under law.

13 **“§ 300112. Office of the Ombudsman**

14 “(a) ESTABLISHMENT.—The corporation shall estab-  
 15 lish an Office of the Ombudsman with such duties and  
 16 responsibilities as may be provided in the bylaws or a reso-  
 17 lution of the board of governors.

18 “(b) REPORT.—The Office of the Ombudsman shall  
 19 submit a report annually to Congress concerning any  
 20 trends and systemic matters that the Office of the Om-  
 21 budsman has identified as confronting the corporation.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
 23 for chapter 3001 of title 36, United States Code, is  
 24 amended by striking the item relating to section 300111  
 25 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.”.

