

**Calendar No. 71**

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, Ms. LANDRIEU, Mr. FEINGOLD, Mr. CORNYN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 8, 2007

Reported by Mr. LEAHY, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

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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”.

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

7       (a) FINDINGS.—Congress makes the following find-  
8       ings:

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

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

20              (3) In an October 2006 report of the Board of  
21       Governors, entitled “American Red Cross Govern-  
22       ance for the 21st Century” (the “Governance Re-  
23       port”), the Board of Governors recommended  
24       changes to the Congressional Charter, bylaws, and  
25       other governing documents of The American Na-

1 tional Red Cross to modernize and enhance the ef-  
2 fectiveness of the Board of Governors and govern-  
3 ance structure of The American National Red Cross.

4 (4) It is in the national interest to create a  
5 more efficient governance structure of The American  
6 National Red Cross and to enhance the Board of  
7 Governors' ability to support the critical mission of  
8 The American National Red Cross in the 21st cen-  
9 tury.

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

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

21 (B) approving and overseeing the corpora-  
22 tion's strategic plan and maintaining strategic  
23 oversight of operational matters;

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

4 (D) evaluating the performance and estab-  
5 lishing the compensation of the senior leader-  
6 ship team and providing for management suc-  
7 cession;

8 (E) overseeing the financial reporting and  
9 audit process, internal controls, and legal com-  
10 pliance;

11 (F) holding management accountable for  
12 performance;

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

15 (H) ensuring the inclusiveness and diver-  
16 sity of the corporation;

17 (I) providing oversight of the protection of  
18 the brand of the corporation; and

19 (J) assisting with fundraising on behalf of  
20 the corporation.

21 (6)(A) The selection of members of the Board  
22 of Governors is a critical component of effective gov-  
23 ernance for The American National Red Cross, and,  
24 as such, it is in the national interest that The Amer-  
25 ican National Red Cross amend its bylaws to provide

1 a method of selection consistent with that described  
2 in the Governance Report.

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

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

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

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

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

20 (i) All Board members (except for the  
21 chairman of the Board of Governors) would be  
22 nominated by a single committee of the Board  
23 of Governors taking into account the criteria  
24 outlined in the Governance Report to assure the

1 expertise, skills, and experience of a governing  
2 board.

3 (ii) The nominated members would be con-  
4 sidered for approval by the full Board of Gov-  
5 ernors and then submitted to The American  
6 National Red Cross annual meeting of delegates  
7 for election, in keeping with the standard cor-  
8 porate practice whereby shareholders of a cor-  
9 poration elect members of a board of directors  
10 at its annual meeting.

11 (7) The United States Supreme Court held The  
12 American National Red Cross to be an instrumen-  
13 tality of the United States, and it is in the national  
14 interest that the Congressional Charter confirm that  
15 status and that any changes to the Congressional  
16 Charter do not affect the rights and obligations of  
17 The American National Red Cross to carry out its  
18 purposes.

19 (8) Given the role of The American National  
20 Red Cross in carrying out its services, programs,  
21 and activities, and meeting its various obligations,  
22 the effectiveness of The American National Red  
23 Cross will be promoted by the creation of an organi-  
24 zational ombudsman who—

1 (A) will be a neutral or impartial dispute  
2 resolution practitioner whose major function  
3 will be to provide confidential and informal as-  
4 sistance to the many internal and external  
5 stakeholders of The American National Red  
6 Cross;

7 (B) will report to the chief executive officer  
8 and the audit committee of the Board of Gov-  
9 ernors; and

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

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

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

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

23 (3) Federal and State action play an important  
24 role in ensuring effective governance and trans-

1        parenthood by setting standards, rooting out violations,  
 2        and informing the public; and

3            (4) while The American National Red Cross is  
 4        and will remain a Federally chartered instrumen-  
 5        tality of the United States, and it has the rights and  
 6        obligations consistent with that status, The Amer-  
 7        ican National Red Cross nevertheless should main-  
 8        tain appropriate communications with State regu-  
 9        lators of charitable organizations and should cooper-  
 10        ate with them as appropriate in specific matters as  
 11        they arise from time to time.

12    **SEC. 3. ORGANIZATION.**

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

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

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

23    **SEC. 4. PURPOSES.**

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



1           (1) by striking “and” at the end of paragraph  
2           (3);

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

5           (3) by adding at the end the following para-  
6           graph:

7           “(5) to conduct other activities consistent with  
8           the foregoing purposes.”.

9   **SEC. 5. MEMBERSHIP AND CHAPTERS.**

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

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

14           (2) in subsection (b)(1)—

15                (A) by striking “board of governors” and  
16                inserting “corporation”; and

17                (B) by inserting “policies and” before  
18                “regulations related”; and

19           (3) in subsection (b)(2)—

20                (A) by inserting “policies and” before  
21                “regulations shall require”; and

22                (B) by striking “national convention” and  
23                inserting “annual meeting”.

1 **SEC. 6. BOARD OF GOVERNORS.**

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

4 **“§ 300104. Board of governors**

5 “(a) BOARD OF GOVERNORS.—

6 “(1) IN GENERAL.—The board of governors is  
7 the governing body of the corporation with all pow-  
8 ers of governing and directing, and of overseeing the  
9 management of the business and affairs of, the cor-  
10 poration.

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

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

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

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

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

25 “(A) CHAIRMAN.—

1           “(i) IN GENERAL.—The board of gov-  
 2 ernors, in accordance with procedures pro-  
 3 vided in the bylaws, shall recommend to  
 4 the President an individual to serve as  
 5 chairman of the board of governors. If  
 6 such recommendation is approved by the  
 7 President, the President shall appoint such  
 8 individual to serve as chairman of the  
 9 board of governors.

10           “(ii) VACANCIES.—Vacancies in the  
 11 office of the chairman, including vacancies  
 12 resulting from the resignation, death, or  
 13 removal by the President of the chairman,  
 14 shall be filled in the same manner de-  
 15 scribed in clause (i).

16           “(iii) DUTIES.—The chairman shall  
 17 be a member of the board of governors  
 18 and, when present, shall preside at meet-  
 19 ings of the board of governors and shall  
 20 have such other duties and responsibilities  
 21 as may be provided in the bylaws or a res-  
 22 olution of the board of governors.

23           “(B) OTHER MEMBERS.—

24           “(i) IN GENERAL.—Members of the  
 25 board of governors other than the chair-

1 man shall be elected at the annual meeting  
2 of the corporation in accordance with such  
3 procedures as may be provided in the by-  
4 laws.

5 “(ii) VACANCIES.—Vacancies in any  
6 such elected board position and in any  
7 newly created board position may be filled  
8 by a vote of the remaining members of the  
9 board of governors in accordance with such  
10 procedures as may be provided in the by-  
11 laws.

12 “(b) TERMS OF OFFICE.—

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

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

23 “(B) any member of the board of gov-  
24 ernors elected by the board to fill a vacancy in  
25 a board position arising before the expiration of

1           its term may, as determined by the board, serve  
2           for the remainder of that term or until the next  
3           annual meeting of the corporation.

4           “(2) STAGGERED TERMS.—The terms of office  
5           of members of the board of governors (other than  
6           the chairman) shall be staggered such that, by  
7           March 31, 2012, and thereafter,  $\frac{1}{3}$  of the entire  
8           board (or as near to  $\frac{1}{3}$  as practicable) shall be elect-  
9           ed at each successive annual meeting of the corpora-  
10          tion with the term of office of each member of the  
11          board of governors elected at an annual meeting ex-  
12          piring at the third annual meeting following the an-  
13          nual meeting at which such member was elected.

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

18          “(c) COMMITTEES AND OFFICERS.—The board—  
19               “(1) may appoint, from its own members, an  
20               executive committee to exercise such powers of the  
21               board when the board is not in session as may be  
22               provided in the bylaws;

23               “(2) may appoint such other committees or ad-  
24               visory councils with such powers as may be provided

1 in the bylaws or a resolution of the board of gov-  
2 ernors;

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

8 “(4) may remove members of the board of gov-  
9 ernors (other than the chairman), officers, and em-  
10 ployees under such procedures as may be provided in  
11 the bylaws or a resolution of the board of governors.

12 “(d) ADVISORY COUNCIL.—

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

15 “(2) MEMBERSHIP; APPOINTMENT BY PRESI-  
16 DENT.—

17 “(A) IN GENERAL.—The advisory council  
18 shall be composed of no fewer than 8 and no  
19 more than 10 members, each of whom shall be  
20 appointed by the President from principal offi-  
21 cers of the executive departments and senior of-  
22 ficers of the Armed Forces whose positions and  
23 interests qualify them to contribute to carrying  
24 out the programs and purposes of the corpora-  
25 tion.

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

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

10                  “(e) ACTION WITHOUT MEETING.—Any action re-  
11                  quired or permitted to be taken at any meeting of the  
12                  board of governors or of any committee thereof may be  
13                  taken without a meeting if all members of the board or  
14                  committee, as the case may be, consent thereto in writing,  
15                  or by electronic transmission and the writing or writings  
16                  or electronic transmission or transmissions are filed with  
17                  the minutes of proceedings of the board or committee.  
18                  Such filing shall be in paper form if the minutes are main-  
19                  tained in paper form and shall be in electronic form if  
20                  the minutes are maintained in electronic form.

21                  “(f) VOTING BY PROXY.—

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

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

4           “(g) BYLAWS.—

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

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

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

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

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

17           “(1) the term ‘entire board’ means the total  
18 number of members of the board of governors that  
19 the corporation would have if there were no vacan-  
20 cies; and

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



1 **SEC. 7. POWERS.**

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

5 **SEC. 8. ANNUAL MEETING.**

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

8 **“§ 300107. Annual meeting**

9 “(a) IN GENERAL.—The annual meeting of the cor-  
10 poration is the annual meeting of delegates of the chap-  
11 ters.

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

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

19 “(d) VOTING.—

20 “(1) IN GENERAL.—In matters requiring a vote  
21 at the annual meeting, each chapter is entitled to at  
22 least 1 vote, and voting on all matters may be con-  
23 ducted by mail, telephone, telegram, cablegram, elec-  
24 tronic mail, or any other means of electronic or tele-  
25 phone transmission, provided that the person voting  
26 shall state, or submit information from which it can

1 be determined, that the method of voting chosen was  
 2 authorized by such person.

3 “(2) ESTABLISHMENT OF NUMBER OF  
 4 VOTES.—

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

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

15 **SEC. 9. ENDOWMENT FUND.**

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

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

20 (2) by striking the second sentence and insert-  
 21 ing the following: “The corporation shall prescribe  
 22 policies and regulations on terms and tenure of of-  
 23 fice, accountability, and expenses of the board of  
 24 trustees.”.

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

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

4 “(a) SUBMISSION OF REPORT.—As soon as prac-  
5 ticable after the end of the corporation’s fiscal year, which  
6 may be changed from time to time by the board of gov-  
7 ernors, the corporation shall submit a report to the Sec-  
8 retary of Defense on the activities of the corporation dur-  
9 ing such fiscal year, including a complete, itemized report  
10 of all receipts and expenditures.”.

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

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

17 **“§ 300111. Authority of the Comptroller General of**  
18 **the United States**

19 “The Comptroller General of the United States is au-  
20 thorized to review the corporation’s involvement in any  
21 Federal program or activity the Government carries out  
22 under law.

23 **“§ 300112. Office of the Ombudsman**

24 “(a) ESTABLISHMENT.—The corporation shall estab-  
25 lish an Office of the Ombudsman with such duties and

1 responsibilities as may be provided in the bylaws or a reso-  
 2 lution of the board of governors.

3 ~~“(b) REPORT.—The Office of the Ombudsman shall~~  
 4 ~~submit a report annually to Congress concerning any~~  
 5 ~~trends and systemic matters that the Office of the Om-~~  
 6 ~~budsman has identified as confronting the corporation.”.~~

7 *“(b) REPORT.—*

8 *“(1) IN GENERAL.—The Office of the Ombuds-*  
 9 *man shall submit annually to the appropriate Con-*  
 10 *gressional committees a report concerning any trends*  
 11 *and systemic matters that the Office of the Ombuds-*  
 12 *man has identified as confronting the corporation.*

13 *“(2) APPROPRIATE CONGRESSIONAL COMMIT-*  
 14 *TEES.—For purposes of paragraph (1), the appro-*  
 15 *priate Congressional committees are the following*  
 16 *committees of Congress:*

17 *“(A) SENATE COMMITTEES.—The appro-*  
 18 *priate Congressional committees of the Senate*  
 19 *are—*

20 *“(i) the Committee on Finance;*

21 *“(ii) the Committee on Foreign Rela-*  
 22 *tions;*

23 *“(iii) the Committee on Health, Edu-*  
 24 *cation, Labor, and Pensions;*

1                   “(iv) *the Committee on Homeland Se-*  
 2                   *curity and Governmental Affairs; and*

3                   “(v) *the Committee on the Judiciary.*

4                   “(B) *HOUSE COMMITTEES.—The appro-*  
 5                   *priate Congressional committees of the House of*  
 6                   *Representatives are—*

7                   “(i) *the Committee on Energy and*  
 8                   *Commerce;*

9                   “(ii) *the Committee on Foreign Affairs;*

10                  “(iii) *the Committee on Homeland Se-*  
 11                  *curity;*

12                  “(iv) *the Committee on the Judiciary;*  
 13                  *and*

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

16           (b) CLERICAL AMENDMENT.—The table of sections  
 17 for chapter 3001 of title 36, United States Code, is  
 18 amended by striking the item relating to section 300111  
 19 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.”.

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1ST Session

**S. 655**

**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.

MARCH 8, 2007

Reported with an amendment