AN ACT

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

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 “Workforce Democracy
5 and Fairness Act”.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SEC. 2. TIMING OF ELECTIONS.

Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended—

(1) in subsection (b), by striking “The Board shall decide” and all that follows through “Provided, That the” and inserting: “In each case, prior to an election, the Board shall determine, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining. Unless otherwise stated in this Act, and excluding bargaining unit determinations promulgated through rulemaking effective before August 26, 2011, the unit appropriate for purposes of collective bargaining shall consist of employees that share a sufficient community of interest. In determining whether employees share a sufficient community of interest, the Board shall consider (1) similarity of wages, benefits, and working conditions; (2) similarity of skills and training; (3) centrality of management and common supervision; (4) extent of interchange and frequency of contact between employees; (5) integration of the work flow and interrelationship of the production process; (6) the consistency of the unit with the employer’s organizational structure; (7) similarity of job functions and work; and (8) the bargaining his-
tory in the particular unit and the industry. To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit. Whether additional employees should be included in a proposed unit shall be based on whether such additional employees and proposed unit members share a sufficient community of interest, with the sole exception of proposed accretions to an existing unit, in which the inclusion of additional employees shall be based on whether such additional employees and existing unit members share an overwhelming community of interest and the additional employees have little or no separate identity. The”; and

(2) in subsection (c)(1), in the matter following subparagraph (B)—

(A) by inserting “, but in no circumstances less than 14 calendar days after the filing of the petition” after “hearing upon due notice”;

(B) by inserting before the last sentence the following: “An appropriate hearing shall be one that is non-adversarial with the hearing officer charged, in collaboration with the parties,
with the responsibility of identifying any rel-
evant and material pre-election issues and
thereafter making a full record thereon. Rel-
evant and material pre-election issues shall in-
clude, in addition to unit appropriateness, the
Board’s jurisdiction and any other issue the
resolution of which may make an election un-
necessary or which may reasonably be expected
to impact the election’s outcome. Parties may
raise independently any relevant and material
pre-election issue or assert any relevant and
material position at any time prior to the close
of the hearing.”;

(C) in the last sentence—

(i) by inserting “or consideration of a
request for review of a regional director’s
decision and direction of election,” after
“record of such hearing”; and

(ii) by inserting “to be conducted as
soon as practicable but not less than 35
calendar days following the filing of an
election petition” after “election by secret
ballot”; and

(D) by adding at the end the following:

“Not earlier than 7 days after final determi-
tion by the Board of the appropriate bargaining
unit, the Board shall acquire from the employer
a list of all eligible voters to be made available
to all parties, which shall include the employee
names, and one additional form of personal em-
ployee contact information (such as telephone
number, email address or mailing address) cho-
sen by the employee in writing.”.

Passed the House of Representatives November 30,
2011.

Attest: KAREN L. HAAS,
Clerk.
AN ACT

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

December 16, 2011

Read the second time and placed on the calendar.