

Union Calendar No. 269

111TH CONGRESS
2^D SESSION

H. R. 1722

[Report No. 111-474]

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2009

Mr. SARBANES (for himself, Mr. WOLF, Mr. CONNOLLY of Virginia, Mr. LYNCH, Mr. DAVIS of Illinois, Mr. MORAN of Virginia, and Mr. RUPPERSBERGER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MAY 4, 2010

Additional sponsors: Mr. WITTMAN, Mr. HIMES, Ms. ZOE LOFGREN of California, Mrs. CAPITO, Mr. DOGGETT, Mr. CUMMINGS, Ms. NORTON, and Mr. TOWNS

MAY 4, 2010

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 25, 2009]

A BILL

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, 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 “Telework Improvements*
5 *Act of 2010”.*

6 **SEC. 2. TELEWORK.**

7 *(a) IN GENERAL.—Part III of title 5, United States*
8 *Code, is amended by inserting after chapter 63 the fol-*
9 *lowing:*

10 **“CHAPTER 65—TELEWORK**

“Sec.

“6501. Definitions.

“6502. Governmentwide telework requirement.

“6503. Implementation.

“6504. Telework Managing Officer.

“6505. Evaluating telework in agencies.

11 **“§ 6501. Definitions**

12 *“For purposes of this chapter—*

13 *“(1) the term ‘agency’ means an Executive agen-*
14 *cy (as defined by section 105), except as otherwise*
15 *provided in this chapter;*

16 *“(2) the term ‘telework’ or ‘teleworking’ refers to*
17 *a work flexibility arrangement under which an em-*
18 *ployee performs the duties and responsibilities of such*
19 *employee’s position, and other authorized activities,*
20 *from an approved worksite other than the location*
21 *from which the employee would otherwise work;*

1 “(3) the term ‘continuity of operations’, as used
2 with respect to an agency, refers to measures designed
3 to ensure that functions essential to the mission of the
4 agency can continue to be performed during a wide
5 range of emergencies, including localized acts of na-
6 ture, accidents, public health emergencies, and techno-
7 logical or attack-related emergencies; and

8 “(4) the term ‘Telework Managing Officer’
9 means, with respect to an agency, the Telework Man-
10 aging Officer of the agency designated under section
11 6504.

12 **“§ 6502. Governmentwide telework requirement**

13 “(a) TELEWORK REQUIREMENT.—

14 “(1) IN GENERAL.—Not later than one year after
15 the date of the enactment of this chapter, the head of
16 each agency shall establish a policy under which em-
17 ployees shall be authorized to telework, subject to
18 paragraph (2) and subsection (b).

19 “(2) AGENCY POLICIES.—The head of each agen-
20 cy shall ensure—

21 “(A) that the telework policy established
22 under this section—

23 “(i) conforms to the regulations pro-
24 mulgated by the Director of the Office of

1 *Personnel Management under section 6503,*
2 *and*

3 *“(ii) authorizes employees to telework*
4 *to the maximum extent possible without di-*
5 *minishing agency operations and perform-*
6 *ance; and*

7 *“(B) that information on the eligibility of*
8 *employees to telework is included in descriptions*
9 *of available positions and other recruiting mate-*
10 *rials.*

11 *“(b) PROVISIONS RELATING TO CERTAIN CIR-*
12 *CUMSTANCES.—Nothing in subsection (a) shall be consid-*
13 *ered—*

14 *“(1) to require the head of an agency to author-*
15 *ize teleworking in the case of an employee whose du-*
16 *ties and responsibilities—*

17 *“(A) require daily direct handling of classi-*
18 *fied information; or*

19 *“(B) are such that their performance re-*
20 *quires on-site activity which cannot be carried*
21 *out from a site removed from the employee’s reg-*
22 *ular place of employment; or*

23 *“(2) to prevent the temporary denial of permis-*
24 *sion for an employee to telework if, in the judgment*

1 *of the agency head, the employee is needed to respond*
2 *to an emergency.*

3 “(c) *RULE OF CONSTRUCTION.—Nothing in this chap-*
4 *ter shall—*

5 “(1) *be considered to require any employee to*
6 *telework; or*

7 “(2) *prevent an agency from permitting an em-*
8 *ployee to telework as part of a continuity of oper-*
9 *ations plan.*

10 **“§ 6503. Implementation**

11 “(a) *RESPONSIBILITIES OF AGENCIES.—The head of*
12 *each agency shall ensure that—*

13 “(1) *appropriate training is provided to super-*
14 *visors and managers, and to all employees who are*
15 *authorized to telework, as directed by the Telework*
16 *Managing Officer of such agency;*

17 “(2) *the training covers the information security*
18 *guidelines issued by the Director of the Office of Man-*
19 *agement and Budget under this section;*

20 “(3) *no distinction is made between teleworkers*
21 *and nonteleworkers for purposes of—*

22 “(A) *periodic appraisals of job performance*
23 *of employees,*

1 “(B) training, rewarding, reassigning, pro-
2 moting, reducing in grade, retaining, or remov-
3 ing employees,

4 “(C) work requirements, or

5 “(D) other acts involving managerial dis-
6 cretion;

7 “(4) in determining what constitutes diminished
8 performance in the case of an employee who teleworks,
9 the agency shall consult the performance management
10 guidelines of the Office of Personnel Management; and

11 “(5) in the case of an agency which is named in
12 paragraph (1) or (2) of section 901(b) of title 31, the
13 agency incorporates telework in its continuity of oper-
14 ations plans and uses telework in response to emer-
15 gencies.

16 “(b) *PROMULGATION OF REGULATIONS BY OPM.*—The
17 Director of the Office of Personnel Management shall—

18 “(1) not later than 180 days after the date of the
19 enactment of this chapter, in consultation with the
20 Administrator of General Services, promulgate regu-
21 lations necessary to carry out this chapter, except that
22 such regulations shall not apply with respect to the
23 Government Accountability Office;

24 “(2) provide advice, assistance, and any nec-
25 essary training to agencies with respect to the re-

1 *quirements of this chapter, including with respect*
2 *to—*

3 *“(A) questions of eligibility to telework,*
4 *such as considerations relating to employee per-*
5 *formance, and*

6 *“(B) making telework part of the agency’s*
7 *goals, including those of individual supervisors*
8 *and managers; and*

9 *“(3) in consultation with the Administrator of*
10 *General Services, maintain a central, publicly avail-*
11 *able telework website that includes—*

12 *“(A) any regulations relating to telework*
13 *and any other information the Director considers*
14 *appropriate,*

15 *“(B) an e-mail address which may be used*
16 *to submit comments to the Director on agency*
17 *telework programs or agreements, and*

18 *“(C) a copy of all reports issued under sec-*
19 *tion 6505(a).*

20 *“(c) SECURITY GUIDELINES.—The Director of the Of-*
21 *fice of Management and Budget, in coordination with the*
22 *National Institute of Standards and Technology, shall issue*
23 *guidelines not later than 180 days after the date of the en-*
24 *actment of this chapter to ensure the adequacy of informa-*
25 *tion and security protections for information and informa-*

1 *tion systems used in, or otherwise affected by, teleworking.*
2 *Such guidelines shall, at a minimum, include requirements*
3 *necessary—*

4 “(1) *to control access to agency information and*
5 *information systems;*

6 “(2) *to protect agency information (including*
7 *personally identifiable information) and information*
8 *systems;*

9 “(3) *to limit the introduction of vulnerabilities;*

10 “(4) *to protect information systems not under*
11 *the control of the agency that are used for teleworking;*
12 *and*

13 “(5) *to safeguard wireless and other tele-*
14 *communications capabilities that are used for tele-*
15 *working.*

16 **“§ 6504. Telework Managing Officer**

17 “(a) *DESIGNATION AND COMPENSATION.—Each agen-*
18 *cy shall designate an officer, to be known as the ‘Telework*
19 *Managing Officer’. The Telework Managing Officer of an*
20 *agency shall be designated—*

21 “(1) *by the Chief Human Capital Officer of such*
22 *agency; or*

23 “(2) *if the agency does not have a Chief Human*
24 *Capital Officer, by the head of such agency.*

1 “(b) *STATUS WITHIN AGENCY.*—*The Telework Man-*
2 *aging Officer of an agency shall be a senior official of the*
3 *agency who has direct access to the head of the agency.*

4 “(c) *LIMITATIONS.*—*An individual may not hold the*
5 *position of Telework Managing Officer as a noncareer ap-*
6 *pointee (as defined in section 3132(a)(7)), and such posi-*
7 *tion may not be considered or determined to be of a con-*
8 *fidential, policy-determining, policy-making, or policy ad-*
9 *vocating character.*

10 “(d) *DUTIES AND RESPONSIBILITIES.*—*Each Telework*
11 *Managing Officer of an agency shall—*

12 “(1) *provide advice on teleworking to the head of*
13 *such agency and to the Chief Human Capital Officer*
14 *of such agency (if any);*

15 “(2) *serve as a resource on teleworking for super-*
16 *visors, managers, and employees of such agency;*

17 “(3) *serve as the primary point of contact on*
18 *telework matters for agency employees and (with re-*
19 *spect to such agency) for Congress and other agencies;*

20 “(4) *work with senior management of the agency*
21 *to develop and implement a plan to incorporate*
22 *telework into the agency’s regular business strategies*
23 *and its continuity of operations strategies, taking*
24 *into consideration factors such as—*

25 “(A) *cost-effectiveness,*

1 “(B) equipment,

2 “(C) training, and

3 “(D) data collection;

4 “(5) ensure that the agency’s telework policy is
5 communicated effectively to employees;

6 “(6) ensure that electronic or written notification
7 is provided to each employee of specific telework pro-
8 grams and the agency’s telework policy, including au-
9 thorization criteria and application procedures;

10 “(7) develop and administer a tracking system
11 for compliance with Governmentwide telework report-
12 ing requirements;

13 “(8) provide to the Director of the Office of Per-
14 sonnel Management and the Comptroller General such
15 information as such individuals may require to pre-
16 pare the reports required under section 6505, includ-
17 ing the techniques used to verify and validate data on
18 telework, except that this paragraph shall not apply
19 with respect to the Government Accountability Office;

20 “(9) establish a system for receiving feedback
21 from agency employees on the telework policy of the
22 agency;

23 “(10) develop and implement a program to iden-
24 tify and remove barriers to telework and to maximize
25 telework opportunities in the agency;

1 “(11) track and retain information on all deni-
2 als of permission to telework for employees who are
3 authorized to telework, and report such information
4 on an annual basis to—

5 “(A) the Chief Human Capital Officer of
6 such agency (or, if the agency does not have a
7 Chief Human Capital Officer, the head of such
8 agency), and

9 “(B) the Director of the Office of Personnel
10 Management, for purposes of preparing the re-
11 ports required under section 6505(a), except that
12 this subparagraph shall not apply with respect
13 to the Government Accountability Office;

14 “(12) ensure that employees are notified of griev-
15 ance procedures available to them (if any) with re-
16 spect to any disputes that relate to telework; and

17 “(13) perform such other duties and responsibil-
18 ities relating to telework as the head of the agency
19 may require.

20 “(e) *RULE OF CONSTRUCTION REGARDING STATUS OF*
21 *TELEWORK MANAGING OFFICER.*—Nothing in this section
22 shall be construed to prohibit an individual who holds an-
23 other office or position in an agency from serving as the
24 Telework Managing Officer for the agency under this chap-
25 ter.

1 **“§ 6505. Evaluating telework in agencies**

2 “(a) ANNUAL REPORT BY OPM.—

3 “(1) IN GENERAL.—*The Director of the Office of*
4 *Personnel Management shall submit to the Comp-*
5 *troller General and the appropriate committees of*
6 *Congress a report evaluating the extent to which each*
7 *agency is in compliance with this chapter with re-*
8 *spect to the period covered by the report, and shall in-*
9 *clude in the report an evaluation of each of the fol-*
10 *lowing:*

11 “(A) *The degree of participation by employ-*
12 *ees of the agency in teleworking during the pe-*
13 *riod. In the case of an agency which is an Exec-*
14 *utive department, the evaluation will include the*
15 *degree of participation by employees of each*
16 *component within the department, including—*

17 “(i) *the total number of employees in*
18 *the agency;*

19 “(ii) *the number and percentage of*
20 *such employees who are eligible to telework;*
21 *and*

22 “(iii) *the number and percentage of*
23 *such employees who do telework, broken*
24 *down by the number and percentage who*
25 *telework 3 or more days per week, one or*

1 *two days per week, and less frequently than*
2 *one day per week.*

3 “(B) *The method the agency uses to gather*
4 *data on telework and the techniques used to*
5 *verify and validate such data.*

6 “(C) *Whether the total number of employees*
7 *who telework is at least 10% higher or lower*
8 *than the number who teleworked during the pre-*
9 *vious reporting period and the reasons identified*
10 *for any such change.*

11 “(D) *The agency’s goal for increasing the*
12 *number of employees who telework in the next re-*
13 *porting period.*

14 “(E) *The extent to which the agency met the*
15 *goal described in subparagraph (D) for its pre-*
16 *vious report, and, if the agency failed to meet the*
17 *goal, the actions the agency plans to take to meet*
18 *the goal for the next reporting period.*

19 “(F) *The best practices in agency telework*
20 *programs.*

21 “(G) *In the case of an agency which is*
22 *named in paragraph (1) or (2) of section 901(b)*
23 *of title 31, the extent to which the agency incor-*
24 *porated telework in its continuity of operations*

1 *plans and used telework in response to emer-*
2 *gencies.*

3 “(2) *MINIMUM REQUIREMENT FOR COMPLI-*
4 *ANCE.—For purposes of the reports required under*
5 *this subsection, the Director shall determine that an*
6 *agency is in compliance with the requirements of this*
7 *chapter if the Director finds that the agency—*

8 “(A) *reported the requested data accurately*
9 *and in a timely manner; and*

10 “(B) *either met or exceeded the agency’s es-*
11 *tablished telework goals, or provided expla-*
12 *nations as to why the goals were not met as well*
13 *as the steps the agency is taking to meet the*
14 *goals.*

15 “(3) *REPORTING PERIOD; TIMING.—The Director*
16 *shall submit a report under this subsection with re-*
17 *spect to the first 1-year period for which the regula-*
18 *tions promulgated by the Director under section*
19 *6503(b) are in effect and each of the 4 succeeding 1-*
20 *year periods, and shall submit the report with respect*
21 *to a period not later than 6 months after the last day*
22 *of the period to which the report relates.*

23 “(4) *EXCLUSION OF GOVERNMENT ACCOUNT-*
24 *ABILITY OFFICE.—The Director shall not submit a re-*

1 *port under this subsection with respect to the Govern-*
2 *ment Accountability Office.*

3 “(b) *REPORTS BY COMPTROLLER GENERAL.*—

4 “(1) *EVALUATIONS OF REPORTS BY DIRECTOR OF*
5 *OPM.*—*Not later than 6 months after the Director sub-*
6 *mits a report under subsection (a), the Comptroller*
7 *General shall review the report and submit a report*
8 *to the appropriate committees of Congress. The report*
9 *shall evaluate the compliance of the Office of Per-*
10 *sonnel Management and agencies with this chapter*
11 *and address the overall progress of agencies in car-*
12 *rying out this chapter, and shall include such other*
13 *information and recommendations as the Comptroller*
14 *General considers appropriate.*

15 “(2) *REPORTS ON GOVERNMENT ACCOUNTABILITY*
16 *OFFICE.*—*The Comptroller General shall submit a re-*
17 *port with respect to the Government Accountability*
18 *Office in the same manner and in accordance with*
19 *the same requirements applicable to a report sub-*
20 *mitted by the Director with respect to any other agen-*
21 *cy under subsection (a).*

22 “(c) *APPROPRIATE COMMITTEES OF CONGRESS DE-*
23 *FINED.*—*In this section, the term ‘appropriate committees*
24 *of Congress’ means—*

1 “(1) *the Committee on Oversight and Govern-*
2 *ment Reform of the House of Representatives; and*

3 “(2) *the Committee on Homeland Security and*
4 *Governmental Affairs of the Senate.*”.

5 ***(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1)***
6 *The analysis for part III of title 5, United States Code,*
7 *is amended by inserting after the item relating to chapter*
8 *63 the following:*

“65. Telework 6501”.

9 (2) *Section 622 of the Departments of Commerce, Jus-*
10 *tice, and State, the Judiciary, and Related Agencies Appro-*
11 *priations Act, 2005, as contained in the Consolidated Ap-*
12 *propriations Act, 2005 (5 U.S.C. 6120 note) is amended*
13 *by striking “designate a ‘Telework Coordinator’ to be” and*
14 *inserting “designate a Telework Managing Officer or des-*
15 *ignate the Chief Human Capital Officer or other career em-*
16 *ployee to be”.*

17 **SEC. 3. POLICY GUIDANCE.**

18 *Not later than the expiration of the 120-day period*
19 *which begins on the date of the enactment of this Act, the*
20 *Director of the Office of Management and Budget shall issue*
21 *policy guidance requiring each Executive agency (as such*
22 *term is defined in section 105 of title 5, United States*
23 *Code), when purchasing computer systems, to purchase*
24 *computer systems that enable and support telework, unless*

1 *the head of the agency determines that there is a mission-*
2 *specific reason not to do so.*

3 **SEC. 4. TRAVEL EXPENSE TEST PROGRAMS.**

4 *Section 5710 of title 5, United States Code, is amended*
5 *to read as follows:*

6 **“§5710. Authority for travel expense test programs**

7 *“(a)(1) Notwithstanding any other provision of this*
8 *subchapter, if the Administrator of General Services deter-*
9 *mines it to be in the interest of Government, the Adminis-*
10 *trator may approve the request of an agency to operate a*
11 *test program under which the agency may pay through the*
12 *proper disbursing official any necessary travel expenses of*
13 *the employee in lieu of any payment otherwise authorized*
14 *or required under this subchapter. Under an approved test*
15 *program, an agency may provide an employee with the op-*
16 *tion to waive any payment authorized or required under*
17 *this subchapter. An agency shall include in any request to*
18 *the Administrator for approval of such a test program an*
19 *analysis of the expected costs and benefits and a set of cri-*
20 *teria for evaluating the effectiveness of the test program.*

21 *“(2) Any test program operated under this section*
22 *shall be designed to enhance cost savings or other efficiencies*
23 *that accrue to the Government.*

24 *“(b) The Administrator shall transmit a description*
25 *of any test program approved or extended by the Adminis-*

1 *trator under this section to the appropriate committees of*
2 *the Congress not later than 30 days before the program or*
3 *extension takes effect.*

4 “(c)(1) *An agency operating a test program approved*
5 *under this section shall annually submit a report on the*
6 *results of the program to date to the Administrator.*

7 “(2) *Not later than 3 months after the conclusion of*
8 *a test program approved under this section, the agency op-*
9 *erating the program shall submit a final report on the re-*
10 *sults of the program to the Administrator and the appro-*
11 *priate committees of Congress.*

12 “(d) *The Administrator may approve such number of*
13 *test programs under this section as the Administrator con-*
14 *siders appropriate, including test programs which are car-*
15 *ried out on a government-wide basis, except that the number*
16 *of test programs in operation at any time may not exceed*
17 *12.*

18 “(e)(1) *The Administrator may not approve any test*
19 *program under this section for an initial period of more*
20 *than 2 years.*

21 “(2) *Upon a showing of enhanced cost savings, the Ad-*
22 *ministrator may extend an approved test program for an*
23 *additional period not to exceed 2 years.*

24 “(f) *In this section, the term ‘appropriate committees*
25 *of Congress’ means the Committee on Oversight and Govern-*

1 *ment Reform of the House of Representatives and the Com-*
2 *mittee on Homeland Security and Governmental Affairs of*
3 *the Senate.*

4 “(g) *The authority to conduct test programs under this*
5 *section shall expire upon the expiration of the 6-year period*
6 *which begins on the date of the enactment of the Telework*
7 *Improvements Act of 2010.”.*

8 **SEC. 5. TELEWORK RESEARCH.**

9 (a) *RESEARCH BY OPM ON TELEWORK.—The Director*
10 *of the Office of Personnel Management shall—*

11 (1) *conduct studies on the utilization of telework*
12 *by public and private sector entities that identify best*
13 *practices and recommendations for the Federal gov-*
14 *ernment;*

15 (2) *review the outcomes associated with an in-*
16 *crease in telework, including the effects of telework on*
17 *energy consumption, the environment, job creation*
18 *and availability, urban transportation patterns, and*
19 *the ability to anticipate the dispersal of work during*
20 *periods of emergency; and*

21 (3) *make any studies or reviews performed under*
22 *this subsection available to the public.*

23 (b) *USE OF CONTRACT TO CARRY OUT RESEARCH.—*
24 *The Director of the Office of Personnel Management may*

- 1 *carry out subsection (a) pursuant to a contract entered into*
- 2 *by the Director using competitive procedures.*

Amend the title so as to read: “A bill to require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework, and for other purposes.”.

Union Calendar No. 269

11TH CONGRESS
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H. R. 1722

[Report No. 111-474]

A BILL

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, and for other purposes.

MAY 4, 2010

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed