

107TH CONGRESS  
1ST SESSION

# S. 1856

To amend the Internal Revenue Code of 1986 to promote employer and employee participation in telework arrangements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 18), 2001

Mr. KERRY (for himself, Mr. BURNS, Mr. CORZINE, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to promote employer and employee participation in telework arrangements, 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 “Teleworking Advance-  
5       ment Act”.

6       **SEC. 2. CREDIT FOR TELEWORKING.**

7       (a) IN GENERAL.—Subpart B of part IV of sub-  
8       chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to foreign tax credit, etc.) is amended by  
 2 inserting after section 30A the following new section:

3 **“SEC. 30B. TELEWORK CREDIT.**

4 “(a) GENERAL RULE.—There shall be allowed as a  
 5 credit against the tax imposed by this chapter for any tax-  
 6 able year an amount equal to the sum of—

7 “(1) the employer telework tax credit, plus

8 “(2) the telework equipment tax credit.

9 “(b) EMPLOYER TELEWORK TAX CREDIT;  
 10 TELEWORK EQUIPMENT TAX CREDIT.—For purposes of  
 11 this section—

12 “(1) EMPLOYER TELEWORK TAX CREDIT.—Ex-  
 13 cept as provided for in subsection (c)(1), the em-  
 14 ployer telework tax credit for any taxable year is  
 15 equal to \$500 for each employee who participates in  
 16 an employer sponsored telework arrangement during  
 17 the taxable year.

18 “(2) TELEWORK EQUIPMENT TAX CREDIT.—  
 19 Except as provided for in subsection (c)(2), the  
 20 telework equipment tax credit for any taxable year  
 21 is equal to 10 percent of qualified telework expenses  
 22 paid or incurred during the taxable year by either  
 23 the employer on behalf of the employee, or directly  
 24 by the employee, pursuant to an employer sponsored  
 25 telework arrangement.

1       “(c) SPECIAL RULE FOR DISABLED EMPLOYEES AND  
2 EMPLOYEES OF SMALL BUSINESSES.—For purposes of  
3 this section:

4           “(1) For each employee who is covered under  
5 the Americans with Disabilities Act of 1990 (42  
6 U.S.C. 1201), or for each employee of a small busi-  
7 ness, the employer telework tax credit for any tax-  
8 able year is equal to \$1,000 for each employee who  
9 participates in an employer sponsored telework ar-  
10 rangement during the taxable year.

11          “(2) For each employee who is covered under  
12 the Americans with Disabilities Act of 1990 (42  
13 U.S.C. 1201), or for each employee of a small busi-  
14 ness, the telework equipment tax credit for any tax-  
15 able year is equal to 20 percent of qualified telework  
16 expenses paid or incurred during the taxable year by  
17 either the employer on behalf of the employee, or di-  
18 rectly by the employee, pursuant to an employer  
19 sponsored telework arrangement.

20       “(d) CREDIT ADJUSTMENTS AND LIMITATIONS.—

21           “(1) CREDIT ADJUSTMENTS.—In computing the  
22 credit allowed under subsection (b)(1) or (c)(1) for  
23 any taxable year, the following adjustments shall  
24 apply:

1           “(A) In the case of an employee who par-  
2           ticipates in an employer sponsored telework ar-  
3           rangement for less than the full taxable year,  
4           the credit amount identified in subsection (b)(1)  
5           or (c)(1), whichever is applicable, shall be mul-  
6           tiplied by a fraction, the numerator of which is  
7           the total number of months in the taxable year  
8           that the employee participates in an employer  
9           sponsored telework arrangement and the de-  
10          nominator of which is 12. For purposes of the  
11          preceding sentence, an employee is considered  
12          to be participating in an employer sponsored  
13          telework arrangement for a month if the em-  
14          ployee teleworks for at least one full day of  
15          such month.

16          “(B) In the case of an employee who par-  
17          ticipates in an employer sponsored telework ar-  
18          rangement but does not telework every day of  
19          the taxable year that the employee is required  
20          by his or her employer to work, the credit  
21          amount identified in subsection (b)(1) or (c)(1),  
22          whichever is applicable, shall be multiplied by a  
23          fraction, the numerator of which is the total  
24          number of full days in the taxable year that the  
25          employee teleworks and the denominator of

1 which is the total number of days in the taxable  
2 year that the employee is required by his or her  
3 employer to work.

4 “(2) TELEWORK EQUIPMENT CREDIT LIMITA-  
5 TIONS.—

6 “(A) In computing the credit allowed  
7 under subsection (b)(2) for any taxable year,  
8 the following limitations shall apply:

9 “(i) The maximum credit claimed by  
10 any employer with respect to qualified  
11 telework expenses paid or incurred on be-  
12 half of an employee shall not exceed \$500  
13 for each employee who participates in an  
14 employer sponsored telework arrangement.

15 “(ii) The maximum credit claimed by  
16 any employee with respect to qualified  
17 telework expenses paid or incurred directly  
18 by the employee pursuant to an employer  
19 sponsored telework arrangement shall not  
20 exceed \$500.

21 “(B) In computing the credit allowed  
22 under subsection (c)(2) for any taxable year  
23 with respect to employees who are covered  
24 under the Americans with Disabilities Act of  
25 1990 (42 U.S.C. 1201), or for each employee of

1 a small business, the following limitations shall  
2 apply:

3 “(i) The maximum credit claimed by  
4 any employer with respect to qualified  
5 telework expenses paid or incurred on be-  
6 half of an employee shall not exceed  
7 \$1,000 for each employee who participates  
8 in an employer sponsored telework ar-  
9 rangement.

10 “(ii) The maximum credit claimed by  
11 any employee with respect to qualified  
12 telework expenses paid or incurred directly  
13 by the employee pursuant to an employer  
14 sponsored telework arrangement shall not  
15 exceed \$1,000.

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

17 “(1) EMPLOYER SPONSORED TELEWORK AR-  
18 RANGEMENT.—The term ‘employer sponsored  
19 telework arrangement’ means an arrangement estab-  
20 lished by an employer that enables employees of the  
21 employer to telework for a minimum of 25 full days  
22 per taxable year. Such an arrangement shall be sup-  
23 ported by a written agreement between the employer  
24 and each teleworking employee that describes the

1 terms of the employer sponsored telework arrange-  
2 ment.

3 “(2) QUALIFIED TELEWORK EXPENSES.—

4 “(A) IN GENERAL.—The term ‘qualified  
5 telework expenses’ shall include expenses paid  
6 or incurred for computers, computer-related  
7 hardware and software, modems, data proc-  
8 essing equipment, telecommunications equip-  
9 ment, and access to Internet or broadband tech-  
10 nologies, including applicable taxes and other  
11 expenses for the delivery, installation, or main-  
12 tenance of such equipment.

13 “(B) ONLY CERTAIN EXPENSES TAKEN  
14 INTO ACCOUNT.—Expenses shall be taken into  
15 account under subparagraph (A) only to the ex-  
16 tent they are authorized by the employer pursu-  
17 ant to an employer sponsored telework arrange-  
18 ment and are necessary to enable the employee  
19 to telework.

20 “(3) SMALL BUSINESS.—The term ‘small busi-  
21 ness’ means a business with an average of 100 or  
22 fewer employees during the taxable year.

23 “(4) TELEWORK.—An employee shall be treated  
24 as engaged in telework if—

1           “(A) the employee’s normal and regular  
2 work functions are performed at a fixed loca-  
3 tion provided by the employer,

4           “(B)(i) the employee, under an employer  
5 sponsored telework arrangement, performs such  
6 functions at the employee’s residence or at a lo-  
7 cation specifically designed to allow employees  
8 to perform such functions closer to their resi-  
9 dence, and

10           “(ii) the performance of such func-  
11 tions at such residence or location elimi-  
12 nates or substantially reduces the physical  
13 commute of the employee to the fixed loca-  
14 tion described in subparagraph (A), and

15           “(C) the employee transmits by electronic  
16 or other communications medium the employ-  
17 ee’s work product from such residence or loca-  
18 tion to the fixed location where such functions  
19 would otherwise have been performed.

20           “(f) SPECIAL RULES.—

21           “(1) LIMITATION BASED ON AMOUNT OF  
22 TAX.—

23           “(A) LIABILITY FOR TAX.—The credit al-  
24 lowable under subsection (a) for any taxable  
25 year shall not exceed the excess (if any) of—



1 “(i) the regular tax for the taxable  
 2 year, reduced by the sum of the credits al-  
 3 lowable under subpart A and the preceding  
 4 sections of this subpart, over

5 “(ii) the tentative minimum tax for  
 6 the taxable year.

7 “(B) CARRYFORWARD OF UNUSED CRED-  
 8 IT.—If the amount of the credit allowable under  
 9 subsection (a) for any taxable year exceeds the  
 10 limitation under paragraph (1)(A) for the tax-  
 11 able year, the excess shall be carried to the suc-  
 12 ceeding taxable year and added to the amount  
 13 allowable as a credit under subsection (a) for  
 14 such succeeding taxable year.

15 “(2) BASIS REDUCTION.—The basis of any  
 16 property for which a credit is allowable under sub-  
 17 section (a) shall be reduced by the amount of such  
 18 credit (determined without regard to paragraph (1)).

19 “(3) RECAPTURE.—The Secretary shall, by reg-  
 20 ulations, provide for recapturing the benefit of any  
 21 credit allowable under subsection (a) with respect to  
 22 any property which ceases to be property eligible for  
 23 such credit.

24 “(4) PROPERTY USED OUTSIDE UNITED  
 25 STATES, ETC., NOT QUALIFIED.—No credit shall be

1       allowed under subsection (a) with respect to any  
 2       property referred to in section 50(b) or with respect  
 3       to the portion of the cost of any property taken into  
 4       account under section 179.

5           “(5) ELECTION NOT TO TAKE CREDITS.—No  
 6       credits shall be allowed under subsection (a) for any  
 7       expense if the taxpayer elects to not have this sec-  
 8       tion apply with respect to such expense.

9           “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-  
 10      tion or credit (other than under this section) shall  
 11      be allowed under this chapter with respect to any ex-  
 12      pense which is taken into account in determining the  
 13      credit under this section.

14          “(7) DOCUMENTATION.—Employers and em-  
 15      ployees are responsible for maintaining adequate  
 16      documentation to support any credits claimed under  
 17      this section.”

18      (b) CONFORMING AMENDMENT.—Subsection (a) of  
 19      section 1016 of the Internal Revenue Code of 1986 (relat-  
 20      ing to general rule for adjustments to basis) is amended  
 21      by striking “and” at the end of paragraph (27), by strik-  
 22      ing the period at the end of paragraph (28) and inserting  
 23      “, and”, and by adding at the end the following:

1           “(29) in the case of property with respect to  
2           which a credit was allowed under section 30B, to the  
3           extent provided in section 30B(f)(2).”

4           (c) CLERICAL AMENDMENT.—The table of sections  
5           for subpart B of part IV of subchapter A of chapter 1  
6           of the Internal Revenue Code of 1986 is amended by in-  
7           serting after the item relating to section 30A the following  
8           new item:

                  “Sec. 30B. Telework credit.”

9           (d) REGULATORY MATTERS.—

10           (1) PROHIBITION.—No Federal or State agency  
11           or instrumentality shall adopt regulations or rate-  
12           making procedures that would have the effect of  
13           confiscating any credit or portion thereof allowed  
14           under sections 30B of the Internal Revenue Code of  
15           1986 (as added by this Act) or otherwise subverting  
16           the purpose of this Act.

17           (2) TREASURY REGULATORY AUTHORITY.—It is  
18           the intent of Congress in providing the telework tax  
19           credit under section 30B of the Internal Revenue  
20           Code of 1986 (as added by this Act) to promote  
21           broad participation in employer sponsored telework  
22           arrangements by providing incentives to both em-  
23           ployers and employees. Accordingly, the Secretary of  
24           the Treasury shall prescribe such regulations as may  
25           be necessary or appropriate to carry out the pur-

1 poses of section 30B of such Code, including regula-  
2 tions describing the information, records, and data  
3 that employers and employees are required to pro-  
4 vide the Secretary to substantiate compliance with  
5 the requirements of this section and section 30B of  
6 such Code. Until the Secretary prescribes such regu-  
7 lations, employers and employees may base such de-  
8 terminations on any reasonable method that is con-  
9 sistent with the purposes of section 30B of such  
10 Code.

11 (e) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2001.

14 **SEC. 3. SMALL BUSINESS TELECOMMUTING PILOT PRO-**  
15 **GRAM.**

16 (a) IN GENERAL.—In accordance with this section,  
17 the Administrator shall conduct, in not more than 5 of  
18 the Small Business Administration's regions, a pilot pro-  
19 gram to raise awareness about telecommuting among  
20 small business employers and to encourage such employers  
21 to offer telecommuting options to employees.

22 (b) SPECIAL OUTREACH TO INDIVIDUALS WITH DIS-  
23 ABILITIES.—In carrying out subsection (a), the Adminis-  
24 trator shall make special efforts to do outreach to—

1           (1) businesses owned by or employing individ-  
2           uals with disabilities, and disabled American vet-  
3           erans in particular;

4           (2) Federal, State, and local agencies having  
5           knowledge and expertise in assisting individuals with  
6           disabilities or disabled American veterans; and

7           (3) any group or organization, the primary pur-  
8           pose of which is to aid individuals with disabilities  
9           or disabled American veterans.

10          (c) PERMISSIBLE ACTIVITIES.—In carrying out the  
11       pilot program, the Administrator may only—

12           (1) produce educational materials and conduct  
13           presentations designed to raise awareness in the  
14           small business community of the benefits and the  
15           ease of telecommuting;

16           (2) conduct outreach—

17                   (A) to small business concerns that are  
18                   considering offering telecommuting options; and

19                   (B) as provided in subsection (b); and

20           (3) acquire telecommuting technologies and  
21           equipment to be used for demonstration purposes.

22          (d) SELECTION OF REGIONS.—In determining which  
23       regions will participate in the pilot program, the Adminis-  
24       trator shall give priority consideration to regions in which

1 Federal agencies and private-sector employers have dem-  
2 onstrated a strong regional commitment to telecommuting.

3 (e) REPORT TO CONGRESS.—Not later than 2 years  
4 after the first date on which funds are appropriated to  
5 carry out this section, the Administrator shall transmit to  
6 the Committee on Small Business of the House of Rep-  
7 resentatives and the Committee on Small Business of the  
8 Senate a report containing the results of an evaluation of  
9 the pilot program and any recommendations as to whether  
10 the pilot program, with or without modification, should be  
11 extended to include the participation of all Small Business  
12 Administration regions.

13 (f) DEFINITIONS.—In this section—

14 (1) the term “Administrator” means the Ad-  
15 ministrator of the Small Business Administration;

16 (2) the term “disability” has the same meaning  
17 as in section 3 of the Americans with Disabilities  
18 Act of 1990 (42 U.S.C. 12102);

19 (3) the term “pilot program” means the pro-  
20 gram established under this section; and

21 (4) the term “telecommuting” means the use of  
22 telecommunications to perform work functions under  
23 circumstances which reduce or eliminate the need to  
24 commute.

1       (g) TERMINATION.—The pilot program shall termi-  
2   nate 2 years after the first date on which funds are appro-  
3   priated to carry out this section.

4       (h) AUTHORIZATION OF APPROPRIATIONS.—There is  
5   authorized to be appropriated to the Small Business Ad-  
6   ministration \$5,000,000 to carry out this section.

○