

111TH CONGRESS
1ST SESSION

H. R. 1722

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

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 Improve-
5 ments Act of 2009”.

1 **SEC. 2. TELEWORK.**

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

5 **“CHAPTER 65—TELEWORK**

“6501. Definitions.

“6502. Governmentwide telework requirement.

“6503. Implementation.

“6504. Telework Managing Officer.

“6505. Evaluating telework in agencies.

“6506. Continuity of operations.

6 **“§ 6501. Definitions**

7 “For purposes of this chapter—

8 “(1) the term ‘agency’ means an Executive
 9 agency (as defined by section 105), except as pro-
 10 vided in section 6506(c);

11 “(2) the term ‘telework’ or ‘teleworking’ refers
 12 to a work arrangement under which an employee
 13 regularly performs the duties and responsibilities of
 14 such employee’s position, and other authorized ac-
 15 tivities, from home or another worksite removed
 16 from the employee’s regular place of employment;

17 “(3) the term ‘continuity of operations’, as used
 18 with respect to an agency, refers to measures de-
 19 signed to ensure that functions essential to the mis-
 20 sion of the agency can continue to be performed dur-
 21 ing a wide range of emergencies, including localized

1 acts of nature, accidents, public health emergencies,
2 and technological or attack-related emergencies; and

3 “(4) the term ‘Telework Managing Officer’, as
4 used with respect to an agency, refers to the
5 Telework Managing Officer of such agency, des-
6 ignated under section 6504.

7 **“§ 6502. Governmentwide telework requirement**

8 “(a) TELEWORK REQUIREMENT.—

9 “(1) IN GENERAL.—As soon as practicable
10 after the date of the enactment of this chapter, the
11 head of each agency shall establish a policy under
12 which employees shall be authorized to telework,
13 subject to paragraph (2) and subsection (b).

14 “(2) REGULATIONS.—The policy of each agency
15 under this subsection—

16 “(A) shall be in conformance with regula-
17 tions which the Director of the Office of Per-
18 sonnel Management shall, as soon as prac-
19 ticable after the date of the enactment of this
20 chapter and in coordination with the General
21 Services Administration, prescribe for purposes
22 of this subsection; and

23 “(B) shall ensure that employees are au-
24 thorized to telework—

1 “(i) to the maximum extent possible;

2 and

3 “(ii) without diminishing employee

4 performance or agency operations.

5 “(b) PROVISIONS RELATING TO CERTAIN CIR-

6 CUMSTANCES.—Nothing in subsection (a) shall be consid-

7 ered—

8 “(1) to require the head of an agency to au-

9 thorize teleworking in the case of an employee whose

10 duties and responsibilities—

11 “(A) require daily access to classified in-

12 formation;

13 “(B) require daily face-to-face contact with

14 members of the public or other persons, or the

15 use of equipment, at the employee’s regular

16 place of employment; or

17 “(C) are such that their performance from

18 a site removed from the employee’s regular

19 place of employment is otherwise infeasible; or

20 “(2) to prevent the temporary denial of permis-

21 sion for an employee to telework if, in the judgment

22 of the agency head—

23 “(A) the employee is needed to respond to

24 an emergency;

1 “(B) the employee requires additional
2 training; or

3 “(C) the denial is necessary, for a specific
4 or ascertainable period of time, to achieve goals
5 and objectives of programs administered by the
6 agency.

7 “(c) REPORTING REQUIREMENTS.—

8 “(1) RESPONSIBILITIES OF THE AGENCY
9 TMO.—In the event that denial of permission for an
10 employee to telework is considered necessary by rea-
11 son of circumstances described in paragraph (1) or
12 (2) of subsection (b), the Telework Managing Officer
13 of the agency involved shall log and report such de-
14 nial to—

15 “(A)(i) the Chief Human Capital Officer of
16 such agency; or

17 “(ii) if the agency does not have a Chief
18 Human Capital Officer, the head of such agen-
19 cy; and

20 “(B) the Office of Personnel Management.

21 “(2) INCLUSION IN ANNUAL REPORT.—The Of-
22 fice of Personnel Management shall transmit a sum-
23 mary of any denials of permission to telework (as re-
24 ceived under paragraph (1)) to the Comptroller Gen-

1 eral for inclusion in the annual report required
2 under section 6505(b).

3 “(d) RULE OF CONSTRUCTION.—Nothing in this
4 chapter 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 “In order to carry out the purposes of this chapter—

12 “(1) the head of each agency shall ensure
13 that—

14 “(A) appropriate training is provided to
15 supervisors and managers and to all employees
16 who are authorized to telework—

17 “(i) prior to the start of any telework
18 arrangement; and

19 “(ii) following the start of any
20 telework arrangement,

21 as directed by the Telework Managing Officer
22 of such agency;

23 “(B) no distinction is made between tele-
24 workers and nonteleworkers for purposes of—

1 “(i) periodic appraisals of job per-
2 formance of employees;

3 “(ii) training, rewarding, reassigning,
4 promoting, reducing in grade, retaining, or
5 removing employees;

6 “(iii) work requirements; or

7 “(iv) other acts involving managerial
8 discretion; and

9 “(C) in determining what constitutes di-
10 minished performance in the case of an em-
11 ployee who teleworks, the agency shall consult
12 the performance management guidelines of the
13 Office of Personnel Management;

14 “(2) the Office of Personnel Management, in
15 coordination with the General Services Administra-
16 tion, shall provide advice, assistance, and any nec-
17 essary training to agencies, including with respect
18 to—

19 “(A) questions of eligibility to telework,
20 such as considerations relating to employee per-
21 formance; and

22 “(B) making telework part of the agency’s
23 goals, including those of individual supervisors
24 and managers;

1 “(3) the General Services Administration, in co-
2 ordination with the Office of Management and
3 Budget and the National Institute of Standards and
4 Technology, shall prescribe regulations, within 120
5 days after the date of the enactment of this chapter,
6 to ensure the adequacy of information and security
7 protections for information and information systems
8 used in, or otherwise affected by, teleworking; such
9 regulations shall be consistent with information se-
10 curity policies and guidance issued by the Office of
11 Management and Budget and the National Institute
12 of Standards and Technology, and shall, at a min-
13 imum, include requirements necessary—

14 “(A) to control access to agency informa-
15 tion and information systems;

16 “(B) to protect agency information (includ-
17 ing personally identifiable information) and in-
18 formation systems;

19 “(C) to limit the introduction of
20 vulnerabilities;

21 “(D) to protect information systems not
22 under the control of the agency that are used
23 for teleworking; and

1 “(E) to safeguard wireless and other tele-
2 communications capabilities that are used for
3 teleworking; and

4 “(4) the Office of Personnel Management
5 shall—

6 “(A) maintain a central, publicly available
7 telework website, to be jointly controlled and
8 funded by the General Services Administration
9 and the Office of Personnel Management;

10 “(B) include on the website under sub-
11 paragraph (A)—

12 “(i) any regulations relating to
13 telework, and any other information, the
14 General Services Administration and the
15 Office of Personnel Management consider
16 appropriate;

17 “(ii) a confidential hotline and e-mail
18 address which may be used to contact the
19 Office of Personnel Management in order
20 to report any abuse of agency telework
21 programs or agreements; and

22 “(iii) a copy of the most recent report
23 available under section 6505(b); and

24 “(C) provide a summary of any reports of
25 abuse, received by the Office of Personnel Man-

1 agement (whether under subparagraph (B)(ii)
2 or otherwise), to the Comptroller General for
3 inclusion in the annual report required under
4 section 6505(b).

5 **“§ 6504. Telework Managing Officer**

6 “(a) DESIGNATION AND COMPENSATION.—

7 “(1) IN GENERAL.—Each agency shall des-
8 ignate an officer, to be known as the ‘Telework
9 Managing Officer’. The Telework Managing Officer
10 of an agency—

11 “(A) shall be designated—

12 “(i) by the Chief Human Capital Offi-
13 cer of such agency; or

14 “(ii) if the agency does not have a
15 Chief Human Capital Officer, by the head
16 of such agency; and

17 “(B) shall be compensated at a rate not
18 less than the minimum rate of basic pay for
19 grade GS–15 of the General Schedule.

20 “(2) WAIVER.—The Director of the Office of
21 Personnel Management may waive the minimum
22 rate requirement under paragraph (1)(B) with re-
23 spect to an agency if such agency has fewer than
24 100 employees (determined on a full-time equivalent
25 basis) and the head of such agency certifies that

1 being required to comply with paragraph (1)(B)
2 would adversely impact the operations of such agen-
3 cy.

4 “(b) 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 “(c) DUTIES AND RESPONSIBILITIES.—The duties
11 and responsibilities of the Telework Managing Officer of
12 an agency shall be as follows:

13 “(1) Serving as—

14 “(A) an advisor on teleworking to the head
15 of such agency and to the Chief Human Capital
16 Officer of such agency (if any);

17 “(B) a resource on teleworking for super-
18 visors, managers, and employees of such agen-
19 cy;

20 “(C) the primary point of contact for any
21 agency employee who elects to telework, in the
22 event of a telework-related dispute between the
23 employee and a supervisor or manager; and

1 “(D) the agency’s primary point of contact
2 on teleworking matters for employees of such
3 agency, Congress, and other agencies.

4 “(2) Ensuring that the agency’s teleworking
5 policy is communicated effectively to employees.

6 “(3) Ensuring that electronic or written notifi-
7 cation is provided to each employee of specific
8 telework programs and the agency’s teleworking pol-
9 icy, including authorization criteria and application
10 procedures.

11 “(4) Developing and administering a tracking
12 system for compliance with Governmentwide
13 telework reporting requirements.

14 “(5) Providing to the Comptroller General and
15 to the Director of the Office of Personnel Manage-
16 ment such information as the Comptroller General
17 may require to prepare the annual reports under
18 section 6505(b).

19 “(6) Establishing a system for receiving feed-
20 back from agency employees on the telework policy
21 of such agency.

22 “(7) Developing and implementing a program
23 to identify and remove barriers to telework and to
24 maximize telework opportunities in the agency.

1 “(8) Ensuring that employees are notified of
2 grievance procedures available to them (if any) with
3 respect to any disputes that relate to telework.

4 “(9) Performing such other duties and respon-
5 sibilities relating to telework as the head of the
6 agency may require.

7 **“§ 6505. Evaluating telework in agencies**

8 “(a) IN GENERAL.—The Comptroller General shall
9 establish a system for evaluating—

10 “(1) the telework policy of each agency; and

11 “(2) employee participation in telework pro-
12 grams at each agency.

13 “(b) ANNUAL REPORT.—The Comptroller General
14 shall, based on the system established under subsection
15 (a), submit an annual report to the Committee on Over-
16 sight and Government Reform of the House of Represent-
17 atives and the Committee on Homeland Security and Gov-
18 ernmental Affairs of the Senate. Each report under this
19 subsection shall, with respect to the period covered by such
20 report—

21 “(1) evaluate the telework policy of each agen-
22 cy;

23 “(2) for each agency, indicate the total number
24 of employees in such agency and specify—

1 “(A) the number and percentage of em-
2 ployees who were eligible to telework;

3 “(B) the number and percentage of em-
4 ployees who teleworked an average of at least
5 once a week on a regular basis, determined
6 based on time spent actually teleworking;

7 “(C) the number and percentage of em-
8 ployees who teleworked an average of at least
9 20 percent of the hours that they worked in
10 every 2 administrative workweeks, determined
11 based on time spent actually teleworking;

12 “(D) the number and percentage of em-
13 ployees who teleworked at least once a month
14 on a regular basis, determined based on time
15 spent actually teleworking;

16 “(E) the number and percentage of em-
17 ployees who were not authorized to telework
18 and the reasons why they were not so author-
19 ized;

20 “(F) the number and percentage of em-
21 ployees who were authorized to telework and
22 then later stopped teleworking, the reasons why
23 those employees stopped teleworking, and
24 whether their stopping was voluntary or due to

1 other factors, such as office coverage needs or
2 productivity;

3 “(G) the extent to which barriers to maxi-
4 mizing teleworking opportunities have been
5 identified and eliminated;

6 “(H) the impact (if any) of the agency’s
7 telework policy on the recruitment and reten-
8 tion of employees;

9 “(I) the impact (if any) of the agency’s
10 telework policy on the performance of agency
11 employees;

12 “(J) the level of employee satisfaction with
13 the agency’s telework policy, determined based
14 on employee feedback; and

15 “(K) the amount of training provided to
16 supervisors and managers, and any additional
17 training that would better enable supervisors
18 and managers to manage teleworking employ-
19 ees;

20 “(3) evaluate the compliance of each agency
21 with the requirements of this chapter; and

22 “(4) identify best practices in agency telework
23 programs.

24 A report under this subsection shall be submitted for the
25 year in which the regulations under section 6502(a)(2)(A)

1 take effect and for each of the 4 succeeding years. Each
2 such report shall be submitted within 6 months after the
3 end of the year to which it relates.

4 “(c) MINIMUM REQUIREMENT FOR COMPLIANCE.—
5 For purposes of subsection (b)(3), an agency shall not be
6 considered to be in compliance with the requirements of
7 this chapter unless the employees of such agency who were
8 authorized to telework were permitted to telework for at
9 least 20 percent of the hours that they worked in every
10 2 administrative workweeks (disregarding any workweeks
11 for which such employees did not submit a request or for
12 which they were otherwise ineligible to telework).

13 **“§ 6506. Continuity of operations**

14 “(a) IN GENERAL.—The head of each agency shall
15 ensure that—

16 “(1) to the maximum extent practicable,
17 telework is incorporated into the continuity of oper-
18 ations planning of such agency; and

19 “(2) mission critical personnel, as determined
20 by the head of such agency, are equipped to telework
21 in time of a catastrophe.

22 “(b) COORDINATION RULE.—The continuity of oper-
23 ations plan of an agency shall supersede any telework pol-
24 icy of such agency to the extent that they are inconsistent
25 with one another.

1 “(c) AGENCY DEFINED.—For purposes of carrying
2 out subsection (a)(2), the term ‘agency’ means an agency
3 named in paragraph (1) or (2) of section 901(b) of title
4 31.”.

5 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
6 (1) 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,
10 Justice, and State, the Judiciary, and Related Agencies
11 Appropriations Act, 2005, as contained in the Consoli-
12 dated Appropriations Act, 2005 (5 U.S.C. 6120 note) is
13 amended by striking “designate a ‘Telework Coordinator’
14 to be” and inserting “designate a Telework Managing Of-
15 ficer or designate the Chief Human Capital Officer or
16 other career employee to be”.

17 **SEC. 3. REPORTING REQUIREMENT.**

18 (a) INCORPORATION OF TELEWORK INTO CON-
19 TINUITY OF OPERATIONS PLANNING.—Within 12 months
20 after the effective date of the regulations under section
21 6502(a)(2)(A) of title 5, United States Code (as amended
22 by section 2), the General Services Administration, in co-
23 ordination with the Office of Personnel Management, the
24 Federal Emergency Management Agency, and the Chief
25 Human Capital Officers Council, shall report to the appro-

1 priate committees of Congress on the incorporation of
2 telework into agencies' continuity of operations planning,
3 including—

4 (1) the extent to which such incorporation has
5 occurred within each of the respective agencies;

6 (2) the extent to which each agency has con-
7 ducted continuity of operations tests and exercises
8 incorporating telework for essential and non-essen-
9 tial personnel;

10 (3) the extent to which agencies have used
11 telework in response to emergencies; and

12 (4) any recommendations the General Services
13 Administration considers appropriate.

14 (b) DEFINITIONS.—For purposes of this section—

15 (1) the term “appropriate committees of Con-
16 gress” means the Committee on Oversight and Gov-
17 ernment Reform of the House of Representatives
18 and the Committee on Homeland Security and Gov-
19 ernmental Affairs of the Senate;

20 (2) the terms “telework” and “continuity of op-
21 erations” have the meanings given those terms by
22 section 6501 of title 5, United States Code (as
23 amended by section 2); and

1 (3) the term “agency” means an agency named
2 in paragraph (1) or (2) of section 901(b) of title 31,
3 United States Code.

○