

Calendar No. 362

111TH CONGRESS
2^D SESSION

S. 707

[Report No. 111-177]

To enhance the Federal Telework Program.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2009

Mr. AKAKA (for himself, Mr. VOINOVICH, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MAY 3, 2010

Reported by Mr. LIEBERMAN, with amendments

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

A BILL

To enhance the Federal Telework Program.

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 Enhance-
5 ment Act of ~~2009~~2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) EMPLOYEE.—The term “employee” has the
2 meaning given that term under section 2105 of title
3 5, United States Code.

4 (2) EXECUTIVE AGENCY.—Except as provided
5 in section 7, the term “executive agency” has the
6 meaning given that term under section 105 of title
7 5, United States Code.

8 (3) TELEWORK.—The term “telework” means a
9 work arrangement in which an employee performs
10 officially assigned duties at home or other worksites
11 geographically convenient to the residence of the em-
12 ployee.

13 **SEC. 3. EXECUTIVE AGENCIES TELEWORK REQUIREMENT.**

14 (a) TELEWORK ELIGIBILITY.—Not later than 180
15 days after the date of enactment of this Act, the head of
16 each executive agency shall—

17 (1) establish a policy under which eligible em-
18 ployees of the agency may be authorized to telework;

19 (2) determine the eligibility for all employees of
20 the agency to participate in telework; and

21 (3) notify all employees of the agency of their
22 eligibility to telework.

23 (b) PARTICIPATION.—The policy described under
24 subsection (a) shall—

1 (1) ensure that telework does not diminish em-
2 ployee performance or agency operations;

3 (2) require a written agreement that—

4 (A) is entered into between an agency
5 manager and an employee authorized to
6 telework, that outlines the specific work ar-
7 rangement that is agreed to; and

8 (B) is mandatory in order for any em-
9 ployee to participate in telework;

10 (3) provide that an employee may not be au-
11 thorized to telework if the performance of that em-
12 ployee does not comply with the terms of the written
13 agreement between the agency manager and that
14 employee;

15 (4) except in emergency situations as deter-
16 mined by the head of an agency, not apply to any
17 employee of the agency whose official duties require
18 on a daily basis (every work day)—

19 (A) direct handling of secure materials; or

20 (B) on-site activity that cannot be handled
21 remotely or at an alternate worksite; and

22 (5) be incorporated as part of the continuity of
23 operations plans of the agency in the event of an
24 emergency.

1 **SEC. 4. TRAINING AND MONITORING.**

2 (a) IN GENERAL.—The head of each executive agency
3 shall ensure that—

4 (1) an interactive telework training program is
5 provided to—

6 (A) employees eligible to participate in the
7 telework program of the agency; and

8 (B) all managers of teleworkers;

9 (2) except as provided under subsection (b), an
10 employee has successfully completed the interactive
11 telework training program before that employee en-
12 ters into a written agreement to telework described
13 under section 3(b)(2);

14 (3) ~~no distinction is made between~~ teleworkers
15 and nonteleworkers *are treated the same* for purposes
16 of—

17 (A) periodic appraisals of job performance
18 of employees;

19 (B) training, rewarding, reassigning, pro-
20 moting, reducing in grade, retaining, and re-
21 moving employees;

22 (C) work requirements; or

23 (D) other acts involving managerial discre-
24 tion; and

25 (4) when determining what constitutes dimin-
26 ished employee performance, the agency shall con-

1 sult the ~~established~~ performance management guide-
2 lines of the Office of Personnel Management.

3 (b) TRAINING REQUIREMENT EXEMPTIONS.—The
4 head of an executive agency may provide for an exemption
5 from the training requirements under subsection (a), if the
6 head of that agency determines that the training would
7 be unnecessary because the employee is already tele-
8 working under a work arrangement in effect before the
9 date of enactment of this Act.

10 **SEC. 5. POLICY AND SUPPORT.**

11 (a) AGENCY CONSULTATION WITH THE OFFICE OF
12 PERSONNEL MANAGEMENT.—Each executive agency shall
13 consult with the Office of Personnel Management in devel-
14 oping telework policies.

15 (b) GUIDANCE AND CONSULTATION.—The Office of
16 Personnel Management shall—

17 (1) provide policy and policy guidance for
18 telework in the areas of pay and leave, agency clo-
19 sure, performance management, official worksite, re-
20 cruitment and retention, and accommodations for
21 employees with disabilities;

22 (2) assist each agency in establishing appro-
23 priate qualitative and quantitative measures and
24 teleworking goals; and

25 (3) consult with—

1 (A) the Federal Emergency Management
2 Agency on policy and policy guidance for
3 telework in the areas of continuation of oper-
4 ations and long-term emergencies; and

5 (B) the General Services Administration
6 on policy and policy guidance for telework in
7 the areas of telework centers, travel, technology,
8 equipment, and dependent care.

9 (c) CONTINUITY OF OPERATIONS PLANS.—

10 (1) INCORPORATION INTO CONTINUITY OF OP-
11 ERATIONS PLANS.—Each executive agency shall in-
12 corporate telework into the continuity of operations
13 plan of that agency.

14 (2) CONTINUITY OF OPERATIONS PLANS SUPER-
15 SEDE TELEWORK POLICY.—During any period that
16 an executive agency is operating under a continuity
17 of operations plan, that plan shall supersede any
18 telework policy.

19 (d) TELEWORK WEBSITE.—The Office of Personnel
20 Management shall—

21 (1) maintain a central telework website; and

22 (2) include on that website related—

23 (A) telework links;

24 (B) announcements;

1 (C) guidance developed by the Office of
2 Personnel Management; and

3 (D) guidance submitted by the Federal
4 Emergency Management Agency, and the Gen-
5 eral Services Administration to the Office of
6 Personnel Management not later than 10 busi-
7 ness days after the date of submission.

8 **SEC. 6. TELEWORK MANAGING OFFICER.**

9 (a) IN GENERAL.—

10 (1) DESIGNATION.—The head of each executive
11 agency shall designate an employee of the agency as
12 the Telework Managing Officer. The Telework Man-
13 aging Officer shall be established within the Office
14 of the Chief Human Capital Officer or a comparable
15 office with similar functions.

16 (2) TELEWORK COORDINATORS.—

17 (A) *APPROPRIATIONS ACT, 2003.*—Section
18 623 of the Departments of Commerce, Justice,
19 and State, the Judiciary, and Related Agencies
20 Appropriations Act, 2003 (Public Law 108–7;
21 117 Stat. 103) is amended by striking “designate
22 a ‘Telework Coordinator’ to be” and inserting
23 “designate a Telework Managing Officer to be”.

24 ~~(A)~~(B) *APPROPRIATIONS ACT, 2004.*—Sec-
25 tion 627 of the Departments of Commerce, Jus-

1 tice, and State, the Judiciary, and Related
 2 Agencies Appropriations Act, 2004 (Public Law
 3 108–199; 118 Stat. 99) is amended by striking
 4 “designate a ‘Telework Coordinator’ to be” and
 5 inserting “designate a Telework Managing Offi-
 6 cer to be”.

7 ~~(B)~~(C) APPROPRIATIONS ACT, 2005.—Sec-
 8 tion 622 of the Departments of Commerce, Jus-
 9 tice, and State, the Judiciary, and Related
 10 Agencies Appropriations Act, 2005 (Public Law
 11 108–447; 118 Stat. 2919) is amended by strik-
 12 ing “designate a ‘Telework Coordinator’ to be”
 13 and inserting “designate a Telework Managing
 14 Officer to be”.

15 (D) APPROPRIATIONS ACT, 2006.—Section
 16 617 of the Science, State, Justice, Commerce,
 17 and Related Agencies Appropriations Act, 2006
 18 (Public Law 109–108; 119 Stat. 2340) is amend-
 19 ed by striking “maintain a ‘Telework Coordi-
 20 nator’ to be” and inserting “maintain a
 21 Telework Managing Officer to be”.

22 (b) DUTIES.—The Telework Managing Officer
 23 shall—

24 (1) be devoted to policy development and imple-
 25 mentation related to agency telework programs;

1 (2) serve as—

2 (A) an advisor for agency leadership, in-
3 cluding the Chief Human Capital Officer;

4 (B) a resource for managers and employ-
5 ees; and

6 (C) a primary agency point of contact for
7 the Office of Personnel Management on
8 telework matters; and

9 (3) perform other duties as the applicable dele-
10 gating authority may assign.

11 **SEC. 7. REPORTS.**

12 (a) DEFINITION.—In this section, the term “execu-
13 tive agency” shall not include the Government Account-
14 ability Office.

15 (b) REPORTS BY THE OFFICE OF PERSONNEL MAN-
16 AGEMENT.—

17 (1) SUBMISSION OF REPORTS.—Not later than
18 18 months after the date of enactment of this Act
19 and on an annual basis thereafter, the Director of
20 the Office of Personnel Management, in consultation
21 with Chief Human Capital Officers Council, shall—

22 (A) submit a report addressing the
23 telework programs of each executive agency
24 to—

1 (i) the Committee on Homeland Secu-
2 rity and Governmental Affairs of the Sen-
3 ate; and

4 (ii) the Committee on Oversight and
5 Government Reform of the House of Rep-
6 resentatives; and

7 (B) transmit a copy of the report to the
8 Comptroller General and the Office of Manage-
9 ment and Budget.

10 (2) CONTENTS.—Each report submitted under
11 this subsection shall include—

12 (A) the degree of participation by employ-
13 ees of each executive agency in teleworking dur-
14 ing the period covered by the report (and for
15 each executive agency whose head is referred to
16 under section 5312 of title 5, United States
17 Code, the degree of participation in each bu-
18 reau, division, or other major administrative
19 unit of that agency), including—

20 (i) the total number of employees in
21 the agency;

22 (ii) the number and percent of em-
23 ployees in the agency who are eligible to
24 telework; and

1 (iii) the number and percent of eligi-
2 ble employees in the agency who are tele-
3 working—

4 (I) 3 or more days per pay pe-
5 riod;

6 (II) 1 or 2 days per pay period;

7 (III) once per month; and

8 (IV) on an occasional, episodic,
9 or short-term basis;

10 (B) the method for gathering telework
11 data in each agency;

12 (C) if the total number of employees tele-
13 working is 10 percent higher or lower than the
14 previous year in any agency, the reasons for the
15 positive or negative variation;

16 (D) the agency goal for increasing partici-
17 pation to the extent practicable or necessary for
18 the next reporting period, as indicated by the
19 percent of eligible employees teleworking in
20 each frequency category described under sub-
21 paragraph (A)(iii);

22 (E) an explanation of whether or not the
23 agency met the goals for the last reporting pe-
24 riod and, if not, what actions are being taken
25 to identify and eliminate barriers to maximizing

1 telework opportunities for the next reporting
2 period;

3 (F) an assessment of the progress each
4 agency has made in meeting agency participa-
5 tion rate goals during the reporting period, and
6 other agency goals relating to telework, such as
7 the impact of telework on—

8 (i) emergency readiness;

9 (ii) energy use;

10 (iii) recruitment and retention;

11 (iv) performance;

12 (v) productivity; and

13 (vi) employee attitudes and opinions
14 regarding telework; and

15 (G) the best practices in agency telework
16 programs.

17 (c) COMPTROLLER GENERAL REPORTS.—

18 (1) REPORT ON GOVERNMENT ACCOUNTABILITY
19 OFFICE TELEWORK PROGRAM.—

20 (A) IN GENERAL.—Not later than 18
21 months after the date of enactment of this Act
22 and on an annual basis thereafter, the Comp-
23 troller General shall submit a report addressing
24 the telework program of the Government Ac-
25 countability Office to—

1 (i) the Committee on Homeland Secu-
2 rity and Governmental Affairs of the Sen-
3 ate; and

4 (ii) the Committee on Oversight and
5 Government Reform of the House of Rep-
6 resentatives.

7 (B) CONTENTS.—Each report submitted
8 by the Comptroller General shall include the
9 same information as required under subsection
10 (b) applicable to the Government Accountability
11 Office.

12 (2) REPORT TO CONGRESS ON OFFICE OF PER-
13 SONNEL MANAGEMENT REPORT.—Not later than 6
14 months after the submission of the first report to
15 Congress required under subsection (b), the Comp-
16 troller General shall review that report required
17 under subsection (b) and submit a report to Con-
18 gress on the progress each executive agency has
19 made towards the goals established under section
20 5(b)(2).

21 (d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—

22 (1) IN GENERAL.—Each year the Chief Human
23 Capital Officer of each executive agency, in consulta-
24 tion with the Telework Managing Officer of that
25 agency, shall submit a report to the Chair and Vice

1 Chair of the Chief Human Capital Officers Council
2 on agency management efforts to promote telework.

3 (2) REVIEW AND INCLUSION OF RELEVANT IN-
4 FORMATION.—The Chair and Vice Chair of the
5 Chief Human Capital Officers Council shall—

6 (A) review the reports submitted under
7 paragraph (1);

8 (B) include relevant information from the
9 submitted reports in the annual report to Con-
10 gress required under subsection (b); and

11 (C) use that relevant information for other
12 purposes related to the strategic management
13 of human capital.

14 **SEC. 8. AUTHORITY FOR TELEWORK TRAVEL EXPENSES**
15 **TEST PROGRAMS.**

16 (a) IN GENERAL.—Chapter 57 of title 5, United
17 States Code, is amended by inserting after section 5710
18 the following:

19 **“§ 5711. Authority for telework travel expenses test**
20 **programs**

21 “(a)(1) Notwithstanding any other provision of this
22 subchapter, under a test program which the Administrator
23 of General Services determines to be in the interest of the
24 Government and approves, an employing agency may pay
25 through the proper disbursing official any necessary travel

1 expenses in lieu of any payment otherwise authorized or
2 required under this subchapter for employees participating
3 in a telework program. An agency shall include in any re-
4 quest to the Administrator for approval of such a test pro-
5 gram an analysis of the expected costs and benefits and
6 a set of criteria for evaluating the effectiveness of the pro-
7 gram.

8 “(2) Any test program conducted under this section
9 shall be designed to enhance cost savings or other effi-
10 ciencies that accrue to the Government.

11 “(3) Under any test program, if an agency employee
12 voluntarily relocates from the pre-existing duty station of
13 that employee, the Administrator may authorize the em-
14 ploying agency to establish a reasonable maximum number
15 of occasional visits to the pre-existing duty station before
16 that employee is eligible for payment of any accrued travel
17 expenses by that agency.

18 “(4) Nothing in this section is intended to limit the
19 authority of any agency to conduct test programs.

20 “(b) The Administrator shall transmit a copy of any
21 test program approved by the Administrator under this
22 section, and the rationale for approval, to the appropriate
23 committees of Congress at least 30 days before the effec-
24 tive date of the program.

1 “(c)(1) An agency authorized to conduct a test pro-
2 gram under subsection (a) shall provide to the Adminis-
3 trator, the Telework Managing Officer of that agency, and
4 the appropriate committees of Congress a report on the
5 results of the program not later than 3 months after com-
6 pletion of the program.

7 “(2) The results in a report described under para-
8 graph (1) may include—

9 “(A) the number of visits an employee makes to
10 the pre-existing duty station of that employee;

11 “(B) the travel expenses paid by the agency;

12 “(C) the travel expenses paid by the employee;

13 or

14 “(D) any other information the agency deter-
15 mines useful to aid the Administrator, Telework
16 Managing Officer, and Congress in understanding
17 the test program and the impact of the program.

18 “(d) No more than 10 test programs under this sec-
19 tion may be conducted simultaneously.

20 “(e) The authority to conduct test programs under
21 this section shall expire 7 years after the date of the enact-
22 ment of the Telework Enhancement Act of ~~2009~~2010.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 57 of title 5, United

1 States Code, is amended by inserting after the item relat-
 2 ing to section 5710 the following:

“5711. Authority for telework travel expenses test programs.”.

3 **SEC. 9. PATENT AND TRADEMARK OFFICE TRAVEL EX-**
 4 **PENSES TEST PROGRAM.**

5 (a) *IN GENERAL.*—Section 5710 of title 5, United
 6 States Code, is amended—

7 (1) *in subsection (a)(1), by striking “for a period*
 8 *not to exceed 24 months”;* and

9 (2) *by striking subsection (e) and inserting the*
 10 *following:*

11 “(e)(1) *The Patent and Trademark Office shall conduct*
 12 *a test program under this section.*

13 “(2) *In conducting the program under this subsection,*
 14 *the Patent and Trademark Office may pay any travel ex-*
 15 *penses of an employee for travel to and from a Patent and*
 16 *Trademark Office worksite, if—*

17 “(A) *the employee is employed at a Patent and*
 18 *Trademark Office worksite and enters into an ap-*
 19 *proved telework arrangement;*

20 “(B) *the employee requests to telework from a lo-*
 21 *cation beyond the local commuting area of the Patent*
 22 *and Trademark Office worksite; and*

23 “(C) *the Patent and Trademark Office approves*
 24 *the requested arrangement for reasons of employee*
 25 *convenience instead of an agency need for the em-*

1 *ployee to relocate in order to perform duties specific*
2 *to the new location.*

3 *“(3)(A) The Patent and Trademark Office shall estab-*
4 *lish an oversight committee comprising an equal number*
5 *of members representing management and labor, including*
6 *representatives from each collective bargaining unit.*

7 *“(B) The oversight committee shall develop the oper-*
8 *ating procedures for the program under this subsection to—*

9 *“(i) provide for the effective and appropriate*
10 *functioning of the program; and*

11 *“(ii) ensure that—*

12 *“(I) reasonable technological or other alter-*
13 *natives to employee travel are used before requir-*
14 *ing employee travel, including teleconferencing,*
15 *videoconferencing or internet-based technologies;*

16 *“(II) the program is applied consistently*
17 *and equitably throughout the Patent and Trade-*
18 *mark Office; and*

19 *“(III) an optimal operating standard is de-*
20 *veloped and implemented for maximizing the use*
21 *of the telework arrangement described under*
22 *paragraph (2) while minimizing agency travel*
23 *expenses and employee travel requirements.*

1 “(4)(A) *The test program under this subsection shall*
2 *be designed to enhance cost savings or other efficiencies that*
3 *accrue to the Government.*

4 “(B) *The Director of the Patent and Trademark Office*
5 *shall—*

6 “(i) *prepare an analysis of the expected*
7 *costs and benefits and a set of criteria for evalu-*
8 *ating the effectiveness of the program; and*

9 “(ii) *before the test program is imple-*
10 *mented, submit the analysis and criteria to the*
11 *Administrator of General Services and to the ap-*
12 *propriate committees of Congress.*

13 “(C) *With respect to an employee of the Patent and*
14 *Trademark Office who voluntarily relocates from the pre-*
15 *existing duty station of that employee, the operating proce-*
16 *dures of the program may include a reasonable maximum*
17 *number of occasional visits to the pre-existing duty station*
18 *before that employee is eligible for payment of any accrued*
19 *travel expenses by the Office.*

20 “(D)(i) *Not later than 3 months after completion of*
21 *the test program under this subsection, the Director of the*
22 *Patent and Trademark Office shall provide a report on the*
23 *results of the program to the Administrator of General Serv-*
24 *ices and to the appropriate committees of Congress.*

1 “(ii) *The results in the report described under para-*
2 *graph (1) may include—*

3 “(I) *the number of visits an employee makes to*
4 *the pre-existing duty station of that employee;*

5 “(II) *the travel expenses paid by the Office;*

6 “(III) *the travel expenses paid by the employee;*

7 *or*

8 “(IV) *any other information that the Director*
9 *determines may be useful to aid the Administrator*
10 *and Congress in understanding the test program and*
11 *the impact of the program.*

12 “(E) *In this paragraph, the term ‘appropriate com-*
13 *mittees of Congress’ means—*

14 “(i) *the Committees on Homeland Security and*
15 *Governmental Affairs and on the Judiciary of the*
16 *Senate; and*

17 “(ii) *the Committees on Government Oversight*
18 *and Reform and on the Judiciary of the House of*
19 *Representatives.*

20 “(f)(1) *Except as provided under paragraph (2), the*
21 *authority to conduct test programs under this section shall*
22 *expire 7 years after the date of the enactment of the Travel*
23 *and Transportation Reform Act of 1998.*

24 “(2) *The authority to conduct a test program by the*
25 *Patent and Trademark Office under this section shall expire*

1 *20 years after the date of the enactment of the Travel and*
2 *Transportation Reform Act of 1998.”*

3 **(b) EFFECTIVE DATE.**—*The amendments made by this*
4 *section shall take effect as though enacted as part of the*
5 *Travel and Transportation Reform Act of 1998 (Public*
6 *Law 105–264; 112 Stat. 2350).*

Calendar No. 362

11TH CONGRESS
2^D SESSION

S. 707

[Report No. 111-177]

A BILL

To enhance the Federal Telework Program.

MAY 3, 2010

Reported with amendments