

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> 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.

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## 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

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## 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.

○