

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 1722

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be proposed by Mr. AKAKA (for himself and Mr. VOINOVICH)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telework Enhance-
5 ment 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. Executive agencies telework requirement.

“6503. Training and monitoring.
“6504. Policy and support.
“6505. Telework Managing Officer.
“6506. Reports.

1 **“§ 6501. Definitions**

2 “In this chapter:

3 “(1) EMPLOYEE.—The term ‘employee’ has the
4 meaning given that term under section 2105.

5 “(2) EXECUTIVE AGENCY.—Except as provided
6 in section 6506, the term ‘executive agency’ has the
7 meaning given that term under section 105.

8 “(3) TELEWORK.—The term ‘telework’ or ‘tele-
9 working’ refers to a work flexibility arrangement
10 under which an employee performs the duties and
11 responsibilities of such employee’s position, and
12 other authorized activities, from an approved work-
13 site other than the location from which the employee
14 would otherwise work.

15 **“§ 6502. Executive agencies telework requirement**

16 “(a) TELEWORK ELIGIBILITY.—

17 “(1) IN GENERAL.—Not later than 180 days
18 after the date of enactment of this chapter, the head
19 of each executive agency shall—

20 “(A) establish a policy under which eligible
21 employees of the agency may be authorized to
22 telework;

1 “(B) determine the eligibility for all em-
2 ployees of the agency to participate in telework;
3 and

4 “(C) notify all employees of the agency of
5 their eligibility to telework.

6 “(2) LIMITATION.—An employee may not
7 telework under a policy established under this sec-
8 tion if—

9 “(A) the employee has been officially dis-
10 ciplined for being absent without permission for
11 more than 5 days in any calendar year; or

12 “(B) the employee has been officially dis-
13 ciplined for violations of subpart G of the
14 Standards of Ethical Conduct for Employees of
15 the Executive Branch for viewing, downloading,
16 or exchanging pornography, including child por-
17 nography, on a Federal Government computer
18 or while performing official Federal Govern-
19 ment duties.

20 “(b) PARTICIPATION.—The policy described under
21 subsection (a) shall—

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

24 “(2) require a written agreement that—

1 “(A) is entered into between an agency
2 manager and an employee authorized to
3 telework, that outlines the specific work ar-
4 rangement that is agreed to; and

5 “(B) is mandatory in order for any em-
6 ployee to participate in telework;

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

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

16 “(A) direct handling of classified materials;
17 or

18 “(B) on-site activity that cannot be han-
19 dled remotely or at an alternate worksite; and

20 “(5) be incorporated as part of the continuity
21 of operations plans of the agency in the event of an
22 emergency.

23 **“§ 6503. Training and monitoring**

24 “(a) IN GENERAL.—The head of each executive agen-
25 cy shall ensure that—

1 “(1) an interactive telework training program is
2 provided to—

3 “(A) employees eligible to participate in
4 the telework program of the agency; and

5 “(B) all managers of teleworkers;

6 “(2) except as provided under subsection (b),
7 an employee has successfully completed the inter-
8 active telework training program before that em-
9 ployee enters into a written agreement to telework
10 described under section 6502(b)(2);

11 “(3) teleworkers and nonteleworkers are treated
12 the same for purposes of—

13 “(A) periodic appraisals of job perform-
14 ance of employees;

15 “(B) training, rewarding, reassigning, pro-
16 moting, reducing in grade, retaining, and re-
17 moving employees;

18 “(C) work requirements; or

19 “(D) other acts involving managerial dis-
20 cretion; and

21 “(4) when determining what constitutes dimin-
22 ished employee performance, the agency shall con-
23 sult the performance management guidelines of the
24 Office of Personnel Management.

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

8 **“§ 6504. Policy and support**

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

13 “(b) GUIDANCE AND CONSULTATION.—The Office of
14 Personnel Management shall—

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

20 “(2) assist each agency in establishing appro-
21 priate qualitative and quantitative measures and
22 teleworking goals; and

23 “(3) consult with—

24 “(A) the Federal Emergency Management
25 Agency on policy and policy guidance for

1 telework in the areas of continuation of oper-
2 ations and long-term emergencies;

3 “(B) the General Services Administration
4 on policy and policy guidance for telework in
5 the areas of telework centers, travel, technology,
6 equipment, and dependent care; and

7 “(C) the National Archives and Records
8 Administration on policy and policy guidance
9 for telework in the areas of efficient and effec-
10 tive records management and the preservation
11 of records, including Presidential and Vice-
12 Presidential records.

13 “(c) SECURITY GUIDELINES.—

14 “(1) IN GENERAL.—The Director of the Office
15 of Management and Budget, in coordination with
16 the Department of Homeland Security and the Na-
17 tional Institute of Standards and Technology, shall
18 issue guidelines not later than 180 days after the
19 date of the enactment of this chapter to ensure the
20 adequacy of information and security protections for
21 information and information systems used while tele-
22 working.

23 “(2) CONTENTS.—Guidelines issued under this
24 subsection shall, at a minimum, include require-
25 ments necessary to—

1 “(A) control access to agency information
2 and information systems;

3 “(B) protect agency information (including
4 personally identifiable information) and infor-
5 mation systems;

6 “(C) limit the introduction of
7 vulnerabilities;

8 “(D) protect information systems not
9 under the control of the agency that are used
10 for teleworking;

11 “(E) safeguard wireless and other tele-
12 communications capabilities that are used for
13 teleworking; and

14 “(F) prevent inappropriate use of official
15 time or resources that violates subpart G of the
16 Standards of Ethical Conduct for Employees of
17 the Executive Branch by viewing, downloading,
18 or exchanging pornography, including child por-
19 nography.

20 “(d) CONTINUITY OF OPERATIONS PLANS.—

21 “(1) INCORPORATION INTO CONTINUITY OF OP-
22 ERATIONS PLANS.—Each executive agency shall in-
23 corporate telework into the continuity of operations
24 plan of that agency.

1 “(2) CONTINUITY OF OPERATIONS PLANS SU-
2 PERSEDE TELEWORK POLICY.—During any period
3 that an executive agency is operating under a con-
4 tinuity of operations plan, that plan shall supersede
5 any telework policy.

6 “(e) TELEWORK WEBSITE.—The Office of Personnel
7 Management shall—

8 “(1) maintain a central telework website; and

9 “(2) include on that website related—

10 “(A) telework links;

11 “(B) announcements;

12 “(C) guidance developed by the Office of
13 Personnel Management; and

14 “(D) guidance submitted by the Federal
15 Emergency Management Agency, and the Gen-
16 eral Services Administration to the Office of
17 Personnel Management not later than 10 busi-
18 ness days after the date of submission.

19 “(f) POLICY GUIDANCE ON PURCHASING COMPUTER
20 SYSTEMS.—Not later than 120 days after the date of the
21 enactment of this chapter, the Director of the Office of
22 Management and Budget shall issue policy guidance re-
23 quiring each executive agency when purchasing computer
24 systems, to purchase computer systems that enable and

1 support telework, unless the head of the agency deter-
2 mines that there is a mission-specific reason not to do so.

3 **“§ 6505. Telework Managing Officer**

4 “(a) DESIGNATION.—The head of each executive
5 agency shall designate an employee of the agency as the
6 Telework Managing Officer. The Telework Managing Offi-
7 cer shall be established within the Office of the Chief
8 Human Capital Officer or a comparable office with similar
9 functions.

10 “(b) DUTIES.—The Telework Managing Officer
11 shall—

12 “(1) be devoted to policy development and im-
13 plementation related to agency telework programs;

14 “(2) serve as—

15 “(A) an advisor for agency leadership, in-
16 cluding the Chief Human Capital Officer;

17 “(B) a resource for managers and employ-
18 ees; and

19 “(C) a primary agency point of contact for
20 the Office of Personnel Management on
21 telework matters; and

22 “(3) perform other duties as the applicable del-
23 egating authority may assign.

1 “(c) 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 “(d) RULE OF CONSTRUCTION REGARDING STATUS
5 OF TELEWORK MANAGING OFFICER.—Nothing in this
6 section shall be construed to prohibit an individual who
7 holds another office or position in an agency from serving
8 as the Telework Managing Officer for the agency under
9 this chapter.

10 **“§ 6506. Reports**

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

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

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

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

1 “(i) the Committee on Homeland Se-
2 curity and Governmental Affairs of the
3 Senate; 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, the degree of participation
17 in each bureau, division, or other major admin-
18 istrative unit of that agency), including—

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

21 “(ii) the number and percent of em-
22 ployees in the agency who are eligible to
23 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 ACCOUNT-
19 ABILITY OFFICE TELEWORK PROGRAM.—

20 “(A) IN GENERAL.—Not later than 18
21 months after the date of enactment of this
22 chapter and on an annual basis thereafter, the
23 Comptroller General shall submit a report ad-
24 dressing the telework program of the Govern-
25 ment Accountability Office to—

1 “(i) the Committee on Homeland Se-
2 curity and Governmental Affairs of the
3 Senate; 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 6504(b)(2).

21 “(d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—

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

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

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

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

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

12 “(C) use that relevant information for
13 other purposes related to the strategic manage-
14 ment of human capital.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) TABLE OF CHAPTERS.—The table of chap-
17 ters for part III of title 5, United States Code, is
18 amended by inserting after the item relating to
19 chapter 63 the following:

65. Telework 6501

20 (2) TELEWORK COORDINATORS.—

21 (A) APPROPRIATIONS ACT, 2003.—Section
22 623 of the Departments of Commerce, Justice,
23 and State, the Judiciary, and Related Agencies
24 Appropriations Act, 2003 (Public Law 108–7;
25 117 Stat. 103) is amended by striking “des-

1 designate a ‘Telework Coordinator’ to be” and in-
2 sserting “designate a Telework Managing Officer
3 to be”.

4 (B) APPROPRIATIONS ACT, 2004.—Section
5 627 of the Departments of Commerce, Justice,
6 and State, the Judiciary, and Related Agencies
7 Appropriations Act, 2004 (Public Law 108–
8 199; 118 Stat. 99) is amended by striking “des-
9 ignate a ‘Telework Coordinator’ to be” and in-
10 sserting “designate a Telework Managing Officer
11 to be”.

12 (C) APPROPRIATIONS ACT, 2005.—Section
13 622 of the Departments of Commerce, Justice,
14 and State, the Judiciary, and Related Agencies
15 Appropriations Act, 2005 (Public Law 108–
16 447; 118 Stat. 2919) is amended by striking
17 “designate a ‘Telework Coordinator’ to be” and
18 inserting “designate a Telework Managing Offi-
19 cer to be”.

20 (D) APPROPRIATIONS ACT, 2006.—Section
21 617 of the Science, State, Justice, Commerce,
22 and Related Agencies Appropriations Act, 2006
23 (Public Law 109–108; 119 Stat. 2340) is
24 amended by striking “maintain a ‘Telework Co-

1 ordinator’ to be” and inserting “maintain a
2 Telework Managing Officer to be”.

3 **SEC. 3. AUTHORITY FOR TELEWORK TRAVEL EXPENSES**

4 **TEST PROGRAMS.**

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

8 **“§ 5711. Authority for telework travel expenses test**
9 **programs**

10 “(a) Except as provided under subsection (f)(1), in
11 this section, the term ‘appropriate committees of Con-
12 gress’ means—

13 “(1) the Committee on Homeland Security and
14 Governmental Affairs of the Senate; and

15 “(2) the Committee on Oversight and Govern-
16 ment Reform of the House of Representatives.

17 “(b)(1) Notwithstanding any other provision of this
18 subchapter, under a test program which the Administrator
19 of General Services determines to be in the interest of the
20 Government and approves, an employing agency may pay
21 through the proper disbursing official any necessary travel
22 expenses in lieu of any payment otherwise authorized or
23 required under this subchapter for employees participating
24 in a telework program. Under an approved test program,
25 an agency may provide an employee with the option to

1 waive any payment authorized or required under this sub-
2 chapter. An agency shall include in any request to the Ad-
3 ministrator for approval of such a test program an anal-
4 ysis of the expected costs and benefits and a set of criteria
5 for evaluating the effectiveness of the program.

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

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

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

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

23 “(d)(1) An agency authorized to conduct a test pro-
24 gram under subsection (b) shall provide to the Adminis-
25 trator, the Telework Managing Officer of that agency, and

1 the appropriate committees of Congress a report on the
2 results of the program not later than 3 months after com-
3 pletion of the program.

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

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

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

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

10 or

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

15 “(e) No more than 10 test programs under this sec-
16 tion may be conducted simultaneously.

17 “(f)(1) In this subsection, the term ‘appropriate com-
18 mittee of Congress’ means—

19 “(A) the Committee on Homeland Security and
20 Governmental Affairs of the Senate;

21 “(B) the Committee on Oversight and Govern-
22 ment Reform of the House of Representatives;

23 “(C) the Committee on the Judiciary of the
24 Senate; and

1 “(D) the Committee on the Judiciary of the
2 House of Representatives.

3 “(2) The Patent and Trademark Office shall conduct
4 a test program under this section, including the provision
5 of reports in accordance with subsection (d)(1).

6 “(3) In conducting the program under this sub-
7 section, the Patent and Trademark Office may pay any
8 travel expenses of an employee for travel to and from a
9 Patent and Trademark Office worksite or provide an em-
10 ployee with the option to waive any payment authorized
11 or required under this subchapter, if—

12 “(A) the employee is employed at a Patent and
13 Trademark Office worksite and enters into an ap-
14 proved telework arrangement;

15 “(B) the employee requests to telework from a
16 location beyond the local commuting area of the Pat-
17 ent and Trademark Office worksite; and

18 “(C) the Patent and Trademark Office ap-
19 proves the requested arrangement for reasons of em-
20 ployee convenience instead of an agency need for the
21 employee to relocate in order to perform duties spe-
22 cific to the new location.

23 “(4)(A) The Patent and Trademark Office shall es-
24 tablish an oversight committee comprising an equal num-
25 ber of members representing management and labor, in-

1 cluding representatives from each collective bargaining
2 unit.

3 “(B) The oversight committee shall develop the oper-
4 ating procedures for the program under this subsection
5 to—

6 “(i) provide for the effective and appropriate
7 functioning of the program; and

8 “(ii) ensure that—

9 “(I) reasonable technological or other al-
10 ternatives to employee travel are used before re-
11 quiring employee travel, including teleconfer-
12 encing, videoconferencing or internet-based
13 technologies;

14 “(II) the program is applied consistently
15 and equitably throughout the Patent and
16 Trademark Office; and

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

23 “(5)(A) The test program under this subsection shall
24 be designed to enhance cost savings or other efficiencies
25 that accrue to the Government.

1 “(B) The Director of the Patent and Trademark Of-
2 fice shall—

3 “(i) prepare an analysis of the expected
4 costs and benefits and a set of criteria for eval-
5 uating the effectiveness of the program; and

6 “(ii) before the test program is imple-
7 mented, submit the analysis and criteria to the
8 Administrator of General Services and to the
9 appropriate committees of Congress.

10 “(C) With respect to an employee of the Patent and
11 Trademark Office who voluntarily relocates from the pre-
12 existing duty station of that employee, the operating pro-
13 cedures of the program may include a reasonable max-
14 imum number of occasional visits to the pre-existing duty
15 station before that employee is eligible for payment of any
16 accrued travel expenses by the Office.

17 “(g) The authority to conduct test programs under
18 this section shall expire 7 years after the date of the enact-
19 ment of the Telework Enhancement Act of 2010.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of sections for chapter 57 of title 5, United
22 States Code, is amended by inserting after the item relat-
23 ing to section 5710 the following:

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

1 **SEC. 4. TELEWORK RESEARCH.**

2 (a) RESEARCH BY OPM ON TELEWORK.—The Direc-
3 tor of the Office of Personnel Management shall—

4 (1) research the utilization of telework by public
5 and private sector entities that identify best prac-
6 tices and recommendations for the Federal Govern-
7 ment;

8 (2) review the outcomes associated with an in-
9 crease in telework, including the effects of telework
10 on energy consumption, job creation and availability,
11 urban transportation patterns, and the ability to an-
12 ticipate the dispersal of work during periods of
13 emergency; and

14 (3) make any studies or reviews performed
15 under this subsection available to the public.

16 (b) USE OF CONTRACT TO CARRY OUT RESEARCH.—
17 The Director of the Office of Personnel Management may
18 carry out subsection (a) under a contract entered into by
19 the Director using competitive procedures under section
20 303 of the Federal Property and Administrative Services
21 Act of 1949 (41 U.S.C. 253).

22 (c) USE OF OTHER FEDERAL AGENCIES.—The heads
23 of Federal agencies with relevant jurisdiction over the sub-
24 ject matters in subsection (a)(2) shall work cooperatively
25 with the Director of the Office of Personnel Management
26 to carry out that subsection, if the Director determines

- 1 that coordination is necessary to fulfill obligations under
- 2 that subsection.