

Legislative Bulletin.....November 18, 2010

Contents:

Motion to concur in the Senate Amendment to H.R. 1722—Telework Improvements Act

Conservative Concerns to H.R. 1722

- ***Another Perk for Federal Employees:*** The unemployment rate continues to hover around 10% percent. However, [federal sector employment is booming](#) at a time when many Americans struggle to find work. Some conservatives may believe it is inappropriate to provide federal employees with an additional fringe benefit when so many private sector jobs remain unavailable.
- ***Lower Productivity:*** Recently, it has been reported that a significant number of federal employees at the [Department of Interior](#), [National Science Foundation](#), and [Securities and Exchange Commission](#) spent numerous hours surfing the Web for pornography at their office. Some conservatives have expressed concern that this and other non-productive practices could get worse if more employees are able to work without any supervision.
- ***Duplicative & Unnecessary:*** Public law already requires federal agencies to “establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent.” H.R. 1722 spends another \$32 million to accomplish a dubious goal executive agencies are already tasked with doing.

For additional concerns, see below.

H.R. 1722 - Telework Improvements Act (*Sarbanes, D-MD*)

Order of Business: The bill is scheduled to be considered on Thursday, November 18, 2010, under a closed rule ([H.Res.1721](#)) providing one hour of debate. The rule waives all points of order against consideration of the bill except those arising under clause 9 & 10 of rule XXI (earmarks & “pay-go”) and adopts the Senate amendment as the underlying text to H.R. 1722. Additionally, the rule provides for measures to be considered under suspension of the rules through Friday, November 19, 2010.

Changes since the Last Time This Legislation was Before the House: Similar legislation passed under a closed rule on July 14, 2010, by a vote of [290-131](#). While the Senate Amendment contains changes to the implementation and structure of the telework program, the amendment

primarily removes a number of provisions added under the Republican motion to recommit when H.R. 1722 was considered by the House.

Specifically, the MTR required the head of each agency to certify to the Office of Personnel Management a telework program will save money. Additionally, the MTR prohibited employees from participating in telework programs that have been previously disciplined for viewing pornography, disciplined for more than five unexcused absences, are serious tax delinquents, or have fraudulently applied for LIHEAP benefits. Most of these items have been removed or have been significantly diluted from H.R. 1722 as passed by the House.

Summary of Senate Amendment to H.R. 1722: The amendment would require each federal agency head to establish a policy authorizing employees to telework within 180 days after enactment. The amendment no longer exempts agencies with fewer than 100 employees from being required to implement a telework program. The amendment does not allow federal employees to participate if they have been officially disciplined for being absent without permission for more than five days during the calendar year or have been officially disciplined for viewing, downloading, or exchanging pornography. The amendment requires the policy to “ensure the telework does not diminish employee performance” and outlines the specific work arrangements in writing. This legislation will not require an agency to authorize teleworking for an employee whose duties require daily access to classified information, require daily face-to-face contact with members of the public, and require daily use of equipment at the employee’s regular place of employment, or in cases where teleworking is infeasible.

The amendment requires the creation of an interactive telework training program at each executive agency where employees must successfully complete the program before being eligible to telework. The bill requires each executive agency to consult with the Office of Personnel Management to provide policy and policy guidelines for telework in the areas of pay and leave, agency closure, performance management, security guidelines, among other issues. Additionally, OPM is required to maintain a central telwork website.

The legislation requires that each federal agency designate an officer, known as the “Telework Managing Officer” designated as a “senior official of the agency who has direct access to the head of the agency.” The Telework Managing Officer shall serve as:

- An advisor on teleworking to the head of such agency and to the Chief Human Capital Officer of such agency;
- A resource on teleworking for supervisors, managers, and employees;
- The primary point of contact for the Office of Personnel Management on telework related issues.

The bill requires the Director of OPM and Comptroller of the Government Accountability office to each submit an annual report to the House Oversight and Government Reform Committee, and the Senate Homeland Security and Governmental Affairs Committee. The report shall evaluate the telework policy of each agency, include information about employees who teleworked, evaluate the compliance of each agency with this act, and identify best practices in agency telework programs. Additionally, the bill requires the Chief Human Capital Officer of each executive agency to submit an annual report to Chair and Vice Chair of the Chief Human Capital Officers Council on agency management efforts to promote telework.

The bill provides the Administrator of General Services with the authority to require the implementation of a telework travel expenses test program. The program may pay any necessary

travel expenses in lieu of other payment otherwise authorized in the bill. Under the program, an agency may provide an employee with the option to waive any payment authorized and requires each approved test program to provide an analysis of the expected costs, benefits, and a criterion for evaluating the effectiveness of the program. The bill limits the number of test programs that can be simultaneously conducted to ten.

The bill requires the Patent and Trademark Office (PTO) to conduct a test program and pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite or provide an employee with the option to waive any payment authorized or required if:

- “the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement;
- “the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite;
- “the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location.”

Finally, the bill requires the Director of the Office of Personnel Management to:

- “research the utilization of telework by public and private sector entities that identify best practices and recommendations for the federal government;
- “review the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency; and
- “make any studies or reviews performed under this subsection available to the public.”

Additional Information: Public Law 106-346 directs each executive branch agency to establish policies for employees to participate in telework programs to the maximum extent possible without diminishing performance. According to the committee, 5 percent of federal employees participated in telework programs in 2008. The purpose of H.R. 1722 seeks to increase the number of federal employees participating in telework programs by directing the OPM to issue regulations that authorize employees to telework.

Potential Conservative Concerns: Some conservatives may be concerned that this legislation *requires* each federal agency to create a Teleworking Managing Officer. Some agencies may not be big enough to need this position and creating such a position should be up to the discretion of the agency head and not required by law.

Some conservatives may be concerned that teleworking—working from home or a remote location—may discourage efficiency among federal employees and reduce the productivity of the federal government. The private sector should be able to dictate the best way to handle employee performance and telecommuting might be a good idea in many instances for employees that get paid by performance. However, some might argue the opposite holds true for federal employees that typically do not have to adhere to a performance based evaluation system.

Additionally, some conservatives have expressed concern that teleworking is another perk for federal employees. Federal employees already enjoy a number of benefits not guaranteed by

many private sector employers. In addition, Democrats also made federal workforce benefits even more generous by changing the Federal Employee Retirement System (FERS) to allow employees to count unused sick time towards retirement in 2009. Some conservatives believe it is inappropriate to encourage federal employees to work from home when approximately 15 million Americans remain unemployed.

[Democrat Inconsistency Alert!](#)

Productivity & Performance: Supporters of H.R. 1722 argue that with a better telework policy, the federal government could have reduced the approximately \$100 million in lost productivity during February's "snowagedon." While telecommuting may have reduced the total loss in productivity for that extremely rare week that dumped several feet of [global warming](#) on Washington D.C, telecommuting for federal employees may actually result in less overall productivity on the typical workday.

Private sector companies can promote telework programs because many of those jobs are based on tangible performance based outcomes. However, unlike sales jobs for example, it is hard to measure those outcomes for most federal jobs. In addition, it has been reported that a significant number of federal employees are already distracted by spending numerous hours surfing the Web for pornography at their office. Some conservatives have expressed concern that this and [other non-productive practices](#) could get worse if more employees are able to work absent of any supervision.

Committee Action: H.R. 1722 was introduced on March 25, 2009, and referred to the House Oversight and Government Reform Subcommittee on Federal Workforce, Post Office, and the District of Columbia. A full committee markup was held on April 14, 2010, and the bill was approved by voice vote. On May 6, 2010, the bill was defeated in the full House by a vote of [268-147](#) under suspension of the rules. On July, 14, 2010 H.R. 1722 passed the full House under a rule by a vote of [290-131](#). On September 29, 2010, the Senate amended H.R. 1722 and passed the bill by unanimous consent.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A CBO cost estimate of the Senate Amendment is unavailable at press time. However, CBO estimated that H.R. 1722 "would increase the administrative costs of federal agencies by \$2 million in 2010 and by \$30 million over the 2010-2015 period, assuming the availability of appropriated funds."

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to committee report, 111-474, H.R. 1722 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Constitutional Authority: The Oversight and Government Reform committee cites Article I, Section 8 of the Constitution, clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

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