Order Code RL34516

CRS Report for Congress

Telework Legislation Pending in the 110th Congress: A Side-by-Side Comparison of Provisions

Updated June 11, 2008

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Prepared for Members and Committees of Congress

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Summary

S. 1000, the Telework Enhancement Act of 2007, and H.R. 4106, the Telework Improvements Act of 2008, are currently pending in the 110th Congress. The Senate Committee on Homeland Security and Governmental Affairs ordered S. 1000 to be reported, as amended, on November 14, 2007. The House of Representatives passed H.R. 4106 by voice vote under suspension of the rules on June 3, 2008. H.R. 4106 would amend Title 5 of the *United States Code* by adding a new Chapter 65 entitled "Telework."

Under the legislation, the heads of executive branch agencies would be required to establish policies under which employees (with some exceptions) could be eligible to participate in telework. Legislative branch employees also would be covered by S. 1000. Agencies would have to establish policies on telework within 180 days after enactment of the acts. Employee participation in telework would be required to the maximum extent possible without diminishing either employee performance or agency operations.

Executive branch employees not eligible for telework generally would include those whose duties involve the daily handling of secure materials, contact with persons, the use of special equipment, or physical presence. The legislation could require each executive branch agency to appoint a Telework Managing Officer, who would be responsible for implementing the telework policies. The agencies also would be required to provide training to managers, supervisors, and employees participating in telework. H.R. 4106 would require the Comptroller General to evaluate the telework policies in the executive branch.

This report presents a side-by-side comparison of the provisions of S. 1000, as ordered to be reported, and H.R. 4106, as passed by the House. It will be updated as events dictate.

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Background

Legislation (S. 1000 and H.R. 4106) to foster telework in the federal government is currently pending in the 110th Congress.

Senator Ted Stevens, for himself and Senator Mary Landrieu, introduced S. 1000, the Telework Enhancement Act of 2007, on March 27, 2007, and it was referred to the Senate Committee on Homeland Security and Governmental Affairs.[1] In his statement upon introducing the bill, Senator Stevens stated that the legislation would enhance telework by, among other things, making all federal employees eligible to telework, unless expressly determined otherwise, and revising the definition of telework.[2] The Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia conducted a hearing on the legislation on June 12, 2007. On November 14, 2007, the committee marked up the bill and, by voice vote, agreed to an amendment in the nature of a substitute that was offered by Senators Daniel Akaka and Stevens. The committee, by voice vote, ordered the bill to be reported, as amended, the same day. An estimate prepared by the Congressional Budget Office determined that administrative costs in the federal agencies would increase by $5 million in 2008, and "much smaller amounts in subsequent years" as S. 1000 was implemented.[3]

During markup of the Senate's version of the Supplemental Appropriations Act by the Senate Committee on Appropriations on May 15, 2008, Senator Stevens offered an amendment on telework. The amendment was adopted by voice vote. A press release issued by the Senator's office stated that "S. 1000 served as the foundation for the amendment" and described the benefits of the proposed legislation as quoted below:

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[1] S. 1000, as ordered to be reported, also includes a provision that would amend 5 U.S.C. §5710 to extend for 16 years a program that tests new approaches to reimbursing federal employees for their travel expenses. H.R. 4106, as reported, also includes provisions that would amend 5 U.S.C. Chapter 14 on the Chief Human Capital Officers Council.

[2] Statement of Senator Ted Stevens, *Congressional Record*, daily edition, vol. 153, March 27, 2007, p. S3843.

[3] U.S. Congressional Budget Office, Cost Estimate, *S. 1000, Telework Enhancement Act of 2007*, January 28, 200[8].

> In addition to helping reduce Americans oil consumption, the bill would encourage federal employees to drive less and thereby reduce traffic congestion, help consumers save on fuel expenses, and limit greenhouse gas emissions. The measure would also help improve the cost-efficiency of the federal government; supplement the federal government's efforts to develop continuity of operations plans; provide incentives to attract and retain highly skilled federal personnel; and establish a model for similar programs in the private sector.[4]

The text of the Stevens amendment differed from S. 1000 in that it did not include the provisions on telework in the legislative branch and the Comptroller General's role in evaluating telework. In addition, the Stevens amendment would have defined telework as —

> A work arrangement in which an employee regularly performs officially assigned duties at home or other worksites geographically convenient to the residence of the employee during at least 20 percent of each pay period that the employee is performing officially assigned duties.[5]

The Senate-engrossed amendment to H.R. 2642, the Supplemental Appropriations Act for FY2008, as passed by the Senate on May 22, 2008, does not include the telework provisions.

Representative Danny Davis, for himself, and Representatives John Sarbanes, Henry Waxman, Tom Davis, Frank Wolf, and Elijah Cummings, and Delegate Eleanor Holmes Norton, introduced H.R. 4106, the Telework Improvements Act of 2008, on November 7, 2007, and the bill was referred to the House Committee on Oversight and Government Reform. Representative Davis, upon introducing the legislation, stated that it "breaks new ground by ensuring that eligible Federal employees have the opportunity to telework and that agencies are incorporating telework into their continuity of operations planning." He expressed the expectation that the bill "will increase the number of Federal employees that are allowed to telework and thereby better prepare the Government for emergency events, reduce congestion and pollution, and create a more family-friendly workplace."[6] A day before the bill's introduction, on November 6, 2007, the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia conducted a hearing on telework. The subcommittee marked up H.R. 4106 and forwarded it to the full committee, as amended, by voice vote on February 28, 2008. The House Committee on Oversight and Government Reform marked up the bill on March 13, 2008, and ordered it to be reported as amended. The committee reported the bill on May 21, 2008.[7]

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[4] "Appropriations Committee Approves Senator Stevens Telework Bill," May 16, 2008.

[5] The text of the amendment to the Senate version of the supplemental appropriations act for FY2008, provided to CRS by Senate Committee on Appropriations staff.

[6] Statement of Representative Danny K. Davis, "Introduction of the Telework Improvement Act of 2007," *Congressional Record*, daily edition, vol. 153, November 7, 2007, p. E2343.

[7] U.S. Congress, House Committee on Oversight and Government Reform, *Telework Improvements Act of 2008*, report to accompany H.R. 4106, 110th Cong., 2nd sess., H.Rept.

(continued...)

The House passed H.R. 4106 by voice vote under suspension of the rules on June 3, 2008. The bill would amend Title 5 of the *United States Code* by adding a new Chapter 65 entitled "Telework." CBO estimated the cost of the legislation as "$5 million in 2008 and much smaller amounts in subsequent years."[8] The cost estimate is the same as that prepared by CBO for S. 1000, as ordered to be reported. During House consideration of the bill, Representative Danny Davis stated his view of the benefits of telework:

> giving employees the opportunity to telework can help boost productivity by cutting down on commuting time, reducing absenteeism, and allowing for greater organizational flexibility. Improving telework can also help reduce pollution, traffic congestion, and the significant financial burdens that Federal employees face from high gas prices.[9]

He added that H.R. 4106 "ensures that agencies have the necessary flexibility, guidance, and oversight." Representative John Sarbanes emphasized that telework is a "win, win, win," in stating that productivity can be increased "while striking the right balance between family and work."[10]

S. 1000, as ordered to be reported, and H.R. 4106, as passed by the House, would require the heads of executive branch agencies to establish policies under which employees (with some exceptions) could be eligible to participate in telework. S. 1000 also would cover legislative branch employees. The policies on telework would have to be established within 180 days after enactment of the acts. The bills would provide that employee participation in telework would be required to the maximum extent possible without diminishing either employee performance or agency operations.

In the executive branch, employees not eligible for telework generally would include those whose duties involve the daily handling of secure materials, contact with persons, the use of special equipment, or physical presence. The legislation could require that a Telework Managing Officer, who would be responsible for implementing the telework policies, be appointed for each executive branch agency. Each agency also would be required to provide training to managers, supervisors, and employees participating in telework. H.R. 4106 would require the Comptroller General to evaluate the telework policies in the executive branch.

Table 1 below compares the provisions of S. 1000, as ordered to be reported, and H.R. 4106, as passed by the House.

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[7] (...continued)
110-663 (Washington: GPO, 2008).

[8] U.S. Congressional Budget Office, Cost Estimate, *H.R. 4106, Telework Improvements Act of 2008*, April 14, 2008.

[9] "Telework Improvements Act of 2008," *Congressional Record*, daily edition, vol. 154, June 3, 2008, p. H4850.

[10] Ibid., pp. H4850-H4851.

Table 1. Legislation on Telework — Provisions in S. 1000 and H.R. 4106 Compared

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
Definition of Telework	A work arrangement in which an employee regularly performs officially assigned duties at home or other worksites geographically convenient to the residence of the employee. Telework would occur during at least 20% of each pay period that the employee is performing officially assigned duties.	A work arrangement under which an employee regularly performs the duties and responsibilities of his or her position, and other authorized activities, from home or another worksite removed from the employee's regular place of employment. Telework would occur at least 20% of the hours worked in every two administrative workweeks.
Executive Branch Telework	Within 180 days after the act's enactment, the head of each executive branch agency would establish a telework policy, determine the eligibility of employees to participate in telework, and notify all employees of their eligibility.	Within 180 days after the act's enactment, the head of each executive branch agency would establish a policy under which employees would be authorized to telework. Each agency's policy would conform to General Services Administration (GSA) regulations to be prescribed within 120 days after the act's enactment in coordination with the Office of Personnel Management (OPM).
Provisions on Employee Participation in Telework	The telework policy would ensure that telework does not diminish employee performance or agency operations. An agency manager and an employee authorized to telework would sign a written agreement before participation in telework could occur. If the employee's performance does not comply with the written agreement, he or she may not be authorized to telework.	The employees who are authorized to telework would be allowed to do so to the maximum extent possible without diminishing employee performance or agency operations. Nothing in the act would be considered to require an agency head to authorize telework for an employee whose duties and responsibilities require daily access to classified information, daily face-to-face contact with members of the public or other persons, or the use of equipment at the employee's regular place of employment, or are such that their performance from a site removed from the employee's regular place of

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
		employment is not feasible.
	An employee whose official duties require daily physical presence involving equipment or the handling of secure materials would not be eligible to telework, except in emergency situations, as determined by the agency head.	An agency head could temporarily deny permission for an employee to telework upon determination that the employee is needed to respond to an emergency or requires additional training, or if the denial is necessary, for a specific period of time, to achieve the goals and objectives of agency programs. Nothing in the act would be considered to require any employee to telework.
	An agency's telework policy would determine the use of telework as part of continuity of operations (COOP) plans for emergency situations.	An agency could permit an employee to telework as part of a COOP plan.
Training and Monitoring	The head of each executive branch agency would ensure that employees eligible to telework and managers of employees who telework receive an interactive training program on telework.	The head of each executive branch agency would ensure that appropriate training is provided to supervisors and managers and to all employees who are authorized to telework.
	No distinction would be made between those employees who telework and those who do not for purposes of performance appraisal. OPM guidelines on performance management would be consulted by the agency when making determinations on diminished employee performance.	No distinction would be made between those employees who telework and those who do not for purposes of performance appraisal.
Role of OPM and GSA	Each executive branch agency would consult with OPM in developing telework policies.	GSA, in coordination with OPM, would provide advice, assistance, and, to the extent necessary, training, to executive agencies, on questions of eligibility, including considerations relating to employee

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
	OPM would provide policies and guidance on pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities during telework. OPM would consult with the Federal Emergency Management Agency (FEMA) on policies and guidance for telework during COOP and long-term emergencies. OPM would consult with the GSA on policies and guidance on telework centers and travel, technology, equipment, and dependent care during telework. OPM would maintain a central website on telework that would include links to information on telework, announcements, OPM guidance, and FEMA and GSA guidance transmitted to OPM (to be posted no later than 10 business days following submission). When an agency is operating under a COOP plan, that plan would supersede the telework policy.	performance and making telework part of the agency's (including individual supervisor's and manager's) goals. GSA, in coordination with the Office of Management and Budget (OMB) and the National Institute of Standards and Technology (NIST), would prescribe regulations, within 120 days after the act's enactment, to ensure the adequacy of information and security protections for information and information systems used in, or otherwise affected by, telework. The regulations would be consistent with information security policies and guidance issued by OMB and NIST and would, at a minimum, include requirements necessary to (1) control access to agency information and information systems, (2) protect agency information (including personally identifiable information) and information systems, (3) limit the introduction of vulnerabilities, (4) protect information systems not under the control of the agency that are used for telework, and (5) safeguard the use of wireless and other telecommunications capabilities used for telework purposes. GSA would maintain a central website on telework that would be publicly available. The website would be jointly controlled and funded by GSA and OPM. Regulations on telework and other information that GSA and OPM consider appropriate would be included on the website. "COOP" refers to an effort within individual executive departments and agencies to ensure that primary mission-essential functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, public health emergencies, and technological or attack-related emergencies. The head of each executive branch agency would ensure that telework

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
		is incorporated into the agency's COOP planning to the maximum extent practicable, and mission critical personnel, as determined by the agency head, are equipped to telework in a catastrophe. With regard to this mission critical provision, "agency" would mean an agency named in 31 U.S.C. §901(b)(1)(2). An agency's COOP plan would supersede the agency's telework policy to the extent that they are inconsistent with one another. The GSA, in coordination with OPM, FEMA, and the Chief Human Capital Officer (CHCO) Council, would report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform on the incorporation of telework into agency COOP planning. The report would be submitted within one year after the GSA regulations on telework become effective and include information on the extent to which (1) incorporation has occurred within each of the agencies, (2) each agency has conducted COOP tests and exercises that incorporate telework for essential and non-essential personnel, and (3) agencies have used telework in responding to emergencies. The report also would include any GSA recommendations.
Management of Telework	A Telework Managing Officer (TMO) would be appointed by each executive branch agency head. The position would be under the CHCO or a comparable office.	A TMO could be appointed by each executive branch agency. The TMO would be appointed by the CHCO, or if none, by the agency head, and be compensated at not less than the minimum rate of basic pay for grade GS-15 of the General Schedule (GS). The GSA Administrator could waive the minimum salary rate for the TMO for an agency with fewer than 100 full-time equivalent employees. The agency head would certify to GSA that the salary requirement would

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
		adversely affect agency operations. An individual could not hold the TMO position as a noncareer appointee, and the position could not be considered or determined to be of a confidential, policy-determining, policy-making, or policy-advocating character.
	P.L. 108-199 and P.L. 108-447 would be amended by replacing "Telework Coordinator" with TMO.	P.L. 108-447 would be amended by striking "designate a Telework Coordinator" and inserting "appoint a Telework Managing Officer or designate the Chief Human Capital Officer or other career employee to be ...."
	The TMO would develop policy for and implement the agency's telework programs; serve as an adviser to the agency's leadership (including the CHCO), a resource for managers and employees, and the liaison between the agency and OPM on telework matters; and perform other duties as assigned.	The TMO would serve as: (1) an adviser to the agency head and the CHCO on telework; (2) a resource on telework for agency supervisors, managers, and employees; and (3) the agency's primary liaison on telework matters for agency employees, Congress, and other agencies. The TMO also would (1) ensure that the agency's telework policy is communicated to employees; (2) ensure that each employee is notified, electronically or in writing, of specific telework programs and the agency's telework policy, including authorization criteria and application procedures; (3) develop and administer a system to track compliance with requirements for government-wide telework reporting; (4) provide to the Comptroller General (CG) and to the Administrator of GSA such information as the CG may require to prepare the required annual reports; (5) establish a system for receiving feedback from employees on the agency's telework policy; (6) develop and implement a program to identify and remove barriers to telework and maximize opportunities to telework; (7) ensure that employees are notified of any grievance procedures available to address disputes on

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
		telework; and (8) perform such other duties and responsibilities relating to telework as the agency head may require. If a TMO is not appointed, the duties and responsibilities of a TMO would be carried out by the CHCO or a career employee in the agency, as determined by the agency head.
Report to Congress	The OPM Director would submit a report on executive branch agency telework programs to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform and provide a copy of the report to the CG and OMB. The report would include (1) each agency's telework policy, measures in place to carry out the policy, and the agency's analysis of employee participation in telework during the preceding 12-month period; (2) an assessment of each agency's progress in maximizing telework opportunities for employees without diminishing employee performance or agency operations; (3) how telework is defined in the agencies and any modifications to the definition; and (4) data on employee participation in telework, including the number and percent of agency employees who are eligible to telework, who engage in telework, and who have declined to participate in telework; the number of employees who were not authorized, willing, or able to telework and the reasons why not; the extent to which barriers to telework have been identified and eliminated; and best practices among agency telework programs. The report would be submitted no later than 18 months after the act's	No similar provision

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
	enactment and annually thereafter.	
Executive Branch Agency Reports	Each executive branch agency manager would submit a report to the agency's CHCO and the TMO. The report would summarize the manager's efforts to promote telework opportunities for the employees that he or she supervises and any obstacles which hinder his or her ability to promote the opportunity to telework. The report would be submitted within 180 days after an agency's telework policy is established and annually thereafter. The CHCO of each agency, in consultation with the TMO, would submit an annual report to the chair and vice chair of the CHCO Council on the agency's efforts to promote telework. The chair and vice chair of the CHCO Council would review the reports, include relevant information in the annual report to Congress, and use that information for purposes related to the strategic management of human capital.	No similar provision

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
Executive Branch Agency Compliance	An executive branch agency would be in compliance with the act if each employee participating in telework regularly performs officially assigned duties at home or other worksites geographically convenient to his or her residence during at least 20% of each pay period that the employee performs officially assigned duties. OMB would report to Congress within 90 days after OPM's report on telework (see above) is submitted. The OMB report would identify and recommend corrective actions and time frames for each executive branch agency that is not in compliance with the act, as determined by OMB, and describe agency progress in becoming compliant, justifications for continuing to be not in compliance, and OMB or agency recommendations for corrective actions.	The CG, as discussed below, would evaluate each executive branch agency's compliance with the act.
Legislative Branch Telework	**Senate.** The Senate Committee on Rules and Administration, in consultation with the Senate Majority and Minority Leaders, would establish guidelines for a policy under which Senate employees (except those employees who have been designated by the applicable employing authority as not eligible) could be authorized to telework. The guidelines would be established within 180 days after the act's enactment. Each employing authority that is included under the guidelines would submit a telework policy for applicable employees to the Senate Committee on Rules and Administration within 180 days after the policy guidelines on telework discussed above have been established. **House of Representatives.** The House Committee on House Administration, in consultation with the Speaker and Minority Leader,	No similar provision

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
	would establish guidelines for a policy under which House employees (except those employees who have been designated by the applicable employing authority as not eligible) could be authorized to telework. The guidelines would be established within 180 days after the act's enactment. Each employing authority that is included under the guidelines would submit a telework policy for applicable employees to the House Committee on House Administration within 180 days after the policy guidelines on telework discussed above have been established. **Legislative Branch Agencies.** Identified as the Government Accountability Office, the Library of Congress, the Government Printing Office, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance. Each legislative branch agency head would establish a policy under which the agency's respective employees (except those employees who have been designated by the agency head as not eligible) could be authorized to telework. The policies would be established within 180 days after the act's enactment. **Training.** Employees participating in telework and their managers would be required to participate in a training program on telework. **Similar Policies.** The policies on telework for the legislative branch could be similar to those established for the executive branch.	

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
	Nothing in the act would be construed as requiring the application of the provisions discussed prior to this section on "Legislative Branch Telework" to any policy on telework established for the legislative branch.	
Role of the CG	No similar provision	The CG would establish a system to evaluate the telework policies and employee participation in telework in the executive agencies. The CG would submit an annual report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform that would evaluate each agency's telework policy. The report also would provide, for each executive branch agency, information on the number of employees overall, and the number and percentage of employees, (1) eligible to telework; (2) who teleworked an average of at least once a week on a regular basis, determined based on time spent actually teleworking; and (3) who teleworked an average of at least 20% of the hours that they worked in every two administrative workweeks, determined based on time spent teleworking. The report also would include information on the number and percentage of employees who teleworked at least once a month on a regular basis, determined based on time spent teleworking, the number and percentage of employees who were not authorized to telework and the reasons why not; the number and percentage of employees who were authorized to telework and then later stopped teleworking, including the reasons why they stopped and whether stopping was voluntary or due to other factors, such as office coverage needs or productivity; and the extent to which barriers to telework have been identified and eliminated. Information on telework's impact (if any) on an agency's recruitment and retention

Legislative Provision	S. 1000, as ordered to be reported	H.R. 4106, as passed by the House
		of employees and on the performance of an agency's employees, and the level of employee satisfaction with an agency's telework policies, based on feedback, also would be included in the report. The CG also would evaluate the compliance of each executive branch agency with the act and identify best practices in telework programs. The report would be submitted for the year in which the GSA regulations on telework become effective and for each of the four succeeding years. Each report would be submitted within six months after the end of the year to which it relates. To be in compliance, an agency must permit employees who are authorized to telework to do so for at least 20% of the hours that they worked in every two administrative workweeks (disregarding any workweeks for which the employees did not submit a request to telework or for which they were otherwise ineligible to telework).

Sources: The texts of S. 1000, amendment in the nature of a substitute, provided to CRS by the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, and H.R. 4106, as passed by the House of Representatives, from the Legislative Information System of the Congressional Research Service.

Note: "Executive branch agency" is defined as an executive department, government corporation, or independent establishment (5 U.S.C. §105), except as defined for continuity of operations purposes in H.R. 4106.

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