

**Calendar No. 569**

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 116-276

TELEWORK FOR U.S. INNOVATION ACT

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 4138

TO AMEND TITLE 5, UNITED STATES CODE, TO MAKE  
PERMANENT THE AUTHORITY OF THE UNITED STATES PATENT  
AND TRADEMARK OFFICE TO CONDUCT A TELEWORK TRAVEL  
EXPENSES PROGRAM



OCTOBER 1, 2020.—Ordered to be printed

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## TELEWORK FOR U.S. INNOVATION ACT

OCTOBER 1, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

### R E P O R T

[To accompany S. 4138]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4138), to amend title 5, United States Code, to make permanent the authority of the United States Patent and Trademark Office to conduct a telework travel expenses program, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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#### I. PURPOSE AND SUMMARY

S. 4138, the Telework for U.S. Innovation Act, removes the statutory expiration date for the U.S. Patent and Trademark Office's (PTO) telework travel expenses program and requires a permanent annual report to Congress.

#### II. BACKGROUND AND THE NEED FOR LEGISLATION

In the Telework Enhancement Act of 2010, Congress established a test program under which the PTO "may pay any travel expenses

of an employee for travel to and from a [PTO] worksite or provide an employee with the option to waive any payment authorized” under the program under certain conditions.<sup>1</sup> Pursuant to this authority, the PTO launched the Telework Enhancement Act Pilot Program (TEAPP) in February 2012.

TEAPP is a voluntary program for employees wherein, in exchange for increased workplace flexibility, TEAPP employees waive the right to receive reimbursement of travel expenses for a limited number of potential mandatory trips to the PTO each year. USPTO reported that in October 2019, 2,929 full-time employees were participating in the program.<sup>2</sup>

Recent PTO annual reports demonstrate the benefits enjoyed by the agency, amounting to more than \$123 million in net savings in fiscal year (FY) 2019.<sup>3</sup> The PTO reports that over a five-year period, from FYs 2015 through 2019, the attrition rate for participants was 1.1 percent lower than non-teleworking patent examiners.<sup>4</sup> The PTO calculates that this reduced attrition accounts for up to \$23 million annually in retained production unit capacity and avoided training costs.<sup>5</sup> The PTO also calculates that the agency increased production units, bringing in an additional \$48.8 million in revenue in FY 2019, and a savings of \$52 million in avoided real estate costs. Other benefits include savings from salary differentials, avoided travel expenses, and avoided transit subsidy costs.<sup>6</sup> The value of the benefit has increased almost every year since the program began.<sup>7</sup>

The PTO reports a total of approximately \$1.9 million in costs associated with TEAPP, which do not significantly offset the benefits. For FY 2019, these costs included \$453,123 in travel time, \$998,859 in lost revenue due to travel time, \$140,356 in trademarks travel costs, and \$299,296 in added shipping costs.<sup>8</sup> In sum, the approximately \$125 million in total benefits far outweigh the \$1.9 million in additional costs.

With no statutory change, the PTO will lose the authority to operate the TEAPP on December 31, 2020.<sup>9</sup>

### III. LEGISLATIVE HISTORY

Senator James Lankford (R–OK) and Senator Kyrsten Sinema (D–AZ) introduced S. 4138, the Telework for U.S. Innovation Act, on July 1, 2020. Senator Christopher Coons (D–DE) later joined as a cosponsor. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 4138 at a business meeting on July 22, 2020. The bill was ordered reported favorably *en bloc* by voice vote without amendment. Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen were present.

<sup>1</sup> 5 U.S.C. § 5711(f)(2), (f)(3).

<sup>2</sup> *Telework Enhancement Act Pilot Program, Annual Evaluation, FY2019*, U.S. Patent and Trade Office, at 2 (2019) (on file with the Committee).

<sup>3</sup> See *id.* at 19.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 5–6.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 5711(g).

## IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

*Section 1. Short title*

This section established that the bill may be cited as the “Telework for U.S. Innovation Act.”

*Section 2. Telework Travel Expenses Program of the United States Patent and Trademark Office*

Subsection (a) strikes language establishing the program as a “test” and provides that the PTO may maintain the telework travel expenses program but adds a requirement for an annual report to Congress on the program, including its effectiveness and costs and benefits. Subsection (b) provides technical and conforming amendments.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 22, 2020.*

Hon. RON, JOHNSON,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

Dear MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 4138, the Telework for U.S. Innovation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>S. 4138, Telework for U.S. Innovation Act</b>			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 22, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and zero.			

S. 4138 would permanently authorize the U.S. Patent and Trademark Office's (PTO) Telework Enhancement Act Pilot Program (TEAPP). Under current law, TEAPP, which expires on December 31, 2020, enables about 3,000 PTO employees to waive reimbursement for travel expenses in exchange for the ability to live and work anywhere in the United States or Puerto Rico without routinely reporting to a specific jobsite.

Using information from the PTO, CBO expects that the agency would continue most aspects of the telework program after December 31, 2020, though some employees could be required to travel to a specific jobsite for training. As a result, CBO expects that implementing the bill would decrease travel reimbursements the PTO would incur after the pilot program expires. Using information from the PTO, CBO estimates those decreased costs would be less than \$500,000 over the 2021–2025 period. Because the PTO is authorized to collect fees in an amount sufficient to offset its annual appropriation, CBO expects that the agency would adjust fee collections to match any decrease in operating costs. On that basis, CBO estimates that any change in net discretionary spending by the PTO would be negligible, assuming appropriation action consistent with that authority.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

\* \* \* \* \*

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

\* \* \* \* \*

PART III—EMPLOYEES

\* \* \* \* \*

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

\* \* \* \* \*

Subchapter I—Travel and Subsistence; Mileage Allowances

\* \* \* \* \*

Table of sections

Sec.

5701. Definitions.

\* \* \* \* \*

[5711. Authority for telework travel expenses test programs.]

\* \* \* \* \*

5711. Authority for telework travel expenses programs.

SEC. 5711. AUTHORITY FOR TELEWORK TRAVEL EXPENSES [TEST] PROGRAMS.

(a) \* \* \*

\* \* \* \* \*

(f) \* \* \*

(1) In this section, the term appropriate “ [committee] committees of Congress” means—

(A) \* \* \*

(B) the Committee on Oversight and [Government] Reform of the House of Representatives;

\* \* \* \* \*

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

(3) \* \* \*

(4) \* \* \*

(A) \* \* \*

(B) the oversight committee shall develop and maintain the operating procedures for the program under this subsection to—

\* \* \* \* \*

(5) \* \* \*

(A) The [test] program under this subsection shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

**[(B) The Director of the Patent and Trademark Office shall—**

**[(i) prepare an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program; and**

**[(ii) before the test program is implemented, submit the analysis and criteria to the Administrator of General Services and to the appropriate committees of Congress.]**

*(B) The Director of the Patent and Trademark Office shall prepare and submit to the appropriate committees of Congress an annual report on the operation of the program under this subsection, which shall include—*

*(i) the costs and benefits of the program; and*

*(ii) an analysis of the effectiveness of the program, as determined under criteria developed by the Director.*

\* \* \* \* \*

**(g) The authority to conduct test programs [under this section] subsection (b) shall expire on December 31, 2020.**

\* \* \* \* \*

