

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 528
Appropriations

(Delegate Forbes)

**State Personnel – Teleworking Programs, Policies, and Guidelines –
Requirements**

This bill enhances the requirements of Chapter 696 of 2021, which modified and expanded the governance of telework programs by State and local employers, by including specified requirements for the telework programs, policies, and guidelines adopted by the Judicial, Legislative, and Executive Branches of State government and public institutions of higher education. The bill also authorizes an employee to initiate a grievance procedure for the termination of a teleworking agreement. Further, the bill requires, when applicable for the component institutions of the University System of Maryland (USM), telework to be negotiated through collective bargaining at the system level as part of the consolidated memorandum of understanding (MOU) negotiated by the Chancellor instead of at the institution level through separate agreements negotiated by each institution’s president.

Fiscal Summary

State Effect: The bill’s requirements can generally be handled using existing budgeted resources; however, some State agencies, particularly the component institutions of USM, may experience additional costs, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Each telework program, policy, and guideline adopted in response to the requirements established by Chapter 696 must:

- provide that an employee is eligible to apply to telework if (1) the employee's duties can be successfully performed away from the employee's workplace; (2) the employee has a current overall performance evaluation of satisfactory or an equivalent evaluation or better; and (3) the employee has completed an initial probationary period, if applicable;
- provide for specified factors to consider when evaluating a request to telework, including, among others, whether the job position or classification has historically been successfully performed by telework, whether an employee has previously successfully performed duties by teleworking, and the possibility of a hybrid telework and in-person schedule;
- provide a procedure for an employee to initiate a request to telework, including requiring the appropriate official to respond in writing to the employee's request within seven days;
- authorize the termination of a telework agreement after providing written notice 14 days before the date of termination, including a written explanation for terminating the telework agreement;
- prohibit the denial of an application to telework on the basis that the employee is unable to perform the employee's duties away from the workplace if another employee in the same job position or classification is found to be eligible to telework;
- establish reasonable goals and expectations for each job position for work performed while teleworking;
- prohibit an appropriate official or agent of an official from entering any employee's residence for the purpose of applying, enforcing, or implementing any of the bill's requirements; and
- require an appropriate official to make arrangements for teleworking to be available for all possible employees in the event of a communicable disease outbreak.

An employee may initiate a grievance procedure for the termination of a teleworking agreement, and a decision maker in any step of the grievance procedure may reinstate the employee's teleworking agreement.

Current Law: Chapter 696 substantially modified the State's telework program and policies by (1) establishing the Office of Telework Assistance and Business Telework Assistance Grant Program in the Department of Commerce to assist and support businesses in implementing telework policies for their employees; (2) enhancing the telework program for State employees; (3) requiring the Judicial and Legislative branches of State government to each implement a telework program, as well; and (4) requiring local governments to implement telework programs.

Under Chapter 696 and specifically for State employees, each appropriate official for all three branches of government and public institutions of higher education must, to the extent practicable, maximize the number of eligible employees participating in a telework program. Beginning in fiscal 2023, each appropriate official must also negotiate criteria for designated telework positions if the affected employees are covered by collective bargaining. For the component institutions of USM, telework must be negotiated through a separate agreement by the president of each system institution and not through the consolidated MOU negotiated by the Chancellor.

In developing telework guidelines, the appropriate official for each agency must coordinate with the Department of Information Technology and ensure the adequacy of information and security protection for information and information systems used while teleworking. Chapter 696 established other requirements for the guidelines, including that they control access to and protect unit information and information systems. An eligible employee must receive and acknowledge the guidelines before participating in a telework program.

By December 1 of each year, each unit of State government, or the principal department in which the unit is located, must report to the General Assembly on the number of eligible and participating employees in its telework program.

State Expenditures: Most State agencies can likely implement the bill using existing budgeted resources because telework was significantly expanded throughout State government during the COVID-19 pandemic and has become a regular part of many State employees' lives. Moreover, the bill primarily adds specificity to the existing requirements of Chapter 696, which required, for the Executive, Judicial, and Legislative branches of State government and public institutions of higher education, that each entity "maximize the number of eligible employees participating in a telework program."

Nevertheless, some agencies may experience increased costs (including for more equipment) or operational disruptions. For example, under current law, agency heads and appropriate officials have broad authority to revoke the authorization for an employee to telework; however, the bill makes any such revocation more difficult and potentially more disruptive. Specifically, the bill prohibits an appropriate official or agent of an official from entering any employee's residence for the purpose of applying, enforcing, or implementing any of the bill's requirements, and authorizes an employee to initiate a grievance procedure for the termination of a teleworking agreement. To the extent that additional grievances are filed, affected State agencies may also experience additional administrative costs to manage and administer the grievances.

Additionally, specifically for the component institutions of USM, the bill requires telework to be negotiated through collective bargaining as part of the consolidated MOU negotiated by the Chancellor instead of through separate agreements for each institution. As a result,

any disagreement over telework policies and procedures could cause delays or an impasse in the collective bargaining agreement, resulting in related costs.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 421 (Senator Hettleman) - Finance.

Information Source(s): Department of Budget and Management; Governor's Office; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510