

107TH CONGRESS
2D SESSION

H. R. 3925

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2002

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Digital Tech Corps
3 Act of 2002”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) unless action is taken soon, there will be a
7 crisis in the government’s ability to deliver essential
8 services to the American people;

9 (2) by 2006, over 50 percent of the Federal
10 Government’s information technology workforce will
11 be eligible to retire, creating a huge demand in the
12 Federal Government for high-skill workers;

13 (3) despite a 44 percent decrease in the demand
14 for information technology workers in the private
15 sector, the Information Technology Association of
16 America reported in 2001 that employers will need
17 to fill over 900,000 new information technology jobs
18 and will be unable to find qualified workers for
19 425,000 of those jobs;

20 (4) to highlight the urgency of this situation, in
21 January 2001, the General Accounting Office added
22 the Federal Government’s human capital manage-
23 ment to its list of high-risk problems for which an
24 effective solution must be found;

25 (5) despite efforts to increase flexibility in Fed-
26 eral agencies’ employment practices, compensation

1 issues continue to severely restrain recruitment for
 2 Federal agencies; and

3 (6) an effective, efficient, and economical re-
 4 sponse to this crisis would be to create a vibrant, on-
 5 going exchange effort designed to share talent, ex-
 6 pertise, and advances in management between lead-
 7 ing-edge businesses and Federal agencies engaged in
 8 best practices.

9 **SEC. 3. INFORMATION TECHNOLOGY EXCHANGE PROGRAM.**

10 (a) IN GENERAL.—Subpart B of part III of title 5,
 11 United States Code, is amended by adding at the end the
 12 following:

13 **“CHAPTER 37—INFORMATION**
 14 **TECHNOLOGY EXCHANGE PROGRAM**

“Sec.

“3701. Definitions.

“3702. General provisions.

“3703. Assignment of employees to private sector organizations.

“3704. Assignment of employees from private sector organizations.

“3705. Application to Office of the Chief Technology Officer of the District of
 Columbia.

“3706. Reporting requirement.

“3707. Regulations.

15 **“§ 3701. Definitions**

16 “For purposes of this chapter—

17 “(1) the term ‘agency’ means an Executive
 18 agency, but does not include the General Accounting
 19 Office; and

20 “(2) the term ‘detail’ means—

1 “(A) the assignment or loan of an em-
2 ployee of an agency to a private sector organi-
3 zation without a change of position from the
4 agency that employs the individual, or

5 “(B) the assignment or loan of an em-
6 ployee of a private sector organization to an
7 agency without a change of position from the
8 private sector organization that employs the in-
9 dividual,

10 whichever is appropriate in the context in which
11 such term is used.

12 **“§ 3702. General provisions**

13 “(a) ASSIGNMENT AUTHORITY.—On request from or
14 with the agreement of a private sector organization, and
15 with the consent of the employee concerned, the head of
16 an agency may arrange for the assignment of an employee
17 of the agency to a private sector organization or an em-
18 ployee of a private sector organization to the agency. An
19 eligible employee is an individual who—

20 “(1) works in the field of information tech-
21 nology management;

22 “(2) is considered an exceptional performer by
23 the individual’s current employer; and

1 “(3) is expected to assume increased informa-
2 tion technology management responsibilities in the
3 future.

4 An employee of an agency shall be eligible to participate
5 in this program only if the employee is employed at the
6 GS–11 level or above (or equivalent) and is serving under
7 a career or career-conditional appointment or an appoint-
8 ment of equivalent tenure in the excepted service.

9 “(b) AGREEMENTS.—Each agency that exercises its
10 authority under this chapter shall provide for a written
11 agreement between the agency and the employee con-
12 cerned regarding the terms and conditions of the employ-
13 ee’s assignment. In the case of an employee of the agency,
14 the agreement shall—

15 “(1) require the employee to serve in the civil
16 service, upon completion of the assignment, for a pe-
17 riod equal to the length of the assignment; and

18 “(2) provide that, in the event the employee
19 fails to carry out the agreement (except for good and
20 sufficient reason, as determined by the head of the
21 agency from which assigned) the employee shall be
22 liable to the United States for payment of all ex-
23 penses of the assignment.

24 An amount under paragraph (2) shall be treated as a debt
25 due the United States.

1 “(c) TERMINATION.—Assignments may be termi-
2 nated by the agency or private sector organization con-
3 cerned for any reason at any time.

4 “(d) DURATION.—Assignments under this chapter
5 shall be for a period of between 6 months and 1 year,
6 and may be extended in 3-month increments for a total
7 of not more than 1 additional year, except that no assign-
8 ment under this chapter may commence after the end of
9 the 5-year period beginning on the date of the enactment
10 of this chapter.

11 “(e) ASSISTANCE.—The Chief Information Officers
12 Council, by agreement with the Office of Personnel Man-
13 agement, may assist in the administration of this chapter,
14 including by maintaining lists of potential candidates for
15 assignment under this chapter, establishing mentoring re-
16 lationships for the benefit of individuals who are given as-
17 signments under this chapter, and publicizing the pro-
18 gram.

19 “(f) CONSIDERATIONS.—In exercising any authority
20 under this chapter, an agency shall take into
21 consideration—

22 “(1) the need to ensure that small business con-
23 cerns are appropriately represented with respect to
24 the assignments described in sections 3703 and
25 3704, respectively; and

1 “(2) how assignments described in section 3703
2 might best be used to help meet the needs of the
3 agency for the training of employees in information
4 technology management.

5 **“§ 3703. Assignment of employees to private sector or-**
6 **ganizations**

7 “(a) IN GENERAL.—An employee of an agency as-
8 signed to a private sector organization under this chapter
9 is deemed, during the period of the assignment, to be on
10 detail to a regular work assignment in his agency.

11 “(b) COORDINATION WITH CHAPTER 81.—Notwith-
12 standing any other provision of law, an employee of an
13 agency assigned to a private sector organization under this
14 chapter is entitled to retain coverage, rights, and benefits
15 under subchapter I of chapter 81, and employment during
16 the assignment is deemed employment by the United
17 States, except that, if the employee or the employee’s de-
18 pendents receive from the private sector organization any
19 payment under an insurance policy for which the premium
20 is wholly paid by the private sector organization, or other
21 benefit of any kind on account of the same injury or death,
22 then, the amount of such payment or benefit shall be cred-
23 ited against any compensation otherwise payable under
24 subchapter I of chapter 81.

1 “(c) REIMBURSEMENTS.—The assignment of an em-
2 ployee to a private sector organization under this chapter
3 may be made with or without reimbursement by the pri-
4 vate sector organization for the travel and transportation
5 expenses to or from the place of assignment, subject to
6 the same terms and conditions as apply with respect to
7 an employee of a Federal agency or a State or local gov-
8 ernment under section 3375, and for the pay, or a part
9 thereof, of the employee during assignment. Any reim-
10 bursements shall be credited to the appropriation of the
11 agency used for paying the travel and transportation ex-
12 penses or pay.

13 “(d) TORT LIABILITY; SUPERVISION.—The Federal
14 Tort Claims Act and any other Federal tort liability stat-
15 ute apply to an employee of an agency assigned to a pri-
16 vate sector organization under this chapter. The super-
17 vision of the duties of an employee of an agency so as-
18 signed to a private sector organization may be governed
19 by an agreement between the agency and the organization.

20 “(e) SMALL BUSINESS CONCERNS.—

21 “(1) IN GENERAL.—The head of each agency
22 shall take such actions as may be necessary to en-
23 sure that, of the assignments made under this chap-
24 ter from such agency to private sector organizations

1 in each year, at least 20 percent are to small busi-
2 ness concerns.

3 “(2) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) the term ‘small business concern’
6 means a business concern that satisfies the
7 definitions and standards specified by the Ad-
8 ministrator of the Small Business Administra-
9 tion under section 3(a)(2) of the Small Busi-
10 ness Act (as from time to time amended by the
11 Administrator);

12 “(B) the term ‘year’ refers to the 12-
13 month period beginning on the date of the en-
14 actment of this chapter, and each succeeding
15 12-month period in which any assignments
16 under this chapter may be made; and

17 “(C) the assignments ‘made’ in a year are
18 those commencing in such year.

19 “(3) REPORTING REQUIREMENT.—An agency
20 which fails to comply with paragraph (1) in a year
21 shall, within 90 days after the end of such year, sub-
22 mit a report to the Committees on Government Re-
23 form and Small Business of the House of Represent-
24 atives and the Committees on Governmental Affairs

1 and Small Business of the Senate. The report shall
2 include—

3 “(A) the total number of assignments
4 made under this chapter from such agency to
5 private sector organizations in the year;

6 “(B) of that total number, the number
7 (and percentage) made to small business con-
8 cerns; and

9 “(C) the reasons for the agency’s non-
10 compliance with paragraph (1).

11 “(4) EXCLUSION.—This subsection shall not
12 apply to an agency in any year in which it makes
13 fewer than 5 assignments under this chapter to pri-
14 vate sector organizations.

15 **“§ 3704. Assignment of employees from private sector**
16 **organizations**

17 “(a) IN GENERAL.—An employee of a private sector
18 organization assigned to an agency under this chapter is
19 deemed, during the period of the assignment, to be on de-
20 tail to such agency.

21 “(b) TERMS AND CONDITIONS.—An employee of a
22 private sector organization assigned to an agency under
23 this chapter—

1 “(1) may continue to receive pay and benefits
2 from the private sector organization from which he
3 is assigned;

4 “(2) is deemed, notwithstanding subsection (a),
5 to be an employee of the agency for the purposes
6 of—

7 “(A) chapter 73;

8 “(B) sections 201, 203, 205, 207, 208,
9 209, 603, 606, 607, 643, 654, 1905, and 1913
10 of title 18;

11 “(C) sections 1343, 1344, and 1349(b) of
12 title 31;

13 “(D) the Federal Tort Claims Act and any
14 other Federal tort liability statute;

15 “(E) the Ethics in Government Act of
16 1978;

17 “(F) section 1043 of the Internal Revenue
18 Code of 1986; and

19 “(G) section 27 of the Office of Federal
20 Procurement Policy Act; and

21 “(3) is subject to such regulations as the Presi-
22 dent may prescribe.

23 The supervision of an employee of a private sector organi-
24 zation assigned to an agency under this chapter may be
25 governed by agreement between the agency and the private

1 sector organization concerned. Such an assignment may
2 be made with or without reimbursement by the agency for
3 the pay, or a part thereof, of the employee during the pe-
4 riod of assignment, or for any contribution of the private
5 sector organization to employee benefit systems.

6 “(c) COORDINATION WITH CHAPTER 81.—An em-
7 ployee of a private sector organization assigned to an
8 agency under this chapter who suffers disability or dies
9 as a result of personal injury sustained while performing
10 duties during the assignment shall be treated, for the pur-
11 pose of subchapter I of chapter 81, as an employee as de-
12 fined by section 8101 who had sustained the injury in the
13 performance of duty, except that, if the employee or the
14 employee’s dependents receive from the private sector or-
15 ganization any payment under an insurance policy for
16 which the premium is wholly paid by the private sector
17 organization, or other benefit of any kind on account of
18 the same injury or death, then, the amount of such pay-
19 ment or benefit shall be credited against any compensation
20 otherwise payable under subchapter I of chapter 81.

21 “(d) PROHIBITION AGAINST CHARGING CERTAIN
22 COSTS TO THE FEDERAL GOVERNMENT.—A private sec-
23 tor organization may not charge the Federal Government,
24 as direct or indirect costs under a Federal contract, the
25 costs of pay or benefits paid by the organization to an

1 employee assigned to an agency under this chapter for the
2 period of the assignment.

3 **“§ 3705. Application to Office of the Chief Technology**
4 **Officer of the District of Columbia**

5 “(a) IN GENERAL.—The Chief Technology Officer of
6 the District of Columbia may arrange for the assignment
7 of an employee of the Office of the Chief Technology Offi-
8 cer to a private sector organization, or an employee of a
9 private sector organization to such Office, in the same
10 manner as the head of an agency under this chapter.

11 “(b) TERMS AND CONDITIONS.—An assignment
12 made pursuant to subsection (a) shall be subject to the
13 same terms and conditions as an assignment made by the
14 head of an agency under this chapter, except that in apply-
15 ing such terms and conditions to an assignment made pur-
16 suant to subsection (a), any reference in this chapter to
17 a provision of law or regulation of the United States shall
18 be deemed to be a reference to the applicable provision
19 of law or regulation of the District of Columbia, including
20 the applicable provisions of the District of Columbia Gov-
21 ernment Comprehensive Merit Personnel Act of 1978 (sec.
22 1–601.01 et seq., D.C. Official Code) and section 601 of
23 the District of Columbia Campaign Finance Reform and
24 Conflict of Interest Act (sec. 1–1106.01, D.C. Official
25 Code).

1 “(c) DEFINITION.—For purposes of this section, the
2 term ‘Office of the Chief Technology Officer’ means the
3 office established in the executive branch of the govern-
4 ment of the District of Columbia under the Office of the
5 Chief Technology Officer Establishment Act of 1998 (sec.
6 1–1401 et seq., D.C. Official Code).

7 **“§ 3706. Reporting requirement**

8 “(a) IN GENERAL.—The Office of Personnel Manage-
9 ment shall, not later than April 30 and October 31 of each
10 year, prepare and submit to the Committee on Govern-
11 ment Reform of the House of Representatives and the
12 Committee on Governmental Affairs of the Senate a semi-
13 annual report summarizing the operation of this chapter
14 during the immediately preceding 6-month period ending
15 on March 31 and September 30, respectively.

16 “(b) CONTENT.—Each report shall include, with re-
17 spect to the 6-month period to which such report relates—

18 “(1) the total number of individuals assigned
19 to, and the total number of individuals assigned
20 from, each agency during such period;

21 “(2) a brief description of each assignment in-
22 cluded under paragraph (1), including—

23 “(A) the name of the assigned individual,
24 as well as the private sector organization and
25 the agency (including the specific bureau or

1 other agency component) to or from which such
2 individual was assigned;

3 “(B) the respective positions to and from
4 which the individual was assigned, including the
5 duties and responsibilities and the pay grade or
6 level associated with each; and

7 “(C) the duration and objectives of the in-
8 dividual’s assignment; and

9 “(3) such other information as the Office con-
10 siders appropriate.

11 “(c) PUBLICATION.—A copy of each report submitted
12 under subsection (a)—

13 “(1) shall be published in the Federal Register;
14 and

15 “(2) shall be made publicly available on the
16 Internet.

17 “(d) AGENCY COOPERATION.—On request of the Of-
18 fice, agencies shall furnish such information and reports
19 as the Office may require in order to carry out this sec-
20 tion.

21 **“§ 3707. Regulations**

22 “The Director of the Office of Personnel Manage-
23 ment shall prescribe regulations for the administration of
24 this chapter.”.

(b) REPORT.—Not later than 4 years after the date of the enactment of this Act, the General Accounting Office shall prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the operation of chapter 37 of title 5, United States Code (as added by this section). Such report shall include—

(1) an evaluation of the effectiveness of the program established by such chapter; and

(2) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

(c) CLERICAL AMENDMENT.—The analysis for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 35 the following:

“37. Information Technology Exchange Program 3701”.

SEC. 4. ETHICS PROVISIONS.

(a) ONE-YEAR RESTRICTION ON CERTAIN COMMUNICATIONS.—Section 207(c)(2)(A) of title 18, United States Code, is amended—

(1) by striking “or” at the end of clause (iii);

(2) by striking the period at the end of clause

(iv) and inserting “; or”; and

(3) by adding at the end the following:

1 “(v) assigned from a private sector organi-
2 zation to an agency under chapter 37 of title
3 5.”.

4 (b) DISCLOSURE OF CONFIDENTIAL INFORMA-
5 TION.—Section 1905 of title 18, United States Code, is
6 amended by inserting “or being an employee of a private
7 sector organization who is or was assigned to an agency
8 under chapter 37 of title 5,” after “(15 U.S.C. 1311–
9 1314),”.

10 (c) CONTRACT ADVICE.—Section 207 of title 18,
11 United States Code, is amended by adding at the end the
12 following:

13 “(l) CONTRACT ADVICE BY FORMER DETAILS.—
14 Whoever, being an employee of a private sector organiza-
15 tion assigned to an agency under chapter 37 of title 5,
16 within one year after the end of that assignment, know-
17 ingly represents or aids, counsels, or assists in rep-
18 resenting any other person (except the United States) in
19 connection with any contract with that agency shall be
20 punished as provided in section 216 of this title.”.

21 (d) RESTRICTION ON DISCLOSURE OF PROCURE-
22 MENT INFORMATION.—Section 27 of the Office of Federal
23 Procurement Policy Act (41 U.S.C. 423) is amended in
24 subsection (a)(1) by adding at the end the following new
25 sentence: “In the case of an employee of a private sector

1 organization assigned to an agency under chapter 37 of
2 title 5, United States Code, in addition to the restriction
3 in the preceding sentence, such employee shall not, other
4 than as provided by law, knowingly disclose contractor bid
5 or proposal information or source selection information
6 during the three-year period after the end of the assign-
7 ment of such employee.”.

8 **SEC. 5. REPORT ON EXISTING EXCHANGE PROGRAMS.**

9 (a) EXCHANGE PROGRAM DEFINED.—For purposes
10 of this section, the term “exchange program” means an
11 executive exchange program, the program under sub-
12 chapter VI of chapter 33 of title 5, United States Code,
13 and any other program which allows for—

14 (1) the assignment of employees of the Federal
15 Government to non-Federal employers;

16 (2) the assignment of employees of non-Federal
17 employers to the Federal Government; or

18 (3) both.

19 (b) REPORTING REQUIREMENT.—Not later than 1
20 year after the date of the enactment of this Act, the Office
21 of Personnel Management shall prepare and submit to the
22 Committee on Government Reform of the House of Rep-
23 resentatives and the Committee on Governmental Affairs
24 of the Senate a report identifying all existing exchange
25 programs.

1 (c) SPECIFIC INFORMATION.—The report shall, for
2 each such program, include—

3 (1) a brief description of the program, including
4 its size, eligibility requirements, and terms or condi-
5 tions for participation;

6 (2) specific citation to the law or other author-
7 ity under which the program is established;

8 (3) the names of persons to contact for more
9 information, and how they may be reached; and

10 (4) any other information which the Office con-
11 siders appropriate.

12 **SEC. 6. REPORT ON THE ESTABLISHMENT OF A GOVERN-**
13 **MENTWIDE INFORMATION TECHNOLOGY**
14 **TRAINING PROGRAM.**

15 (a) IN GENERAL.—Not later January 1, 2003, the
16 Office of Personnel Management, in consultation with the
17 Chief Information Officers Council and the Administrator
18 of General Services, shall review and submit to the Com-
19 mittee on Government Reform of the House of Represent-
20 atives and the Committee on Governmental Affairs of the
21 Senate a written report on the following:

22 (1) The adequacy of any existing information
23 technology training programs available to Federal
24 employees on a Governmentwide basis.

1 (2)(A) If one or more such programs already
 2 exist, recommendations as to how they might be im-
 3 proved.

4 (B) If no such program yet exists, recommenda-
 5 tions as to how such a program might be designed
 6 and established.

7 (3) With respect to any recommendations under
 8 paragraph (2), how the program under chapter 37
 9 of title 5, United States Code, might be used to help
 10 carry them out.

11 (b) COST ESTIMATE.—The report shall, for any rec-
 12 ommended program (or improvements) under subsection
 13 (a)(2), include the estimated costs associated with the im-
 14 plementation and operation of such program as so estab-
 15 lished (or estimated difference in costs of any such pro-
 16 gram as so improved).

17 **SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.**

18 (a) AMENDMENTS TO TITLE 5, UNITED STATES
 19 CODE.—Title 5, United States Code, is amended—

20 (1) in section 3111, by adding at the end the
 21 following:

22 “(d) Notwithstanding section 1342 of title 31, the
 23 head of an agency may accept voluntary service for the
 24 United States under chapter 37 of this title and regula-
 25 tions of the Office of Personnel Management.”;

1 (2) in section 4108, by striking subsection (d);

2 and

3 (3) in section 7353(b), by adding at the end the

4 following:

5 “(4) Nothing in this section precludes an employee
6 of a private sector organization, while assigned to an agen-
7 cy under chapter 37, from continuing to receive pay and
8 benefits from such organization in accordance with such
9 chapter.”.

10 (b) AMENDMENT TO TITLE 18, UNITED STATES
11 CODE.—Section 209 of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(g)(1) This section does not prohibit an employee
14 of a private sector organization, while assigned to an agen-
15 cy under chapter 37 of title 5, from continuing to receive
16 pay and benefits from such organization in accordance
17 with such chapter.

18 “(2) For purposes of this subsection, the term ‘agen-
19 cy’ means an agency (as defined by section 3701 of title
20 5) and the Office of the Chief Technology Officer of the
21 District of Columbia.”.

22 (c) OTHER AMENDMENTS.—Section 125(c)(1) of
23 Public Law 100–238 (5 U.S.C. 8432 note) is amended—

24 (1) in subparagraph (B), by striking “or” at
25 the end;

Attest: **JEFF TRANDAH**,
Clerk.