



Legislative Bulletin.....April 10, 2002

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H.R. 3925—Digital Tech Corps Act (Davis, Tom)

Order of Business: The bill is scheduled to be considered on Wednesday, April 10th, subject to an open rule.

Summary: H.R. 3925 would establish an exchange program between the federal government and the private sector to promote the development of information technology management. As the basis for creating this program, the bill contains six findings, including:

- “Unless action is taken soon, there will be a crisis in the government’s ability to deliver essential services to the American people;”
- “To highlight the urgency of this situation, in January 2001, the General Accounting Office added the Federal Government’s human capital management to its list of high-risk problems for which an effective solution must be found;”
- “...Compensation issues continue to severely restrain recruitment for Federal agencies;” and
- “An effective, efficient, and economical response to this crisis would be to create a vibrant, ongoing exchange effort designed to share talent, expertise, and advances in management between leading-edge businesses and Federal agencies engaged in best practices.”

Specifically, the program would authorize the head of a federal agency to arrange (in writing) for the six-to-twelve-month assignment of a GS-11 level* (or above) employee to a private sector organization (or an employee of a private sector organization to the agency) to work on information technology management, pending the agreement of said private sector organization and said federal employee. Assignments could be extended for up to an additional year, yet no assignment could begin five years after enactment of this legislation.

Should the federal employee fail to carry out the written agreement, pending exceptions, the employee would owe a debt to the United States in the amount equal to all expenses related to the assignment (except salary). Such assignments may be terminated by either party for any reason at any time.

*[GS -11 level federal employees earn between \$47,000 and \$67,000 per year.]

A federal employee assigned to a private sector organization under this exchange program would still be regarded as a federal employee for legal purposes. A private-sector employee on assignment to a federal agency under this program would be considered to be on detail to such agency and therefore subject to certain federal protections and benefits (yet would not receive a federal salary).

The General Accounting Office (GAO) would have to report to Congress twice a year on the numbers of detailees involved in the program, where they are detailed, for how long they will each be detailed, why they are detailed, and any other information the GAO considers appropriate. Within a year of this bill's enactment, the Office of Personnel Management (OPM) would have to report to Congress analogous facts about all existing exchange programs between federal and non-federal workplaces.

Within four years of this bill's enactment, the GAO would also have to report to Congress on the effectiveness of this exchange program and whether the program should be continued or allowed to expire.

Ethics Rules: An employee of a private organization detailed to a federal agency under this program would be prohibited from lobbying that agency for one year after the assignment ends. Further, such employees would be prohibited (for one year after the assignment ends) from giving advice to persons seeking contracts with said agency. Employees of a private organization would be subject to the same limitations on the disclosure of confidential information as federal employees and could not knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment.

Possible Amendments:

Rep. Tom Davis (R-VA) is expected to offer an amendment to his bill that would:

- Direct a participating federal agency to take into account the needs of small businesses when making assignments under this program;
- Direct a participating federal agency to make assignments based on what would best help the agency train its information technology staff;
- Prohibit a participating private-sector company from charging the federal government for the costs of pay and benefits paid by the company to a detailed federal employee; and
- Direct the OPM by the end of this year to report on the adequacy of existing information technology training programs available to federal employees throughout the federal government and on the costs of new training programs recommended (if any).

Rep. Nydia Velazquez (D-NY) is expected to offer an amendment that would:

- Require each federal agency making more than five annual assignments under this program to ensure that at least 20% each year are to small businesses; and
- Require each federal agency NOT complying with the small business requirement to report to Congress annually explaining why it has not complied.

Rep. Henry Waxman (D-CA) is expected to offer an amendment that would:

- Prohibit private-sector employees assigned to federal agencies under this program from accessing “trade secrets or ... any other nonpublic information which might be of commercial value to the private sector organization from which [they are] assigned;”
- Establish an OPM-run training program for federal information technology workers (the “Federal Information Technology Training Program”);
- Prohibit federal employees from being detailed to private-sector organizations until the Federal Information Technology Training Program is established and until regulations for such detailing are promulgated within said Program; and
- **Authorize \$7.0 million in appropriations for the Training Program for fiscal year 2003 and “such sums as may be necessary for each fiscal year thereafter.”**

The American Federation of Government Employees (which is part of the AFL-CIO) is urging support for the Waxman amendment.

Bush Administration Position: On July 31, 2001, the Subcommittee on Technology and Procurement Policy of the Committee on Government Reform held a hearing to explore solutions to the federal government’s technology workforce needs. At this hearing, various Administration officials expressed support for a technology workforce exchange program like the one proposed in H.R. 3925.

Cost to Taxpayers: CBO estimates that H.R. 3925 would authorize an expenditure of less than \$500,000 in total—mainly for the GAO and OPM reporting requirements. Receipts from civil and criminal fines (for violations of the ethics rules in the bill) would likely be less than \$500,000 per year. If the Waxman amendment is adopted, the authorized appropriations would increase by \$7.0 million in fiscal year 2003 and by “such sums as may be necessary” for subsequent fiscal years.

CBO cites a recent GAO report indicating that it is unlikely that private-sector employers would be willing to part with many employees for extended periods (given the expectation that the demand for qualified information technology workers will exceed the supply). Any exchange of employees that involved reimbursement to the private sector would be subject to the availability of regularly appropriated funds for salary, training, and educational expenses. Presumably, minimal additional funds would need to be appropriated.

H.R. 3925 would not impose any mandates on the private-sector or on state and local governments.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill would establish a new voluntary employee exchange program between the federal government and the private-sector, as outlined above.

Constitutional Authority: The Committee on Government Reform (in House Report 107-379) failed to cite constitutional authority.

Staff Contact: Paul Teller, paul.teller@mail.house.gov, (202) 226-9718

Phelps Motion to Instruct Conferees on H.R. 2646, the Farm Security Act of 2001 –
Instructs the House Conferees to agree to section 1071 of the Senate Amendment.

Section 1071 extends Chapter 12 of title 11, the Family Farm Bankruptcy Provisions

Flake Motion to Instruct to Conferees on H.R. 2646, the Farm Security Act of 2001 --
Instructs the House Conferees to agree to section 1244(g)(1)(C) of the Food Security Act of 1985, as added by section 204 of the Senate-passed bill.

Section 1244(g)(1)(C) states that information regarding owners, operators, or producers that have received payments from the Secretary of Agriculture and the amounts received shall be considered to be public information, and may be released to any person, Indian tribe, or Federal, State, local agency outside the Department of Agriculture.

Both the House and Senate bills seek to restrict the types of information that may be released to the public regarding recipients of federal funds. The Senate includes a provision ensuring that the names of those receiving taxpayer funds and the amount that they receive shall continue to be public information. The Flake Motion to Instruct directs the House Conferees to keep this provision.

Staff Contact: Brent Gibaldo, x5-2635