

Union Calendar No. 231

107TH CONGRESS
2^D SESSION

H. R. 3925

[Report No. 107-379, Parts I and II]

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2002

Mr. TOM DAVIS of Virginia (for himself and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Government Reform

MARCH 18, 2002

Reported from the Committee on Government Reform with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 18, 2002

Referred to the Committees on the Judiciary and Ways and Means for a period ending not later than March 19, 2002, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of those committees pursuant to clause 1 (k) and (s), rule X

MARCH 19, 2002

Referral to the Committees on the Judiciary and Ways and Means extended for a period ending not later than April 9, 2002

APRIL 9, 2002

Reported from the Committee on the Judiciary with an amendment
[Omit the part struck through in *italic* and insert the part printed in **boldface roman**]

APRIL 9, 2002

The Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Digital Tech Corps Act*
5 *of 2002”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds that—*

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

11 *(2) by 2006, over 50 percent of the Federal Gov-*
12 *ernment’s information technology workforce will be el-*
13 *igible to retire, creating a huge demand in the Fed-*
14 *eral Government for high-skill workers;*

15 *(3) despite a 44 percent decrease in the demand*
16 *for information technology workers in the private sec-*
17 *tor, the Information Technology Association of Amer-*
18 *ica reported in 2001 that employers will need to fill*

1 over 900,000 new information technology jobs and
 2 will be unable to find qualified workers for 425,000
 3 of those jobs;

4 (4) to highlight the urgency of this situation, in
 5 January 2001, the General Accounting Office added
 6 the Federal Government’s human capital management
 7 to its list of high-risk problems for which an effective
 8 solution must be found;

9 (5) despite efforts to increase flexibility in Fed-
 10 eral agencies’ employment practices, compensation
 11 issues continue to severely restrain recruitment for
 12 Federal agencies; and

13 (6) an effective, efficient, and economical re-
 14 sponse to this crisis would be to create a vibrant, on-
 15 going exchange effort designed to share talent, exper-
 16 tise, and advances in management between leading-
 17 edge businesses and Federal agencies engaged in best
 18 practices.

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

20 (a) *IN GENERAL.*—Subpart B of part III of title 5,
 21 United States Code, is amended by adding at the end the
 22 following:

23 **“CHAPTER 37—INFORMATION**
 24 **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.*

1 **“§ 3701. Definitions**

2 *“For purposes of this chapter—*

3 *“(1) the term ‘agency’ means an Executive agen-*
4 *cy, but does not include the General Accounting Of-*
5 *fice; and*

6 *“(2) the term ‘detail’ means—*

7 *“(A) the assignment or loan of an employee*
8 *of an agency to a private sector organization*
9 *without a change of position from the agency*
10 *that employs the individual, or*

11 *“(B) the assignment or loan of an employee*
12 *of a private sector organization to an agency*
13 *without a change of position from the private*
14 *sector organization that employs the individual,*
15 *whichever is appropriate in the context in which such*
16 *term is used.*

17 **“§ 3702. General provisions**

18 *“(a) ASSIGNMENT AUTHORITY.—On request from or*
19 *with the agreement of a private sector organization, and*
20 *with the consent of the employee concerned, the head of an*
21 *agency may arrange for the assignment of an employee of*
22 *the agency to a private sector organization or an employee*

1 of a private sector organization to the agency. An eligible
2 employee is an individual who—

3 “(1) works in the field of information technology
4 management;

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

7 “(3) is expected to assume increased information
8 technology management responsibilities in the future.

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

14 “(b) AGREEMENTS.—Each agency that exercises its
15 authority under this chapter shall provide for a written
16 agreement between the agency and the employee concerned
17 regarding the terms and conditions of the employee’s assign-
18 ment. In the case of an employee of the agency, the agree-
19 ment shall—

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

23 “(2) provide that, in the event the employee fails
24 to carry out the agreement (except for good and suffi-
25 cient reason, as determined by the head of the agency

1 *from which assigned) the employee shall be liable to*
2 *the United States for payment of all expenses of the*
3 *assignment.*

4 *An amount under paragraph (2) shall be treated as a debt*
5 *due the United States.*

6 “(c) *TERMINATION.*—*Assignments may be terminated*
7 *by the agency or private sector organization concerned for*
8 *any reason at any time.*

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

16 “(e) *ASSISTANCE.*—*The Chief Information Officers*
17 *Council, by agreement with the Office of Personnel Manage-*
18 *ment, may assist in the administration of this chapter, in-*
19 *cluding by maintaining lists of potential candidates for as-*
20 *signment under this chapter, establishing mentoring rela-*
21 *tionships for the benefit of individuals who are given as-*
22 *signments under this chapter, and publicizing the program.*

1 **“§ 3703. Assignment of employees to private sector or-**
2 **ganizations**

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

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

21 “(c) *REIMBURSEMENTS.*—The assignment of an em-
22 ployee to a private sector organization under this chapter
23 may be made with or without reimbursement by the private
24 sector organization for the travel and transportation ex-
25 penses to or from the place of assignment, subject to the
26 same terms and conditions as apply with respect to an em-

1 *ployee of a Federal agency or a State or local government*
2 *under section 3375, and for the pay, or a part thereof, of*
3 *the employee during assignment. Any reimbursements shall*
4 *be credited to the appropriation of the agency used for pay-*
5 *ing the travel and transportation expenses or pay.*

6 “(d) *TORT LIABILITY; SUPERVISION.—The Federal*
7 *Tort Claims Act and any other Federal tort liability statute*
8 *apply to an employee of an agency assigned to a private*
9 *sector organization under this chapter. The supervision of*
10 *the duties of an employee of an agency so assigned to a*
11 *private sector organization may be governed by an agree-*
12 *ment between the agency and the organization.*

13 **“§3704. Assignment of employees from private sector**
14 **organizations**

15 “(a) *IN GENERAL.—An employee of a private sector*
16 *organization assigned to an agency under this chapter is*
17 *deemed, during the period of the assignment, to be on detail*
18 *to such agency.*

19 “(b) *TERMS AND CONDITIONS.—An employee of a pri-*
20 *vate sector organization assigned to an agency under this*
21 *chapter—*

22 “(1) *may, notwithstanding section 209 of title*
23 *48, continue to receive pay and benefits from the pri-*
24 *vate sector organization from which he is assigned;*

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

3 “(A) chapter 73;

4 “(B) sections 201, 203, 205, 207, 208, 209,
5 603, 606, 607, 643, 654, 1905, and 1913 of title
6 18;

7 “(C) sections 1343, 1344, and 1349(b) of
8 title 31;

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

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

12 “(F) section 1043 of the Internal Revenue
13 Code of 1986; and

14 “(G) section 27 of the Office of Federal Pro-
15 curement Policy Act; and

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

18 *The supervision of an employee of a private sector organiza-*
19 *tion assigned to an agency under this chapter may be gov-*
20 *erned by agreement between the agency and the private sec-*
21 *tor organization concerned. Such an assignment may be*
22 *made with or without reimbursement by the agency for the*
23 *pay, or a part thereof, of the employee during the period*
24 *of assignment, or for any contribution of the private sector*
25 *organization to employee benefit systems.*

1 “(c) *COORDINATION WITH CHAPTER 81.*—An em-
2 ployee of a private sector organization assigned to an agen-
3 cy under this chapter who suffers disability or dies as a
4 result of personal injury sustained while performing duties
5 during the assignment shall be treated, for the purpose of
6 subchapter I of chapter 81, as an employee as defined by
7 section 8101 who had sustained the injury in the perform-
8 ance of duty, except that, if the employee or the employee’s
9 dependents receive from the private sector organization any
10 payment under an insurance policy for which the premium
11 is wholly paid by the private sector organization, or other
12 benefit of any kind on account of the same injury or death,
13 then, the amount of such payment or benefit shall be cred-
14 ited against any compensation otherwise payable under
15 subchapter I of chapter 81.

16 **“§3705. Application to Office of the Chief Technology**
17 **Officer of the District of Columbia**

18 “(a) *IN GENERAL.*—The Chief Technology Officer of
19 the District of Columbia may arrange for the assignment
20 of an employee of the Office of the Chief Technology Officer
21 to a private sector organization, or an employee of a private
22 sector organization to such Office, in the same manner as
23 the head of an agency under this chapter.

24 “(b) *TERMS AND CONDITIONS.*—An assignment made
25 pursuant to subsection (a) shall be subject to the same terms

1 *and conditions as an assignment made by the head of an*
2 *agency under this chapter, except that in applying such*
3 *terms and conditions to an assignment made pursuant to*
4 *subsection (a), any reference in this chapter to a provision*
5 *of law or regulation of the United States shall be deemed*
6 *to be a reference to the applicable provision of law or regu-*
7 *lation of the District of Columbia, including the applicable*
8 *provisions of the District of Columbia Government Com-*
9 *prehensive Merit Personnel Act of 1978 (sec. 1–601.01 et*
10 *seq., D.C. Official Code) and section 601 of the District of*
11 *Columbia Campaign Finance Reform and Conflict of Inter-*
12 *est Act (sec. 1–1106.01, D.C. Official Code).*

13 “(c) *DEFINITION.—For purposes of this section, the*
14 *term ‘Office of the Chief Technology Officer’ means the office*
15 *established in the executive branch of the government of the*
16 *District of Columbia under the Office of the Chief Tech-*
17 *nology Officer Establishment Act of 1998 (sec. 1–1401 et*
18 *seq., D.C. Official Code).*

19 **“§ 3706. Reporting requirement**

20 “(a) *IN GENERAL.—The Office of Personnel Manage-*
21 *ment shall, not later than April 30 and October 31 of each*
22 *year, prepare and submit to the Committee on Government*
23 *Reform of the House of Representatives and the Committee*
24 *on Governmental Affairs of the Senate a semiannual report*
25 *summarizing the operation of this chapter during the im-*

1 *mediately preceding 6-month period ending on March 31*
2 *and September 30, respectively.*

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

5 “(1) *the total number of individuals assigned to,*
6 *and the total number of individuals assigned from,*
7 *each agency during such period;*

8 “(2) *a brief description of each assignment in-*
9 *cluded under paragraph (1), including—*

10 “(A) *the name of the assigned individual, as*
11 *well as the private sector organization and the*
12 *agency (including the specific bureau or other*
13 *agency component) to or from which such indi-*
14 *vidual was assigned;*

15 “(B) *the respective positions to and from*
16 *which the individual was assigned, including the*
17 *duties and responsibilities and the pay grade or*
18 *level associated with each; and*

19 “(C) *the duration and objectives of the indi-*
20 *vidual’s assignment; and*

21 “(3) *such other information as the Office con-*
22 *siders appropriate.*

23 “(c) *PUBLICATION.*—*A copy of each report submitted*
24 *under subsection (a)—*

1 “(1) shall be published in the *Federal Register*;
2 *and*

3 “(2) shall be made publicly available on the
4 *Internet*.

5 “(d) *AGENCY COOPERATION*.—On request of the Office,
6 agencies shall furnish such information and reports as the
7 Office may require in order to carry out this section.

8 **“§ 3707. Regulations**

9 *“The Director of the Office of Personnel Management*
10 *shall prescribe regulations for the administration of this*
11 *chapter.”*

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

19 (1) *an evaluation of the effectiveness of the pro-*
20 *gram established by such chapter; and*

21 (2) *a recommendation as to whether such pro-*
22 *gram should be continued (with or without modifica-*
23 *tion) or allowed to lapse.*

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

 “37. *Information Technology Exchange Program* 3701”.

4 **SEC. 4. ETHICS PROVISIONS.**

5 (a) *ONE-YEAR RESTRICTION ON CERTAIN COMMU-*
 6 *NICATIONS.*—*Section 207(c)(2)(A) of title 18, United States*
 7 *Code, is amended—*

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

9 (2) *by striking the period at the end of clause*
 10 *(iv) and inserting “; or”; and*

11 (3) *by adding at the end the following:*

12 “*(v) an employee of a private sector organi-*
 13 *zation assigned to an agency under chapter 37*
 14 *of title 5.”*

15 **“(v) assigned from a private sec-**
 16 **tor organization to an agency under**
 17 **chapter 37 of title 5.”**

18 (b) *DISCLOSURE OF CONFIDENTIAL INFORMATION.*—
 19 *Section 1905 of title 18, United States Code, is amended*
 20 *by inserting “or being an employee of a private sector orga-*
 21 *nization who is; or was within the past three years; as-*
 22 *signed to an agency under chapter 37 of title 5,” after “(15*
 23 *U.S.C. 1311–1314),”*

1 (c) *CONTRACT ADVICE*.—Section 207 of title 18,
2 *United States Code*, is amended by adding at the end the
3 *following*:

4 “(l) *CONTRACT ADVICE BY FORMER DETAILS*.—Who-
5 *ever, being an employee of a private sector organization as-*
6 *signed to an agency under chapter 37 of title 5, within one*
7 *year after the end of that assignment, knowingly represents*
8 *or aids, counsels, or assists in representing any other person*
9 *(except the United States) in connection with any contract*
10 *with that agency shall be punished as provided in section*
11 *216 of this title.”.*

12 (d) *RESTRICTION ON DISCLOSURE OF PROCUREMENT*
13 *INFORMATION*.—Section 27 of the *Office of Federal Procure-*
14 *ment Policy Act (41 U.S.C. 423)* is amended in subsection
15 (a)(1) by adding at the end the following new sentence: “*In*
16 *the case of an employee of a private sector organization as-*
17 *signed to an agency under chapter 37 of title 5, United*
18 *States Code, in addition to the restriction in the preceding*
19 *sentence, such employee shall not, other than as provided*
20 *by law, knowingly disclose contractor bid or proposal infor-*
21 *mation or source selection information during the three-*
22 *year period after the end of the assignment of such em-*
23 *ployee.”.*

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

2 (a) *EXCHANGE PROGRAM DEFINED.*—For purposes of
3 this section, the term “exchange program” means an execu-
4 tive exchange program, the program under subchapter VI
5 of chapter 33 of title 5, United States Code, and any other
6 program which allows for—

7 (1) the assignment of employees of the Federal
8 Government to non-Federal employers;

9 (2) the assignment of employees of non-Federal
10 employers to the Federal Government; or

11 (3) both.

12 (b) *REPORTING REQUIREMENT.*—Not later than 1 year
13 after the date of the enactment of this Act, the Office of Per-
14 sonnel Management shall prepare and submit to the Com-
15 mittee on Government Reform of the House of Representa-
16 tives and the Committee on Governmental Affairs of the
17 Senate a report identifying all existing exchange programs.

18 (c) *SPECIFIC INFORMATION.*—The report shall, for
19 each such program, include—

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

23 (2) specific citation to the law or other authority
24 under which the program is established;

25 (3) the names of persons to contact for more in-
26 formation, and how they may be reached; and

1 (4) *any other information which the Office con-*
2 *siders appropriate.*

3 **SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.**

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

6 (1) *in section 3111, by adding at the end the fol-*
7 *lowing:*

8 “*(d) Notwithstanding section 1342 of title 31, the head*
9 *of an agency may accept voluntary service for the United*
10 *States under chapter 37 of this title and regulations of the*
11 *Office of Personnel Management.*”;

12 (2) *in section 4108, by striking subsection (d);*
13 *and*

14 (3) *in section 7353(b), by adding at the end the*
15 *following:*

16 “*(4) Nothing in this section precludes an employee of*
17 *a private sector organization, while assigned to an agency*
18 *under chapter 37, from continuing to receive pay and bene-*
19 *fits from such organization in accordance with such chap-*
20 *ter.*”.

21 **(b) AMENDMENT TO TITLE 18, UNITED STATES**
22 **CODE.—Section 209 of title 18, United States**
23 **Code, is amended by adding at the end the fol-**
24 **lowing:**

1 **“(g)(1) This section does not prohibit an**
2 **employee of a private sector organization,**
3 **while assigned to an agency under chapter 37**
4 **of title 5, from continuing to receive pay and**
5 **benefits from such organization in accord-**
6 **ance with such chapter.**

7 **“(2) For purposes of this subsection, the**
8 **term ‘agency’ means an agency (as defined by**
9 **section 3701 of title 5) and the Office of the**
10 **Chief Technology Officer of the District of Co-**
11 **lumbia.”.**

12 ~~(b)~~ **(c) OTHER AMENDMENTS.**—*Section 125(c)(1) of*
13 *Public Law 100–238 (5 U.S.C. 8432 note) is amended—*

14 *(1) in subparagraph (B), by striking “or” at the*
15 *end;*

16 *(2) in subparagraph (C), by striking “and” at*
17 *the end and inserting “or”; and*

18 *(3) by adding at the end the following:*

19 *“(D) an individual assigned from a Federal*
20 *agency to a private sector organization under*
21 *chapter 37 of title 5, United States Code; and”.*

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H. R. 3925

[Report No. 107-379, Parts I and II]

A BILL

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