To make certain workforce authorities available to the National Aeronautics and Space Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2003

Mr. BOEHLENT introduced the following bill; which was referred to the Committee on Science, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To make certain workforce authorities available to the National Aeronautics and Space Administration, 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 “NASA Flexibility Act
5 of 2003”.


SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL. 

(a) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,” and inserting “the rate of basic pay payable for level III of the Executive Schedule,”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

SEC. 3. WORKFORCE AUTHORITIES.

The National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 and following) is amended by adding at the end the following:

```
“TITLE V—WORKFORCE AUTHORITIES

“DEFINITIONS

“Sec. 501. For purposes of this title—

“(1) the term ‘employee’ means an individual employed in or under the Administration;

“(2) the term ‘appropriate committees of Congress’ means—
```
“(A) the Committee on Science and the Committee on Appropriations of the House of Representatives; and

“(B) the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate;

“(3) the term ‘critical need’ means a specific and important requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees either because of the inability to fill positions or because employees do not possess the requisite skills;

“(4) the term ‘Workforce Plan’ means the plan required under section 502(a); and

“(5) the term ‘redesignation bonus’ means a bonus under section 504 paid to an individual described in subsection (a)(2) thereof.

‘‘PLANNING, NOTIFICATION, AND REPORTING REQUIREMENTS

‘‘SEC. 502. (a) Not later than 90 days before first exercising any of the workforce authorities made available by this title, the Administrator shall submit to the appropriate committees of Congress a written plan, which shall include a description of—
“(1) each critical need of the Administration and the criteria used in its identification;

“(2) the functions, approximate number, and classes or other categories of positions or employees that address critical needs and that would be eligible for each authority proposed to be exercised under section 503, and how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

“(3) any critical need identified under paragraph (1) which would not be addressed by the authorities made available by section 503, and the reasons why those needs would not be so addressed;

“(4) the specific criteria to be used in determining which individuals may receive the benefits described in sections 504, 505, and 506 (including, in the case of sections 504 and 505, the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

“(5) the safeguards or other measures that will be applied to ensure that this title is carried out in a manner consistent with merit system principles;
“(6) the means by which employees will be afforded the notification required under subsection (b) and the third sentence of subsection (c)(1), respectively; and

“(7) the methods that will be used to determine if the authorities exercised under section 503 have successfully addressed each critical need identified under paragraph (1).

“(b) Not later than 60 days before first exercising any of the workforce authorities made available by this title, the Administrator shall provide to all employees the Workforce Plan, along with any additional information which the Administrator considers appropriate.

“(c)(1) The Administrator may from time to time modify the Workforce Plan. Not later than 90 days before implementing any such modifications, the Administrator shall submit a description of the proposed modifications to the appropriate committees of Congress. Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration.

“(2) Any reference in this title or any other provision of law to the Workforce Plan shall be considered to include any modification made in accordance with this subsection.
“(d) None of the workforce authorities made available by section 503 may be exercised in a manner inconsistent with the Workforce Plan.

“(e) Not later than 6 years after the date of enactment of this title, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this title, including—

“(1) an evaluation, using the methods described in subsection (a)(7), of whether the authorities exercised under section 503 successfully addressed each critical need identified under subsection (a)(1);

“(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (a)(3)) was not successfully addressed; and

“(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

“(f) Whenever the Administration submits its performance plan under section 1115 of title 31, United States Code, to the Office of Management and Budget for any year, the Administration shall at the same time sub-
mit a copy of such plan to the appropriate committees of Congress.

“WORKFORCE AUTHORITIES

“SEC. 503. (a) The workforce authorities made available by this title are as follows:

“(1) The authority to pay recruitment, redesignation, and relocation bonuses, as provided by section 504.

“(2) The authority to pay retention bonuses, as provided by section 505.

“(3) The authority to apply subchapter II of chapter 35 of title 5, United States Code (relating to voluntary separation incentive payments), as added by section 1313(a)(1)(A) of the Homeland Security Act of 2002 (Public Law 107–296), in accordance with section 506.

“(4) The authority to make term appointments and to take related personnel actions, as provided by section 507.

“(5) The authority to fix rates of basic pay for critical positions, as provided by section 508.

“(6) The authority to extend intergovernmental personnel act assignments, as provided by section 509.
“(b) No authority under this title may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

“(c) Unless specifically stated otherwise, all authorities provided under this title are subject to section 5307 of title 5, United States Code. For purposes of applying such section 5307, cash payments made under authority of this title shall be treated in the same way as if they had instead been made under the corresponding provisions of such title 5 (if any).

“RECRUITMENT, REDESIGNATION, AND RELOCATION BONUSES

“Sec. 504. (a) Notwithstanding section 5753 of title 5, United States Code, the Administrator may pay a bonus to an individual, in accordance with the Workforce Plan and subject to the limitations in this section, if the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position, and if the individual—

“(1) is newly appointed as an employee of the Federal Government;

“(2) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or
“(3) is currently employed by the Federal Government and must relocate to a different geographic area to accept a position with the Administration.

“(b) If the position is described as addressing a critical need in the Workforce Plan pursuant to section 502(a)(2), the amount of a bonus may not exceed—

“(1) 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304–5304a of title 5, United States Code) as of the beginning of the service period multiplied by the service period specified pursuant to subsection (d)(1)(A); or

“(2) 100 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304–5304a of title 5, United States Code) as of the beginning of the service period.

“(c) If the position is not described as addressing a critical need in the Workforce Plan pursuant to section 502(a)(2), the amount of a bonus may not exceed—

“(1) 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304–5304a of title 5, United States Code) as of the beginning of the service period multiplied by the service period specified pursuant to subsection (d)(1)(A); or
“(2) 100 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304–5304a of title 5, United States Code) as of the beginning of the service period.

“(d)(1) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration. The service agreement shall, at a minimum, set forth—

“(A) the required service period;

“(B) the method of payment, including a payment schedule; the method of payment may include a lump-sum payment, installment payments, or a combination thereof;

“(C) the amount of the bonus and the basis for calculating such amount; and

“(D) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service
period may not be less than 6 months and may not exceed 4 years.

“(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

“(f) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each year, a summary of all bonuses paid under subsections (b) and (c) during the previous calendar year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

“RETENTION BONUSES

“SEC. 505. (a) Notwithstanding section 5754 of title 5, United States Code, the Administrator may pay a bonus to an employee, in accordance with the Workforce Plan and subject to the limitations in this section, if the Administrator determines that—

“(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee’s services makes it essential to retain the employee; and
“(2) the employee would be likely to leave in
the absence of a retention bonus.

“(b) If the position is described as addressing a crit-
ical need in the Workforce Plan pursuant to section
502(a)(2), the amount of a bonus may not exceed 50 per-
cent of the employee’s annual rate of basic pay (including
comparability payments under sections 5304–5304a of
title 5, United States Code).

“(c) If the position is not described as addressing a
critical need in the Workforce Plan pursuant to section
502(a)(2), the amount of a bonus may not exceed 25 per-
cent of the employee’s annual rate of basic pay (including
comparability payments under sections 5304–5304a of
title 5, United States Code).

“(d)(1) Payment of a bonus under this section shall
be contingent upon the employee entering into a service
agreement with the Administration. The service agreement
shall, at a minimum, set forth—

“(A) the required service period;

“(B) the method of payment, including a pay-
ment schedule; the method of payment may include
a lump-sum payment, installment payments, or a
combination thereof;

“(C) the amount of the bonus and the basis for
calculating such amount; and
“(D) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) The employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

“(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 of title 5, United States Code, or under section 504.
“(g) Before paying a bonus under this section, the Administration shall establish a plan for paying retention bonuses, subject to approval by the Office of Personnel Management.

“(h) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each year, a summary of all bonuses paid under subsections (b) and (c) during the previous calendar year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

“VOLUNTARY SEPARATION INCENTIVE PAYMENTS

“Sec. 506. (a) In applying subchapter II of chapter 35 of title 5, United States Code, the Administrator may provide for voluntary separation incentive payments in excess of the dollar-amount limitation that would otherwise apply under section 3523(b)(3)(B) of such title, subject to subsection (b).

“(b) Voluntary separation incentive payments described in subsection (a)—

“(1) may not exceed 50 percent of the annual rate of basic pay of the employee receiving such payments (computed disregarding any comparability payments under sections 5304–5304a of title 5, United States Code);
“(2) may not, in any calendar year, be made to
more than—

“(A) 10 employees; or

“(B) such greater number of employees as
the Administrator may, with the approval of the
Office of Management and Budget, establish in
lieu of the number specified in subparagraph
(A) following notification to the appropriate
committees of Congress;

“(3) may not be made to an employee if the
employee has within the last 12 months received, or
if the employee is then receiving, a bonus or allow-
ance under section 5753 or 5754 of title 5, United
States Code, or under section 504 or 505; and

“(4) may be made only if the position in which
the employee is serving addresses a critical need
identified in the Workforce Plan pursuant to section
502(a)(2).

“(c)(1) The proposed use of workforce authorities in
this section shall be included in the plan required by sec-
section 3522 of title 5, United States Code.

“(2) Whenever the Office of Personnel Management
approves the Administration’s plan required in such sec-
section 3522, the Administration shall submit a copy of the
approved plan to the appropriate committees of Congress within 15 days after the date on which it is so approved.

"TERM APPOINTMENTS"

"Sec. 507. (a) The Administrator may authorize term appointments within the Administration made under authority of subchapter I of chapter 33 of title 5, United States Code, for a period of not less than 1 year and not more than 6 years.

"(b) Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

"(1) such individual was appointed under open, competitive examination pursuant to provisions of subchapter I of chapter 33 of title 5, United States Code, to the term position;

"(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

"(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;
“(4) the employee’s performance under such term appointment was at least fully successful or equivalent; and

“(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

“(c) Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

“(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

“(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.
“(f) Not later than February 28 of each year, the Administrator shall submit to the appropriate committees of Congress—

“(1) the total number of term appointments converted during the previous calendar year; and

“(2) of that total number, the number of conversions that were made to address a critical need described in the Workforce Plan pursuant to section 502(a)(2).

“PAY AUTHORITY FOR CRITICAL POSITIONS

“Sec. 508. (a) For the purpose of this section, the term ‘position’ means—

“(1) a position to which chapter 51 of title 5, United States Code, applies, including a position in the Senior Executive Service;

“(2) a position under the Executive Schedule under sections 5312–5317 of title 5, United States Code;

“(3) a position established under section 3104 of title 5, United States Code; or

“(4) a senior-level position to which section 5376(a)(1) of title 5, United States Code, applies.

“(b) Authority under this section—

“(1) may be exercised only with respect to a position which is described as addressing a critical need in the Workforce Plan pursuant to section
502(a)(2), and which requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

“(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

“(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined by section 5102(a)(1) of title 5, United States Code.

“(c)(1) Notwithstanding section 5377 of title 5, United States Code, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

“(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

“(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.
“(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3, United States Code.

“(3) Notwithstanding any provision of section 5307 of title 5, United States Code, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 of such title 5 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3, United States Code.

“(e) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each year, the number of critical pay positions that were established and the number of critical pay positions that were disestablished during the previous calendar year.

“ASSIGNMENTS UNDER THE INTERGOVERNMENTAL PERSONNEL ACT MOBILITY PROGRAM

“Sec. 509. For purposes of applying the third sentence of section 3372(a) of title 5, United States Code (relating to the authority of the head of a Federal agency
to extend the period of an employee’s assignment to or
from a State or local government, institution of higher
education, or other organization), the Administrator may,
with the concurrence of the employee and the government
or organization concerned, take any action which would
be allowable if such sentence had been amended by strik-
ing ‘two’ and inserting ‘four’.

“ENHANCED DEMONSTRATION PROJECT AUTHORITY

“SEC. 510. When conducting a demonstration project
at the Administration, section 4703(d)(1)(A) of title 5,
United States Code, may be applied by substituting ‘such
numbers of individuals as determined by the Adminis-
trator’ for ‘not more than 5,000 individuals’.

“TERMINATION

“SEC. 511. The workforce authorities under section
503 shall terminate as of October 1, 2009, except that
nothing in this section shall—

“(1) affect any bonus payment under sections
504 or 505 agreed to by the employee and the Ad-
ministration before the termination date;

“(2) prevent an employee from being allowed to
complete a term appointment made under section
507(a) if the appointment was made before the ter-
mination date;

“(3) prevent the Administrator from converting
any term employees to career or career-conditional
status under section 507 if the term appointment was made before the termination date;

“(4) prevent an employee from continuing to receive a rate of basic pay fixed under section 508 before the termination date; or

“(5) prevent an employee assigned under section 3372 of title 5, United States Code, from completing the extended term made under section 509 if the extension was made before the termination date.”