

108TH CONGRESS
1ST SESSION

S. 610

To amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2003

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating 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 Workforce
5 Flexibility Act of 2003”.

1 **SEC. 2. WORKFORCE AUTHORITIES AND PERSONNEL PRO-**
 2 **VISIONS.**

3 (a) IN GENERAL.—Subpart I of part III of title 5,
 4 United States Code, is amended by adding at the end the
 5 following:

6 **“CHAPTER 99—NATIONAL AERONAUTICS**
 7 **AND SPACE ADMINISTRATION**

“SUBCHAPTER I—WORKFORCE AUTHORITIES

“Sec.

“9901. Definitions.

“9902. Planning, notification, and reporting requirements.

“9903. Workforce authorities.

“9904. Recruitment, redesignation, and relocation bonuses.

“9905. Retention bonuses.

“9906. Term appointments.

“9907. Pay authority for critical positions.

“9908. Assignments of intergovernmental personnel.

“9909. Enhanced demonstration project authority.

“SUBCHAPTER II—PERSONNEL PROVISIONS

“9931. Definitions.

“9932. Administration and private sector exchange assignments.

“9933. Science and technology scholarship program.

“9934. Distinguished scholar appointment authority.

“9935. Travel and transportation expenses of certain new appointees.

“9936. Annual leave enhancements.

“9937. Limited appointments to Senior Executive Service positions.

“9938. Superior qualifications pay.

8 **“SUBCHAPTER I—WORKFORCE AUTHORITIES**

9 **“§ 9901. Definitions**

10 In this subchapter—

11 “(1) the term ‘Administration’ means the Na-
 12 tional Aeronautics and Space Administration;

13 “(2) the term ‘Administrator’ means the Ad-
 14 ministrator of the National Aeronautics and Space
 15 Administration;

1 “(3) the term ‘critical need’ means a specific
 2 and important requirement of the Administration’s
 3 mission that the Administration is unable to fulfill
 4 because the Administration lacks the appropriate
 5 employees because of—

6 “(A) the inability to fill positions; or

7 “(B) employees do not possess the req-
 8 uisite skills;

9 “(4) the term ‘employee’ means an individual
 10 employed in or under the Administration; and

11 “(5) the term ‘workforce plan’ means the plan
 12 required under section 9902(a).

13 **“§ 9902. Planning, notification, and reporting require-**
 14 **ments**

15 “(a) Before exercising any of the workforce authori-
 16 ties under this subchapter, the Administrator shall submit
 17 a written plan to the Office of Personnel Management for
 18 approval. A plan under this subchapter may not be imple-
 19 mented without the approval of the Office of Personnel
 20 Management.

21 “(b) A workforce plan shall include a description of—

22 “(1) each critical need of the Administration
 23 and the criteria used in the identification of that
 24 need;

1 “(2)(A) the functions, approximate number,
2 and classes or other categories of positions or em-
3 ployees that—

4 “(i) address critical needs; and

5 “(ii) would be eligible for each authority
6 proposed to be exercised under section 9903;
7 and

8 “(B) how the exercise of those authorities with
9 respect to the eligible positions or employees involved
10 would address each critical need identified under
11 paragraph (1);

12 “(3)(A) any critical need identified under para-
13 graph (1) which would not be addressed by the au-
14 thorities made available under section 9903; and

15 “(B) the reasons why those needs would not be
16 so addressed;

17 “(4) the specific criteria to be used in deter-
18 mining which individuals may receive the benefits
19 described under sections 9904 and 9905 (including
20 the criteria for granting bonuses in the absence of
21 a critical need), and how the level of those benefits
22 will be determined;

23 “(5) the safeguards or other measures that will
24 be applied to ensure that this subchapter is carried

1 out in a manner consistent with merit system prin-
2 ciples;

3 “(6) the means by which employees will be af-
4 farded the notification required under subsections
5 (c) and (d)(1)(B); and

6 “(7) the methods that will be used to determine
7 if the authorities exercised under section 9903 have
8 successfully addressed each critical need identified
9 under paragraph (1).

10 “(c) Not later than 60 days before first exercising
11 any of the workforce authorities made available under this
12 subchapter, the Administrator shall provide to all employ-
13 ees the workforce plan, and any additional information
14 which the Administrator considers appropriate.

15 “(d)(1)(A) The Administrator may submit any modi-
16 fications to the workforce plan to the Office of Personnel
17 Management. Modifications to the workforce plan may not
18 be implemented without the approval of the Office of Per-
19 sonnel Management.

20 “(B) Not later than 60 days before implementing any
21 such modifications, the Administrator shall provide an ap-
22 propriately modified plan to all employees of the Adminis-
23 tration.

24 “(2) Any reference in this subchapter or any other
25 provision of law to the workforce plan shall be considered

1 to include any modification made in accordance with this
 2 subsection.

3 “(e) None of the workforce authorities made available
 4 under section 9903 may be exercised in a manner incon-
 5 sistent with the workforce plan.

6 “(f) Whenever the Administration submits its per-
 7 formance plan under section 1115 of title 31 to the Office
 8 of Management and Budget for any year, the Administra-
 9 tion shall at the same time submit a copy of such plan
 10 to—

11 “(1) the Committee on Governmental Affairs
 12 and the Committee on Appropriations of the Senate;
 13 and

14 “(2) the Committee on Government Reform and
 15 the Committee on Appropriations of the House of
 16 Representatives.

17 **“§ 9903. Workforce authorities**

18 “(a) The workforce authorities under this subchapter
 19 are the following:

20 “(1) The authority to pay recruitment, redesign-
 21 nation, and relocation bonuses under section 9904.

22 “(2) The authority to pay retention bonuses
 23 under section 9905.

4 “(4) The authority to fix rates of basic pay for
5 critical positions under section 9907.

6 “(5) The authority to extend intergovernmental
7 personnel act assignments under section 9908.

8 “(b) No authority under this subchapter may be exer-
9 cised with respect to any officer who is appointed by the
10 President, by and with the advice and consent of the Sen-
11 ate.

“(c) Unless specifically stated otherwise, all authori-
ties provided under this subchapter are subject to section
5307.

15 **“§ 9904. Recruitment, redesignation, and relocation**
16 **bonuses**

17 “(a) Notwithstanding section 5753, the Adminis-
18 trator may pay a bonus to an individual, in accordance
19 with the workforce plan and subject to the limitations in
20 this section, if—

21 “(1) the Administrator determines that the Ad-
22 ministration would be likely, in the absence of a
23 bonus, to encounter difficulty in filling a position;
24 and

25 “(2) the individual—

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

3 “(B) is currently employed by the Federal
4 Government and is newly appointed to another
5 position in the same geographic area; or

6 “(C) is currently employed by the Federal
7 Government and is required to relocate to a dif-
8 ferent geographic area to accept a position with
9 the Administration.

10 “(b) If the position is described as addressing a crit-
11 ical need in the workforce plan under section
12 9902(b)(2)(A), the amount of a bonus may not exceed—

13 “(1) 50 percent of the employee’s annual rate
14 of basic pay (including comparability payments
15 under sections 5304 and 5304a, as of the beginning
16 of the service period multiplied by the service period
17 specified under subsection (d)(1)(B)(i); or

18 “(2) 100 percent of the employee’s annual rate
19 of basic pay (including comparability payments
20 under sections 5304 and 5304a) as of the beginning
21 of the service period.

22 “(c) If the position is not described as addressing a
23 critical need in the workforce plan under section
24 9902(b)(2)(A), the amount of a bonus may not exceed—

1 “(1) 25 percent of the employee’s annual rate
2 of basic pay (including comparability payments
3 under sections 5304 and 5304a) as of the beginning
4 of the service period multiplied by the service period
5 specified under subsection (d)(1)(B)(i); or

6 “(2) 100 percent of the employee’s annual rate
7 of basic pay (including comparability payments
8 under sections 5304 and 5304a) as of the beginning
9 of the service period.

10 “(d)(1)(A) Payment of a bonus under this section
11 shall be contingent upon the individual entering into a
12 service agreement with the Administration.

13 “(B) At a minimum, the service agreement shall in-
14 clude—

15 “(i) the required service period;

16 “(ii) the method of payment, including a pay-
17 ment schedule, which may include a lump-sum pay-
18 ment, installment payments, or a combination there-
19 of;

20 “(iii) the amount of the bonus and the basis for
21 calculating that amount; and

22 “(iv) the conditions under which the agreement
23 may be terminated before the agreed-upon service
24 period has been completed, and the effect of the ter-
25 mination.

1 “(2) For purposes of determinations under sub-
 2 sections (b)(1) and (c)(1), the employee’s service period
 3 shall be expressed as the number equal to the full years
 4 and twelfth parts thereof, rounding the fractional part of
 5 a month to the nearest twelfth part of a year. The service
 6 period may not be less than 6 months and may not exceed
 7 4 years.

8 “(3) A bonus under this section may not be consid-
 9 ered to be part of the basic pay of an employee.

10 “(e) Before paying a bonus under this section, the
 11 Administration shall establish a plan for paying recruit-
 12 ment, redesignation, and relocation bonuses, subject to ap-
 13 proval by the Office of Personnel Management.

14 **“§ 9905. Retention bonuses**

15 “(a) Notwithstanding section 5754, the Adminis-
 16 trator may pay a bonus to an employee, in accordance with
 17 the workforce plan and subject to the limitations in this
 18 section, if the Administrator determines that—

19 “(1) the unusually high or unique qualifications
 20 of the employee or a special need of the Administra-
 21 tion for the employee’s services makes it essential to
 22 retain the employee; and

23 “(2) the employee would be likely to leave in
 24 the absence of a retention bonus.

1 “(b) If the position is described as addressing a crit-
2 ical need in the workforce plan under section
3 9902(b)(2)(A), the amount of a bonus may not exceed 50
4 percent of the employee’s annual rate of basic pay (includ-
5 ing comparability payments under sections 5304 and
6 5304a).

7 “(c) If the position is not described as addressing a
8 critical need in the workforce plan under section
9 9902(b)(2)(A), the amount of a bonus may not exceed 25
10 percent of the employee’s annual rate of basic pay (includ-
11 ing comparability payments under sections 5304 and
12 5304a).

13 “(d)(1)(A) Payment of a bonus under this section
14 shall be contingent upon the employee entering into a serv-
15 ice agreement with the Administration.

16 “(B) At a minimum, the service agreement shall in-
17 clude—

18 “(i) the required service period;

19 “(ii) the method of payment, including a pay-
20 ment schedule, which may include a lump-sum pay-
21 ment, installment payments, or a combination there-
22 of;

23 “(iii) the amount of the bonus and the basis for
24 calculating the amount; and

1 “(iv) the conditions under which the agreement
2 may be terminated before the agreed-upon service
3 period has been completed, and the effect of the ter-
4 mination.

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

10 “(3) Notwithstanding paragraph (1), a service agree-
11 ment is not required if the Administration pays a bonus
12 in biweekly installments and sets the installment payment
13 at the full bonus percentage rate established for the em-
14 ployee with no portion of the bonus deferred. In this case,
15 the Administration shall inform the employee in writing
16 of any decision to change the retention bonus payments.
17 The employee shall continue to accrue entitlement to the
18 retention bonus through the end of the pay period in which
19 such written notice is provided.

20 “(e) A bonus under this section may not be consid-
21 ered to be part of the basic pay of an employee.

22 “(f) An employee is not entitled to a retention bonus
23 under this section during a service period previously estab-
24 lished for that employee under section 5753, or under sec-
25 tion 9904.

1 **“§ 9906. Term appointments**

2 “(a) The Administrator may authorize term appoint-
3 ments within the Administration under subchapter I of
4 chapter 33, for a period of not less than 1 year and not
5 more than 6 years.

6 “(b) Notwithstanding chapter 33, or any other provi-
7 sion of law relating to the examination, certification, and
8 appointment of individuals in the competitive service, the
9 Administrator may convert an employee serving under a
10 term appointment to a permanent appointment in the
11 competitive service within the Administration without fur-
12 ther competition if—

13 “(1) such individual was appointed under open,
14 competitive examination under subchapter I of chap-
15 ter 33, to the term position;

16 “(2) the announcement for the term appoint-
17 ment from which the conversion is made stated that
18 there was potential for subsequent conversion to a
19 career-conditional or career appointment;

20 “(3) the employee has completed at least 2
21 years of current continuous service under a term ap-
22 pointment in the competitive service;

23 “(4) the employee’s performance under such
24 term appointment was at least fully successful or
25 equivalent; and

1 “(5) the position to which such employee is
 2 being converted under this section is in the same oc-
 3 cupational series, is in the same geographic location,
 4 and provides no greater promotion potential than
 5 the term position for which the competitive examina-
 6 tion was conducted.

7 “(c) Notwithstanding chapter 33, or any other provi-
 8 sion of law relating to the examination, certification, and
 9 appointment of individuals in the competitive service, the
 10 Administrator may convert an employee serving under a
 11 term appointment to a permanent appointment in the
 12 competitive service within the Administration through in-
 13 ternal competitive promotion procedures if the conditions
 14 under paragraphs (1) through (4) of subsection (b) are
 15 met.

16 “(d) An employee converted under this section be-
 17 comes a career-conditional employee, unless the employee
 18 has otherwise completed the service requirements for ca-
 19 reer tenure.

20 “(e) An employee converted to career or career-condi-
 21 tional employment under this section acquires competitive
 22 status upon conversion.

23 **“§ 9907. Pay authority for critical positions**

24 “(a) In this section, the term ‘position’ means—

1 “(1) a position to which chapter 51 applies, in-
2 cluding a position in the Senior Executive Service;

3 “(2) a position under the Executive Schedule
4 under sections 5312 through 5317;

5 “(3) a position established under section 3104;
6 or

7 “(4) a senior-level position to which section
8 5376(a)(1) applies.

9 “(b) Authority under this section—

10 “(1) may be exercised only with respect to a po-
11 sition that—

12 “(A) is described as addressing a critical
13 need in the workforce plan under section
14 9902(b)(2)(A); and

15 “(B) requires expertise of an extremely
16 high level in a scientific, technical, professional,
17 or administrative field;

18 “(2) may be exercised only to the extent nec-
19 essary to recruit or retain an individual exceptionally
20 well qualified for the position; and

21 “(3) may be exercised only in retaining employ-
22 ees of the Administration or in appointing individ-
23 uals who were not employees of another Federal
24 agency as defined under section 5102(a)(1).

1 “(c)(1) Notwithstanding section 5377, the Adminis-
2 trator may fix the rate of basic pay for a position in the
3 Administration in accordance with this section. The Ad-
4 ministrators may not delegate this authority.

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

7 “(d)(1) The rate of basic pay fixed under this section
8 may not be less than the rate of basic pay (including any
9 comparability payments) which would otherwise be pay-
10 able for the position involved if this section had never been
11 enacted.

12 “(2) The annual rate of basic pay fixed under this
13 section may not exceed the per annum rate of salary pay-
14 able under section 104 of title 3.

15 “(3) Notwithstanding any provision of section 5307,
16 in the case of an employee who, during any calendar year,
17 is receiving pay at a rate fixed under this section, no allow-
18 ance, differential, bonus, award, or similar cash payment
19 may be paid to such employee if, or to the extent that,
20 when added to basic pay paid or payable to such employee
21 (for service performed in such calendar year as an em-
22 ployee in the executive branch or as an employee outside
23 the executive branch to whom chapter 51 applies), such
24 payment would cause the total to exceed the per annum

1 rate of salary which, as of the end of such calendar year,
 2 is payable under section 104 of title 3.

3 **“§ 9908. Assignments of intergovernmental personnel**

4 “For purposes of applying the third sentence of sec-
 5 tion 3372(a) (relating to the authority of the head of a
 6 Federal agency to extend the period of an employee’s as-
 7 signment to or from a State or local government, institu-
 8 tion of higher education, or other organization), the Ad-
 9 ministrator may, with the concurrence of the employee and
 10 the government or organization concerned, take any action
 11 which would be allowable if such sentence had been
 12 amended by striking ‘two’ and inserting ‘four’.

13 **“§ 9909. Enhanced demonstration project authority**

14 “When conducting a demonstration project at the Ad-
 15 ministration, section 4703(d)(1)(A) may be applied by
 16 substituting ‘such numbers of individuals as determined
 17 by the Administrator’ for ‘not more than 5,000 individ-
 18 uals’.

19 **“SUBCHAPTER II—PERSONNEL PROVISIONS**

20 **“§ 9931. Definitions**

21 In this subchapter—

22 “(1) the term ‘Administration’ means the Na-
 23 tional Aeronautics and Space Administration; and

1 “(2) the term ‘Administrator’ means the Ad-
 2 ministrator of the National Aeronautics and Space
 3 Administration.

4 **“§ 9932. Administration and private sector exchange**
 5 **assignments**

6 “(a) In this section—

7 “(1) the term ‘private sector employee’ means
 8 an employee of a private sector entity; and

9 “(2) the term ‘private sector entity’ means an
 10 organization, company, corporation, or other busi-
 11 ness concern, or a foreign government or agency of
 12 a foreign government, that is not a State, local gov-
 13 ernment, Federal agency, or other organization as
 14 defined under section 3371 (1), (2), (3), and (4), re-
 15 spectively.

16 “(b)(1) On request from or with the concurrence of
 17 a private sector entity, and with the consent of the em-
 18 ployee concerned, the Administrator may arrange for the
 19 assignment of—

20 “(A) an employee of the Administration serving
 21 under a career or career-conditional appointment, a
 22 career appointee in the Senior Executive Service, or
 23 an individual under an appointment of equivalent
 24 tenure in an excepted service position, but excluding
 25 employees in positions which have been excepted

1 from the competitive service by reasons of their con-
2 fidential, policy-determining, policymaking, or policy-
3 advocating character, to a private sector entity; and

4 “(B) an employee of a private sector entity to
5 the Administration,

6 for work of mutual concern to the Administration and the
7 private sector entity that the Administrator determines
8 will be beneficial to both.

9 “(2) The period of an assignment under this section
10 may not exceed 2 years. However, the Administrator may
11 extend the period of assignment for not more than 2 addi-
12 tional years.

13 “(3) An employee of the Administration may be as-
14 signed under this section only if the employee agrees, as
15 a condition of accepting an assignment, to serve in the
16 Administration upon the completion of the assignment for
17 a period equal to the length of the assignment. The Ad-
18 ministrator may waive the requirement under this para-
19 graph, with the approval of the Office of Management and
20 Budget, with respect to any employee if the Administrator
21 determines it to be in the best interests of the United
22 States to do so.

23 “(4) Each agreement required under paragraph (3)
24 shall provide that if the employee fails to carry out the
25 agreement (except in the case of a waiver made under

1 paragraph (3)), the employee shall be liable to the United
2 States for payment of all expenses (excluding salary) of
3 the assignment. The amount due shall be treated as a debt
4 due the United States.

5 “(c)(1) An Administration employee assigned to a
6 private sector entity under this section is deemed, during
7 the assignment, to be on detail to a work assignment (as
8 a detailee to the entity).

9 “(2) An Administration employee assigned under this
10 section on detail remains an employee of the Administra-
11 tion. Chapter 171 of title 28 and any other Federal tort
12 liability statute apply to the Administration employee so
13 assigned, and all defenses available to the United States
14 under these laws or applicable provisions of State law shall
15 remain in effect. The supervision of the duties of an Ad-
16 ministration employee assigned to the private sector entity
17 through detail may be governed by agreement between the
18 Administration and the private sector entity concerned.

19 “(3) The assignment of an Administration employee
20 on detail to a private sector entity under this section may
21 be made with or without reimbursement by the private sec-
22 tor entity for the travel and transportation expenses to
23 or from the place of assignment, for the pay, or supple-
24 mental pay, or a part thereof, of the employee, or for the
25 contribution of the Administration to the employee’s ben-

1 efit systems during the assignment. Any reimbursements
 2 shall be credited to the appropriation of the Administra-
 3 tion used for paying the travel and transportation ex-
 4 penses, pay, or benefits, and not paid to the employee.

5 “(d)(1) An employee of a private sector entity who
 6 is assigned to the Administration under an arrangement
 7 under this section shall be deemed on detail to the Admin-
 8 istration.

9 “(2) During the period of assignment, a private sec-
 10 tor employee on detail to the Administration—

11 “(A) is not entitled to pay from the Administra-
 12 tion, except to the extent that the pay received from
 13 the private sector entity is less than the appropriate
 14 rate of pay which the duties would warrant under
 15 the pay provisions of this title or other applicable
 16 authority;

17 “(B) is deemed an employee of the Administra-
 18 tion for the purpose of chapter 73 of this title, the
 19 Ethics in Government Act of 1978, section 27 of the
 20 Office of Federal Procurement Policy Act, sections
 21 201, 203, 205, 207, 208, 209, 602, 603, 606, 607,
 22 610, 643, 654, 1905, and 1913 of title 18, sections
 23 1343, 1344, and 1349(b) of title 31, chapter 171 of
 24 title 28, and any other Federal tort liability statute,

1 and any other provision of Federal criminal law, un-
2 less otherwise specifically exempted;

3 “(C) notwithstanding subparagraph (B), is also
4 deemed to be an employee of his or her private sec-
5 tor employer for purposes of section 208 of title 18;
6 and

7 “(D) is subject to such regulations as the Ad-
8 ministrator may prescribe.

9 “(3) The supervision of the duties of an employee as-
10 signed under this subsection may be governed by agree-
11 ment between the Administration and the private sector
12 entity.

13 “(4) A detail of a private sector employee to the Ad-
14 ministration may be made with or without reimbursement
15 by the Administration for the pay, or a part thereof, of
16 the employee during the period of assignment, or for the
17 contribution of the private sector entity, or a part thereof,
18 to employee benefit systems.

19 “(5)(A) A private sector employee on detail to the
20 Administration under this section who suffers disability or
21 dies as a result of personal injury sustained while in the
22 performance of duties during the assignment shall be
23 treated, for the purpose of subchapter I of chapter 81 as
24 an employee as defined under section 8101 who had sus-
25 tained the injury in the performance of duties.

1 “(B) When an employee (or the employee’s depend-
 2 ents in case of death) entitled by reason of injury or death
 3 to benefits under subchapter I of chapter 81 is also enti-
 4 tled to benefits from the employee’s private sector em-
 5 ployer for the same injury or death, the employee (or the
 6 employee’s dependents in case of death) shall elect which
 7 benefits the employee will receive. The election shall be
 8 made within 1 year after the injury or death, or such fur-
 9 ther time as the Secretary of Labor may allow for reason-
 10 able cause shown. When made, the election is irrevocable.

11 “(C) Except as provided in subparagraphs (A) and
 12 (B), and notwithstanding any other law, the United
 13 States, any instrumentality of the United States, or an
 14 employee, agent, or assign of the United States shall not
 15 be liable to—

16 “(i) a private sector employee assigned to the
 17 Administration under this section;

18 “(ii) such employee’s legal representative,
 19 spouse, dependents, survivors, or next of kin; or

20 “(iii) any other person, including any third
 21 party as to whom such employee, or that employee’s
 22 legal representative, spouse, dependents, survivors,
 23 or next of kin, has a cause of action arising out of
 24 an injury or death sustained in the performance of
 25 duty pursuant to an assignment under this section,

1 otherwise entitled to recover damages from the
2 United States, any instrumentality of the United
3 States, or any employee, agency, or assign of the
4 United States,

5 with respect to any injury or death suffered by a private
6 sector employee sustained in the performance of duties
7 pursuant to an assignment under this section.

8 “(e)(1) Appropriations of the Administration are
9 available to pay, or reimburse, an Administration or pri-
10 vate sector employee in accordance with—

11 “(A) subchapter I of chapter 57 for the ex-
12 penses of—

13 “(i) travel, including a per diem allowance,
14 to and from the assignment location;

15 “(ii) a per diem allowance at the assign-
16 ment location during the period of the assign-
17 ment; and

18 “(iii) travel, including a per diem allow-
19 ance, while traveling on official business away
20 from the employee’s designated post of duty
21 during the assignment when the Administrator
22 considers the travel to be in the interest of the
23 United States;

24 “(B) section 5724 for the expenses of transpor-
25 tation of the employee’s immediate family, household

1 goods, and personal effects to and from the assign-
2 ment location;

3 “(C) section 5724a(a) for the expenses of per-
4 diem allowances for the immediate family of the em-
5 ployee to and from the assignment location;

6 “(D) section 5724a(c) for subsistence expenses
7 of the employee and immediate family while occu-
8 pying temporary quarters at the assignment location
9 and on return to the employee’s former post of duty;

10 “(E) section 5724a(g) to be used by the em-
11 ployee for miscellaneous expenses related to change
12 of station where movement or storage of household
13 goods is involved; and

14 “(F) section 5726(e) for the expenses of non-
15 temporary storage of household goods and personal
16 effects in connection with assignment at an isolated
17 location.

18 “(2) Expenses specified in paragraph (1), other than
19 those in paragraph (1)(A)(iii), may not be allowed in con-
20 nection with the assignment of an Administration or pri-
21 vate sector employee under this section, unless and until
22 the employee agrees in writing to complete the entire pe-
23 riod of his assignment or 1 year, whichever is shorter, un-
24 less separated or reassigned for reasons beyond his control
25 that are acceptable to the Administrator. If the employee

1 violates the agreement, the money spent by the United
 2 States for these expenses is recoverable from the employee
 3 as a debt due the United States. The Administrator may
 4 waive in whole or in part a right of recovery under this
 5 paragraph with respect to a private sector employee on
 6 assignment with the Administration or an Administration
 7 employee on assignment with a private sector entity.

8 “(3) Appropriations of the Administration are avail-
 9 able to pay expenses under section 5742 with respect to
 10 an Administration or private sector employee assigned
 11 under this authority.

12 “(f) A private sector entity may not charge the Fed-
 13 eral Government, as direct or indirect costs under a Fed-
 14 eral contract, the costs of pay or benefits paid by the enti-
 15 ty to an employee assigned to the Administration under
 16 this section for the period of the assignment.

17 **“§9933. Science and technology scholarship program**

18 “(a)(1) The Administrator may carry out a program
 19 of entering into contractual agreements with individuals
 20 described under paragraph (2) under which—

21 “(A) the Administrator agrees to provide to the
 22 individuals scholarships for pursuing, at accredited
 23 institutions of higher education, academic programs
 24 appropriate for careers in professions needed by the
 25 Administration; and

1 “(B) the individuals agree to serve as employees
2 of the Administration, for the period described under
3 subsection (b), in positions needed by the Adminis-
4 tration and for which the individuals are qualified.

5 “(2) The individuals referred to under paragraph (1)
6 are individuals who—

7 “(A) are enrolled or accepted for enrollment as
8 full-time students at accredited institutions of higher
9 education in an academic field or discipline pre-
10 scribed by the Administration;

11 “(B) are United States citizens; and

12 “(C) at the time of the initial scholarship
13 award, are not Federal employees as defined under
14 section 2105.

15 “(b)(1) For purposes of subsection (a)(1)(B), the pe-
16 riod of service for which an individual is obligated to serve
17 as an employee of the Administration is, subject to sub-
18 paragraph (A) of paragraph (2), 12 months for each aca-
19 demic year for which the scholarship under such sub-
20 section is provided.

21 “(2)(A) Subject to subparagraph (B), the Adminis-
22 trator may provide a scholarship under this section if the
23 individual applying for the scholarship agrees that, not
24 later than 60 days after obtaining the educational degree
25 involved, the individual will begin serving full-time as an

1 employee in satisfaction of the period of service that the
 2 individual is obligated to provide.

3 “(B) The Administrator may defer the obligation of
 4 an individual to provide a period of service under this sub-
 5 section, if the Administrator determines that such a defer-
 6 ral is appropriate.

7 “(c)(1) The Administrator may provide a scholarship
 8 under subsection (a) for an academic year if—

9 “(A) the individual applying for the scholarship
 10 has submitted to the Administrator a proposed aca-
 11 demic program leading to a degree in an academic
 12 field or discipline approved by the Administration; or

13 “(B) the individual agrees that the program will
 14 not be altered without the approval of the Adminis-
 15 trator.

16 “(2) The Administrator may provide a scholarship
 17 under this section for an academic year if the individual
 18 applying for the scholarship agrees to maintain a high
 19 level of academic standing as defined by regulation.

20 “(3) The dollar amount of a scholarship for an aca-
 21 demic year shall not exceed—

22 “(A) the limits established by regulation under
 23 paragraph (4); or

24 “(B) the total costs incurred in attending the
 25 institution involved.

1 “(4) A scholarship may be expended for tuition, fees,
2 and other authorized expenses as established by regula-
3 tion.

4 “(5) The Administrator may enter into a contractual
5 agreement with an institution of higher education under
6 which the amounts provided in the scholarship for tuition,
7 fees, and other authorized expenses are paid directly to
8 the institution with respect to which a scholarship is pro-
9 vided.

10 “(6) An individual may not receive a scholarship for
11 longer than 4 academic years, unless an extension is
12 granted by the Administrator.

13 “(d)(1)(A) Any scholarship recipient who fails to
14 maintain a high level of academic standing, who is dis-
15 missed from an educational institution for disciplinary
16 reasons, or who voluntarily terminates academic training
17 before graduation from the educational program for which
18 the scholarship was awarded, shall—

19 “(i) be in breach of the contractual agreement;
20 and

21 “(ii) in lieu of any service obligation arising
22 under such agreement, be liable to the United States
23 for repayment of all scholarship funds paid to that
24 recipient and to the educational institution on their

1 behalf under the agreement within 1 year after the
2 date of default.

3 “(B) The repayment period may be extended by the
4 Administrator when determined to be necessary, as estab-
5 lished by regulation. A penalty for failure to complete the
6 academic program for which the scholarship was awarded
7 may be assessed at the discretion of the Administrator,
8 in addition to the repayment with interest as provided
9 under paragraph (3).

10 “(2)(A) A scholarship recipient who, for any reason,
11 fails to begin or complete that recipient’s service obligation
12 after completion of academic training, or fails to comply
13 with the terms and conditions of deferment established by
14 the Administrator, shall be in breach of the contractual
15 agreement.

16 “(B)(i) In this subparagraph—

17 “(I) the term ‘A’ means the amount the United
18 States is entitled to recover;

19 “(II) the term ‘F’ means the sum of the
20 amounts paid to or on behalf of the participant;

21 “(III) the term ‘t’ means the total number of
22 months of the period of obligated service the partici-
23 pant is required to serve; and

1 “(IV) the term ‘s’ means the number of months
2 of the period of obligated service served by the par-
3 ticipant.

4 “(ii) When a recipient breaches the agreement as pro-
5 vided under subparagraph (A), the United States shall be
6 entitled to recover damages equal to 3 times the scholar-
7 ship award, in accordance with the following formula:

$$8 \qquad \qquad \qquad “A=(3F)[(t-s)/t]$$

9 “(C) The damages that the United States is entitled
10 to recover shall be paid within 1 year after the date of
11 default.

12 “(3) Beginning 90 days after default, interest shall
13 accrue on the payments required to be made under this
14 subsection, at a rate to be determined by regulation estab-
15 lished by the Administrator.

16 “(e)(1) Any obligation of an individual incurred
17 under this section for service or payment of damages may
18 be canceled upon the death of the individual.

19 “(2) The Administrator shall by regulation provide
20 for the partial or total waiver or suspension of any obliga-
21 tion of service or payment incurred by an individual under
22 this section if—

23 “(A) the compliance by the individual is impos-
24 sible or would involve extreme hardship to the indi-
25 vidual; or

1 “(B) enforcement of such obligation with re-
 2 spect to any individual would be contrary to the best
 3 interests of the Government.

4 “(f) The Administrator may provide a scholarship
 5 under this section if an application for the scholarship is
 6 submitted to the Administrator and the application is in
 7 such form, is made in such manner, and contains such
 8 agreements, assurance, and information as the Adminis-
 9 trator determines to be necessary to carry out this section.

10 “(g)(1) There are authorized to be appropriated to
 11 the Administration to carry out this section \$10,000,000
 12 for fiscal year 2004 and \$10,000,000 for each succeeding
 13 fiscal year.

14 “(2) Amounts appropriated for a fiscal year for schol-
 15 arships under this section shall remain available for 2 fis-
 16 cal years.

17 **“§9934. Distinguished scholar appointment authority**

18 “(a) In this section—

19 “(1) the term ‘professional position’ means a
 20 position that is classified to an occupational series
 21 identified by the Office of Personnel Management as
 22 a position that—

23 “(A) requires education and training in the
 24 principles, concepts, and theories of the occupa-
 25 tion that typically can be gained only through

1 completion of a specified curriculum at a recog-
 2 nized college or university; and

3 “(B) is covered by the Group Coverage
 4 Qualification Standard for Professional and Sci-
 5 entific Positions; and

6 “(2) the term ‘research position’ means a posi-
 7 tion in a professional series that primarily involves
 8 scientific inquiry or investigation, or research-type
 9 exploratory development of a creative or scientific
 10 nature, where the knowledge required to perform the
 11 work successfully is acquired typically and primarily
 12 through graduate study.

13 “(b) The Administration may appoint, without regard
 14 to the provisions of sections 3304(b) and 3309 through
 15 3318, candidates directly to General Schedule professional
 16 positions in the Administration for which public notice has
 17 been given, if—

18 “(1) with respect to a position at the GS-7
 19 level, the individual—

20 “(A) received, from an accredited institu-
 21 tion authorized to grant baccalaureate degrees,
 22 a baccalaureate degree in a field of study for
 23 which possession of that degree in conjunction
 24 with academic achievements meets the qualifica-
 25 tion standards as prescribed by the Office of

1 Personnel Management for the position to
2 which the individual is being appointed; and

3 “(B) achieved a cumulative grade point av-
4 erage of 3.0 or higher on a 4.0 scale and a
5 grade point average of 3.5 or higher for courses
6 in the field of study required to qualify for the
7 position;

8 “(2) with respect to a position at the GS–9
9 level, the individual—

10 “(A) received, from an accredited institu-
11 tion authorized to grant graduate degrees, a
12 graduate degree in a field of study for which
13 possession of that degree meets the qualifica-
14 tion standards at this grade level as prescribed
15 by the Office of Personnel Management for the
16 position to which the individual is being ap-
17 pointed; and

18 “(B) achieved a cumulative grade point av-
19 erage of 3.5 or higher on a 4.0 scale in grad-
20 uate coursework in the field of study required
21 for the position;

22 “(3) with respect to a position at the GS–11
23 level, the individual—

24 “(A) received, from an accredited institu-
25 tion authorized to grant graduate degrees, a

graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

“(4) with respect to a research position at the GS-12 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

1 “(c) Veterans’ preference procedures shall apply
 2 when selecting candidates under this section. Preference
 3 eligibles who meet the criteria for distinguished scholar
 4 appointments shall be considered ahead of nonpreference
 5 eligibles.

6 “(d) An appointment made under this authority shall
 7 be a career conditional appointment in the competitive
 8 civil service.

9 **“§ 9935. Travel and transportation expenses of cer-**
 10 **tain new appointees**

11 “(a) In this section, the term ‘new appointee’
 12 means—

13 “(1) a person newly appointed or reinstated to
 14 Federal service to the Administration to—

15 “(A) a career or career-conditional ap-
 16 pointment;

17 “(B) a term appointment;

18 “(C) an excepted service appointment that
 19 provides for noncompetitive conversion to a ca-
 20 reer or career-conditional appointment;

21 “(D) a career or limited term Senior Exec-
 22 utive Service appointment;

23 “(E) an appointment made under section
 24 203(c)(2)(A) of the National Aeronautics and
 25 Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

1 “(F) an appointment to a position estab-
2 lished under section 3104; or

3 “(G) an appointment to a position estab-
4 lished under section 5108; or

5 “(2) a student trainee who, upon completion of
6 academic work, is converted to an appointment in
7 the Administration that is identified in paragraph
8 (1) in accordance with an appropriate authority.

9 “(b) The Administrator may pay the travel, transpor-
10 tation, and relocation expenses of a new appointee to the
11 same extent, in the same manner, and subject to the same
12 conditions as the payment of such expenses under sections
13 5724, 5724a, 5724b, and 5724c to an employee trans-
14 ferred in the interests of the United States Government.

15 **“§ 9936. Annual leave enhancements**

16 “(a)(1) In this subsection—

17 “(A) the term ‘newly appointed employee’
18 means an individual who is first appointed—

19 “(i) regardless of tenure, as an employee of
20 the Federal Government; or

21 “(ii) as an employee of the Federal Gov-
22 ernment following a break in service of at least
23 90 days after that individual’s last period of
24 Federal employment, other than—

1 “(I) employment under the Student
 2 Educational Employment Program admin-
 3 istered by the Office of Personnel Manage-
 4 ment;

5 “(II) employment as a law clerk train-
 6 ee;

7 “(III) employment under a short-term
 8 temporary appointing authority while a
 9 student during periods of vacation from
 10 the educational institution at which the
 11 student is enrolled;

12 “(IV) employment under a provisional
 13 appointment if the new appointment is per-
 14 manent and immediately follows the provi-
 15 sional appointment; or

16 “(V) employment under a temporary
 17 appointment that is neither full-time nor
 18 the principal employment of the individual;

19 “(B) the term ‘period of qualified non-Federal
 20 service’ means any period of service performed by an
 21 individual that—

22 “(i) was performed in a position the duties
 23 of which were directly related to the duties of
 24 the position in the Administration to which that

1 individual will fill as a newly appointed em-
2 ployee; and

3 “(ii) except for this section would not oth-
4 erwise be service performed by an employee for
5 purposes of section 6303; and

6 “(C) the term ‘directly related to the duties of
7 the position’ means duties and responsibilities in the
8 same line of work which require similar qualifica-
9 tions.

10 “(2)(A) For purposes of section 6303, the Adminis-
11 trator may deem a period of qualified non-Federal service
12 performed by a newly appointed employee to be a period
13 of service of equal length performed as an employee.

14 “(B) A period deemed by the Administrator under
15 subparagraph (A) shall continue to apply to the employee
16 during—

17 “(i) the period of Federal service in which the
18 deeming is made; and

19 “(ii) any subsequent period of Federal service.

20 “(3)(A) Notwithstanding section 6303(a), the annual
21 leave accrual rate for an employee of the Administration
22 in a position paid under section 5376 or 5383, or for an
23 employee in an equivalent category whose rate of basic pay
24 is greater than the rate payable at GS–15, step 10, shall
25 be 1 day for each full biweekly pay period.

1 “(B) The accrual rate established under this para-
 2 graph shall continue to apply to the employee during—

3 “(i) the period of Federal service in which such
 4 accrual rate first applies; and

5 “(ii) any subsequent period of Federal service.

6 **“§ 9937. Limited appointments to Senior Executive**
 7 **Service positions**

8 “(a) In this section—

9 “(1) the term ‘career reserved position’ means
 10 a position in the Administration designated under
 11 section 3132(b) which may be filled only by—

12 “(A) a career appointee; or

13 “(B) a limited emergency appointee or a
 14 limited term appointee—

15 “(i) who, immediately before entering
 16 the career reserved position, was serving
 17 under a career or career-conditional ap-
 18 pointment outside the Senior Executive
 19 Service; or

20 “(ii) whose limited emergency or lim-
 21 ited term appointment is approved in ad-
 22 vance by the Office of Personnel Manage-
 23 ment;

24 “(2) the term ‘limited emergency appointee’ has
 25 the meaning given under section 3132; and

1 “(3) the term ‘limited term appointee’ means
2 an individual appointed to a Senior Executive Serv-
3 ice position in the Administration to meet a bona
4 fide temporary need, as determined by the Adminis-
5 trator.

6 “(b) The number of career reserved positions which
7 are filled by an appointee as described under subsection
8 (a)(1)(B) may not exceed 10 percent of the total number
9 of Senior Executive Service positions allocated to the Ad-
10 ministration.

11 “(c) Notwithstanding sections 3132 and 3394(b)—

12 “(1) the Administrator may appoint an indi-
13 vidual to any Senior Executive Service position in
14 the Administration as a limited term appointee
15 under this section for a period of—

16 “(A) 4 years or less to a position the du-
17 ties of which will expire at the end of such
18 term; or

19 “(B) 1 year or less to a position the duties
20 of which are continuing; and

21 “(2) in rare circumstances, the Administrator
22 may authorize an extension of a limited appointment
23 under—

24 “(A) paragraph (1)(A) for a period not to
25 exceed 2 years; and

1 “(B) paragraph (1)(B) for a period not to
2 exceed 1 year.

3 “(d) A limited term appointee who has been ap-
4 pointed in the Administration from a career or career-con-
5 ditional appointment outside the Senior Executive Service
6 shall have reemployment rights in the agency from which
7 appointed, or in another agency, under requirements and
8 conditions established by the Office of Personnel Manage-
9 ment. The Office shall have the authority to direct such
10 placement in any agency.

11 “(e) Notwithstanding section 3394(b) and section
12 3395—

13 “(1) a limited term appointee serving under a
14 term prescribed under this section may be reas-
15 signed to another Senior Executive Service position
16 in the Administration, the duties of which will expire
17 at the end of a term of 4 years or less; and

18 “(2) a limited term appointee serving under a
19 term prescribed under this section may be reas-
20 signed to another continuing Senior Executive Serv-
21 ice position in the Administration, except that the
22 appointee may not serve in 1 or more positions in
23 the Administration under such appointment in ex-
24 cess of 1 year, except that in rare circumstances, the

1 Administrator may approve an extension up to an
2 additional 1 year.

3 “(f) A limited term appointee may not serve more
4 than 7 consecutive years under any combination of limited
5 appointments.

6 “(g) Notwithstanding section 5384, the Adminis-
7 trator may authorize performance awards to limited term
8 appointees in the Administration in the same amounts and
9 in the same manner as career appointees.

10 **“§ 9938. Superior qualifications pay**

11 “(a) In this section the term ‘employee’ means an em-
12 ployee as defined under section 2105 who is employed by
13 the Administration.

14 “(b) Notwithstanding section 5334, the Adminis-
15 trator may set the pay of an employee paid under the Gen-
16 eral Schedule at any step within the pay range for the
17 grade of the position, based on the superior qualifications
18 of the employee, or the special need of the Administration.

19 “(c) If an exercise of the authority under this section
20 relates to a current employee selected for another position
21 within the Administration, a determination shall be made
22 that the employee’s contribution in the new position will
23 exceed that in the former position, before setting pay
24 under this section.

1 “(d) Pay as set under this section is basic pay for
2 such purposes as pay set under section 5334.

3 “(e) If the employee serves for at least 1 year in the
4 position for which the pay determination under this sec-
5 tion was made, or a successor position, the pay earned
6 under such position may be used in succeeding actions to
7 set pay under chapter 53.

8 “(f) The Administrator may waive the restrictions in
9 subsection (e), based on criteria established in the plan
10 required under subsection (g).

11 “(g) Before setting any employee’s pay under this
12 section, the Administrator shall submit a plan to the Of-
13 fice of Personnel Management, that includes—

14 “(1) criteria for approval of actions to set pay
15 under this section;

16 “(2) the level of approval required to set pay
17 under this section;

18 “(3) all types of actions and positions to be cov-
19 ered;

20 “(4) the relationship between the exercise of au-
21 thority under this section and the use of other pay
22 incentives; and

23 “(5) a process to evaluate the effectiveness of
24 this section.”.

25 (b) TECHNICAL AND CONFORMING AMENDMENT.—

1 (1) TABLE OF CHAPTERS.—The table of chap-
 2 ters for part III of title 5, United States Code, is
 3 amended by adding at the end the following:

“99. National Aeronautics and Space Administration 9901”.

4 (2) COMPENSATION FOR CERTAIN EXCEPTED
 5 PERSONNEL.—

6 (A) IN GENERAL.—Subparagraph (A) of
 7 section 203(c)(2) of the National Aeronautics
 8 and Space Act of 1958 (42 U.S.C.
 9 2473(c)(2)(A)) is amended by striking “the
 10 highest rate of grade 18 of the General Sched-
 11 ule of the Classification Act of 1949, as amend-
 12 ed,” and inserting “the rate of basic pay pay-
 13 able for level III of the Executive Schedule,”.

14 (B) EFFECTIVE DATE.—Notwithstanding
 15 section 3, the amendment made by this para-
 16 graph shall take effect on the first day of the
 17 first pay period beginning on or after the effec-
 18 tive date of this Act.

19 (3) COMPENSATION CLARIFICATION.—Section
 20 209 of title 18, United States Code, is amended by
 21 adding at the end the following:

22 “(g)(1) In this subsection, the term ‘private sector
 23 entity’ has the meaning given under section 9932(a) of
 24 title 5.

1 “(2) This section does not prohibit an employee of
2 a private sector entity, while assigned to the National Aer-
3 onautics and Space Administration under section 9932 of
4 title 5, from continuing to receive pay and benefits from
5 that entity in accordance with section 9932 of that title.”.

6 **SEC. 3. EFFECTIVE DATE.**

7 This Act shall take effect 180 days after the date of
8 enactment of this Act.

○