

108TH CONGRESS  
1ST SESSION

# H. R. 1085

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2003

Mr. BOEHLERT 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

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## 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”.

1 **SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PER-**  
2 **SONNEL.**

3 (a) IN GENERAL.—Subparagraph (A) of section  
4 203(c)(2) of the National Aeronautics and Space Act of  
5 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking  
6 “the highest rate of grade 18 of the General Schedule of  
7 the Classification Act of 1949, as amended,” and inserting  
8 “the rate of basic pay payable for level III of the Executive  
9 Schedule.”.

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

14 **SEC. 3. WORKFORCE AUTHORITIES.**

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

18 “TITLE V—WORKFORCE AUTHORITIES

19 “DEFINITIONS

20 “SEC. 501. For purposes of this title—

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

23 “(2) the term ‘appropriate committees of Con-  
24 gress’ means—



1           “(1) each critical need of the Administration  
2           and the criteria used in its identification;

3           “(2) the functions, approximate number, and  
4           classes or other categories of positions or employees  
5           that address critical needs and that would be eligible  
6           for each authority proposed to be exercised under  
7           section 503, and how the exercise of those authori-  
8           ties with respect to the eligible positions or employ-  
9           ees involved would address each critical need identi-  
10          fied under paragraph (1);

11          “(3) any critical need identified under para-  
12          graph (1) which would not be addressed by the au-  
13          thorities made available by section 503, and the rea-  
14          sons why those needs would not be so addressed;

15          “(4) the specific criteria to be used in deter-  
16          mining which individuals may receive the benefits  
17          described in sections 504, 505, and 506 (including,  
18          in the case of sections 504 and 505, the criteria for  
19          granting bonuses in the absence of a critical need),  
20          and how the level of those benefits will be deter-  
21          mined;

22          “(5) the safeguards or other measures that will  
23          be applied to ensure that this title is carried out in  
24          a manner consistent with merit system principles;

1           “(6) the means by which employees will be af-  
2           forded the notification required under subsection (b)  
3           and the third sentence of subsection (c)(1), respec-  
4           tively; and

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

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

14          “(c)(1) The Administrator may from time to time  
15          modify the Workforce Plan. Not later than 90 days before  
16          implementing any such modifications, the Administrator  
17          shall submit a description of the proposed modifications  
18          to the appropriate committees of Congress. Not later than  
19          60 days before implementing any such modifications, the  
20          Administrator shall provide an appropriately modified  
21          plan to all employees of the Administration.

22          “(2) Any reference in this title or any other provision  
23          of law to the Workforce Plan shall be considered to include  
24          any modification made in accordance with this subsection.

1 “(d) None of the workforce authorities made available  
2 by section 503 may be exercised in a manner inconsistent  
3 with the Workforce Plan.

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

9 “(1) an evaluation, using the methods described  
10 in subsection (a)(7), of whether the authorities exer-  
11 cised under section 503 successfully addressed each  
12 critical need identified under subsection (a)(1);

13 “(2) to the extent that they did not, an expla-  
14 nation of the reasons why any critical need (apart  
15 from the ones under subsection (a)(3)) was not suc-  
16 cessfully addressed; and

17 “(3) recommendations for how the Administra-  
18 tion could address any remaining critical need and  
19 could prevent those that have been addressed from  
20 recurring.

21 “(f) Whenever the Administration submits its per-  
22 formance plan under section 1115 of title 31, United  
23 States Code, to the Office of Management and Budget for  
24 any year, the Administration shall at the same time sub-

1 mit a copy of such plan to the appropriate committees of  
2 Congress.

3 “WORKFORCE AUTHORITIES

4 “SEC. 503. (a) The workforce authorities made avail-  
5 able by this title are as follows:

6 “(1) The authority to pay recruitment, redesign-  
7 nation, and relocation bonuses, as provided by sec-  
8 tion 504.

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

11 “(3) The authority to apply subchapter II of  
12 chapter 35 of title 5, United States Code (relating  
13 to voluntary separation incentive payments), as  
14 added by section 1313(a)(1)(A) of the Homeland Se-  
15 curity Act of 2002 (Public Law 107–296), in accord-  
16 ance with section 506.

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

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

22 “(6) The authority to extend intergovernmental  
23 personnel act assignments, as provided by section  
24 509.

1 “(b) No authority under this title may be exercised  
2 with respect to any officer who is appointed by the Presi-  
3 dent, by and with the advice and consent of the Senate.

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

11 “RECRUITMENT, REDESIGNATION, AND RELOCATION  
12 BONUSES

13 “SEC. 504. (a) Notwithstanding section 5753 of title  
14 5, United States Code, the Administrator may pay a bonus  
15 to an individual, in accordance with the Workforce Plan  
16 and subject to the limitations in this section, if the Admin-  
17 istrator determines that the Administration would be like-  
18 ly, in the absence of a bonus, to encounter difficulty in  
19 filling a position, and if the individual—

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

22 “(2) is currently employed by the Federal Gov-  
23 ernment and is newly appointed to another position  
24 in the same geographic area; or



1           “(3) is currently employed by the Federal Gov-  
2           ernment and must relocate to a different geographic  
3           area to accept a position with the Administration.

4           “(b) If the position is described as addressing a crit-  
5           ical need in the Workforce Plan pursuant to section  
6           502(a)(2), the amount of a bonus may not exceed—

7           “(1) 50 percent of the employee’s annual rate  
8           of basic pay (including comparability payments  
9           under sections 5304–5304a of title 5, United States  
10          Code) as of the beginning of the service period mul-  
11          tplied by the service period specified pursuant to  
12          subsection (d)(1)(A); or

13          “(2) 100 percent of the employee’s annual rate  
14          of basic pay (including comparability payments  
15          under sections 5304–5304a of title 5, United States  
16          Code) as of the beginning of the service period.

17          “(c) If the position is not described as addressing a  
18          critical need in the Workforce Plan pursuant to section  
19          502(a)(2), the amount of a bonus may not exceed—

20          “(1) 25 percent of the employee’s annual rate  
21          of basic pay (including comparability payments  
22          under sections 5304–5304a of title 5, United States  
23          Code) as of the beginning of the service period mul-  
24          tplied by the service period specified pursuant to  
25          subsection (d)(1)(A); or

1           “(2) 100 percent of the employee’s annual rate  
2           of basic pay (including comparability payments  
3           under sections 5304–5304a of title 5, United States  
4           Code) as of the beginning of the service period.

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

9           “(A) the required service period;

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

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

16           “(D) the conditions under which the agreement  
17           may be terminated before the agreed-upon service  
18           period has been completed, and the effect of the ter-  
19           mination.

20           “(2) For purposes of determinations under sub-  
21           sections (b)(1) and (c)(1), the employee’s service period  
22           shall be expressed as the number equal to the full years  
23           and twelfth parts thereof, rounding the fractional part of  
24           a month to the nearest twelfth part of a year. The service

1 period may not be less than 6 months and may not exceed  
2 4 years.

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

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

9 “(f) The Administrator shall submit to the appro-  
10 priate committees of Congress, not later than February  
11 28 of each year, a summary of all bonuses paid under sub-  
12 sections (b) and (c) during the previous calendar year.  
13 Such summary shall include the number of bonuses paid,  
14 the total amount of bonuses paid, and the average percent-  
15 age used in calculating the total average bonus amount,  
16 under each such subsection.

17 “RETENTION BONUSES

18 “SEC. 505. (a) Notwithstanding section 5754 of title  
19 5, United States Code, the Administrator may pay a bonus  
20 to an employee, in accordance with the Workforce Plan  
21 and subject to the limitations in this section, if the Admin-  
22 istrator determines that—

23 “(1) the unusually high or unique qualifications  
24 of the employee or a special need of the Administra-  
25 tion for the employee’s services makes it essential to  
26 retain the employee; and

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

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

9           “(c) If the position is not described as addressing a  
10 critical need in the Workforce Plan pursuant to section  
11 502(a)(2), the amount of a bonus may not exceed 25 per-  
12 cent of the employee’s annual rate of basic pay (including  
13 comparability payments under sections 5304–5304a of  
14 title 5, United States Code).

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

19           “(A) the required service period;

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

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

1           “(D) 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 of title 5,  
25          United States Code, or under section 504.

1       “(g) Before paying a bonus under this section, the  
2 Administration shall establish a plan for paying retention  
3 bonuses, subject to approval by the Office of Personnel  
4 Management.

5       “(h) The Administrator shall submit to the appro-  
6 priate committees of Congress, not later than February  
7 28 of each year, a summary of all bonuses paid under sub-  
8 sections (b) and (c) during the previous calendar year.  
9 Such summary shall include the number of bonuses paid,  
10 the total amount of bonuses paid, and the average percent-  
11 age used in calculating the total average bonus amount,  
12 under each such subsection.

13       “VOLUNTARY SEPARATION INCENTIVE PAYMENTS

14       “SEC. 506. (a) In applying subchapter II of chapter  
15 35 of title 5, United States Code, the Administrator may  
16 provide for voluntary separation incentive payments in ex-  
17 cess of the dollar-amount limitation that would otherwise  
18 apply under section 3523(b)(3)(B) of such title, subject  
19 to subsection (b).

20       “(b) Voluntary separation incentive payments de-  
21 scribed in subsection (a)—

22               “(1) may not exceed 50 percent of the annual  
23 rate of basic pay of the employee receiving such pay-  
24 ments (computed disregarding any comparability  
25 payments under sections 5304–5304a of title 5,  
26 United States Code);

1           “(2) may not, in any calendar year, be made to  
2 more than—

3                   “(A) 10 employees; or

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

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

15           “(4) may be made only if the position in which  
16 the employee is serving addresses a critical need  
17 identified in the Workforce Plan pursuant to section  
18 502(a)(2).

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

22           “(2) Whenever the Office of Personnel Management  
23 approves the Administration’s plan required in such sec-  
24 tion 3522, the Administration shall submit a copy of the

1 approved plan to the appropriate committees of Congress  
2 within 15 days after the date on which it is so approved.

3 “TERM APPOINTMENTS

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

9 “(b) Notwithstanding chapter 33 of title 5, United  
10 States Code, or any other provision of law relating to the  
11 examination, certification, and appointment of individuals  
12 in the competitive service, the Administrator may convert  
13 an employee serving under a term appointment to a per-  
14 manent appointment in the competitive service within the  
15 Administration without further competition if—

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

20 “(2) the announcement for the term appoint-  
21 ment from which the conversion is made stated that  
22 there was potential for subsequent conversion to a  
23 career-conditional or career appointment;

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



1           “(4) the employee’s performance under such  
2 term appointment was at least fully successful or  
3 equivalent; and

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

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

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

23          “(e) An employee converted to career or career-condi-  
24 tional employment under this section acquires competitive  
25 status upon conversion.

1 “(f) Not later than February 28 of each year, the  
2 Administrator shall submit to the appropriate committees  
3 of Congress—

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

6 “(2) of that total number, the number of con-  
7 versions that were made to address a critical need  
8 described in the Workforce Plan pursuant to section  
9 502(a)(2).

10 “PAY AUTHORITY FOR CRITICAL POSITIONS

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

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

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

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

21 “(4) a senior-level position to which section  
22 5376(a)(1) of title 5, United States Code, applies.

23 “(b) Authority under this section—

24 “(1) may be exercised only with respect to a po-  
25 sition which is described as addressing a critical  
26 need in the Workforce Plan pursuant to section

1 502(a)(2), and which requires expertise of an ex-  
2 tremely high level in a scientific, technical, profes-  
3 sional, or administrative field;

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

7 “(3) may be exercised only in retaining employ-  
8 ees of the Administration or in appointing individ-  
9 uals who were not employees of another Federal  
10 agency as defined by section 5102(a)(1) of title 5,  
11 United States Code.

12 “(c)(1) Notwithstanding section 5377 of title 5,  
13 United States Code, the Administrator may fix the rate  
14 of basic pay for a position in the Administration in accord-  
15 ance with this section. The Administrator may not dele-  
16 gate this authority.

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

19 “(d)(1) The rate of basic pay fixed under this section  
20 may not be less than the rate of basic pay (including any  
21 comparability payments) which would otherwise be pay-  
22 able for the position involved if this section had never been  
23 enacted.

1 “(2) The annual rate of basic pay fixed under this  
2 section may not exceed the per annum rate of salary pay-  
3 able under section 104 of title 3, United States Code.

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

17 “(e) The Administrator shall submit to the appro-  
18 priate committees of Congress, not later than February  
19 28 of each year, the number of critical pay positions that  
20 were established and the number of critical pay positions  
21 that were disestablished during the previous calendar year.

22 “ASSIGNMENTS UNDER THE INTERGOVERNMENTAL  
23 PERSONNEL ACT MOBILITY PROGRAM

24 “SEC. 509. For purposes of applying the third sen-  
25 tence of section 3372(a) of title 5, United States Code  
26 (relating to the authority of the head of a Federal agency

1 to extend the period of an employee's assignment to or  
2 from a State or local government, institution of higher  
3 education, or other organization), the Administrator may,  
4 with the concurrence of the employee and the government  
5 or organization concerned, take any action which would  
6 be allowable if such sentence had been amended by strik-  
7 ing 'two' and inserting 'four'.

8 "ENHANCED DEMONSTRATION PROJECT AUTHORITY

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

14 "TERMINATION

15 "SEC. 511. The workforce authorities under section  
16 503 shall terminate as of October 1, 2009, except that  
17 nothing in this section shall—

18 "(1) affect any bonus payment under sections  
19 504 or 505 agreed to by the employee and the Ad-  
20 ministration before the termination date;

21 "(2) prevent an employee from being allowed to  
22 complete a term appointment made under section  
23 507(a) if the appointment was made before the ter-  
24 mination date;

25 "(3) prevent the Administrator from converting  
26 any term employees to career or career-conditional

1 status under section 507 if the term appointment  
2 was made before the termination date;

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

6 “(5) prevent an employee assigned under sec-  
7 tion 3372 of title 5, United States Code, from com-  
8 pleting the extended term made under section 509 if  
9 the extension was made before the termination  
10 date.”.

○