

**Calendar No. 236**

108th Congress }  
*1st Session* }

SENATE

{ REPORT  
108-113

NASA WORKFORCE FLEXIBILITY ACT OF  
2003

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 610

together with

ADDITIONAL VIEWS

TO AMEND THE PROVISIONS OF TITLE 5, UNITED STATES CODE,  
TO PROVIDE FOR WORKFORCE FLEXIBILITIES AND CERTAIN  
FEDERAL PERSONNEL PROVISIONS RELATING TO THE NA-  
TIONAL AERONAUTICS AND SPACE ADMINISTRATION, AND FOR  
OTHER PURPOSES



JULY 28 (legislative day, JULY 21), 2003.—Ordered to be printed

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## Calendar No. 236

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### NASA WORKFORCE FLEXIBILITY ACT OF 2003

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JULY 28 (legislative day, JULY 21), 2003.—Ordered to be printed  
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Ms. COLLINS, from the Committee on Governmental Affairs,  
submitted the following

### R E P O R T

together with

### ADDITIONAL VIEWS

[To accompany S. 610]

The Committee on Governmental Affairs, to which was referred the bill (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, reports favorably thereon with amendments and recommends that the bill do pass.

#### I. PURPOSE AND SUMMARY

The purpose of S. 610, the NASA Workforce Flexibility Act of 2003, is to enhance existing workforce flexibilities and establish new flexibilities for the National Aeronautics and Space Administration. NASA is directed to establish, in consultation with employees, a workforce plan to identify the agency's workforce needs and describe how the flexibilities contained in S. 610 will address those needs. The flexibilities contained within this Act may not be used in a manner inconsistent with the workforce plan. The workforce plan must be approved by the Office of Personnel Management and presented to Congress for review before implementation.

#### II. BACKGROUND

On March 6, 2003, House Science Committee Chairman Sherwood Boehlert and NASA Administrator Sean O'Keefe testified before the Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of

Columbia. In his testimony, Administrator O’Keefe outlined the human capital challenges facing his agency and recommended personnel flexibilities for Congress to consider that would assist NASA in addressing those challenges.<sup>1</sup>

During the 1990s, NASA underwent a period of significant downsizing, a process that left the agency with skill imbalances. The agency finds itself with an abundance of a particular skill set but facing a declining number of experienced employees due to impending retirements.<sup>2</sup> Additionally, NASA’s workforce differs significantly from other federal agencies in that more than 60 percent are scientists and engineers.<sup>3</sup> This places NASA in a difficult position as nationally, the number of graduates in the physical sciences, both under- and post-graduate, continues to decrease.<sup>4</sup> NASA increasingly finds itself unable to compete with both academia and the private sector in terms of competitive pay and benefits.

NASA has used existing personnel flexibilities<sup>5</sup> and has taken steps to identify internal barriers to most effectively using existing personnel flexibilities, including its 2002 “Freedom to Manage” initiative.<sup>6</sup> However, due to its unique mission, NASA has concluded that current law has not provided NASA the necessary flexibility to address its workforce challenges.

After the introduction of S. 610, discussions continued with interested parties. Before the bill was considered, changes were agreed to by the sponsor of the bill, and he incorporated those changes into an amendment in the nature of a substitute that he offered and that the Committee agreed to at its business meeting. For example, NASA would be required to discuss workforce recommendations made by the Columbia Accident Investigation Board in its workforce plan. In response to employee concerns, the provision to remove the cap on the number of employees who may participate in a demonstration project at NASA was removed. Concerns that large bonuses would be paid to managers and supervisors at the expense of other employees led to inclusion of language limiting the amount of total dollars that may be paid to managers and supervisors. Additionally, due to valid concerns that the workforce exchange program would encompass individuals in a position to influence contracting decisions, language was added to restrict the program to individuals in scientific and technical positions.

NASA is engaged in fierce competition with the private sector for the most qualified candidates. Enhancing flexibilities NASA has

<sup>1</sup> See Senate Hearing Report 108–28, Evaluating Human Capital at the National Aeronautics and Space Administration.

<sup>2</sup> Currently, 15 percent of NASA’s workforce is eligible to retire and 25 percent of the workforce will be eligible for retirement in five years.

<sup>3</sup> In NASA’s existing science and engineering workforce, scientists and engineers over age 60 outnumber those under age 30 by nearly three to one.

<sup>4</sup> See National Science Board report Science and Engineering Indicators—2002.

<sup>5</sup> NASA has used of existing workforce flexibilities. For example, NASA was one of the first agencies to hire individuals under the Federal Career Intern Program, a program established by Executive Order in 2000 to streamline recruitment for trainee positions in a variety of positions. NASA has implemented an Automated Staffing and Recruitment System and widely used the Student Loan Repayment Program. In addition, NASA has made extensive use of the existing Intergovernmental Personnel Act (IPA) and term appointment authority.

<sup>6</sup> In 2002, NASA implemented “Freedom to Manage” to ensure the effective use of existing workforce flexibilities. The initiative identified internal processes and rules that impeded effective human capital management. The initiative resulted in delegation of authorities, reduced levels of review on some actions, streamlined processes, and more effective use of automated tools to improve operations.

found to be beneficial and implementing new flexibilities would assist this important federal agency in being more competitive in recruiting and retaining the kind of workforce it will need in the 21st Century.

### III. LEGISLATIVE HISTORY

On March 6, 2003, the Subcommittee chaired by Senator George V. Voinovich held a hearing at which Administrator O'Keefe outlined for Committee Members the human capital needs of NASA.

S. 610 was introduced on March 13, 2003, by Senator Voinovich and was referred to the Senate Committee on Governmental Affairs. The bill was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia on April 30, 2003. It was favorably polled from the Subcommittee on June 11, 2003.

S. 610 was considered, amended, and ordered favorably reported by the Governmental Affairs Committee at its business meeting on June 17, 2003. Senator Voinovich offered the amendment in the nature of a substitute described above, on behalf of himself and Senator Carper, and agreed to modify the amendment (so as to cap the amount of bonuses that may be granted to managers and supervisors), as proposed by Senator Durbin. The Committee agreed to the modified amendment in the nature of a substitute and ordered S. 610, as amended, reported favorably by voice vote, with no Members present dissenting. Senators present were as follows: Collins, Lieberman, Voinovich, Coleman, Sununu, Levin, Akaka, Carper, Lautenberg, and Pryor.

### IV. SECTION-BY-SECTION ANALYSIS

#### *Section 9801. Definitions.*

This section establishes the definitions of terms to be used throughout Subchapter I (Sections 9801–9808).

#### *Section 9802. Planning, notification, and reporting requirements*

This section provides that, before exercising any of the workforce authorities under this subchapter, the Administrator of NASA must submit to OPM for approval a written plan detailing the workforce needs of NASA, how NASA will use increased workforce flexibilities to meet those needs, and how the agency has utilized existing flexibilities and discussion of workforce recommendations made by the Columbia Accident Investigation Board. NASA is also required to submit a workforce plan to Congress and provide it to all employees at least 60 days before exercising any of the flexibilities in the plan. Moreover, before submitting a plan to Congress, NASA must have provided a proposed plan to employee representatives and must have given their recommendations full and fair consideration. Modifications of the workforce plan must be noticed to employees and their organizations representing NASA employees for comment, are subject to OPM approval and, must be submitted to Congress and all employees at least 60 days in advance of implementation.

*Section 9803. Workforce authorities.*

This section outlines the workforce authorities that NASA may propose to exercise in the workforce plan.

*Section 9804. Recruitment, redesignation, and relocation bonuses*

This section would permit NASA to pay a bonus to an individual in accordance with its workforce plan if the Administrator determines that NASA would be likely, in the absence of a bonus, to encounter difficulty in filling a position and the individual is newly appointed to the federal government, currently employed by the federal government and newly appointed to another position in the same geographic area, or currently employed by the federal government and is required to relocate to a different geographic area to accept a position with NASA.

This section would grant NASA authority to pay the following bonuses: (1) for positions of critical need, a maximum of 50 percent of an employee's annual rate of basic pay at the beginning of the service period, multiplied by the service period, and not to exceed 100 percent of the employee's annual rate of basic pay at the beginning of the designated service period; and (2) for non-critical need positions, a maximum of 25 percent of an employee's annual rate of basic pay at the beginning of the service period, multiplied by the service period, and not to exceed 100 percent of the employee's annual rate of basic pay at the beginning of the designated service period. Service agreements under this section must include the required service period, the method of payment (including a schedule, which may include a lump-sum payment, installment payments, or a combination), the amount of the bonus, the basis for calculating that amount, the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. A service period under this section may not be less than six months and may not exceed four years. No more than 25% of the total dollar amount used for bonuses may be offered for supervisory or managerial positions.

*Section 9805. Retention bonuses.*

This section would permit NASA to pay a bonus to an employee in accordance with its workforce plan if the Administrator determines that the unusually high or unique qualifications of the employee or a special need of NASA makes it essential to retain the employee and the employee would be likely to leave in the absence of a retention bonus. This section would grant NASA authority to pay bonuses for positions of critical need to a maximum of 50 percent of an employee's annual rate of basic pay; for non-critical need positions, NASA may pay bonuses not to exceed 25 percent of an employee's annual rate of basic pay. Service agreements under this section must include the required service period, the method of payment (including a schedule, which may include a lump-sum payment, installment payments, or a combination), the amount of the bonus, the basis for calculating that amount, the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. A service period under this section may not be less than six months and may not exceed four years. No more than 25 percent

of the total dollar amount used for bonuses may be offered for supervisory or managerial positions.

*Section 9806. Term appointments.*

This section would amend title 5 to permit NASA to make a term appointment for a maximum of six years or extend existing term appointments to six years. Current statute permits term appointments for four years, to be extended by a waiver from OPM. NASA hires individuals for specific scientific and technical programs; however, as technology does not always develop rapidly, a term appointment may expire before the project is complete. This section would provide NASA the authority to convert a term appointment to a career-conditional appointment under certain conditions. An appointment may be converted if (1) the individual was hired under the competitive examining procedures in title 5, (2) the original announcement stated the appointment may be converted from term to career-conditional, (3) the position is in the same occupational series and geographic location and provides no greater promotional potential than the term appointment, (4) the individual has completed at least two years of the term appointment having served successfully, and (5) the individual has performed successfully in the position.

*Section 9807. Pay authority for critical positions.*

This section would allow the NASA Administrator to appoint up to 10 individuals possessing expertise of an extremely high level to specific administrative, technical, scientific, and professional positions needed to carry out critical agency functions and aid in the accomplishment of the agency's mission. Individuals hired for these critical positions would earn a salary not to exceed that of the Vice President. This authority, which has been granted to other agencies, such as the Internal Revenue Service, and which exists governmentwide for 800 such appointments, subject to OMB and OPM approval, is designed to attract talented individuals to critical positions in the federal government for short periods of time.

*Section 9808. Assignments of intergovernmental personnel.*

This section would allow NASA to extend an intergovernmental personnel assignment for no more than four years. Current statute provides for a two-year term with the option of a two year extension. Extensions are to be made with the concurrence of the employee and the employee's originating agency or organization. NASA has achieved success using the provisions of the Intergovernmental Personnel Act (IPA). However, some scientific and technical projects run more than four years. NASA finds the need to retain the critical expertise to support the program to avoid the unnecessary disruption caused by ending the assignment.

*Section 9831. Definitions.*

This section establishes the definitions of terms to be used throughout Subchapter II (Sections 9831–9838).

*Section 9832. Administration and private sector exchange assignments.*

This section would authorize the Administrator to detail permanent employees in a scientific or technical position to private sector entities and accept the detail of private sector employees to NASA with the concurrence of the employees involved. Assignments would be made for two years with the possibility for a two year extension; employees participating in the exchange must agree to work for the agency for a period of time equivalent to the assignment. Private sector employees detailed to NASA are subject to all conflict of interest and ethics statutes applicable to federal employees. Private sector organizations are prohibited from including the cost of salaries and benefits of an employee detailed to NASA in their direct or indirect costs for a federal contract. Following the success of Intergovernmental Personnel Assignments and similar to the Digital Tech Corps Act passed last year by Congress, this section would offer NASA a tool to exchange talent between NASA and the private sector for work of mutual concern that the Administrator determines will be beneficial to both. The exchange program should also make service at NASA more attractive and should provide an opportunity for NASA employees to improve their skills.

*Section 9833. Science and technology scholarship program.*

This section would require NASA to establish a program for providing scholarships to students enrolled in academic programs at accredited colleges and universities appropriate for professions at NASA. In exchange, students would be required to complete year-for-year service with NASA. Students must be U.S. citizens and must not be federal employees. Scholarships may not exceed the costs associated with attending the college or university. Students who fail to maintain a high level of academic standing, as defined by regulation, are dismissed from their college or university for disciplinary reasons, or do not complete their program of study would be required to repay funds received under the scholarship program. In the event a scholarship recipient fails to complete the service obligation to the agency, the individual will be responsible to repay the amount of scholarship received with penalties. The Administrator shall, by regulation, provide for the waiver or suspension of a service obligation if completion of service by an individual would be impossible or would involve extreme hardship to the individual, or if enforcement would be contrary to the best interests of the government. The bill authorizes \$10 million per year to be made available for two years. NASA anticipates the program will support 300 students. This section attempts to assist NASA in addressing the problem of a declining graduate pool of scientists, engineers, and technology professionals.

*Section 9834. Distinguished scholar appointment authority.*

This section would permit NASA to appoint directly to the General Schedule individuals in professional and research positions in grades GS-7 through GS-12 who meet specified education requirements. Veterans' preference applies and public notice of vacancies is required. This provision is necessary considering the makeup of NASA's workforce, in which 60 percent of employees are scientists and engineers. NASA needs a process to properly recognize aca-



demeric excellence for professional positions and eliminate barriers to quickly offering employment to top graduates.

*Section 9835. Travel and transportation expenses of certain new appointees.*

This section would authorize NASA to offer employees reimbursement for house-hunting trips and limited reimbursement for home sale and purchase expenses, temporary quarters allowance, and relocation services. Such benefits are available to current federal employees who accept a new position within the federal government. Such reimbursements would help NASA compete with private sector organizations that are able to offer generous relocation packages to attract a highly qualified candidate.

*Section 9836. Annual leave enhancements.*

This section would change the rules that govern the accrual of annual leave for new mid-career NASA employees. Currently, new mid-career hires with significant professional experience and considerable private sector vacation benefits earn annual leave at a rate of four hours per biweekly pay period for the first three years of employment with the federal government. This section would allow the head of NASA to deem a period of qualified non-federal career experience for an individual an equal period of service performed as a federal employee. For example, 10 years of career experience prior to the commencement of service with NASA could be treated as 10 years of federal service, resulting in the new employee being placed in the 6 hour leave accrual category. This change would assist NASA in hiring mid-career individuals with significant professional experience by enabling NASA to allow such individuals to accrue annual leave at a higher rate than entry-level employees ordinarily receive.

This section would also provide that all senior executives and other senior level employees at NASA accrue annual leave at the maximum rate: one day (eight hours) for each bi-weekly pay period.

*Section 9837. Limited appointments to Senior Executive Service positions.*

This section would combine the limited term and limited emergency appointments into one limited appointment authority designed to meet NASA's short-term staffing needs. Specifically, this section would permit limited SES appointees to be appointed to career reserved positions, provided that the limited appointee, immediately before the career reserved appointment, was serving under a career or career-conditional appointment outside of the SES (or an appointment of equivalent tenure). These changes are designed to provide more flexibility for NASA to address short-term staffing needs at the senior executive level.

*Section 9838. Superior qualifications pay.*

This section would allow NASA, after review by OPM, to adjust the base pay for employees and those redesignated for positions at NASA at any rate within the GS salary range for the position. The determination is to be made on the superior qualifications of the individual and the need of the agency. Current statute permits pay to be set under the General Schedule at any step of the pay range

for superior qualifications or agency need for new hires only. NASA has little ability to set base pay for current employees to recognize their superior contributions to the agency.

This Act shall be effective 180 days after enactment.

V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, June 25, 2003.

Hon. SUSAN M. COLLINS,  
 Chairman, Committee on Governmental Affairs,  
 U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 610, 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
 Director.

Enclosure.

*S. 610—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*

Summary: S. 610 would allow the National Aeronautics and Space Administration (NASA) to modify its personnel and workforce practices under the bill. NASA would be allowed to pay higher bonuses to attract and retain individuals with special expertise, exchange personnel with industrial firms, and increase compensation or benefits for certain positions. In addition, the bill would authorize the appropriation of \$10 million a year for a new science and technology scholarship program.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 610 would cost \$80 million over the 2004–2008 period. In 2003, about \$2 billion was appropriated for NASA’s personnel costs. Enacting S. 610 would not affect direct spending or revenues.

S. 610 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 610 is shown in the following table. The costs of this legislation fall within budget functions 250 (general science, space, and technology) and 400 (transportation).

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level .....	15	17	19	22	22

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Estimated outlays .....	6	13	18	21	22

Basis of estimate: For this estimate, CBO assumes that S. 610 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year and that outlays will occur at historical rates for NASA's personnel costs.

This bill would authorize the appropriation of \$10 million a year for a science and technology scholarship program. Recipients would be required to work for NASA for a period of time corresponding to the duration of the scholarship.

Based on information from NASA, CBO estimates that expenditures for the new personnel benefits authorized by the bill would cost \$5 million to \$10 million a year (in 2003 dollars) in most or all of the next five years, depending on how extensively the agency used some of the new authorities. CBO estimates that spending for higher bonuses would account for most of the additional cost. According to NASA, over 5,000 of its roughly 18,000 employees will be eligible to retire by 2008, half of who are in scientific and engineering fields.

Under S. 610, new employees could receive bonuses equivalent to 100 percent of their salary under certain conditions (compared to 25 percent under current law), while current employees with critical skills could be given a one-time bonus equivalent to 50 percent of their salary (compared to 25 percent under current law). CBO estimates such bonuses would cost a total of about \$25 million over the next five years, based on the assumption that such payments would likely increase over time in response to recruitment needs and payment schedules. The estimated cost is equivalent to giving the maximum bonus to an average of 90 individuals a year over the 2004–2008 period.

Intergovernmental and private-sector impact: S. 610 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On May 15, 2003, CBO transmitted a cost estimate for H.R. 1836, the Civil Service and National Security Personnel Improvement Act, as ordered reported by the House Committee on Government Reform on May 8, 2003. Subtitle B of that bill and S. 610 are nearly identical, as are the CBO estimates.

Estimate prepared by: Federal costs: Kathleen Gramp; impact on state, local, and tribal governments: Gregory Waring; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## VI. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.”

The enactment of this legislation will not have significant regulatory impact.

## VII. ADDITIONAL VIEWS

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### ADDITIONAL VIEWS OF SENATOR DURBIN

I am pleased to support this legislation, as amended, which will provide a variety of workforce flexibilities to the National Aeronautics and Space Administration (NASA). This legislation is very important because it will assist NASA in its efforts to recruit and retain a workforce that is ready to meet the scientific and technical challenges necessary to fulfill its missions. I applaud the efforts of Subcommittee Chairman Voinovich to evaluate a variety of options, seek input from interested and affected parties, and carefully consider alternative approaches in crafting the compromise proposal approved by the Committee.

I would specifically like to draw attention to Senator Voinovich's willingness to include provisions to address Federal employee concerns. The amended legislation, as approved by the Committee, contains language that will require NASA workforce plans to be submitted to Congress before the flexibilities specified in the plans can be implemented. By including this language, Congress can remain fully engaged in the process as NASA develops and implements flexibilities for its workforce. The legislation also contains a provision that requires NASA officials to describe any reforms to workforce management practices as recommended by the Columbia Accident Investigation Board when developing workforce plans. This will ensure that personnel recommendations resulting from the *Columbia* investigation will be addressed.

The original version of the legislation contained language that would have removed the cap on the number of employees permitted to participate in Federal demonstration projects at NASA. Eliminating the cap would have allowed NASA to include all employees in demonstration projects, subject to any existing collective bargaining agreements. This language was removed from the legislation before it was approved by the Committee. Therefore, the current cap on employees permitted to participate in Federal demonstration projects remains in place. Maintaining the cap ensures that new workforce flexibilities can be appropriately and adequately tested through demonstration projects without affecting the entire workforce.

During the full committee markup, Senator Voinovich accepted an amendment I was prepared to offer relating to the new bonus authorities contained in the legislation. This amendment required that no more than 25 percent of the total dollar amount allotted for bonuses in any year may be used for individuals serving in management and supervisory positions. This ensures that an adequate amount of bonus funding will be reserved and available for rank and file scientific and technical employees. I am pleased that

this amendment was incorporated in the legislation as approved by the Committee.

While I appreciate Senator Voinovich's willingness to incorporate each of the provisions that I have discussed, I remain concerned about a provision retained in the amended bill to establish an exchange program between NASA employees and private sector employees. This type of program raises serious concerns about the potential for conflicts of interest. The bill includes language that would limit participation in the program to those in scientific and technical positions. However, I do not believe that making such a change sufficiently addresses the concern. Senator Voinovich has indicated his commitment to continue to work with me to address my remaining concerns about the potential for conflicts of interest that might arise in this type of exchange program and to incorporate additional safeguards that may be necessary. I am confident that we will be able to make further progress on this section of the legislation prior to Senate floor consideration.

RICHARD J. DURBIN.

## ADDITIONAL VIEWS OF SENATOR AKAKA

S. 610, the National Aeronautics and Space Administration (NASA) Workforce Flexibility Act of 2003, would provide NASA added tools to manage its workforce, including an exchange program whereby NASA could detail its employees to private companies and rotate private sector employees into NASA. While I support this legislation, I am concerned that the exchange program lacks sufficient safeguards to ensure that the program will benefit NASA. For the program to be effective, there must be in place an adequate internal management structure that is transparent and accountable. According to a new General Accounting Office (GAO) review on the effective use of workforce flexibilities, the inefficient and ineffective use of flexibilities can significantly hinder the ability of federal agencies to recruit, hire, retain, and manage their employees.

For the proposed exchange program to work there needs to be sufficient safeguards to make certain that the program does not result in workforce shortfalls. NASA should not lose more employees and talent than it gains from the private sector. As such, there should be controls over the proportion and number of private sector and NASA employees who participate in the program. The concept of a private sector exchange program is new in government and untested at NASA. Moreover, the first exchange program established for the IT industry has not been in effect long enough for the Office of Personnel Management (OPM) to report on the administration of the program.

The exchange program also raises concerns over possible conflicts of interest, since the same private sector employees who are detailed to NASA under the program may return at a later date as NASA contractors. Ninety percent of NASA's workforce are contract or grant workers. The provision would benefit from additional safeguards to ensure that contractors do not use the program to gain a competitive advantage in future contracts with NASA. One way to address that concern is to institute a cooling off period whereby contractors participating in the program would be restricted from contracting with NASA for an appropriate period of time.

Moreover, there need to be assurances that minority owned and small businesses have the access to participate in the exchange program. The exchange program should be a genuine exchange, not an access point for new contracting opportunities with NASA. I look forward to working with my colleague from Ohio, Senator Voinovich, to ensure that these concerns are addressed and that adequate safeguards are included in the final version of this bill.

Although S. 610 does not specifically address contract management, I believe that with such heavy reliance on contract personnel, it is critical that there is effective and strong contract man-

agement at NASA. GAO first identified NASA contract management as a high risk area in 1990 when GAO's high risk list was first established. Unfortunately, GAO continues to find that NASA lacks the systems and processes needed to oversee contractor activities and control costs effectively. Last year, the Office of Inspector General at NASA concluded that the lack of proper contract oversight threatened the safety of the space shuttle operations. An internal study of NASA operations questioned the decision to privatize much of its shuttle operations in light of the reduction of staff responsible for overseeing NASA contractors. Admiral Harold W. Gehman (Ret.), Chairman of the Columbia Accident Investigation Board, has identified management failure as a contributing factor in the space shuttle disaster. A 2002 RAND study affirms the importance of NASA oversight of contractors and concludes that safety is often best served by stability of management.

As an early member of the House of Representatives Space Caucus, I view NASA's mission of space exploration unique within the federal government. NASA employees are modern day pioneers who help uncover the mysteries of the universe and promote technological advancements. For example, NASA has developed the wind-shear warning equipment used in commercial airliners and NASA space scientists have harnessed microgravity conditions to make advancements in medicine. Yet, despite the headway made through space exploration, NASA faces many of the same workforce management challenges faced by other federal agencies. As Congress prepares to grant new personnel flexibilities to NASA, Congress must provide strong oversight over the agency's operational, managerial, and safety challenges.

DANIEL K. AKAKA.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

**UNITED STATES CODE**

**TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES**

**PART III. EMPLOYEES**

\* \* \* \* \*

**Subpart B. Employment and Retention**

**CHAPTER 31. AUTHORITY FOR EMPLOYMENT**

**Subchapter I. Employment Authorities**

**§ 3111. Acceptance of volunteer service**

\* \* \* \* \*

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chapter 37 or *section 9832* of this title and regulations of the Office of Personnel Management.

\* \* \* \* \*

**Subpart F. Labor-Management and Employee Relations**

**CHAPTER 73. SUITABILITY, SECURITY, AND CONDUCT**

**Subchapter V. Misconduct**

**§ 7353. Gifts to Federal employees**

\* \* \* \* \*

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations estab-



lished by such individual's supervising ethics office pursuant to paragraph (1).

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37 or section 9832, from continuing to receive pay and benefits from such organization in accordance with such chapter.

*Section 125 of Pub. L. 100-238, as amended, Pub. L. 107-347, Title II, §209(g)(3), Dec. 17, 2002, 116 Stat. 2932 (5 U.S.C. 8432 note)*

(a) DEFINITIONS.—For purposes of this section—

(1) the term “Executive Director” means the Executive Director under section 8474 of title 5, United States Code; and

(2) the term “Thrift Savings Plan” refers to the program under subchapter III of chapter 84 of title 5, United States Code.

(b) REGULATIONS.—

(1) IN GENERAL.—The Executive Director shall prescribe regulations relating to participation in the Thrift Savings Plan by an individual described in subsection (c).

(2) SPECIFIC MATTERS TO BE INCLUDED.—Under the regulations—

(A) in computing a percentage of basic pay to determine an amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used shall be the same as that used in computing any amount which the individual involved is otherwise required, as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be), to contribute to the Civil Service Retirement and Disability Fund; and

(B) an employing authority which would not otherwise make contributions to the Thrift Savings Fund shall be allowed, with respect to any individual under subsection (c) who is serving under such authority, and at the sole discretion of such authority, to make any contributions on behalf of such individual which would be permitted or required under the provisions of section 8432(c) of title 5, United States Code, if such authority were the individual's employing agency under such provisions.

(c) APPLICABILITY.—This section applies with respect to—

(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

(A) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11) of title 5, United States Code);

(B) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code;

(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)); [or]

(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; [and] or

(E) an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 8932 of title 5, United States Code; and

(2) any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(o).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the regulations prescribed under this section shall become effective in accordance with the provisions of such regulations.

(2) EXCEPTION.—The regulations prescribed under this section shall, with respect to individuals under subsection (c)(1)(C), be effective as of January 1, 1987.

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**Subpart I. Miscellaneous**

**CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Insert legislative text of S. 610: page 46, line 9 through p. 89, line 24.]

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**TITLE 18. CRIMES AND CRIMINAL PROCEDURE**

**PART I. CRIMES**

**CHAPTER 11. BRIBERY, GRAFT, AND CONFLICTS OF INTEREST**

\* \* \* \* \*

**§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches**

\* \* \* \* \*

(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.

\* \* \* \* \*

(2) Persons to whom restrictions apply.

(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0–7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 or *section 9832* of title 5.

\* \* \* \* \*

(1) Contract advice by former details. Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 or *section 9832* of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

\* \* \* \* \*

**§ 209. Salary of Government officials and employees payable only by United States**

\* \* \* \* \*

*(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of that title.*

\* \* \* \* \*

**CHAPTER 93. PUBLIC OFFICERS AND EMPLOYEES**

**§ 1905. Disclosure of confidential information**

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act, or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 or *section 9832* of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him

in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

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## TITLE 42. THE PUBLIC HEALTH AND WELFARE

### CHAPTER 26. NATIONAL SPACE PROGRAM

#### COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

##### § 2473. Functions of the Administration

\* \* \* \* \*

(c) In the performance of its functions the Administration is authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law;

(2) to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, except that (A) to the extent the Administrator deems such action necessary to the discharge of his responsibilities, he may appoint not more than four hundred and twenty-five of the scientific, engineering, and administrative personnel of the Administration without regard to such laws, and may fix the compensation of such personnel not in excess of [the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended] *the rate of basic pay payable for level III of the Executive Schedule*, and (B) to the extent the Administrator deems such action necessary to recruit specially qualified scientific and engineering talent, he may establish the entrance grade for scientific and engineering personnel without previous service in the Federal Government at a level up to two grades higher than the grade provided for such personnel under the General

Schedule established by the Classification Act of 1949, and fix  
their compensation accordingly;

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