

(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R. 3625

To provide for termination liability costs for certain National Aeronautics and Space Administration projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BROOKS of Alabama introduced the following bill; which was referred to the Committee on _____

A BILL

To provide for termination liability costs for certain National Aeronautics and Space Administration projects, 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. FINDINGS.**

4 Congress makes the following findings:

5 (1) The International Space Station, the Space
6 Launch System, and the Orion crew capsule will en-
7 able the Nation to continue operations in low-Earth
8 orbit and to send its astronauts to deep space. As

1 a result of their unique capabilities and their critical
2 contribution to the future of space exploration, these
3 systems have been designated by Congress and the
4 Administration as priority investments.

5 (2) While the Space Launch System and the
6 Orion programs, currently under development, have
7 made significant progress, they have not been fund-
8 ed at levels authorized, and as a result congression-
9 ally authorized milestones will be delayed by several
10 years.

11 (3) In addition, contractors are currently hold-
12 ing program funding, estimated to be in the hun-
13 dreds of millions of dollars, to cover the potential
14 termination liability should the Government choose
15 to terminate a program for convenience. As a result,
16 hundreds of millions of taxpayer dollars are unavail-
17 able for meaningful work on these programs.

18 (4) According to the Government Accountability
19 Office, the Administration procures most of its
20 goods and services through contracts, and it termi-
21 nates very few of them. In fiscal year 2010, the Ad-
22 ministration terminated 28 of 16,343 active con-
23 tracts and orders—a termination rate of about 0.17
24 percent.

1 (5) Providing processes requiring congressional
2 action on termination of these high-priority pro-
3 grams would enable contractors to apply taxpayer
4 dollars to making maximum progress in meeting the
5 established technical goals and schedule milestones
6 of these programs.

7 **SEC. 2. NASA TERMINATION LIABILITY.**

8 (a) **GENERAL RULE.**—Termination liability costs for
9 a covered program shall be provided only pursuant to this
10 section.

11 (b) **PROHIBITION ON RESERVING FUNDS.**—The Ad-
12 ministrators may not reserve funds from amounts appro-
13 priated for a covered program, and shall direct prime con-
14 tractors not to reserve funds, for potential termination li-
15 ability costs with respect to a covered program.

16 (c) **INTENT OF CONGRESS.**—It is the intent of Con-
17 gress that funds authorized to be appropriated for covered
18 programs be applied in meeting established technical goals
19 and schedule milestones.

20 (d) **VOID CONTRACTUAL PROVISIONS.**—Any provi-
21 sion in a prime contract entered into before the date of
22 enactment of this Act that provides for the payment of
23 termination liability costs through any means other than
24 as provided in this section is hereby declared to be void
25 and unenforceable.

1 (e) CONGRESSIONAL ACTION; NOTICE.—

2 (1) TERMINATION FOR CONVENIENCE.—The
3 Administrator may not initiate termination for the
4 convenience of the Government of a prime contract
5 on a covered program unless such program termi-
6 nation is authorized or required by a law enacted
7 after the date of enactment of this Act.

8 (2) TERMINATION FOR CAUSE.—The Adminis-
9 trator shall notify the Committee on Science, Space,
10 and Technology of the House of Representatives and
11 the Committee on Commerce, Science, and Trans-
12 portation of the Senate before initiating termination
13 for cause of a prime contract on a covered program.

14 (f) SUPPLEMENTAL APPROPRIATION REQUEST.—

15 (1) REQUEST.—If the Administrator decides to
16 terminate a prime contract on a covered program,
17 and sufficient unobligated appropriations are not
18 available to cover termination liability costs in the
19 appropriations account that is funding the prime
20 contract being terminated, the Administrator shall
21 provide to Congress a notification that an authoriza-
22 tion of appropriations is necessary not later than
23 120 days in advance of the proposed contract settle-
24 ment for the covered program.

1 (2) INTENT OF CONGRESS.—It is the intent of
2 Congress to provide additional authorization for ap-
3 propriations as may be necessary to pay termination
4 liability costs on prime contracts for covered pro-
5 grams if Congress deems it appropriate that the Ad-
6 ministration terminate such prime contracts.

7 **SEC. 3. REPORTING.**

8 Not later than 6 months after the date of enactment
9 of this Act, and every 6 months thereafter for the duration
10 of the prime contracts on covered programs, the Adminis-
11 trator shall transmit to the Committee on Science, Space,
12 and Technology of the House of Representatives and the
13 Committee on Commerce, Science, and Transportation of
14 the Senate a report that provides—

15 (1) the estimated termination liability costs for
16 each of the prime contracts; and

17 (2) the basis for how such estimate was deter-
18 mined.

19 **SEC. 4. DEFINITIONS.**

20 In this Act:

21 (1) ADMINISTRATION.—The term “Administra-
22 tion” means the National Aeronautics and Space
23 Administration.

1 (2) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Administra-
3 tion.

4 (3) COVERED PROGRAM.—The term “covered
5 program” means the International Space Station,
6 the Space Launch System, and the Orion crew cap-
7 sule.

8 (4) ORION CREW CAPSULE.—The term “Orion
9 crew capsule” refers to the multipurpose crew vehi-
10 cle described in section 303 of the National Aero-
11 nautics and Space Administration Authorization Act
12 of 2010 (42 U.S.C. 18323).

13 (5) PRIME CONTRACTOR.—The term “prime
14 contractor” means a person or entity contracting di-
15 rectly with the Federal Government on a covered
16 program.

17 (6) SPACE LAUNCH SYSTEM.—The term “Space
18 Launch System” refers to the follow-on Government-
19 owned civil launch system developed, managed, and
20 operated by the Administration to serve as a key
21 component to expand human presence beyond low-
22 Earth orbit, as described in section 302 of the Na-
23 tional Aeronautics and Space Administration Au-
24 thorization Act of 2010 (42 U.S.C. 18322).

1 (7) TERMINATION LIABILITY COSTS.—The term
2 “termination liability costs” means any costs in-
3 curred by a prime contractor, or by any subcon-
4 tractor of a prime contractor, for which the Federal
5 Government is liable as a result of termination of a
6 prime contract by the Administrator.