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.

Congress makes the following findings:

(1) The International Space Station, the Space

Launch System, and the Orion crew capsule will en-

able the Nation to continue operations in low-Earth

orbit and to send its astronauts to deep space. As
a result of their unique capabilities and their critical
collection to the future of space exploration, these
systems have been designated by Congress and the
Administration as priority investments.

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

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

(4) According to the Government Accountability
Office, the Administration procures most of its
goods and services through contracts, and it termi-
nates very few of them. In fiscal year 2010, the Ad-
ministration terminated 28 of 16,343 active con-
tracts and orders—a termination rate of about 0.17
percent.
(5) Providing processes requiring congressional action on termination of these high-priority programs would enable contractors to apply taxpayer dollars to making maximum progress in meeting the established technical goals and schedule milestones of these programs.

SEC. 2. NASA TERMINATION LIABILITY.

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

(b) PROHIBITION ON RESERVING FUNDS.—The Administrator may not reserve funds from amounts appropriated for a covered program, and shall direct prime contractors not to reserve funds, for potential termination liability costs with respect to a covered program.

(c) INTENT OF CONGRESS.—It is the intent of Congress that funds authorized to be appropriated for covered programs be applied in meeting established technical goals and schedule milestones.

(d) VOID CONTRACTUAL PROVISIONS.—Any provision in a prime contract entered into before the date of enactment of this Act that provides for the payment of termination liability costs through any means other than as provided in this section is hereby declared to be void and unenforceable.
(e) CONGRESSIONAL ACTION; NOTICE.—

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

(2) TERMINATION FOR CAUSE.—The Administrator shall notify the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate before initiating termination for cause of a prime contract on a covered program.

(f) SUPPLEMENTAL APPROPRIATION REQUEST.—

(1) REQUEST.—If the Administrator decides to terminate a prime contract on a covered program, and sufficient unobligated appropriations are not available to cover termination liability costs in the appropriations account that is funding the prime contract being terminated, the Administrator shall provide to Congress a notification that an authorization of appropriations is necessary not later than 120 days in advance of the proposed contract settlement for the covered program.
(2) INTENT OF CONGRESS.—It is the intent of Congress to provide additional authorization for appropriations as may be necessary to pay termination liability costs on prime contracts for covered programs if Congress deems it appropriate that the Administration terminate such prime contracts.

SEC. 3. REPORTING.

Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter for the duration of the prime contracts on covered programs, the Administrator shall transmit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that provides—

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

(2) the basis for how such estimate was determined.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADMINISTRATION.—The term "Administration" means the National Aeronautics and Space Administration.
(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Administration.

(3) COVERED PROGRAM.—The term “covered program” means the International Space Station, the Space Launch System, and the Orion crew capsule.

(4) ORION CREW CAPSULE.—The term “Orion crew capsule” refers to the multipurpose crew vehicle described in section 303 of the National Aeronautics and Space Administration Authorization Act of 2010 (42 U.S.C. 18323).

(5) PRIME CONTRACTOR.—The term “prime contractor” means a person or entity contracting directly with the Federal Government on a covered program.

(6) SPACE LAUNCH SYSTEM.—The term “Space Launch System” refers to the follow-on Government-owned civil launch system developed, managed, and operated by the Administration to serve as a key component to expand human presence beyond low-Earth orbit, as described in section 302 of the National Aeronautics and Space Administration Authorization Act of 2010 (42 U.S.C. 18322).
(7) TERMINATION LIABILITY COSTS.—The term "termination liability costs" means any costs incurred by a prime contractor, or by any subcontractor of a prime contractor, for which the Federal Government is liable as a result of termination of a prime contract by the Administrator.