

**Legislative Bulletin.....January 28, 2004**

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**S. 610**—NASA Flexibility Act of 2003

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**Summary of the Bills Under Consideration Today:**

Total Number of New Government Programs: 1

*Year to Date Prior to Today's Bills: 0*

Total Cost of Discretionary Authorizations: \$84 million over five years

*Year to Date Prior to Today's Bills: 0*

Total Amount of Revenue Reductions: \$317 million over five years

*Year to Date Prior to Today's Bills: 0*

Total Increase in Mandatory Spending: \$23 million over five years

*Year to Date Prior to Today's Bills: 0*

Total New State & Local Government Mandates: 0

*Year to Date Prior to Today's Bills: 0*

Total New Private Sector Mandates: 4

*Year to Date Prior to Today's Bills: 0*

**S. 610—NASA Flexibility Act of 2003 (Sen. Voinovich)**

**Order of Business:** The bill is scheduled for consideration on Wednesday, January 28<sup>th</sup>, under an open rule. The rule provides one hour of general debate, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Science and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Government Reform. Amendments will be considered under the five-minute rule.

The Senate approved S. 610 by unanimous consent on November 24, 2003.

**Summary:** S. 610 provides new and additional workforce flexibilities for the National Aeronautics and Space Administration (NASA).

**Bonuses:**

- Allows NASA to pay a recruitment bonus to an individual if, without the bonus, NASA would have difficulty filling the position and if the individual is a new federal employee, a current federal employee newly appointed to another position in the same geographic area, or a current federal employee required to relocate to accept a NASA position.
- Allows NASA to pay a retention bonus to an employee if it is determined that the employee has “unusually high or unique qualifications” or a special need of NASA makes it essential to retain the employee, and if the individual is likely to leave unless a bonus is paid.
- For individuals filling a “critical need” (as defined by NASA’s workforce plan, explained below), bonuses are limited to 50 percent of an employee’s annual salary multiplied by the service period agreed to in the service agreement between the employee and NASA, not to exceed 100 percent of the employee’s salary. For non-critical need positions, a bonus payment may not exceed 25 percent of the employee’s annual salary.
- Bonuses for supervisors or management officials may not exceed 25 percent of the total amount awarded.

**Other Provisions:**

- Allows NASA to make a term appointment for a maximum of six years or to extend existing term appointments to six years (Under term employment, the employing agency hires the term appointee for work of a project or non-permanent nature and for a limited period of time, a maximum of four years, unless a waiver is granted by the Office of Personnel Management (OPM)). NASA is also permitted to convert a term appointment to a career-conditional appointment if certain conditions are met.
- Allows NASA to appoint up to ten people to critical positions that would have fixed pay, not to exceed the salary of the Vice President.
- Allows NASA to extend an intergovernmental personnel assignment for no more than four years (currently such assignments are limited to two-year terms with the option of a two-year extension).
- Requires NASA to establish a Science and Technology Scholarship Program to award scholarships to students enrolled in academic programs at accredited colleges and universities appropriate for professions at NASA. Eligible students must be U.S. citizens or permanent residents and agree to serve as employees of NASA 24 months for each year a scholarship was received (not to exceed 4 years). Scholarship amounts are to be determined by the NASA administrator but may not exceed the cost of attendance. Students who fail to maintain a high level of academic standing, are dismissed from school for disciplinary reasons, or do not complete their program of study must repay any scholarship funds received. The bill authorizes \$10 million a year to be available for two years for the program.

- Allows NASA to appoint individuals directly to the General Schedule in professional and research positions in grade GS-7 through GS-12, if they meet certain academic criteria.
- Authorizes NASA to pay travel, transportation, and relocation expenses of new appointees (these benefits are currently available to current federal employees who accept a new position within the federal government).
- Allows NASA to deem a period of qualified non-federal service as service performed as a federal employee for the purpose of determining annual leave. The bill also provides that all senior executives and other senior level employees at NASA would accrue annual leave at the maximum rate of one day for each bi-weekly pay period.
- Combines the current law limited term and limited emergency appointment authority into a new limited appointment authority for the Senior Executive Service.
- Allows NASA, after review by OPM, to set pay for employees who are determined to have “unusually high or unique qualifications” and are assigned to new duties or new positions at any level within the General Schedule salary range for the position.
- Requires NASA to submit an annual report to Congress with information on how the authorities provided under the bill were used, including a summary of all bonuses, number of scholarships, and total number of employees awarded enhanced leave.

Before using any of the authority provided in the bill, NASA is required to submit a written plan to OPM stating the workforce needs of NASA, how NASA will use increased workforce flexibilities to meet those needs, and how NASA has used existing flexibilities. A workforce plan must also be submitted to Congress and to all employees at least 60 days before exercising any part of the plan. Prior to submitting a plan to Congress, however, a proposed plan must be provided to employee representatives and NASA is required to give their recommendations “full and fair consideration.”

**Possible Amendment:**

Flake: requires NASA to submit to Congress a plan to offset new spending authorized under this legislation with budget reductions elsewhere. Gives NASA the flexibility to choose which budget requests to target for reduction. The report must demonstrate that spending requests for provisions authorized under S. 610 are matched with corresponding budget cuts in other specific budget items.

**Committee Action:** S. 610 was held at the desk upon approval by the Senate and was not referred to a committee. However, the House Committee on Science did consider a similar bill, H.R. 1085, on July 22, 2003 and reported it favorably to the House by a vote of 21-14.

**Cost to Taxpayers:** The Congressional Budget Office estimates that S. 610 will cost \$80 million over the 2004-2008 period. The bill would not affect direct spending or revenues.

**Does the Bill Create New Federal Programs or Rules?:** The bill creates one new program, the Science and Technology Scholarship Program, and creates new rules for NASA’s workforce.

**Constitutional Authority:** Senate Committee reports are not required to provide a constitutional authority statement. The House Science Committee report (108-244) cites Article I, Section 8, but does not cite a specific clause.

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## **S. 1920—A bill to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted (Senator Grassley)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, January 28<sup>th</sup>, subject to a modified closed rule (H.Res. 503). The Senate passed S. 1920 on November 25, 2003, by unanimous consent.

**Summary:** S. 1920 would renew for six months the family farmer bankruptcy protection, known as Chapter 12 (Public Law 105-277). Chapter 12 allows bankrupt family farmers to restructure their debts without losing their land. The bill would extend Chapter 12 through July 1, 2004, six months later than its current expiration date of January 1, 2004. (The extension would take effect retroactively on January 1, 2004.)

A *permanent* Chapter 12 extension was contained in H.R. 975, the bankruptcy reform legislation that the House passed on March 19, 2003 (by a vote of 315-113-1), but that the Senate has not yet considered. <http://clerk.house.gov/evs/2003/roll074.xml>

**Amendment under the Rule (H.Res. 503):** If the rule passes, the text of H.R. 975, the comprehensive bankruptcy reform legislation as it passed the House last year, would automatically be substituted into S. 1920.

### **Highlights of H.R. 975:**

H.R. 975 is aimed at reducing frivolous bankruptcy claims (by requiring that higher-income filers who can repay some of their debts actually do so) while protecting debtors *vis a vis* creditors. The legislation establishes a needs-based system (or “means test”) that accounts for a debtor’s income, expenses, obligations, and any “special circumstances” when determining whether the debtor can repay at least a portion of the debt (rather than file under Chapter 7 to erase virtually all debts).

Further, the bill would ensure that creditors receive timely notice of important events in a bankruptcy case, while improving the accuracy of the information contained in debtors' schedules, statements of financial affairs, and other such documents. Abusive serial filings would be prohibited, the period between successive discharges would be lengthened (from six to eight years in most cases), and the use of exemptions would be limited.

The bill moves child support and alimony debts from the number seven priority (on the list of what debts must be paid and in what order) to the number *one* priority, thereby preventing some debtors from using bankruptcy to evade child support or alimony payments. The bill

creates a uniform and expanded definition of domestic support obligations to include debts that accrue both before or after a bankruptcy case is filed.

The bill also includes provisions for law firms and other counseling agencies to educate consumers about debt, including required credit counseling for pre-bankruptcy filers and required explanations of non-bankruptcy options and the consequences of bankruptcy to debtors. Retirement accounts that are tax-exempt and worth \$1 million or less would not count towards a debtor's estate, nor would Social Security benefits, withheld wages for contributions to employee benefit plans, or funds (up to \$5000 per beneficiary) placed in an education IRA or used to purchase a tuition credit within a year of filing bankruptcy.

To prevent "loading up" on debt prior to filing for bankruptcy, this bill lengthens the time-period before bankruptcy (from 60 days to 90 days) and lowers the dollar-amount of items purchased (from \$1000 to \$250) that would not be dischargeable through bankruptcy. No cash advance of \$750 or higher made within 70 days before filing bankruptcy would be dischargeable, nor would any debt incurred for the purpose of paying a state or local tax.

In giving creditors new responsibilities, the legislation requires creditors to educate debtors about the results of paying only the minimum payment each month, prohibits creditors from closing the accounts of consumers who incur no finance charges, gives incentives for alternative dispute resolution, and encourages honest pre-bankruptcy settlements with debtors.

The bill also has provisions to protect dispositions of family farms (by making **permanent** the existing bankruptcy relief laws for family farmers) and to apply certain laws of individual bankruptcy to small business bankruptcy. H.R. 975 would establish a new form of bankruptcy relief for transnational insolvencies.

### **Some Key Issues:**

*Discharging Debts Incurred from Pro-Life Activities:* H.R. 975 does NOT contain the language in the conference report for H.R. 333 in the 107<sup>th</sup> Congress to which pro-life Members objected. That is, there is **no** language, sometimes referred to as the "Schumer language," that would prevent the dischargeability of debts incurred as a result of peaceful, non-violent protesting (such as sidewalk counseling).

*The Homestead Exemption:* H.R. 975 would lengthen, from six months to two years before bankruptcy filing, the amount of time that a debtor would have to have lived in a particular state to claim the homestead exemption available in that state. The value of such exemption would be reduced to reflect the portions disposed of within seven years of bankruptcy with the intent to "hinder, delay, or defraud a creditor." A homestead exemption may not exempt interest in a house above a total of \$125,000 acquired within 1215 days of declaring bankruptcy (unless the value is a result of a transfer of residence within a single state). Therefore, the bill discourages debtors from moving to a state with more favorable homestead laws in order to keep an expensive home after declaring bankruptcy.

H.R. 975 also would cap a debtor's homestead exemption at \$125,000 if the debtor was convicted in the preceding five years of a felony or owes a debt arising from any securities law violation, from any criminal act, or from willful or reckless misconduct that caused serious physical injury or death.

**Other provisions of H.R. 975:**

- Limits the release of personally identifiable information from consumer transactions in certain instances;
- Authorizes the appointment of consumer privacy ombudsmen;
- Clarifies what counts as “wages and benefits” once a bankruptcy case has been filed;
- Allows for a delay of debt discharges while the outcome of certain proceedings are pending;
- Requires that administrators of employee benefit plans fulfill their duties as administrators even when they are debtors in bankruptcy cases;
- Expands the qualifications to be a “family farmer” for the purposes of family farmer bankruptcy protection;
- Expands the requirement that family farmers receive 50% of their income from farming operations in the taxable year immediately prior to bankruptcy filing to each of the second and third taxable years preceding the bankruptcy year;
- Prohibits the retroactive assessment of disposable income for family farmers;
- Extends to family fishermen the bankruptcy protections for family farmers; and
- Makes nondischargeable any debts incurred to pay fines or penalties imposed under federal election law.

For more details and background on H.R. 975, please view the RSC Legislative Bulletin at this webpage: <http://johnshadegg.house.gov/rsc/LB31903.pdf>

**Other Amendments Made in Order under the Rule (H.Res. 503):** The following two amendments would be made in order under the rule, if it passes. Note that these two amendments would be amending the version of S. 1920 as substituted with the text of H.R. 975. (See “Amendment under the Rule” section above.)

**Sensenbrenner (Manager’s Amendment):** Makes technical changes to H.R. 975 as passed by the House, which consist of the following: (1) revising the year of the short title (and subsequent references thereto) from 2003 to 2004 and a Code of Federal Regulations reference from 2002 to 2003; (2) amending section 1001 to make the reenactment of Chapter 12 retroactive to the date on which Chapter 12 was last in effect; (3) renumbering titles XIV and XV as titles XV and XIV, respectively, to clarify the measure’s overall effective date; (4) correcting an erroneous drafting instruction in section 1201; and (5) adding a new provision (section 1502) that corrects statutory cross-references in the Bankruptcy Code and the Securities Investment Protection Act with respect to a provision of the Bankruptcy Code amended by H.R. 975.

**Baldwin (Amendment in the Nature of a Substitute):** This amendment would strike the provisions of H.R. 975 from S. 1920 and insert provisions making permanent the family

farmer bankruptcy protections in the U.S. Code, while expanding eligibility requirements for such protections. That is, the amendment would expand who qualifies as a farmer and fisherman for purposes of bankruptcy relief.

**Additional Background:** The President signed into law the last extension of family farmer bankruptcy protection (Public Law 108-73) on August 15, 2003. The extension was from July 1, 2003, to January 1, 2004.

To read brief summaries explaining the differences among the chapters in the bankruptcy code (Ch. 7, 13, 11, 12, and 9), visit this website:

<http://www.thebankruptcysite.com/chapters.htm>

**Committee Action:** S. 1920 was referred to the House Judiciary Committee on January 15, 2004, but was not considered.

**Administration Position:** Although no Statement of Administration Policy (SAP) is available for S. 1920, the SAP for H.R. 975, which contains a *permanent* extension of family farmer bankruptcy protection, was supportive:

<http://www.whitehouse.gov/omb/legislative/sap/108-1/hr975sap-h.pdf>

**Cost to Taxpayers:** A CBO cost estimate for H.R. 975 did not report any affect on federal spending or receipts by an extension of family farmer bankruptcy protection. If the text of H.R. 975 replaces the base text of S. 1920 on the House floor, the budgetary effects of S. 1920 would then be as follows:

- A net \$4 million increase in authorizations over the next five years (starting with a \$17 million net decrease in the first year);
- A net \$23 million increase in mandatory spending over the next five years (starting with a net \$3 million increase in the first year); and
- A net \$317 million decrease in revenues over the next five years (starting with a net \$47 million decrease in the first year).

**Does the Bill Create New Federal Programs, Rules, or Mandates?:** The base text of S. 1920 would not, since it would temporarily extend, through July 1, 2004, a current-law bankruptcy provision that expired on January 1<sup>st</sup>. However, if the text of H.R. 975 replaces the base text of S. 1920 on the House floor, the new programs and rules would be as follows:

- For debtors:
  - Debtors would have to undergo credit counseling within 180 days of filing for bankruptcy and may not obtain any discharge of debts until completing a personal financial management instructional course.
  - Bankruptcy filers would have to file the three most recent years of tax returns or face dismissal of their cases.
- For creditors:
  - Creditors would be required to send information to consumers about the ramifications of paying only the minimum balance each month, introductory rates, payment deadlines, late-payment penalties, and other information.

--Creditors would be prohibited from terminating a credit account prior to its pre-determined expiration date just because the consumer always pays off the full balance each month (and thus never incurs a finance charge).

- For other entities:

--The Director of the Administrative Office of the United States Courts would collect statistics on individual bankruptcy, standardize and make such statistics available to the public, and submit a report on this data once a year beginning no later than October 31, 2002.

--The Board of Governors of the Federal Reserve would be directed to study consumer protections for unauthorized use of dual-purpose debit cards and other consumer credit issues.

--Debt-relief counseling agencies (popularly known as “bankruptcy mills”) would be required to counsel consumers on the significance of bankruptcy and what alternatives to bankruptcy consumers may have.

--The U.S. Attorney General would be directed to randomly audit no less than one out of every 250 individual bankruptcy filings.

--23 bankruptcy judgeships would be temporarily created for certain court districts.

--District courts of appeals would have to expedite bankruptcy appeals to meet 30-day deadlines for certain court actions.

**Constitutional Authority:** Though a committee report citing constitutional authority is unavailable, Article I, Section 8, Clause 4 of the Constitution gives Congress the power “to establish...uniform Laws on the subject of Bankruptcies throughout the United States.”

**Outside Organizations:** The U.S. Chamber of Commerce has urged support for H.R. 975 and “will consider” including the vote on S. 1920 (assuming the text of H.R. 975 is inserted into S. 1920) in its annual “How They Voted” guide.

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