

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. _____**

**OFFERED BY MRS. SYKES OF OHIO
and Mr. Miller of Ohio**

Add at the end of title VIII the following:

1 **SEC. 8 ____ . NASA PUBLIC-PRIVATE TALENT PROGRAM.**

2 Section 20113 of title 51, United States Code, is
3 amended by adding at the end the following new sub-
4 section:

5 **“(n) PUBLIC-PRIVATE TALENT PROGRAM.—**

6 **“(1) ASSIGNMENT AUTHORITY.—**Under policies
7 and procedures prescribed by the Administration,
8 the Administrator may, with the agreement of a pri-
9 vate sector entity and the consent of an employee of
10 the Administration or of such entity, arrange for the
11 temporary assignment of such employee of the Ad-
12 ministration to such private sector entity, or of such
13 employee of such entity to the Administration, as
14 the case may be.

15 **“(2) AGREEMENTS.—**

16 **“(A) IN GENERAL.—**The Administrator
17 shall provide for a written agreement among
18 the Administration, the private sector entity,
19 and the employee concerned regarding the

1 terms and conditions of the employee's assign-
2 ment under this subsection. The agreement
3 shall—

4 “(i) require that the employee of the
5 Administration, upon completion of the as-
6 signment, will serve in the Administration,
7 or elsewhere in the civil service if approved
8 by the Administrator, for a period equal to
9 twice the length of the assignment;

10 “(ii) provide that if the employee of
11 the Administration or of the private sector
12 entity (as the case may be) fails to carry
13 out the agreement, such employee shall be
14 liable to the United States for payment of
15 all expenses of the assignment, unless such
16 failure was for good and sufficient reason,
17 as determined by the Administrator; and

18 “(iii) contain language ensuring that
19 such employee of the Administration or of
20 the private sector entity (as the case may
21 be) does not improperly use predecisional
22 or draft deliberative information that such
23 employee may be privy to or aware of re-
24 lated to Administration programing, budg-
25 eting, resourcing, acquisition, or procure-

1 ment for the benefit or advantage of the
2 private sector entity.

3 “(B) TREATMENT.—An amount for which
4 an employee is liable under subparagraph (A)
5 shall be treated as a debt due the United
6 States.

7 “(C) WAIVER.—The Administrator may
8 waive, in whole or in part, collection of a debt
9 described in subparagraph (B) based on a de-
10 termination that the collection would be against
11 equity and good conscience and not in the best
12 interests of the United States, after taking into
13 account any indication of fraud, misrepresenta-
14 tion, fault, or lack of good faith on the part of
15 the employee concerned.

16 “(3) TERMINATION.—An assignment under this
17 section may, at any time and for any reason, be ter-
18 minated by the Administration or the private-sector
19 entity concerned, as the case may be.

20 “(4) DURATION.—

21 “(A) IN GENERAL.—An assignment under
22 this subsection shall be for a period of not less
23 than three months and not more than two
24 years, renewable up to a total of three years.
25 An employee of the Administration may not be

1 assigned under this subsection for more than a
2 total of three years inclusive of all such assign-
3 ments.

4 “(B) EXTENSION.—An assignment under
5 this subsection may be for a period in excess of
6 two years, but not more than three years, if the
7 Administrator determines that such assignment
8 is necessary to meet critical mission or program
9 requirements.

10 “(5) POLICIES AND PROCEDURES.—

11 “(A) IN GENERAL.—The Administrator
12 shall establish policies and procedures relating
13 to assignments under this subsection.

14 “(B) ELEMENTS.—Policies and procedures
15 established pursuant to subparagraph (A) shall
16 address the following:

17 “(i) The nature and elements of writ-
18 ten agreements with participants in assign-
19 ments under this subsection.

20 “(ii) Criteria for making such assign-
21 ments, including the needs of the Adminis-
22 tration relating thereto.

23 “(iii) How the Administration will
24 oversee such assignments, in particular

1 with respect to paragraphs (2)(A)(iii),
2 (7)(C), and (7)(D).

3 “(iv) Criteria for issuing waivers.

4 “(v) How expenses under paragraph
5 (2)(A)(ii) would be determined.

6 “(vi) Guidance for participants in
7 such assignments.

8 “(vii) Mission Directorate, Office, and
9 organizational structure to implement and
10 manage such assignments.

11 “(viii) Any other necessary policies,
12 procedures, or guidelines to ensure such
13 assignments comply with all relevant statu-
14 tory authorities and ethics rules, and effec-
15 tively contribute to one or more of the Ad-
16 ministration’s missions.

17 “(C) INHERENTLY GOVERNMENTAL AC-
18 TIVITIES.—Assignments made under this sub-
19 section shall not have responsibilities or per-
20 form duties or decision making regarding Ad-
21 ministration activities that are inherently gov-
22 ernmental, pursuant to subpart 7.500 of title
23 48, Code of Federal Regulations, and Office of
24 Management and Budget review.

1 “(6) STATUS OF FEDERAL EMPLOYEES AS-
2 SIGNED TO PRIVATE SECTOR ENTITIES.—

3 “(A) IN GENERAL.—An employee of the
4 Administration who is assigned to a private sec-
5 tor entity under this subsection shall be consid-
6 ered, during the period of such assignment, to
7 be on detail to a regular work assignment in
8 the Administration for all purposes. The written
9 agreement established under paragraph (2)(A)
10 shall address the specific terms and conditions
11 related to such employee’s continued status as
12 a Federal employee.

13 “(B) CERTIFICATION.—In establishing a
14 temporary assignment of an employee of the
15 Administration to a private sector entity, the
16 Administrator shall certify that such temporary
17 assignment shall not have an adverse or nega-
18 tive impact on the mission of the Administra-
19 tion or organizational capabilities associated
20 with such assignment.

21 “(7) TERMS AND CONDITIONS FOR PRIVATE
22 SECTOR EMPLOYEES.—An employee of a private sec-
23 tor entity who is assigned to the Administration
24 under this subsection—

1 “(A) shall continue to receive pay and ben-
2 efits from the private sector entity from which
3 such employee is assigned and shall not receive
4 pay or benefits from the Administration, except
5 as provided in subparagraph (B);

6 “(B) is deemed to be an employee of the
7 Administration for the purposes of—

8 “(i) chapters 73 and 81 of title 5;

9 “(ii) sections 201, 203, 205, 207,
10 208, 209, 603, 606, 607, 643, 654, 1905,
11 and 1913 of title 18, except that such sec-
12 tion 209 does not apply to any salary, or
13 contribution or supplementation of salary
14 made pursuant to subparagraph (A) of this
15 paragraph;

16 “(iii) sections 1343, 1344, and
17 1349(b) of title 31;

18 “(iv) the Federal Tort Claims Act and
19 any other Federal tort liability statute;

20 “(v) the Ethics in Government Act of
21 1978; and

22 “(vi) chapter 21 of title 41;

23 “(C) shall not have access to any trade se-
24 crets or any other nonpublic information which

1 is of commercial value to the private sector en-
2 tity from which such employee is assigned;

3 “(D) may not perform work that is consid-
4 ered inherently governmental in nature, in ac-
5 cordance with paragraph (5)(C); and

6 “(E) may not be used to circumvent—

7 “(i) section 1710 of title 41, United
8 States Code; or

9 “(ii) any limitation or restriction on
10 the size of the Administration’s civil serv-
11 ant workforce.

12 “(8) ADDITIONAL REQUIREMENTS.—The Ad-
13 ministrator shall ensure that—

14 “(A) the normal duties and functions of an
15 employee of the Administration who is assigned
16 to a private sector entity under this subsection
17 can be reasonably performed by other employ-
18 ees of the Administration without the perma-
19 nent transfer or reassignment of other per-
20 sonnel of the Administration;

21 “(B) normal duties and functions of such
22 other employees of the Administration are not,
23 as a result of and during the course of such
24 temporary assignment, performed or augmented

1 by contractor personnel in violation of section
2 1710 of title 41; and

3 “(C) not more than two percent of the Ad-
4 ministration’s civil servant workforce may par-
5 ticipate in an assignment under this subsection
6 at the same time.

7 “(9) CONFLICTS OF INTEREST.—The Adminis-
8 trator shall implement a system to identify, mitigate,
9 and manage any conflicts of interests that may arise
10 as a result of an employee’s assignment under this
11 subsection.

12 “(10) PROHIBITION AGAINST CHARGING CER-
13 TAIN COSTS TO THE FEDERAL GOVERNMENT.—A
14 private-sector entity may not charge the Administra-
15 tion or any other agency of the Federal Government,
16 as direct or indirect costs under a Federal contract,
17 the costs of pay or benefits paid by the entity to an
18 employee assigned to the Administration under this
19 subsection for the period of the assignment con-
20 cerned.

21 “(11) CONSIDERATIONS.—In carrying out this
22 subsection, the Administrator shall take into consid-
23 eration—

24 “(A) the question of how assignments
25 under this subsection might best be used to

1 help meet the needs of the Administration with
2 respect to the training of employees; and

3 “(B) where applicable, areas of particular
4 private sector expertise, such as cybersecurity.

5 “(12) NASA REPORTING.—

6 “(A) IN GENERAL.—Not later than April
7 30 of each year, the Administrator shall submit
8 to the Committee on Science, Space, and Tech-
9 nology of the House of Representatives and the
10 Committee on Commerce, Science, and Trans-
11 portation of the Senate a report summarizing
12 the implementation of this subsection.

13 “(B) CONTENTS.—Each report under sub-
14 paragraph (A) shall include, with respect to the
15 annual period to which such report relates, the
16 following:

17 “(i) Information relating to the total
18 number of employees of private sector enti-
19 ties assigned to the Administration, and
20 the total number of employees of the Ad-
21 ministration assigned to private sector en-
22 tities.

23 “(ii) A brief description and assess-
24 ment of the talent management benefits
25 evidenced from such assignments, as well

1 as any identified strategic human capital
2 and operational challenges, including the
3 following:

4 “(I) An identification of the
5 names of the private sector entities to
6 and from which employees were as-
7 signed.

8 “(II) A complete listing of posi-
9 tions such employees were assigned to
10 and from.

11 “(III) An identification of as-
12 signed roles and objectives of such as-
13 signments.

14 “(IV) Information relating to the
15 durations of such assignments.

16 “(V) Information relating to as-
17 sociated pay grades and levels.

18 “(iii) An assessment of impacts of
19 such assignments on the Administration
20 workforce and workforce culture.

21 “(iv) An identification of the number
22 of Administration staff and budgetary re-
23 sources required to implement this sub-
24 section.

1 “(13) FEDERAL ETHICS.—Nothing in this sub-
2 section shall affect existing Federal ethics rules ap-
3 plicable to Federal personnel.

4 “(14) GAO REPORTING.—

5 “(A) IN GENERAL.—Not later than three
6 years after the date of the enactment of this
7 subsection, the Comptroller General of the
8 United States shall submit to the Committee on
9 Science, Space, and Technology of the House of
10 Representatives and the Committee on Com-
11 merce, Science, and Transportation of the Sen-
12 ate a report summarizing the implementation of
13 this subsection.

14 “(B) CONTENTS.—The report under sub-
15 paragraph (A) shall include the following:

16 “(i) A review of the implementation of
17 this subsection, according to law and the
18 Administration policies and procedures es-
19 tablished for assignments under this sub-
20 section.

21 “(ii) Information relating to the ex-
22 tent to which such assignments adhere to
23 best practices relating to public-private tal-
24 ent exchange programs.

1 “(iii) A determination as to whether
2 there should be limitations on the number
3 of individuals participating in such assign-
4 ments.

5 “(iv) Information relating to the ex-
6 tent to which the Administration complies
7 with statutory requirements and ethics
8 rules, and appropriately handles potential
9 conflicts of interest and access to non-
10 public information with respect to such as-
11 signments.

12 “(v) Information relating to the extent
13 to which such assignments effectively con-
14 tribute to one or more of the Administra-
15 tion’s missions.

16 “(vi) Information relating to Adminis-
17 tration resources, including employee time,
18 dedicated to administering such assign-
19 ments, and whether such resources are suf-
20 ficient for such administration.”.

