Suspend the Rules and Pass the Bill, HR. 2213, with An Amendment
(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS
1ST SESSION

H. R. 2213

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2017

Ms. McSally (for herself, Mr. McCaul, Mr. Hurd, Mr. Carter of Texas, Mr. Cuellar, Mr. Roe of Tennessee, and Mr. Vela) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, 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. SHORT TITLE.

4 This Act may be cited as the “Anti-Border Corrup-
5 tion Reauthorization Act of 2017”.

SEC. 2. HIRING FLEXIBILITY.

Section 3 of the Anti-Border Corruption Act of 2010
(Public Law 111–376; 6 U.S.C. 221) is amended by strik-
ing subsection (b) and inserting the following new sub-
sections:

“(b) WAIVER AUTHORITY.—The Commissioner of
U.S. Customs and Border Protection may waive the appli-
cation of subsection (a)(1) in the following circumstances:

“(1) In the case of a current, full-time law en-
forcement officer employed by a State or local law
enforcement agency, if such officer—

“(A) has served as a law enforcement offi-
cer for not fewer than three years with no
break in service;

“(B) is authorized by law to engage in or
supervise the prevention, detection, investiga-
tion, or prosecution of, or the incarceration of
any person for, any violation of law, and has
statutory powers for arrest or apprehension;

“(C) is not currently under investigation,
has not been found to have engaged in criminal
activity or serious misconduct, has not resigned
from a law enforcement officer position under
investigation or in lieu of termination, and has
not been dismissed from a law enforcement offi-
cer position; and
“(D) has, within the past ten years, successfully completed a polygraph examination as a condition of employment with such officer’s current law enforcement agency.

“(2) In the case of a current, full-time law enforcement officer employed by a Federal law enforcement agency, if such officer—

“(A) has served as a law enforcement officer for not fewer than three years with no break in service;

“(B) has authority to make arrests, conduct investigations, conduct searches, make seizures, carry firearms, and serve orders, warrants, and other processes;

“(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

“(D) holds a current Tier 4 background investigation or current Tier 5 background investigation.
“(3) In the case of an individual who is a member of the Armed Forces (or a reserve component thereof) or a veteran, if such individual—

“(A) has served in the Armed Forces for not fewer than three years;

“(B) holds, or has held within the past five years, a Secret, Top Secret, or Top Secret / Sensitive Compartmented Information clearance;

“(C) holds, or has undergone within the past five years, a current Tier 4 background investigation or current Tier 5 background investigation;

“(D) received, or is eligible to receive, an honorable discharge from service in the Armed Forces and has not engaged in criminal activity or committed a serious military or civil offense under the Uniform Code of Military Justice; and

“(E) was not granted any waivers to obtain the clearance referred to subparagraph (B).

“(c) TERMINATION OF WAIVER AUTHORITY.—The authority to issue a waiver under subsection (b) shall terminate on the date that is five years after the date of the
enactment of the Anti-Border Corruption Reauthorization Act of 2017.”.

SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND DEFINITIONS.

(a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—Section 4 of the Anti-Border Corruption Act of 2010 (Public Law 111–376) is amended to read as follows:

“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.

“(a) NON-EXEMPTION.—An individual who receives a waiver under subsection (b) of section 3 is not exempt from other hiring requirements relating to suitability for employment and eligibility to hold a national security designated position, as determined by the Commissioner of U.S. Customs and Border Protection.

“(b) BACKGROUND INVESTIGATIONS.—Any individual who receives a waiver under subsection (b) of section 3 who holds a current Tier 4 background investigation shall be subject to a Tier 5 background investigation.

“(c) ADMINISTRATION OF POLYGRAPH EXAMINATION.—The Commissioner of U.S. Customs and Border Protection is authorized to administer a polygraph examination to an applicant or employee who is eligible for or receives a waiver under subsection (b) of section 3 if information is discovered prior to the completion of a background investigation that results in a determination that
a polygraph examination is necessary to make a final de-
termination regarding suitability for employment or con-
tinued employment, as the case may be.”.

(b) REPORT.—The Anti-Border Corruption Act of
2010 is amended by adding at the end the following new
section:

“SEC. 5. REPORTING.

“Not later than one year after the date of the enact-
ment of this section and every year for the next four years
thereafter, the Commissioner of U.S. Customs and Border
Protection shall provide the Committee on Homeland Se-
curity of the House of Representatives and the Committee
on Homeland Security and Governmental Affairs of the
Senate information on the number, disaggregated with re-
spect to each of paragraphs (1), (2), and (3) of subsection
(b) of section 3, of waivers requested, granted, and denied,
and the reasons for any such denial, and the final outcome
of the application for employment at issue. Such informa-
tion shall also include the number of instances a polygraph
examination was administered under the conditions de-
scribed in subsection (c) of section 4, the result of such
examination, and the final outcome of the application for
employment at issue.”.

(c) DEFINITIONS.—The Anti-Border Corruption Act
of 2010, as amended by subsection (b) of this section, is
further amended by adding at the end the following new section:

**“SEC. 6. DEFINITIONS.”**

“In this Act:

“(1) **LAW ENFORCEMENT OFFICER.**—The term ‘law enforcement officer’ has the meaning given such term in sections 8331(20) and 8401(17) of title 5, United States Code.

“(2) **VETERAN.**—The term ‘veteran’ has the meaning given such term in section 101(2) of title 38, United States Code.

“(3) **SERIOUS MILITARY OR CIVIL OFFENSE.**—The term ‘serious military or civil offense’ means an offense for which—

“(A) a member of the Armed Forces may be discharged or separated from service in the Armed Forces; and

“(B) a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial, as pursuant to Army Regulation 635-200 chapter 14-12.

“(4) **TIER 4; TIER 5.**—The terms ‘Tier 4’ and ‘Tier 5’ with respect to background investigations
have the meaning given such terms under the 2012 Federal Investigative Standards.”.