

**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)**

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2213

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

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## 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

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## 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”.

1 **SEC. 2. HIRING FLEXIBILITY.**

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

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

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

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

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

20 “(C) is not currently under investigation,  
21 has not been found to have engaged in criminal  
22 activity or serious misconduct, has not resigned  
23 from a law enforcement officer position under  
24 investigation or in lieu of termination, and has  
25 not been dismissed from a law enforcement offi-  
26 cer position; and

1           “(D) has, within the past ten years, suc-  
2           cessfully completed a polygraph examination as  
3           a condition of employment with such officer’s  
4           current law enforcement agency.

5           “(2) In the case of a current, full-time law en-  
6           forcement officer employed by a Federal law enforce-  
7           ment agency, if such officer—

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

11          “(B) has authority to make arrests, con-  
12          duct investigations, conduct searches, make sei-  
13          zures, carry firearms, and serve orders, war-  
14          rants, and other processes;

15          “(C) is not currently under investigation,  
16          has not been found to have engaged in criminal  
17          activity or serious misconduct, has not resigned  
18          from a law enforcement officer position under  
19          investigation or in lieu of termination, and has  
20          not been dismissed from a law enforcement offi-  
21          cer position; and

22          “(D) holds a current Tier 4 background  
23          investigation or current Tier 5 background in-  
24          vestigation.

1           “(3) In the case of an individual who is a mem-  
2           ber of the Armed Forces (or a reserve component  
3           thereof) or a veteran, if such individual—

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

6                   “(B) holds, or has held within the past five  
7                   years, a Secret, Top Secret, or Top Secret /  
8                   Sensitive Compartmented Information clear-  
9                   ance;

10                  “(C) holds, or has undergone within the  
11                  past five years, a current Tier 4 background in-  
12                  vestigation or current Tier 5 background inves-  
13                  tigation;

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

20                  “(E) was not granted any waivers to ob-  
21                  tain the clearance referred to subparagraph  
22                  (B).

23           “(c) TERMINATION OF WAIVER AUTHORITY.—The  
24           authority to issue a waiver under subsection (b) shall ter-  
25           minate on the date that is five years after the date of the

1 enactment of the Anti-Border Corruption Reauthorization  
2 Act of 2017.”.

3 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**  
4 **DEFINITIONS.**

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

8 **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

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

15 “(b) BACKGROUND INVESTIGATIONS.—Any indi-  
16 vidual who receives a waiver under subsection (b) of sec-  
17 tion 3 who holds a current Tier 4 background investiga-  
18 tion shall be subject to a Tier 5 background investigation.

19 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-  
20 TION.—The Commissioner of U.S. Customs and Border  
21 Protection is authorized to administer a polygraph exam-  
22 ination to an applicant or employee who is eligible for or  
23 receives a waiver under subsection (b) of section 3 if infor-  
24 mation is discovered prior to the completion of a back-  
25 ground investigation that results in a determination that

1 a polygraph examination is necessary to make a final de-  
2 termination regarding suitability for employment or con-  
3 tinued employment, as the case may be.”.

4 (b) REPORT.—The Anti-Border Corruption Act of  
5 2010 is amended by adding at the end the following new  
6 section:

7 **“SEC. 5. REPORTING.**

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

24 (c) DEFINITIONS.—The Anti-Border Corruption Act  
25 of 2010, as amended by subsection (b) of this section, is

1 further amended by adding at the end the following new  
2 section:

3 **“SEC. 6. DEFINITIONS.**

4 “In this Act:

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

9 “(2) VETERAN.—The term ‘veteran’ has the  
10 meaning given such term in section 101(2) of title  
11 38, United States Code.

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

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

18 “(B) a punitive discharge is, or would be,  
19 authorized for the same or a closely related of-  
20 fense under the Manual for Court-Martial, as  
21 pursuant to Army Regulation 635-200 chapter  
22 14-12.

23 “(4) TIER 4; TIER 5.—The terms ‘Tier 4’ and  
24 ‘Tier 5’ with respect to background investigations

- 1 have the meaning given such terms under the 2012
- 2 Federal Investigative Standards.”.