Union Calendar No. 74

115TH CONGRESS
1ST SESSION

H. R. 2213

[Report No. 115–121]

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

MAY 16, 2017

Additional sponsors: Mr. Messer, Mr. Gonzalez of Texas, and Mr. Arrington

MAY 16, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 27, 2017]
To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Anti-Border Corruption
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 striking
subsection (b) and inserting the following new subsections:

“(b) WAIVER AUTHORITY.—The Commissioner of U.S.
Customs and Border Protection may waive the application
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 en-
forcement agency, if such officer—

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

“(B) is authorized by law to engage in or
supervise the prevention, detection, investigation,
or prosecution of, or the incarceration of any
person for, any violation of law, and has statu-
tory 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, success-
fully completed a polygraph examination as a
condition of employment with such officer’s cur-
rent law enforcement agency.

“(2) In the case of a current, full-time law en-
forcement officer employed by a Federal law enforce-
ment 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 determination regarding suitability for employment or continued 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 enactment 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 Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the number, disaggregated with respect 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 information shall also include the number of instances a polygraph examination was administered under the conditions described 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.”.
A BILL

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115th Congress

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