

119TH CONGRESS
1ST SESSION

S. _____

To amend the Anti-Border Corruption Act of 2010 with respect to waiving the polygraph examination requirement for former Federal law enforcement officers seeking employment with U.S. Customs and Border Protection, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. GALLEG0 introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Anti-Border Corruption Act of 2010 with respect to waiving the polygraph examination requirement for former Federal law enforcement officers seeking employment with U.S. Customs and Border Protection, 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 “Border Patrol Recruit-
5 ment Enhancement Act”.

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

2 Section 3 of the Anti-Border Corruption Act of 2010
3 (6 U.S.C. 221) is amended by striking subsection (b) and
4 inserting the following:

5 “(b) WAIVER AUTHORITY.—The Commissioner for
6 U.S. Customs and Border Protection may waive the appli-
7 cation of subsection (a)(1) for any of the following individ-
8 uals:

9 “(1) A current, full-time law enforcement offi-
10 cer employed by a State or local law enforcement
11 agency who—

12 “(A) has served as a law enforcement offi-
13 cer for not fewer than 3 years with no break in
14 service during the most recent 3-year period;

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 does not have disciplinary, misconduct, or de-
22 rogatory records, has not been convicted of, and
23 does not have pending charges related to, a
24 criminal offense or misconduct;

1 “(D) has not resigned from a law enforce-
2 ment officer position under investigation or in
3 lieu of termination;

4 “(E) has not been dismissed from a law
5 enforcement officer position; and

6 “(F) has, within the most recent 10-year
7 period, successfully passed a polygraph exam-
8 ination as a condition of employment with such
9 officer’s current law enforcement agency and
10 can provide verification of passing such exam-
11 ination.

12 “(2) A current, full-time Federal law enforce-
13 ment officer who—

14 “(A) has served as a law enforcement offi-
15 cer for not fewer than 3 years with no break in
16 service during the most recent 3-year period;

17 “(B) is authorized to make arrests, con-
18 duct investigations, conduct searches, make sei-
19 zures, carry firearms, and serve orders, war-
20 rants, and other processes;

21 “(C) is not currently under investigation,
22 does not have disciplinary, misconduct, or de-
23 rogatory records, has not been convicted of, and
24 does not have pending charges related to, a
25 criminal offense or misconduct;

1 “(D) has not resigned from a law enforce-
2 ment officer position under investigation or in
3 lieu of termination;

4 “(E) has not been dismissed from a law
5 enforcement officer position; and

6 “(F) holds a current background investiga-
7 tion, in accordance with current standards re-
8 quired to be eligible for access to Top Secret or
9 Top Secret/Sensitive Compartmented Informa-
10 tion.

11 “(3) A member of the Armed Forces (or of a
12 reserve component thereof) or a veteran who—

13 “(A) has served in the Armed Forces for
14 not fewer than 3 years;

15 “(B) holds, or has undergone within the
16 most recent 5-year period, a current back-
17 ground investigation in accordance with current
18 standards required to be eligible for access to
19 Top Secret or Top Secret/Sensitive Compart-
20 mented Information;

21 “(C) received, or is eligible to receive, an
22 honorable discharge from service in the Armed
23 Forces;

1 “(D) has not been convicted of, and does
2 not have pending criminal charges related to, a
3 criminal offense or misconduct;

4 “(E) has not committed a military offense
5 under the Uniform Code of Military Justice;
6 and

7 “(F) does not have disciplinary, mis-
8 conduct, or derogatory records.

9 “(c) TERMINATION OF WAIVER AUTHORITY.—The
10 authority to issue a waiver under subsection (b) shall ter-
11 minate on the date that is 5 years after the date of the
12 enactment of the Border Patrol Recruitment Enhance-
13 ment Act.”.

14 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
15 **DEFINITIONS.**

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

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

20 “(a) NON-EXEMPTION.—Any individual who receives
21 a waiver pursuant to section 3(b) is not exempt from other
22 hiring requirement relating to suitability for employment
23 and eligibility to hold a national security designated posi-
24 tion, as determined by the Commissioner for U.S. Cus-
25 toms and Border Protection.

1 “(b) BACKGROUND INVESTIGATIONS.—Any indi-
2 vidual who receives a waiver pursuant to section 3(b) and
3 holds a background investigation in accordance with cur-
4 rent standards required for access to Top Secret or Top
5 Secret Sensitive Compartmented Information shall be sub-
6 ject to an appropriate background investigation.

7 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-
8 TION.—The Commissioner for U.S. Customs and Border
9 Protection is authorized to administer a polygraph exam-
10 ination to an applicant or employee who receives, or is eli-
11 gible for, a waiver under section 3(b) if information is dis-
12 covered before the completion of a background investiga-
13 tion that results in a determination that a polygraph ex-
14 amination is necessary to make a final determination re-
15 garding suitability for employment or continued employ-
16 ment, as the case may be.”.

17 (b) REPORT.—The Anti-Border Corruption Act of
18 2010 (Public Law 111–376), as amended by subsection
19 (a), is further amended by adding at the end the following:
20 **“SEC. 5. REPORTING REQUIREMENTS.**

21 “(a) ANNUAL REPORT.—Not later than 1 year after
22 the date of the enactment of the Border Patrol Recruit-
23 ment Enhancement Act, and annually thereafter for the
24 following 4 years, the Commissioner for U.S. Customs and

1 Border Protection shall submit a report to Congress that
2 includes, with respect to the reporting period—

3 “(1) the number of waivers granted pursuant to
4 section 3(b);

5 “(2) the number of requests for a waiver under
6 section 3(b) that were denied, including the reasons
7 for each such denial;

8 “(3) the percentage of applicants who were
9 hired after receiving a waiver pursuant to section
10 3(b);

11 “(4) the number of instances in which a poly-
12 graph examination was administered to an applica-
13 tion who initially received a waiver pursuant to sec-
14 tion 3(b), and the results of each such examination;

15 “(5) an assessment of the impact of the poly-
16 graph waiver program on filling law enforcement po-
17 sitions at U.S. Customs and Border Protection;

18 “(6) additional authorities that U.S. Customs
19 and Border Protection needs to better utilize the
20 polygraph waiver program in order to achieve its in-
21 tended goals; and

22 “(7) any disciplinary actions taken against law
23 enforcement officers hired after receiving a waiver
24 pursuant to section 3(b).

1 “(b) ADDITIONAL INFORMATION.—The first report
2 submitted to Congress pursuant to subsection (a) shall in-
3 clude—

4 “(1) an analysis of other employment suitability
5 tests to detect deception that could be used in con-
6 junction with traditional background investigations
7 to evaluate potential employees for suitability; and

8 “(2) a recommendation regarding whether a
9 test referred to in paragraph (1) should be utilized
10 whenever the polygraph examination requirement is
11 waived pursuant to section 3(b).”.

12 (c) GAO REPORT.—The Anti-Border Corruption Act
13 of 2010 (Public Law 111–376), as amended by sub-
14 sections (a) and (b), is further amended by adding at the
15 end the following:

16 **“SEC. 6. GAO REPORT.**

17 “Not later than 5 years after the date of the enact-
18 ment of the Border Patrol Recruitment Enhancement Act,
19 and every 5 years thereafter for the following 10 years,
20 the Comptroller General of the United States shall—

21 “(1) review the disciplinary, misconduct, and
22 derogatory records of all individuals hired using the
23 waiver authority under section 3(b)—

24 “(A) to determine the rates of disciplinary
25 actions taken against individuals hired using

1 such waiver authority compared to individuals
2 hired after passing the polygraph examination
3 required under section 3(a); and

4 “(B) to address any other issue relating to
5 discipline by U.S. Customs and Border Protec-
6 tion; and

7 “(2) submit a report to the Committee on
8 Homeland Security and Governmental Affairs of the
9 Senate and the Committee on Homeland Security of
10 the House of Representatives that describes the re-
11 sults of the review described in paragraph (1), while
12 appropriately protecting sensitive information.”.

13 (d) DEFINITIONS.—The Anti-Border Corruption Act
14 of 2010 (Public Law 111–376), as amended by sub-
15 sections (a), (b), and (c), is further amended by adding
16 at the end the following:

17 **“SEC. 7. DEFINITIONS.**

18 “In this Act:

19 “(1) CRIMINAL OFFENSE.—The term ‘criminal
20 offense’ means—

21 “(A) any felony punishable by a term of
22 imprisonment of more than 1 year; or

23 “(B) any other crime for which an essen-
24 tial element involves fraud, deceit, or misrepre-

1 sentation to obtain an advantage or to dis-
2 advantage another person.

3 “(2) FEDERAL LAW ENFORCEMENT OFFICER.—

4 The term ‘Federal law enforcement officer’ has the
5 meanings given the term ‘law enforcement officer’ in
6 sections 8331(20) and 8401(17) of title 5, United
7 States Code.

8 “(3) MILITARY OFFENSE.—The term ‘military
9 offense’ means—

10 “(A) an offense for which—

11 “(i) a member of the Armed Forces
12 may be discharged or separated from serv-
13 ice in the Armed Forces; or

14 “(ii) a punitive discharge is, or would
15 be, authorized for the same or a closely re-
16 lated offense under the Manual for Courts-
17 Martial pursuant to chapter 14–12 of
18 Army Regulation 635–200; or

19 “(B) an action for which a member of the
20 Armed Forces received a demotion in military
21 rank as punishment for a crime or wrongdoing,
22 which was imposed by a court martial or other
23 authority.

1 “(4) VETERAN.—The term ‘veteran’ has the
2 meaning given such term in section 101(2) of title
3 38, United States Code.”.