

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the bill.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 731**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. HASSAN

Viz:

1 Beginning on page 2, strike line 1 and all that follows  
2 through page 8, line 3, and insert the following:

3 “(b) WAIVER AUTHORITY.—The Commissioner may  
4 waive the application of subsection (a)(1), upon certifying  
5 to Congress that the individual receiving the waiver poses  
6 no threat to national security or public safety —

7 “(1) with respect to any current, full-time, law  
8 enforcement officer employed by a State or local law  
9 enforcement agency who—

10 “(A) has served as a law enforcement offi-  
11 cer for at least 3 years with no break in service;

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

6           “(C) is not currently under investigation,  
7 has not been found to have engaged in criminal  
8 activity or serious misconduct, has not resigned  
9 from a law enforcement officer position under  
10 investigation or in lieu of termination, and has  
11 not been dismissed from a law enforcement offi-  
12 cer position; and

13           “(D) has, within the previous 3 years, suc-  
14 cessfully completed a polygraph examination as  
15 a condition of employment with such officer’s  
16 current law enforcement agency if—

17           “(i) the officer submits evidence to  
18 the Secretary of Homeland Security that  
19 the polygraph examination comports with  
20 current Federal polygraph examination  
21 standards and any additional requirements  
22 established by the Secretary of Homeland  
23 Security, in consultation with the Director  
24 of National Intelligence; and

1                   “(ii) the Secretary of Homeland Secu-  
2                   rity certifies in writing that the evidence  
3                   provided comports with the requirements  
4                   established under clause (i);

5                   “(2) with respect to any current, full-time law  
6                   enforcement officer employed by a Federal law en-  
7                   forcement agency who—

8                   “(A) has served as a law enforcement offi-  
9                   cer for at least 3 years with no break in service;

10                   “(B) holds an active Top Secret or Top  
11                   Secret/Sensitive Compartmented Information  
12                   clearance;

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

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

24                   “(E) holds a current background investiga-  
25                   tion to the level required for service as a law

1 enforcement officer with U.S. Customs and  
2 Border Protection; and

3 “(3) with respect to any individual who is a  
4 member of the Armed Forces (or a reserve compo-  
5 nent thereof) or a veteran who—

6 “(A) has served in the Armed Forces for  
7 at least 3 years;

8 “(B) holds an active Top Secret or Top  
9 Secret/Sensitive Compartmented Information  
10 clearance;

11 “(C) holds or has undergone and passed a  
12 background investigation to the level required  
13 for service as a law enforcement officer with  
14 U.S. Customs and Border Protection;

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

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

24 (b) TERMINATION OF WAIVER AUTHORITY.—Section  
25 3(b) of the Anti-Border Corruption Act of 2010, as

1 amended by subsection (a), shall be repealed on the date  
2 that is 5 years after the date of the enactment of this  
3 Act.

4 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY; RE-**  
5 **PORTING; DEFINITIONS.**

6 (a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—  
7 The Anti-Border Corruption Act of 2010 (Public Law  
8 111–376) is amended by striking section 4 and inserting  
9 the following:

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

11 “(a) NONEXEMPTION.—An individual who receives a  
12 waiver under section 3(b) shall not be exempt from other  
13 hiring requirements relating to suitability for employment  
14 and eligibility to hold a national security designated posi-  
15 tion, as determined by the Commissioner.

16 “(b) BACKGROUND INVESTIGATIONS.—Any indi-  
17 vidual who receives a waiver under section 3(b) and holds  
18 a current background investigation may be subject to fur-  
19 ther background investigation to the level required for  
20 service as a law enforcement officer with U.S. Customs  
21 and Border Protection.

22 “(c) CONTINUOUS EVALUATION.—Any individual  
23 who receives a waiver under section 3(b) shall not be ex-  
24 empt from any requirement relating to continuous evalua-  
25 tion established by the Commissioner.

1           “(d) ADMINISTRATION OF POLYGRAPH EXAMINA-  
2 TION.—The Commissioner is authorized to administer a  
3 polygraph examination to an applicant or employee who  
4 is eligible for or receives a waiver under section 3(b) if  
5 information is discovered before the completion of a back-  
6 ground investigation that results in a determination that  
7 a polygraph examination is necessary to make a final de-  
8 termination regarding suitability for employment or con-  
9 tinued employment.

10 **“SEC. 5. REPORTING.**

11           “Not later than 1 year after the date of the enact-  
12 ment of the Anti-Border Corruption Improvement Act and  
13 annually thereafter for the following 4 years, the Commis-  
14 sioner shall submit a report to the Committee on Home-  
15 land Security and Governmental Affairs of the Senate and  
16 the Committee on Homeland Security of the House of  
17 Representatives that identifies—

18                   “(1)(A) the number of waivers requested,  
19                   granted, or denied, disaggregated with respect to  
20                   each of paragraphs (1) and (2) of section 3(b);

21                   “(B) the reasons for any denial referred to in  
22                   subparagraph (A); and

23                   “(C) the final outcome of the application for  
24                   employment at issue; and

1           “(2)(A) the number of instances a polygraph  
2           examination was administered under the conditions  
3           described in section 4(d);

4           “(B) the result of each examination referred to  
5           in subparagraph (A); and

6           “(C) the final outcome of the application for  
7           employment at issue.

8   **“SEC. 6. DEFINITIONS.**

9           “In this Act:

10           “(1) COMMISSIONER.—The term ‘Commis-  
11           sioner’ means the Commissioner of U.S. Customs  
12           and Border Protection.

13           “(2) LAW ENFORCEMENT OFFICER.—The term  
14           ‘law enforcement officer’ means any law enforcement  
15           officer described in section 8331(20) or 8401(17) of  
16           title 5, United States Code.

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

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

23           “(B) a punitive discharge is, or would be,  
24           authorized for the same or a closely related of-  
25           fense under the Manual for Courts-Martial,

1           pursuant to chapter 14–12 of Army Regulation  
2           635–200.

3           “(4) VETERAN.—The term ‘veteran’ has the  
4           meaning given such term in section 101(2) of title  
5           38, United States Code.”.