

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

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.**

**S. 595**

To provide U.S. Customs and Border Protection with additional flexibility to expedite the hiring process for applicants for law enforcement positions, 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 IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. JOHNSON

Viz:

1       Strike all after the enacting clause and insert the fol-  
2       lowing:

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. HIRING FLEXIBILITY.**

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

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

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

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

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

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) has, within the past ten years, suc-  
23 cessfully completed a polygraph examination as  
24 a condition of employment with such officer’s  
25 current law enforcement agency.

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

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

7                   “(B) has authority to make arrests, con-  
8                   duct investigations, conduct searches, make sei-  
9                   zures, carry firearms, and serve orders, war-  
10                  rants, and other processes;

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

18                  “(D) holds a current Tier 4 background  
19                  investigation or current Tier 5 background in-  
20                  vestigation.

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

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

1           “(B) holds, or has held within the past five  
2 years, a Secret, Top Secret, or Top Secret /  
3 Sensitive Compartmented Information clear-  
4 ance;

5           “(C) holds, or has undergone within the  
6 past five years, a current Tier 4 background in-  
7 vestigation or current Tier 5 background inves-  
8 tigation;

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

15           “(E) was not granted any waivers to ob-  
16 tain the clearance referred to subparagraph  
17 (B).

18           “(c) TERMINATION OF WAIVER AUTHORITY.—The  
19 authority to issue a waiver under subsection (b) shall ter-  
20minate on the date that is five years after the date of the  
21 enactment of the Anti-Border Corruption Reauthorization  
22 Act of 2017.”.

1 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**  
2 **DEFINITIONS.**

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

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

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

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

17 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-  
18 TION.—The Commissioner of U.S. Customs and Border  
19 Protection is authorized to administer a polygraph exam-  
20 ination to an applicant or employee who is eligible for or  
21 receives a waiver under subsection (b) of section 3 if infor-  
22 mation is discovered prior to the completion of a back-  
23 ground investigation that results in a determination that  
24 a polygraph examination is necessary to make a final de-  
25 termination regarding suitability for employment or con-  
26 tinued employment, as the case may be.”.

1 (b) REPORT.—The Anti-Border Corruption Act of  
2 2010 is amended by adding at the end the following new  
3 section:

4 **“SEC. 5. REPORTING.**

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

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

1 **“SEC. 6. DEFINITIONS.**

2 “In this Act:

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

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

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

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

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

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