

Suspend the Rules and Pass the Bill, H.R. 5896, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS
2^D SESSION

H. R. 5896

To amend title 5, United States Code, to modify the authority for pay and work schedules of border patrol agents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2018

Mr. HURD (for himself, Mr. VELA, and Ms. MCSALLY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend title 5, United States Code, to modify the authority for pay and work schedules of border patrol agents, 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 Agent
5 Pay Reform Amendments Act of 2018”.

1 **SEC. 2. AMENDMENTS TO THE BORDER PATROL AGENT PAY**
2 **REFORM ACT OF 2014.**

3 (a) BORDER PATROL AGENT PAY.—Section 5550 of
4 title 5, United States Code, is amended—

5 (1) in subsection (a)(1), by inserting “agent”
6 after “applicable border patrol”;

7 (2) in subsection (b)(1)—

8 (A) in subparagraph (A), by striking “Not
9 later than 30 days before the first day of each
10 year beginning after the date of enactment of
11 this section, a border patrol agent shall make
12 an election whether the border patrol agent
13 shall, for that year, be assigned to” and insert-
14 ing “Not later than December 1 of each year,
15 a border patrol agent shall make an election
16 whether the border patrol agent shall, for the
17 next annual period beginning on the first day of
18 the first pay period that commences on or after
19 January 1, be assigned to”;

20 (B) in subparagraph (C), by striking “Not
21 later than 60 days before the first day of each
22 year beginning after the date of enactment of
23 this section” and inserting in its place “Not
24 later than November 1 of each year”;

25 (C) in subparagraph (D)—

1 (i) by amending clause (iv) to read as
2 follows:

3 “(iv) a border patrol agent shall be
4 assigned a basic border patrol rate of pay
5 during the period of initial training (in-
6 cluding initial orientation sessions, basic
7 training, and other preparatory activities)
8 prior to the agent’s first regular work as-
9 signment; and”;

10 (ii) in clause (v), by striking “or the
11 level 2 border patrol rate of pay”;

12 (D) in subparagraph (E)—

13 (i) in clause (i), by striking “or the
14 level 2 border patrol rate of pay”;

15 (ii) in clause (ii), by striking “the
16 analysis conducted under section 2(e) of
17 the Border Patrol Agent Pay Reform Act
18 of 2014” and inserting in its place “a writ-
19 ten staffing analysis”; and

20 (iii) by adding at the end the fol-
21 lowing:

22 “(iv) EXCLUSION OF CERTAIN EM-
23 PLOYEES.—In applying any percentage
24 limit under clause (i) or (ii) to a location
25 population, U.S. Customs and Border Pro-

1 tection shall exclude from such population
2 any border patrol agent who is assigned a
3 basic border patrol rate of pay under sub-
4 paragraph (D)(iii) or (D)(iv) or who would
5 reach the premium pay cap under section
6 5547 if assigned a level 1 border patrol
7 rate of pay.

8 “(v) APPLICATION FREQUENCY.—The
9 10 percent limit under clause (i) or an al-
10 ternative percentage limit under a waiver
11 under clause (ii) shall be applied at the be-
12 ginning of the first pay period beginning
13 on or after January 1 each year.”;

14 (E) by striking subparagraph (G);

15 (3) in subsection (b)(2)—

16 (A) by amending subparagraph (C)(i) to
17 read as follows:

18 “(i) any compensation under this sec-
19 tion or any other provision of law in addi-
20 tion to the compensation provided under
21 subparagraph (B); or”;

22 (B) in subparagraph (E)—

23 (i) by striking “paid leave” and in-
24 serting “leave”; and

1 (ii) by striking “absent from work”
2 and inserting “excused from work”;

3 (C) in subparagraph (F)(ii), by striking
4 “and”;

5 (D) by amending subparagraph (G) to
6 read as follows:

7 “(G) if the border patrol agent participates
8 in a full day of advanced training but does not
9 perform the entire required amount of sched-
10 uled overtime work under subparagraph (A)(ii)
11 on that day, the border patrol agent shall be
12 deemed to have performed scheduled overtime
13 work during nonwork periods to the extent nec-
14 essary to reach the required amount, but such
15 deemed credit may be applied to no more than
16 180 hours in a calendar year; otherwise, the
17 agent shall accrue a debt of hours for scheduled
18 overtime not worked on such a day; and”;

19 (E) by adding at the end the following:

20 “(H) a border patrol agent may choose to
21 reduce any debt of obligated overtime hours
22 that the agent has incurred by applying any ac-
23 crued compensatory time off for travel pursuant
24 to section 5550b, and such compensatory time
25 off for travel may be applied towards such debt

1 only after other forms of overtime or earned
2 compensatory time credited to the border patrol
3 agent have been exhausted.”;

4 (4) in subsection (b)(3)—

5 (A) by amending subparagraph (C)(i) to
6 read as follows:

7 “(i) any compensation under this sec-
8 tion or any other provision of law in addi-
9 tion to the compensation provided under
10 subparagraph (B); or”;

11 (B) in subparagraph (E), by striking “paid
12 leave” and inserting “leave”;

13 (C) in subparagraph (F)(ii), by striking
14 “and”;

15 (D) by amending subparagraph (G) to
16 read as follows:

17 “(G) if the border patrol agent participates
18 in a full day of advanced training but does not
19 perform the entire required amount of sched-
20 uled overtime work under subparagraph (A)(ii)
21 on that day, the border patrol agent shall be
22 deemed to have performed scheduled overtime
23 work during nonwork periods to the extent nec-
24 essary to reach the required amount, but such
25 deemed credit may be applied to no more than

1 90 hours in a calendar year; otherwise, the
2 agent shall accrue a debt of hours for scheduled
3 overtime not worked on such a day; and”;

4 (E) by adding at the end the following:

5 “(H) a border patrol agent may choose to
6 reduce any debt of obligated overtime hours
7 that the agent has incurred by applying any ac-
8 crued compensatory time off for travel pursuant
9 to section 5550b; such compensatory time off
10 for travel may be applied towards such debt
11 only after other forms of overtime or earned
12 compensatory time credited to the border patrol
13 agent have been exhausted.”;

14 (5) by amending subsection (d) to read as fol-
15 lows:

16 “(d) TREATMENT AS BASIC PAY.—

17 “(1) IN GENERAL.—Any overtime supplement
18 in addition to the basic border patrol rate of pay for
19 a border patrol agent resulting from application of
20 the level 1 border patrol rate of pay or the level 2
21 border patrol rate of pay shall be treated as part of
22 basic pay only—

23 “(A) except as otherwise provided in para-
24 graph (3), for purposes of the definitions in sec-
25 tion 8331(3) and 8401(4) and the provisions in

1 chapters 83 and 84 that rely on those defini-
2 tions (consistent with section 8331(3)(I));

3 “(B) except as otherwise provided in para-
4 graph (3), for purposes of sections 5595(c) and
5 8704(c);

6 “(C) for the purpose of section 8114(e);
7 and

8 “(D) subject to paragraph (2) and any
9 limitation established under paragraph (3), any
10 other purpose that the Director of the Office of
11 Personnel Management may by regulation pre-
12 scribe.

13 “(2) EXCLUSIONS.—The overtime supplement
14 described in paragraph (1) shall not be treated as
15 part of basic pay for purposes not covered by that
16 paragraph, including the purposes of calculating—

17 “(A) overtime pay, night pay, Sunday pay,
18 or holiday pay under section 5542, 5545, or
19 5546;

20 “(B) locality-based comparability payments
21 under section 5304 or special rate supplements
22 under section 5305; or

23 “(C) cost-of-living allowances in nonforeign
24 areas under section 5941.

25 “(3) LIMITATIONS.—

1 “(A) IN GENERAL.—During the control pe-
2 riod described in subparagraph (B), the amount
3 of the overtime supplement that is considered
4 basic pay under paragraphs (1)(A) and (1)(B)
5 may not exceed the amount derived by multi-
6 plying the border patrol agent’s basic border
7 patrol rate of pay by the percentage rep-
8 resenting the agent’s career average of assigned
9 overtime supplement percentages (including 0
10 percent for periods of time during which no
11 overtime supplement was payable). That career
12 average percentage is computed without regard
13 to the effect of the limitation on premium pay
14 under section 5547, but the premium pay limi-
15 tation remains applicable in determining the
16 dollar amount of any overtime supplement com-
17 puted using the career average percentage.

18 “(B) CONTROL PERIOD.—For the purposes
19 of applying subparagraph (A), the control pe-
20 riod described in this subparagraph is the pe-
21 riod that begins 3 years before the date a bor-
22 der patrol agent will meet age and service re-
23 quirements associated with entitlement to an
24 immediate annuity and continues throughout

1 the remainder of the individual's career as a
2 border patrol agent.

3 “(C) ASSIGNED OVERTIME SUPPLEMENT
4 PERCENTAGES.—For the purpose of applying
5 subparagraph (A), a border patrol agent's ini-
6 tial career average of assigned overtime supple-
7 ment percentages is the average for the border
8 patrol agent's career (excluding any period of
9 initial training prior to the agent's first regular
10 work assignment) prior to the beginning of the
11 control period described in subparagraph (B).
12 During such control period, the career average
13 shall be recomputed at the end of each annual
14 period (as described in subsection (b)(1)(A)). In
15 computing such career average, any periods of
16 service as a border patrol agent prior to the
17 first day of the first pay period beginning on or
18 after January 1, 2016, shall be included, and
19 the agent's assigned overtime supplement dur-
20 ing such periods shall be deemed to be 25 per-
21 cent.

22 “(4) ANNUAL LEAVE PAYMENT.—For the pur-
23 pose of computing an agent's lump-sum annual leave
24 payment under section 5551 or 5552, the pay the
25 agent is projected to receive shall include a deemed

1 overtime supplement derived under this paragraph.
2 Such overtime supplement shall be based on the
3 lower of the agent's actual overtime supplement per-
4 centage in effect at separation or the average per-
5 centage of the agent's overtime supplement over the
6 26 full biweekly pay periods immediately preceding
7 that separation, and shall not exceed the amount
8 that is or would be payable under the premium pay
9 limitation in section 5547.”;

10 (6) in subsection (f)—

11 (A) in the heading of such subsection, by
12 striking “AND SUBSTITUTION OF HOURS” and
13 inserting “DURING REGULAR TIME; ABSENCES
14 DURING SCHEDULED OVERTIME”; and

15 (B) by adding at the end the following:

16 “(5) APPLICATION.—

17 “(A) LIMITATION ON SUBSTITUTION.—
18 Notwithstanding paragraph (1), scheduled over-
19 time (as described in paragraph (2)(A)(ii) or
20 (3)(A)(ii) of subsection (b)) may not be sub-
21 stituted for leave without pay on a day when a
22 border patrol agent has a full day of leave with-
23 out pay.

24 “(B) LEAVE WITHOUT PAY.—As provided
25 in paragraphs (2)(A)(ii) and (3)(A)(ii) of sub-

1 section (b), a border patrol agent shall incur no
2 scheduled overtime obligation on a day when
3 the agent has a full day of leave without pay.”;
4 and

5 (7) by adding at the end the following:

6 “ (h) ALTERNATIVE WORK SCHEDULES.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision in this section or section 6101, U.S. Cus-
9 toms and Border Protection may assign a border pa-
10 trol agent an alternative work schedule as described
11 in this subsection, subject to any regulations pre-
12 scribed by the Director of the Office of Personnel
13 Management. No alternative work schedule may be
14 established under subchapter II of chapter 61.

15 “(2) LEVEL 2 BORDER PATROL AGENT.—A bor-
16 der patrol agent receiving a level 2 border patrol
17 rate of pay may, in lieu of the standard work sched-
18 ule described in subsection (b)(3)(A), be assigned to
19 an alternative work schedule under the following
20 terms and conditions:

21 “(A) The alternative work schedule shall
22 be a regular tour of duty consisting of 9 work-
23 days per biweekly pay period, with—

24 “(i) 8 workdays including 9 hours of
25 regular time per workday and 1 additional

1 hour of scheduled overtime for each day
2 the agent performs work during regular
3 time; and

4 “(ii) 1 workday including 8 hours of
5 regular time per workday and 2 additional
6 hours of scheduled overtime when the
7 agent performs work during such regular
8 time.

9 “(B) Subparagraphs (B) through (H) of
10 subsection (b)(3) shall continue to apply to an
11 agent assigned to an alternative work schedule
12 under this paragraph. References in this section
13 to regular time under subsection (b)(3)(A)(i)
14 and scheduled overtime under subsection
15 (b)(3)(A)(ii) shall be deemed to be references to
16 regular time and scheduled overtime described
17 in subparagraph (A), respectively.

18 “(3) BASIC BORDER PATROL AGENT.—A border
19 patrol agent receiving a basic border patrol rate of
20 pay may, in lieu of the standard work schedule de-
21 scribed in subsection (b)(4)(A), be assigned to an al-
22 ternative work schedule that is a regular tour of
23 duty consisting of 4 workdays per week with 10
24 hours of regular time per workday.

1 “(4) SUNDAY PAY; PREMIUM PAY.—A border
2 patrol agent assigned to an alternative work sched-
3 ule under this subsection, may receive, as applica-
4 ble—

5 “(A) Sunday pay for no more than 8 hours
6 of regular time associated with a given Sunday,
7 consistent with section 5546(a);

8 “(B) premium pay for work on a holiday
9 for no more than 8 hours of regular time asso-
10 ciated with a given holiday, consistent with sec-
11 tion 5546(b); and

12 “(C) basic pay for all regular time hours
13 that qualify for holiday time off pay when an
14 agent is relieved or prevented from working
15 during such regular time on a day designated
16 as a holiday by Federal statute or Executive
17 order.

18 “(5) APPLICATION.—For purposes of admin-
19 istering sections 6303(a), 6304, 6307(a) and (d),
20 6323, 6326, 6327, and 8339(m), in the case of an
21 employee assigned to an alternative work schedule
22 under this subsection, references to a day or work-
23 day (or to multiples or parts thereof) contained in
24 such sections shall be considered to be references to

1 8 hours (or to the respective multiples or parts
2 thereof).

3 “(i) REGULATIONS.—The Director of the Office of
4 Personnel Management shall promulgate regulations to
5 carry out this section, including regulations governing—

6 “(1) elections and assignments of a border pa-
7 trol rate of pay for newly hired border patrol agents
8 who complete initial training during an annual pe-
9 riod;

10 “(2) situations in which an agent receives more
11 than one type of border patrol rate of pay in a bi-
12 weekly pay period or is employed as a border patrol
13 agent for only part of a biweekly pay period; and

14 “(3) the treatment of hours that are substituted
15 for nonpay status hours during regular time.”.

16 (b) OVERTIME RATES.—Section 5542(g)(5) of title
17 5, United States Code, is amended—

18 (1) in subparagraph (A), by striking “leave
19 year” and inserting “an annual period, as described
20 in section 5550(b)(1)(A)”; and

21 (2) by amending subparagraph (E) to read as
22 follows:

23 “(E) shall not receive credit towards com-
24 putation of the border patrol agent’s annuity
25 based on unused compensatory time off; and”.

1 (c) PREMIUM PAY CAP.—Section 5547(c) of title 5,
2 United States Code, is amended by inserting after “duty,”
3 the following: “or to border patrol agents who receive an
4 overtime supplement for overtime hours within their reg-
5 ular tour of duty under section 5550,”.

6 (d) BASIC PAY FOR RETIREMENT.—Section
7 8331(3)(I) of title 5, United States Code, is amended by
8 adding before the semicolon at the end the following: “,
9 subject to the limitation prescribed in section 5550(d)(3)”.

10 (e) SCHEDULED OVERTIME WORK.—Section 2(c)(2)
11 of the Border Patrol Agent Pay Reform Act of 2014 (Pub-
12 lic Law 113–277) is amended by inserting after “sched-
13 uled overtime work” the following: “(other than scheduled
14 overtime work within the regular tour of duty)”.

15 **SEC. 3. EFFECTIVE DATE.**

16 The amendments made by section 2 shall take effect
17 on the first day of the first pay period beginning on or
18 after the day that is 90 days after the date of the enact-
19 ment of this Act.