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
2D 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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Border Patrol Agent Pay Reform Amendments Act of 2018”.

5
SEC. 2. AMENDMENTS TO THE BORDER PATROL AGENT PAY REFORM ACT OF 2014.

(a) Border Patrol Agent Pay.—Section 5550 of title 5, United States Code, is amended—

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

(2) in subsection (b)(1)—

(A) in subparagraph (A), by striking “Not later than 30 days before the first day of each year beginning after the date of enactment of this section, a border patrol agent shall make an election whether the border patrol agent shall, for that year, be assigned to” and inserting “Not later than December 1 of each year, a border patrol agent shall make an election whether the border patrol agent shall, for the next annual period beginning on the first day of the first pay period that commences on or after January 1, be assigned to”;

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

(C) in subparagraph (D)—
(i) by amending clause (iv) to read as follows:

“(iv) a border patrol agent shall be assigned a basic border patrol rate of pay during the period of initial training (including initial orientation sessions, basic training, and other preparatory activities) prior to the agent’s first regular work assignment; and”;

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

(D) in subparagraph (E)—

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

(ii) in clause (ii), by striking “the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014” and inserting in its place “a written staffing analysis”; and

(iii) by adding at the end the following:

“(iv) EXCLUSION OF CERTAIN EMPLOYEES.—In applying any percentage limit under clause (i) or (ii) to a location population, U.S. Customs and Border Pro-
tection shall exclude from such population any border patrol agent who is assigned a basic border patrol rate of pay under subparagraph (D)(iii) or (D)(iv) or who would reach the premium pay cap under section 5547 if assigned a level 1 border patrol rate of pay.

“(v) APPLICATION FREQUENCY.—The 10 percent limit under clause (i) or an alternative percentage limit under a waiver under clause (ii) shall be applied at the beginning of the first pay period beginning on or after January 1 each year.”;

(E) by striking subparagraph (G);

(3) in subsection (b)(2)—

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

“(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or”;

(B) in subparagraph (E)—

(i) by striking “paid leave” and inserting “leave”; and
(ii) by striking “absent from work” and inserting “excused from work”; (C) in subparagraph (F)(ii), by striking “and”; (D) by amending subparagraph (G) to read as follows: “(G) if the border patrol agent participates in a full day of advanced training but does not perform the entire required amount of scheduled overtime work under subparagraph (A)(ii) on that day, the border patrol agent shall be deemed to have performed scheduled overtime work during nonwork periods to the extent necessary to reach the required amount, but such deemed credit may be applied to no more than 180 hours in a calendar year; otherwise, the agent shall accrue a debt of hours for scheduled overtime not worked on such a day; and”; (E) by adding at the end the following: “(H) a border patrol agent may choose to reduce any debt of obligated overtime hours that the agent has incurred by applying any accrued compensatory time off for travel pursuant to section 5550b, and such compensatory time off for travel may be applied towards such debt
only after other forms of overtime or earned compensatory time credited to the border patrol agent have been exhausted.”;

(4) in subsection (b)(3)—

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

“(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or’’;

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

(C) in subparagraph (F)(ii), by striking “and’’;

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

“(G) if the border patrol agent participates in a full day of advanced training but does not perform the entire required amount of scheduled overtime work under subparagraph (A)(ii) on that day, the border patrol agent shall be deemed to have performed scheduled overtime work during nonwork periods to the extent necessary to reach the required amount, but such deemed credit may be applied to no more than
90 hours in a calendar year; otherwise, the
agent shall accrue a debt of hours for scheduled
overtime not worked on such a day; and’’;

(E) by adding at the end the following:

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

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

“(d) TREATMENT AS BASIC PAY.—

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

“(A) except as otherwise provided in para-
graph (3), for purposes of the definitions in sec-
tion 8331(3) and 8401(4) and the provisions in
chapters 83 and 84 that rely on those definitions (consistent with section 8331(3)(I));

“(B) except as otherwise provided in paragraph (3), for purposes of sections 5595(c) and 8704(c);

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

“(D) subject to paragraph (2) and any limitation established under paragraph (3), any other purpose that the Director of the Office of Personnel Management may by regulation prescribe.

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

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

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

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

“(3) Limitations.—
“(A) IN GENERAL.—During the control period described in subparagraph (B), the amount of the overtime supplement that is considered basic pay under paragraphs (1)(A) and (1)(B) may not exceed the amount derived by multiplying the border patrol agent’s basic border patrol rate of pay by the percentage representing the agent’s career average of assigned overtime supplement percentages (including 0 percent for periods of time during which no overtime supplement was payable). That career average percentage is computed without regard to the effect of the limitation on premium pay under section 5547, but the premium pay limitation remains applicable in determining the dollar amount of any overtime supplement computed using the career average percentage.

“(B) CONTROL PERIOD.—For the purposes of applying subparagraph (A), the control period described in this subparagraph is the period that begins 3 years before the date a border patrol agent will meet age and service requirements associated with entitlement to an immediate annuity and continues throughout
the remainder of the individual’s career as a border patrol agent.

“(C) ASSIGNED OVERTIME SUPPLEMENT PERCENTAGES.—For the purpose of applying subparagraph (A), a border patrol agent’s initial career average of assigned overtime supplement percentages is the average for the border patrol agent’s career (excluding any period of initial training prior to the agent’s first regular work assignment) prior to the beginning of the control period described in subparagraph (B). During such control period, the career average shall be recomputed at the end of each annual period (as described in subsection (b)(1)(A)). In computing such career average, any periods of service as a border patrol agent prior to the first day of the first pay period beginning on or after January 1, 2016, shall be included, and the agent’s assigned overtime supplement during such periods shall be deemed to be 25 percent.

“(4) ANNUAL LEAVE PAYMENT.—For the purpose of computing an agent’s lump-sum annual leave payment under section 5551 or 5552, the pay the agent is projected to receive shall include a deemed
Such overtime supplement shall be based on the lower of the agent’s actual overtime supplement percentage in effect at separation or the average percentage of the agent’s overtime supplement over the 26 full biweekly pay periods immediately preceding that separation, and shall not exceed the amount that is or would be payable under the premium pay limitation in section 5547.”;

(6) in subsection (f)—

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

(B) by adding at the end the following:

“(5) APPLICATION.—

“(A) LIMITATION ON SUBSTITUTION.—

Notwithstanding paragraph (1), scheduled overtime (as described in paragraph (2)(A)(ii) or (3)(A)(ii) of subsection (b)) may not be substituted for leave without pay on a day when a border patrol agent has a full day of leave without pay.

“(B) LEAVE WITHOUT PAY.—As provided in paragraphs (2)(A)(ii) and (3)(A)(ii) of sub-
section (b), a border patrol agent shall incur no scheduled overtime obligation on a day when the agent has a full day of leave without pay.”

and

(7) by adding at the end the following:

“(h) ALTERNATIVE WORK SCHEDULES.—

“(1) IN GENERAL.—Notwithstanding any other provision in this section or section 6101, U.S. Customs and Border Protection may assign a border patrol agent an alternative work schedule as described in this subsection, subject to any regulations prescribed by the Director of the Office of Personnel Management. No alternative work schedule may be established under subchapter II of chapter 61.

“(2) LEVEL 2 BORDER PATROL AGENT.—A border patrol agent receiving a level 2 border patrol rate of pay may, in lieu of the standard work schedule described in subsection (b)(3)(A), be assigned to an alternative work schedule under the following terms and conditions:

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

“(i) 8 workdays including 9 hours of regular time per workday and 1 additional
hour of scheduled overtime for each day
the agent performs work during regular
time; and

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

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

“(3) BASIC BORDER PATROL AGENT.—A border
patrol agent receiving a basic border patrol rate of
pay may, in lieu of the standard work schedule de-
scribed in subsection (b)(4)(A), be assigned to an al-
ternative work schedule that is a regular tour of
duty consisting of 4 workdays per week with 10
hours of regular time per workday.
“(4) SUNDAY PAY; PREMIUM PAY.—A border patrol agent assigned to an alternative work schedule under this subsection, may receive, as applicable—

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

“(B) premium pay for work on a holiday for no more than 8 hours of regular time associated with a given holiday, consistent with section 5546(b); and

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

“(5) APPLICATION.—For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, and 8339(m), in the case of an employee assigned to an alternative work schedule under this subsection, references to a day or work-day (or to multiples or parts thereof) contained in such sections shall be considered to be references to
8 hours (or to the respective multiples or parts thereof).

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

“(1) elections and assignments of a border patrol rate of pay for newly hired border patrol agents who complete initial training during an annual period;

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

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

(b) Overtime Rates.—Section 5542(g)(5) of title 5, United States Code, is amended—

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

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

“(E) shall not receive credit towards computation of the border patrol agent’s annuity based on unused compensatory time off; and”.
(c) **Premium Pay Cap.**—Section 5547(c) of title 5, United States Code, is amended by inserting after “duty,” the following: “or to border patrol agents who receive an overtime supplement for overtime hours within their regular tour of duty under section 5550,”.

(d) **Basic Pay for Retirement.**—Section 8331(3)(I) of title 5, United States Code, is amended by adding before the semicolon at the end the following: “, subject to the limitation prescribed in section 5550(d)(3)”.

(e) **Scheduled Overtime Work.**—Section 2(c)(2) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277) is amended by inserting after “scheduled overtime work” the following: “(other than scheduled overtime work within the regular tour of duty)”.

SEC. 3. **EFFECTIVE DATE.**

The amendments made by section 2 shall take effect on the first day of the first pay period beginning on or after the day that is 90 days after the date of the enactment of this Act.