

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.

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## 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

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## 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”.

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

8       (a) BORDER PATROL AGENT PAY.—

1           (1) IN GENERAL.—Section 5550 of title 5,  
2       United States Code, is amended—

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

5           (B) in subsection (b)(1)—

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

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

25          (iii) in subparagraph (D)—

1 (I) by amending clause (iv) to  
2 read as 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  
11 the level 2 border patrol rate of pay”;  
12 (iv) in subparagraph (E)—

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

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

21 (III) by adding at the end the  
22 following:

23 “(iv) EXCLUSION OF CERTAIN EM-  
24 PLOYEES.—In applying any percentage  
25 limit under clause (i) or (ii) to a location

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

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

15 (v) by amending subparagraph (F) to  
16 read as follows:

17 “(F) CANINE CARE.—(i) For a border pa-  
18 trol agent assigned to provide care for a canine  
19 while not on duty and assigned to the level 1  
20 border patrol rate of pay in accordance with  
21 subparagraph (D)(ii)—

22 “(I) that rate of pay covers all such  
23 care and no other pay shall be paid to the  
24 border patrol agent for such care except as  
25 set forth in subclauses (II) through (V);

1 “(II) the agent shall be credited with  
2 1 hour of such care for each calendar day  
3 on which such care occurs (without regard  
4 to the actual duration of such care);

5 “(III) canine care hours credited  
6 under subclause (II) on a day when the  
7 agent performs regular time work under  
8 paragraph (2)(A)(i) shall—

9 “(aa) be counted as up to 1 hour  
10 of scheduled overtime (as described in  
11 paragraph (2)(A)(ii)) on that work  
12 day if the agent has not completed 2  
13 hours of scheduled overtime (exclud-  
14 ing the canine care hour credited  
15 under clause (ii)) on that workday; or

16 “(bb) be counted as up to 1 hour  
17 of overtime work that is officially or-  
18 dered or approved in advance of the  
19 workweek under section 5542(g)  
20 based on the amount of canine care  
21 credit for the workday that is not con-  
22 verted to scheduled overtime under  
23 item (aa);

24 “(IV) canine care hours credited  
25 under subclause (II) on a day when the

1 agent does not perform regular time work  
2 under paragraph (2)(A)(i) shall be counted  
3 as 1 hour of overtime work that is offi-  
4 cially ordered or approved in advance of  
5 the workweek under section 5542(g); and

6 “(V) notwithstanding subclauses  
7 (III)(bb) and (V), overtime work credited  
8 under those subclauses is subject to substi-  
9 tution or application as provided in para-  
10 graph (2)(F) and subsection (f) as follows:

11 “(aa) Substitution for periods of  
12 absence during regular time or sched-  
13 uled overtime (as described in para-  
14 graph (2)(A)(ii)) within the same  
15 work period in which the canine care  
16 credit was generated.

17 “(bb) Application towards a debt  
18 of obligated overtime hours.

19 “(ii) Canine care hours credited under sub-  
20 clauses (III) or (IV) shall not be credited as  
21 overtime work under any other provision of  
22 law.”; and

23 (vi) by striking subparagraph (G);  
24 (C) in subsection (b)(2)—

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

3 “(i) any compensation under this sec-  
4 tion or any other provision of law in addi-  
5 tion to the compensation provided under  
6 subparagraph (B); or”;

7 (ii) in subparagraph (E)—

8 (I) by striking “paid leave” and  
9 inserting “leave”; and

10 (II) by striking “absent from  
11 work” and inserting “excused from  
12 work”;

13 (iii) in subparagraph (F)(ii), by strik-  
14 ing “and”;

15 (iv) 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

1 180 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”; and

4 (v) 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, and such compensatory time  
10 off 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 (D) in subsection (b)(3)—

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

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

21 (ii) in subparagraph (E), by striking  
22 “paid leave” and inserting “leave”;

23 (iii) in subparagraph (F)(ii), by strik-  
24 ing “and”;



1 (iv) by amending subparagraph (G) to  
2 read as follows:

3 “(G) if the border patrol agent participates  
4 in a full day of advanced training but does not  
5 perform the entire required amount of sched-  
6 uled overtime work under subparagraph (A)(ii)  
7 on that day, the border patrol agent shall be  
8 deemed to have performed scheduled overtime  
9 work during nonwork periods to the extent nec-  
10 essary to reach the required amount, but such  
11 deemed credit may be applied to no more than  
12 90 hours in a calendar year; otherwise, the  
13 agent shall accrue a debt of hours for scheduled  
14 overtime not worked on such a day; and”;

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

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

1 (E) by amending subsection (d) to read as  
2 follows:

3 “(d) TREATMENT AS BASIC PAY.—

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

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

15 “(B) except as otherwise provided in para-  
16 graph (3), for purposes of sections 5595(c) and  
17 8704(c);

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

20 “(D) subject to paragraph (2) and any  
21 limitation established under paragraph (3), any  
22 other purpose that the Director of the Office of  
23 Personnel Management may by regulation pre-  
24 scribe.

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

5                   “(A) overtime pay, night pay, Sunday pay,  
6 or holiday pay under section 5542, 5545, or  
7 5546;

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

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

13           “(3) LIMITATIONS.—

14                   “(A) IN GENERAL.—During the control pe-  
15 riod described in subparagraph (B), the amount  
16 of the overtime supplement that is considered  
17 basic pay under paragraphs (1)(A) and (1)(B)  
18 may not exceed the amount derived by multi-  
19 plying the border patrol agent’s basic border  
20 patrol rate of pay by the percentage rep-  
21 resenting the agent’s career average of assigned  
22 overtime supplement percentages (including 0  
23 percent for periods of time during which no  
24 overtime supplement was payable). That career  
25 average percentage is computed without regard

1 to the effect of the limitation on premium pay  
2 under section 5547, but the premium pay limi-  
3 tation remains applicable in determining the  
4 dollar amount of any overtime supplement com-  
5 puted using the career average percentage.

6 “(B) CONTROL PERIOD.—For the purposes  
7 of applying subparagraph (A), the control pe-  
8 riod described in this subparagraph is the pe-  
9 riod that begins 3 years before the date a bor-  
10 der patrol agent will meet age and service re-  
11 quirements associated with entitlement to an  
12 immediate annuity and continues throughout  
13 the remainder of the individual’s career as a  
14 border patrol agent.

15 “(C) ASSIGNED OVERTIME SUPPLEMENT  
16 PERCENTAGES.—For the purpose of applying  
17 subparagraph (A), a border patrol agent’s ini-  
18 tial career average of assigned overtime supple-  
19 ment percentages is the average for the border  
20 patrol agent’s career (excluding any period of  
21 initial training prior to the agent’s first regular  
22 work assignment) prior to the beginning of the  
23 control period described in subparagraph (B).  
24 During such control period, the career average  
25 shall be recomputed at the end of each annual

1 period (as described in subsection (b)(1)(A)). In  
2 computing such career average, any periods of  
3 service as a border patrol agent prior to the  
4 first day of the first pay period beginning on or  
5 after January 1, 2016, shall be included, and  
6 the agent's assigned overtime supplement dur-  
7 ing such periods shall be deemed to be 25 per-  
8 cent.

9 “(4) ANNUAL LEAVE PAYMENT.—For the pur-  
10 pose of computing an agent's lump-sum annual leave  
11 payment under section 5551 or 5552, the pay the  
12 agent is projected to receive shall include a deemed  
13 overtime supplement derived under this paragraph.  
14 Such overtime supplement shall be based on the  
15 lower of the agent's actual overtime supplement per-  
16 centage in effect at separation or the average per-  
17 centage of the agent's overtime supplement over the  
18 26 full biweekly pay periods immediately preceding  
19 that separation, and shall not exceed the amount  
20 that is or would be payable under the premium pay  
21 limitation in section 5547.”;

22 (F) in subsection (f)—

23 (i) in the heading of such subsection,  
24 by striking “AND SUBSTITUTION OF  
25 HOURS” and inserting “DURING REGULAR

1 TIME; ABSENCES DURING SCHEDULED  
2 OVERTIME”; and

3 (ii) by adding at the end the fol-  
4 lowing:

5 “(5) SPECIAL RULES FOR LEAVE WITHOUT  
6 PAY.—

7 “(A) AT LEAST 1 WORKDAY.—If a border  
8 patrol agent takes leave without pay for a pe-  
9 riod of at least 1 workday, the agent shall not  
10 receive any pay for the hours during which the  
11 border patrol agent took leave without pay.

12 “(B) NO ACCRUAL OF OVERTIME DEBT.—  
13 A border patrol agent shall not accrue an over-  
14 time debt for any full workdays during which a  
15 border patrol agent uses leave without pay, re-  
16 gardless of the border patrol rate of pay to  
17 which the border patrol agent is assigned.

18 “(C) CALCULATION OF PAY.—For pay pe-  
19 riods during which a border patrol agent takes  
20 1 or more full days of leave without pay, the  
21 amount of border patrol pay that the agent  
22 would normally receive shall be reduced propor-  
23 tionally by the amount of overtime hours that  
24 the agent has not worked due to being on leave  
25 without pay. The total amount of border patrol

1 pay that a border patrol agent would normally  
2 receive in a pay period described in the pre-  
3 ceding sentence shall be decreased based on the  
4 percentage of work days for which the border  
5 patrol agent takes leave without pay.”; and

6 (G) by adding at the end the following:

7 “(i) ALTERNATIVE WORK SCHEDULES.—

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

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

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

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

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

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

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



1 duty consisting of 4 workdays per week with 10  
2 hours of regular time per workday.”.

3 (2) REGULATIONS.—The Director of the Office  
4 of Personnel Management shall promulgate regula-  
5 tions to carry out the amendments made by this  
6 subsection, including regulations governing—

7 (A) elections and assignments of a border  
8 patrol rate of pay for newly hired border patrol  
9 agents who complete initial training during an  
10 annual period;

11 (B) situations in which a border patrol  
12 agent receives more than one type of border pa-  
13 trol rate of pay in a biweekly pay period or is  
14 employed as a border patrol agent for only part  
15 of a biweekly pay period; and

16 (C) the treatment of hours that are sub-  
17 stituted for nonpay status hours during regular  
18 time.

19 (b) OVERTIME RATES.—Section 5542(g)(5) of title  
20 5, United States Code, is amended—

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

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

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

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

9           (d) BASIC PAY FOR RETIREMENT.—Section  
 10   8331(3)(I) of title 5, United States Code, is amended by  
 11   adding before the semicolon at the end the following: “,  
 12   subject to the limitation prescribed in section 5550(d)(3)”.

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

18   **SEC. 3. EFFECTIVE DATE.**

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

○