

Calendar No. 548113TH CONGRESS
2^D SESSION**S. 1691****[Report No. 113-248]**

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2013

Mr. TESTER (for himself, Mr. MCCAIN, Ms. HEITKAMP, Ms. AYOTTE, and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

AUGUST 26, 2014

Reported, under authority of the order of the Senate of August 5 (legislative day, August 1), 2014, by Mr. CARPER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Patrol Agent
3 Pay Reform Act of 2013”.

4 **SEC. 2. BORDER PATROL RATE OF PAY.**

5 (a) **PURPOSE.**—The purposes of this Act are—

6 (1) to strengthen U.S. Customs and Border
7 Protection and ensure border patrol agents are suffi-
8 ciently ready to conduct necessary work and that
9 agents will perform overtime hours in excess of a 40-
10 hour work week based on the needs of the employing
11 agency; and

12 (2) to ensure U.S. Customs and Border Protec-
13 tion has the flexibility to cover shift changes and re-
14 tains the right to assign scheduled and unscheduled
15 work for mission requirements and planning based
16 on operational need.

17 (b) **RATES OF PAY.**—Subchapter V of chapter 55 of
18 title 5, United States Code, is amended by inserting after
19 section 5549 the following:

20 **“§ 5550. Border patrol rate of pay**

21 “(a) **DEFINITIONS.**—In this section—

22 “(1) the term ‘available to work’ means a bor-
23 der patrol agent is generally and reasonably acces-
24 sible by U.S. Customs and Border Protection to per-
25 form unscheduled duty based on the needs of U.S.
26 Customs and Border Protection;

1 “(2) the term ‘border patrol agent’ means an
2 individual who is performing functions included
3 under position classification series 1896 (Border Pa-
4 trol Enforcement) of the Office of Personnel Man-
5 agement, or any successor thereto, including per-
6 forming covered border patrol activities;

7 “(3) the term ‘covered border patrol activities’
8 means a border patrol agent is—

9 “(A) detecting and preventing illegal entry
10 and smuggling of aliens, commercial goods, nar-
11 cotics, weapons, or contraband into the United
12 States;

13 “(B) arresting individuals suspected of
14 conduct described in subparagraph (A);

15 “(C) attending training authorized by U.S.
16 Customs and Border Protection;

17 “(D) on approved annual, sick, or adminis-
18 trative leave;

19 “(E) on ordered travel status;

20 “(F) on official time, within the meaning
21 of section 7131;

22 “(G) on excused absence with pay for relo-
23 cation purposes;

24 “(H) on light duty due to injury or dis-
25 ability;

1 “(I) performing administrative duties or
2 mission critical work assignments while main-
3 taining law enforcement authority;

4 “(J) caring for the canine assigned to the
5 border patrol agent, which may not exceed 1
6 hour per day; or

7 “(K) engaged in an activity similar to an
8 activity described in subparagraphs (A) through
9 (J) while temporarily away from the regular
10 duty assignment of the border patrol agent;

11 “(4) the term ‘level 1 border patrol rate of pay’
12 means the hourly rate of pay equal to 1.25 times the
13 otherwise applicable hourly rate of basic pay of the
14 applicable border patrol agent;

15 “(5) the term ‘level 2 border patrol rate of pay’
16 means the hourly rate of pay equal to 1.125 times
17 the otherwise applicable hourly rate of basic pay of
18 the applicable border patrol agent; and

19 “(6) the term ‘work period’ means a 14-day bi-
20 weekly pay period.

21 “(b) RECEIPT OF BORDER PATROL RATE OF PAY.—

22 “(1) VOLUNTARY ELECTION.—

23 “(A) IN GENERAL.—Not later than 30
24 days before the first day of each year beginning
25 after the date of enactment of this section; a

1 border patrol agent shall make an election
2 whether the border patrol agent shall, for the
3 following year—

4 “(i) be assigned to the level 1 border
5 patrol rate of pay;

6 “(ii) be assigned the level 2 border pa-
7 trol rate of pay; or

8 “(iii) decline to be assigned the level
9 1 border patrol rate of pay or the level 2
10 border patrol rate of pay.

11 “(B) PROCEDURES.—The Director of the
12 Office of Personnel Management shall establish
13 procedures for elections under subparagraph
14 (A).

15 “(C) INFORMATION REGARDING ELEC-
16 TION.—Not later than 60 days before the first
17 day of each year beginning after the date of en-
18 actment of this section, U.S. Customs and Bor-
19 der Protection shall provide each border patrol
20 agent with information regarding each type of
21 election available under subparagraph (A) and
22 how to make such an election.

23 “(D) FAILURE TO ELECT.—A border pa-
24 trol agent who fails to make a timely election
25 under subparagraph (A) shall be deemed to

1 have made an election to be assigned to the
2 level 1 border patrol rate of pay under subpara-
3 graph (A)(i).

4 “(E) SENSE OF CONGRESS.—It is the
5 sense of Congress that U.S. Customs and Bor-
6 der Protection should take such action as is
7 necessary to ensure that not more than 10 per-
8 cent of the border patrol agents stationed at a
9 location decline to be assigned to the level 1
10 border patrol rate of pay or the level 2 border
11 patrol rate of pay.

12 “(2) LEVEL 1 BORDER PATROL RATE OF PAY.—
13 For a border patrol agent who has in effect an elec-
14 tion under paragraph (1)(A)(i)—

15 “(A) the border patrol agent shall be
16 scheduled to work, for 5 days per week—

17 “(i) 8 hours of regular time per day;

18 and

19 “(ii) 2 additional hours of scheduled
20 overtime during each day the border patrol
21 agent is scheduled to work under clause
22 (i);

23 “(B) for the hours of regular time work
24 described in subparagraph (A)(i), the border

1 patrol agent shall receive pay at the level 1 bor-
2 der patrol rate of pay;

3 “(C) for the hours of regularly scheduled
4 overtime work described in subparagraph
5 (A)(ii), the border patrol agent shall not re-
6 ceive—

7 “(i) additional compensation under
8 this section or any other provision of law;
9 or

10 “(ii) compensatory time off;

11 “(D) any hours during which the border
12 patrol agent is available to work during a work
13 period shall be included in the hours of regular
14 time or regularly scheduled overtime scheduled
15 under subparagraph (A);

16 “(E) shall receive compensatory time off or
17 pay at the overtime hourly rate of pay for hours
18 of work in excess of 100 hours during a work
19 period; as determined in accordance with sec-
20 tion 5542(a)(7); and

21 “(F) shall be charged leave in increments
22 of 8 hours for 1 shift of leave; regardless of the
23 length of the shift.

1 ~~“(3) LEVEL 2 BORDER PATROL RATE OF PAY.—~~

2 For a border patrol agent who has in effect an elec-
3 tion under paragraph (1)(A)(ii)—

4 ~~“(A) the border patrol agent shall be~~
5 ~~scheduled to work, for 5 days per week—~~

6 ~~“(i) 8 hours of regular time per day;~~

7 and

8 ~~“(ii) 1 additional hour of scheduled~~
9 ~~overtime during each day the border patrol~~
10 ~~agent is scheduled to work under clause~~
11 ~~(i);~~

12 ~~“(B) for the hours of regular time work~~
13 ~~described in subparagraph (A)(i), the border~~
14 ~~patrol agent shall receive pay at the level 2 bor-~~
15 ~~der patrol rate of pay;~~

16 ~~“(C) for the hours of regularly scheduled~~
17 ~~overtime work described in subparagraph~~
18 ~~(A)(ii), the border patrol agent shall not re-~~
19 ~~ceive—~~

20 ~~“(i) additional compensation under~~
21 ~~this section or any other provision of law;~~

22 or

23 ~~“(ii) compensatory time off;~~

24 ~~“(D) any hours during which the border~~
25 ~~patrol agent is available to work during a work~~

1 period shall be included in the hours of regular
 2 time or regularly scheduled overtime scheduled
 3 under subparagraph (A);

4 “(E) shall receive compensatory time off or
 5 pay at the overtime hourly rate of pay for hours
 6 of work in excess of 90 hours during a work pe-
 7 riod, as determined in accordance with section
 8 5542(a)(7); and

9 “(F) shall be charged leave in increments
 10 of 8 hours for 1 shift of leave, regardless of the
 11 length of the shift.

12 “(4) BASIC BORDER PATROL RATE OF PAY.—

13 For a border patrol agent who has in effect an elec-
 14 tion under paragraph (1)(A)(iii)—

15 “(A) the border patrol agent shall be
 16 scheduled to work 8 hours of regular time per
 17 day and 5 days per week;

18 “(B) any hours during which the border
 19 patrol agent is available to work during a work
 20 period shall be included in the hours of regular
 21 time scheduled under subparagraph (A); and

22 “(C) the border patrol agent shall receive
 23 compensatory time off or pay at the overtime
 24 hourly rate of pay for hours of work in excess

1 of 80 hours during a work period, as deter-
2 mined in accordance with section 5542(a)(7).

3 “(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A
4 border patrol agent—

5 “(1) shall receive premium pay for night work
6 in accordance with subsections (a) and (b) of section
7 5545 and Sunday and holiday pay in accordance
8 with section 5546, without regard to the election of
9 the border patrol agent under subsection (b)(1)(A);
10 except that section 5546(d) shall not apply and eligi-
11 bility for pay for, and the rate of pay for, any over-
12 time work shall be determined in accordance with
13 this section and section 5542(a)(7); and

14 “(2) shall not be eligible for any other form of
15 premium pay under this title, except as provided in
16 section 5542(a)(7).

17 “(d) TREATMENT AS BASIC PAY.—Any pay received
18 at the level 1 border patrol rate of pay or the level 2 border
19 patrol rate of pay or pay described in subsection (b)(3)(B)
20 shall be treated as part of basic pay for—

21 “(1) purposes of sections 5595(e), 8114(e),
22 8331(3), and 8704(e);

23 “(2) any other purpose that the Office of Per-
24 sonnel Management may by regulation prescribe;
25 and

1 ~~“(3) any other purpose expressly provided for~~
2 ~~by law.~~

3 ~~“(e) AUTHORITY TO REQUIRE OVERTIME WORK.—~~
4 ~~Nothing in this section shall be construed to limit the au-~~
5 ~~thority of U.S. Customs and Border Protection to require~~
6 ~~a border patrol agent to perform hours of overtime work~~
7 ~~in accordance with the needs of U.S. Customs and Border~~
8 ~~Protection, including if needed in the event of a local or~~
9 ~~national emergency.”.~~

10 ~~(e) OVERTIME WORK.—Section 5542(a) of title 5,~~
11 ~~United States Code, is amended by adding at the end the~~
12 ~~following:~~

13 ~~“(7)(A) In this paragraph, the term ‘border patrol~~
14 ~~agent’ has the meaning given that term in section 5550.~~

15 ~~“(B) Notwithstanding the matter preceding para-~~
16 ~~graph (1) or paragraphs (1) and (2), for a border patrol~~
17 ~~agent who has in effect an election to be assigned to the~~
18 ~~level 1 border patrol rate of pay under section~~
19 ~~5550(b)(1)(A)(i)—~~

20 ~~“(i) except as provided in subparagraph (E),~~
21 ~~hours of work in excess of 100 hours during a 14-~~
22 ~~day biweekly pay period shall be overtime work; and~~

23 ~~“(ii) the border patrol agent—~~

24 ~~“(I) shall receive pay at the overtime hour-~~
25 ~~ly rate of pay (as determined in accordance~~

1 with paragraphs (1) and (2)) for hours of over-
2 time work that are officially ordered or ap-
3 proved in advance of the work assignment; and

4 “(II) shall receive compensatory time off
5 for any hours of overtime work that are not
6 hours of overtime work described in subclause
7 (I).

8 “(C) Notwithstanding the matter preceding para-
9 graph (1) or paragraphs (1) and (2), for a border patrol
10 agent who has in effect an election to be eligible for the
11 level 2 border patrol rate of pay under section
12 5550(b)(1)(A)(ii)—

13 “(i) except as provided in subparagraph (E),
14 hours of work in excess of 90 hours during a 14-day
15 biweekly pay period shall be overtime work; and

16 “(ii) the border patrol agent—

17 “(I) shall receive pay at the overtime hour-
18 ly rate of pay (as determined in accordance
19 with paragraphs (1) and (2)) for hours of over-
20 time work that are officially ordered or ap-
21 proved in advance of the work assignment; and

22 “(II) shall receive compensatory time off
23 for any hours of overtime work that are not
24 hours of overtime work described in subclause
25 (I).

1 ~~“(D) Notwithstanding the matter preceding para-~~
2 ~~graph (1) or paragraphs (1) and (2), for a border patrol~~
3 ~~agent who has in effect an election under section~~
4 ~~5550(b)(1)(A)(iii)—~~

5 ~~“(i) except as provided in subparagraph (E),~~
6 ~~hours of work in excess of 80 hours during a 14-day~~
7 ~~biweekly pay period shall be overtime work; and~~

8 ~~“(ii) the border patrol agent—~~

9 ~~“(I) shall receive pay at the overtime hour-~~
10 ~~ly rate of pay (as determined in accordance~~
11 ~~with paragraphs (1) and (2)) for hours of over-~~
12 ~~time work that are officially ordered or ap-~~
13 ~~proved in advance of the work assignment; and~~

14 ~~“(II) shall receive compensatory time off~~
15 ~~for any hours of overtime work that are not~~
16 ~~hours of overtime work described in subclause~~
17 ~~(I).~~

18 ~~“(E)(i) Except as provided in clause (ii), during a~~
19 ~~14-day biweekly pay period, a border patrol agent shall~~
20 ~~not perform and may not receive compensatory time off~~
21 ~~for more than 8 hours of overtime work.~~

22 ~~“(ii) U.S. Customs and Border Protection may, as~~
23 ~~it determines appropriate, waive the limitation under~~
24 ~~clause (i) for hours of overtime work, but such waiver~~
25 ~~must be approved in advance of any work being performed~~

1 that would be subject to compensatory time under sub-
 2 section (B)(ii)(II), (C)(ii)(II), or (D)(ii)(II).

3 “(F) A border patrol agent—

4 “(i) may not earn more than 240 hours of com-
 5 pensatory time off during a year; and

6 “(ii) shall use any hours of compensatory time
 7 off not later than 1 year after the date on which the
 8 compensatory time off is accrued.”.

9 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) Section 13(a) of the Fair Labor Standards
 11 Act of 1938 (29 U.S.C. 213(a)) is amended—

12 (A) in paragraph (16), by striking “or”
 13 after the semicolon;

14 (B) in paragraph (17), by striking the pe-
 15 riod at the end and inserting “; or”; and

16 (C) by adding at the end the following:

17 “(18) any employee who is a border patrol
 18 agent, as defined in section 5550(a) of title 5,
 19 United States Code.”.

20 (2) The table of sections for chapter 55 of title
 21 5, United States Code, is amended by inserting after
 22 the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Border Patrol Agent*
 25 *Pay Reform Act of 2014”.*

1 **SEC. 2. BORDER PATROL RATE OF PAY.**

2 (a) *PURPOSE.*—*The purposes of this Act are—*

3 (1) *to strengthen U.S. Customs and Border Pro-*
 4 *tection and ensure that border patrol agents are suffi-*
 5 *ciently ready to conduct necessary work and will per-*
 6 *form overtime hours in excess of a 40-hour workweek*
 7 *based on the needs of U.S. Customs and Border Pro-*
 8 *tection; and*

9 (2) *to ensure U.S. Customs and Border Protec-*
 10 *tion has the flexibility to cover shift changes and re-*
 11 *tains the right to assign scheduled and unscheduled*
 12 *work for mission requirements and planning based on*
 13 *operational need.*

14 (b) *RATES OF PAY.*—*Subchapter V of chapter 55 of*
 15 *title 5, United States Code, is amended by inserting after*
 16 *section 5549 the following:*

17 **“§ 5550. Border patrol rate of pay**

18 “(a) *DEFINITIONS.*—*In this section—*

19 “(1) *the term ‘basic border patrol rate of pay’*
 20 *means the hourly rate of basic pay of the applicable*
 21 *border patrol, as determined without regard to this*
 22 *section;*

23 “(2) *the term ‘border patrol agent’ means an in-*
 24 *dividual who is appointed to a position assigned to*
 25 *the Border Patrol Enforcement classification series*
 26 *1896 or any successor series, consistent with classi-*

1 *fication standards established by the Office of Per-*
2 *sonnel Management;*

3 “(3) the term ‘level 1 border patrol rate of pay’
4 *means the hourly rate of pay equal to 1.25 times the*
5 *otherwise applicable hourly rate of basic pay of the*
6 *applicable border patrol agent;*

7 “(4) the term ‘level 2 border patrol rate of pay’
8 *means the hourly rate of pay equal to 1.125 times the*
9 *otherwise applicable hourly rate of basic pay of the*
10 *applicable border patrol agent; and*

11 “(5) the term ‘work period’ means a 14-day bi-
12 *weekly pay period.*

13 “(b) *RECEIPT OF BORDER PATROL RATE OF PAY.—*

14 “(1) *VOLUNTARY ELECTION.—*

15 “(A) *IN GENERAL.—Not later than 30 days*
16 *before the first day of each year beginning after*
17 *the date of enactment of this section, a border*
18 *patrol agent shall make an election whether the*
19 *border patrol agent shall, for that year, be as-*
20 *signed to—*

21 “(i) *the level 1 border patrol rate of*
22 *pay;*

23 “(ii) *the level 2 border patrol rate of*
24 *pay; or*

1 “(iii) the basic border patrol rate of
2 pay, with additional overtime assigned as
3 needed by U.S. Customs and Border Protec-
4 tion.

5 “(B) REGULATIONS.—The Director of the
6 Office of Personnel Management shall promul-
7 gate regulations establishing procedures for elec-
8 tions under subparagraph (A).

9 “(C) INFORMATION REGARDING ELEC-
10 TION.—Not later than 60 days before the first
11 day of each year beginning after the date of en-
12 actment of this section, U.S. Customs and Bor-
13 der Protection shall provide each border patrol
14 agent with information regarding each type of
15 election available under subparagraph (A) and
16 how to make such an election.

17 “(D) ASSIGNMENT IN LIEU OF ELECTION.—
18 Notwithstanding subparagraph (A)—

19 “(i) a border patrol agent who fails to
20 make a timely election under subparagraph
21 (A) shall be assigned to the level 1 border
22 patrol rate of pay;

23 “(ii) a border patrol agent who is as-
24 signed a canine shall be assigned to the level
25 1 border patrol rate of pay;

1 “(iii) if at any time U.S. Customs and
2 *Border Protection* concludes that a border
3 patrol agent is unable to perform overtime
4 on a daily basis in accordance with this
5 section, U.S. Customs and Border Protec-
6 tion shall assign the border patrol agent to
7 the basic border patrol rate of pay until
8 such time as U.S. Customs and Border Pro-
9 tection determines that the border patrol
10 agent is able to perform scheduled overtime
11 on a daily basis;

12 “(iv) unless the analysis conducted
13 under section 2(e) of the *Border Patrol*
14 *Agent Pay Reform Act of 2014* indicates
15 that, in order to more adequately fulfill the
16 operational requirements of U.S. Customs
17 and *Border Protection*, such border patrol
18 agents should be allowed to elect or be as-
19 signed to the level 1 border patrol rate of
20 pay or the level 2 border patrol rate of pay,
21 a border patrol agent shall be assigned to
22 the basic border patrol rate of pay if the
23 agent works—

24 “(I) at U.S. Customs and *Border*
25 *Protection* headquarters;

1 “(II) as a training instructor at a
2 U.S. Customs and Border Protection
3 training facility;

4 “(III) in an administrative posi-
5 tion; or

6 “(IV) as a fitness instructor; and

7 “(v) a border patrol agent may be as-
8 signed to the level 1 border patrol rate of
9 pay or the level 2 border patrol rate of pay
10 in accordance with subparagraph (E).

11 “(E) FLEXIBILITY.—

12 “(i) IN GENERAL.—Except as provided
13 in clauses (ii) and (iii), and notwith-
14 standing any other provision of law, U.S.
15 Customs and Border Protection shall take
16 such action as is necessary, including the
17 unilateral assignment of border patrol
18 agents to the level 1 border patrol rate of
19 pay or the level 2 border patrol rate of pay,
20 to ensure that not more than 10 percent of
21 the border patrol agents stationed at a loca-
22 tion are assigned to the level 2 border patrol
23 rate of pay or the basic border patrol rate
24 of pay.

1 “(ii) *WAIVER.*—U.S. Customs and
2 *Border Protection may waive the limitation*
3 *under clause (i) on the percent of border pa-*
4 *trol agents stationed at a location who are*
5 *assigned to the level 2 border patrol rate of*
6 *pay or the basic border patrol rate of pay*
7 *if, based on the analysis conducted under*
8 *section 2(e) of the Border Patrol Agent Pay*
9 *Reform Act of 2014, U.S. Customs and Bor-*
10 *der Protection determines it may do so and*
11 *adequately fulfill its operational require-*
12 *ments.*

13 “(iii) *CERTAIN LOCATIONS.*—Clause (i)
14 *shall not apply to border patrol agents*
15 *working at the headquarters of U.S. Cus-*
16 *toms and Border Protection or a training*
17 *location of U.S. Customs and Border Pro-*
18 *tection.*

19 “(F) *CANINE CARE.*—For a border patrol
20 *agent assigned to provide care for a canine and*
21 *assigned to the level 1 border patrol rate of pay*
22 *in accordance with subparagraph (D)(ii)—*

23 *“(i) that rate of pay covers all such*
24 *care;*

1 “(ii) for the purposes of scheduled over-
2 time under paragraph (2)(A)(ii), such care
3 shall be counted as 1 hour of scheduled over-
4 time on each regular workday without re-
5 gard to the actual duration of such care or
6 whether such care occurs on the regular
7 workday; and

8 “(iii) no other pay shall be paid to the
9 border patrol agent for such care.

10 “(G) PAY ASSIGNMENT CONTINUITY.—

11 “(i) IN GENERAL.—Not later than 1
12 year after the date of enactment of the Bor-
13 der Patrol Agent Pay Reform Act of 2014,
14 and in consultation with the Office of Per-
15 sonnel Management, U.S. Customs and Bor-
16 der Protection shall develop and implement
17 a plan to ensure, to the greatest extent prac-
18 ticable, that the assignment of a border pa-
19 trol agent under this section during the 3
20 years of service before the border patrol
21 agent becomes eligible for immediate retire-
22 ment are consistent with the average border
23 patrol rate of pay level to which the border
24 patrol agent has been assigned during the

1 *course of the career of the border patrol*
2 *agent.*

3 “(ii) *IMPLEMENTATION.—Notwith-*
4 *standing any other provision of law, U.S.*
5 *Customs and Border Protection may take*
6 *such action as is necessary, including the*
7 *unilateral assignment of border patrol*
8 *agents to the level 1 border patrol rate of*
9 *pay, the level 2 border patrol rate of pay,*
10 *or the basic border patrol rate of pay, to*
11 *implement the plan developed under this*
12 *subparagraph.*

13 “(iii) *REPORTING.—U.S. Customs and*
14 *Border Protection shall submit the plan de-*
15 *veloped under clause (i) to the appropriate*
16 *committees of Congress.*

17 “(iv) *GAO REVIEW.—Not later than 6*
18 *months after U.S. Customs and Border Pro-*
19 *tection issues the plan required under clause*
20 *(i), the Comptroller General of the United*
21 *States shall submit to the appropriate com-*
22 *mittees of Congress a report on the effective-*
23 *ness of the plan in ensuring that border pa-*
24 *trol agents are not able to artificially en-*
25 *hance their retirement annuities.*

1 “(v) *DEFINITION.*—*In this subpara-*
 2 *graph, the term ‘appropriate committees of*
 3 *Congress’ means—*

4 “(I) *the Committee on Homeland*
 5 *Security and Governmental Affairs*
 6 *and the Committee on Appropriations*
 7 *of the Senate; and*

8 “(II) *the Committee on Homeland*
 9 *Security, the Committee on Oversight*
 10 *and Government Reform, and the Com-*
 11 *mittee on Appropriations of the House*
 12 *of Representatives.*

13 “(vi) *RULE OF CONSTRUCTION.*—*Noth-*
 14 *ing in this subparagraph shall be construed*
 15 *to limit the ability of U.S. Customs and*
 16 *Border Protection to assign border patrol*
 17 *agents to border patrol rates of pay as nec-*
 18 *essary to meet operational requirements.*

19 “(2) *LEVEL 1 BORDER PATROL RATE OF PAY.*—
 20 *For a border patrol agent who is assigned to the level*
 21 *1 border patrol rate of pay—*

22 “(A) *the border patrol agent shall have a*
 23 *regular tour of duty consisting of 5 workdays per*
 24 *week with—*

1 “(i) 8 hours of regular time per work-
2 day, which may be interrupted by an un-
3 paid off-duty meal break; and

4 “(ii) 2 additional hours of scheduled
5 overtime during each day the agent per-
6 forms work under clause (i);

7 “(B) for paid hours of regular time de-
8 scribed in subparagraph (A)(i), the border patrol
9 agent shall receive pay at the level 1 border pa-
10 trol rate of pay;

11 “(C) compensation for the hours of regu-
12 larly scheduled overtime work described in sub-
13 paragraph (A)(ii) is provided indirectly through
14 the 25 percent supplement within the level 1 bor-
15 der patrol rate of pay, and the border patrol
16 agent may not receive for such hours—

17 “(i) any compensation in addition to
18 the compensation under subparagraph (B)
19 under this section or any other provision of
20 law; or

21 “(ii) any compensatory time off;

22 “(D) the border patrol agent shall receive
23 compensatory time off or pay at the overtime
24 hourly rate of pay for hours of work in excess of

1 100 hours during a work period, as determined
2 in accordance with section 5542(g);

3 “(E) the border patrol agent shall be
4 charged corresponding amounts of paid leave,
5 compensatory time off, or other paid time off for
6 each hour (or part thereof) the agent is absent
7 from work during regular time (except that full
8 days off for military leave shall be charged when
9 required);

10 “(F) if the border patrol agent is absent
11 during scheduled overtime described in subpara-
12 graph (A)(ii)—

13 “(i) the border patrol agent shall ac-
14 cruce an obligation to perform other overtime
15 work for each hour (or part thereof) the bor-
16 der patrol agency is absent; and

17 “(ii) any overtime work applied to-
18 ward the obligation under clause (i) shall
19 not be credited as overtime work under any
20 other provision of law; and

21 “(G) for the purposes of advanced training,
22 the border patrol agent—

23 “(i) shall be paid at the level 1 border
24 patrol rate of pay for the first 60 days of
25 advanced training in a calendar year; and

1 “(i) for any advanced training in ad-
2 dition to the advanced training described in
3 clause (i), shall be paid at the basic border
4 patrol rate of pay.

5 “(3) LEVEL 2 BORDER PATROL RATE OF PAY.—
6 For a border patrol agent who is assigned to the level
7 2 border patrol rate of pay—

8 “(A) the border patrol agent shall have a
9 regular tour of duty consisting of 5 workdays per
10 week with—

11 “(i) 8 hours of regular time per work-
12 day, which may be interrupted by an un-
13 paid off-duty meal break; and

14 “(ii) 1 additional hour of scheduled
15 overtime during each day the agent per-
16 forms work under clause (i);

17 “(B) for paid hours of regular time de-
18 scribed in subparagraph (A)(i), the border patrol
19 agent shall receive pay at the level 2 border pa-
20 trol rate of pay;

21 “(C) compensation for the hours of regu-
22 larly scheduled overtime work described in sub-
23 paragraph (A)(ii) is provided indirectly through
24 the 12.5 percent supplement within the level 2

1 *border patrol rate of pay, and the border patrol*
2 *agent may not receive for such hours—*

3 “(i) *any compensation in addition to*
4 *the compensation under subparagraph (B)*
5 *under this section or any other provision of*
6 *law; or*

7 “(ii) *any compensatory time off;*

8 “(D) *the border patrol agent shall receive*
9 *compensatory time off or pay at the overtime*
10 *hourly rate of pay for hours of work in excess of*
11 *90 hours during a work period, as determined in*
12 *accordance with section 5542(g);*

13 “(E) *the border patrol agent shall be*
14 *charged corresponding amounts of paid leave,*
15 *compensatory time off, or other paid time off for*
16 *each hour (or part thereof) the agent is excused*
17 *from work during regular time (except that full*
18 *days off for military leave shall be charged when*
19 *required);*

20 “(F) *if the border patrol agent is absent*
21 *during scheduled overtime described in subpara-*
22 *graph (A)(ii)—*

23 “(i) *the border patrol agent shall ac-*
24 *cruce an obligation to perform other overtime*

1 *work for each hour (or part thereof) the bor-*
2 *der patrol agency is absent; and*

3 “(ii) *any overtime work applied to-*
4 *ward the obligation under clause (i) shall*
5 *not be credited as overtime work under any*
6 *other provision of law; and*

7 “(G) *for the purposes of advanced training,*
8 *the border patrol agent—*

9 “(i) *shall be paid at the level 2 border*
10 *patrol rate of pay for the first 60 days of*
11 *advanced training in a calendar year; and*

12 “(ii) *for any advanced training in ad-*
13 *dition to the advanced training described in*
14 *clause (i), shall be paid at the basic border*
15 *patrol rate of pay.*

16 “(4) *BASIC BORDER PATROL RATE OF PAY.—For*
17 *a border patrol agent who is assigned to the basic bor-*
18 *der patrol rate of pay—*

19 “(A) *the border patrol agent shall have a*
20 *regular tour of duty consisting of 5 workdays per*
21 *week with 8 hours of regular time per workday;*
22 *and*

23 “(B) *the border patrol agent shall receive*
24 *compensatory time off or pay at the overtime*
25 *hourly rate of pay for hours of work in excess of*

1 80 hours during a work period, as determined in
2 accordance with section 5542(g).

3 “(c) *ELIGIBILITY FOR OTHER PREMIUM PAY.*—A bor-
4 *der patrol agent*—

5 “(1) *shall receive premium pay for nightwork in*
6 *accordance with subsections (a) and (b) of section*
7 *5545 and Sunday and holiday pay in accordance*
8 *with section 5546, without regard to the rate of pay*
9 *to which the border patrol agent is assigned under*
10 *this section, except that*—

11 “(A) *no premium pay for night, Sunday, or*
12 *holiday work shall be provided for hours of regu-*
13 *larly scheduled overtime work described in para-*
14 *graph (2)(A)(ii) or (3)(A)(ii) of subsection (b),*
15 *consistent with the requirements of paragraph*
16 *(2)(C) or (3)(C) of subsection (b); and*

17 “(B) *section 5546(d) shall not apply and*
18 *instead eligibility for pay for, and the rate of*
19 *pay for, any overtime work on a Sunday or a*
20 *designated holiday shall be determined in ac-*
21 *cordance with this section and section 5542(g);*

22 “(2) *except as provided in paragraph (3) or sec-*
23 *tion 5542(g), shall not be eligible for any other form*
24 *of premium pay under this title; and*

1 “(3) shall be eligible for hazardous duty pay in
2 accordance with section 5545(d).

3 “(d) *TREATMENT AS BASIC PAY.*—Any pay in addi-
4 tion to the basic border patrol rate of pay for a border pa-
5 trol agent resulting from application of the level 1 border
6 patrol rate of pay or the level 2 border patrol rate of pay—

7 “(1) subject to paragraph (2), shall be treated as
8 part of basic pay solely for—

9 “(A) purposes of sections 5595(c), 8114(e),
10 8331(3)(I), and 8704(c);

11 “(B) any other purpose that the Director of
12 the Office of Personnel Management may by reg-
13 ulation prescribe; and

14 “(C) any other purpose expressly provided
15 for by law; and

16 “(2) shall not be treated as part of basic pay for
17 the purposes of calculating overtime pay, night pay,
18 Sunday pay, or holiday pay under section 5542,
19 5545, or 5546.

20 “(e) *TRAVEL TIME.*—Travel time to and from home
21 and duty station by a border patrol agent shall not be con-
22 sidered hours of work under any provision of law.

23 “(f) *LEAVE WITHOUT PAY AND SUBSTITUTION OF*
24 *HOURS.*—

25 “(1) *REGULAR TIME.*—

1 “(A) *IN GENERAL.*—For a period of leave
2 without pay during the regular time of a border
3 patrol agent (as described in paragraph
4 (2)(A)(i), (3)(A)(i), or (4)(A) of subsection (b))
5 within a work period, an equal period of work
6 outside the regular time of the border patrol
7 agent, but in the same work period—

8 “(i) shall be substituted and paid for
9 at the rate applicable for the regular time;
10 and

11 “(ii) shall not be credited as overtime
12 hours for any purpose.

13 “(B) *PRIORITY FOR SAME DAY WORK.*—In
14 substituting hours of work under subparagraph
15 (A), work performed on the same day as the pe-
16 riod of leave without pay shall be substituted
17 first.

18 “(C) *PRIORITY FOR REGULAR TIME SUBSTI-*
19 *TUTION.*—Hours of work shall be substituted for
20 regular time work under this paragraph before
21 being substituted for scheduled overtime under
22 paragraphs (2), (3), and (4).

23 “(2) *OVERTIME WORK.*—

24 “(A) *IN GENERAL.*—For a period of absence
25 during scheduled overtime (as described in para-

1 graph (2)(F) or (3)(F) of subsection (b)) within
2 a work period, an equal period of additional
3 work in the same work period—

4 “(i) shall be substituted and credited
5 as scheduled overtime; and

6 “(ii) shall not be credited as overtime
7 hours under any other provision of law.

8 “(B) PRIORITY FOR SAME DAY WORK.—In
9 substituting hours of work under subparagraph
10 (A), work performed on the same day as the pe-
11 riod of absence shall be substituted first.

12 “(3) APPLICATION OF COMPENSATORY TIME.—If
13 a border patrol agent does not have sufficient addi-
14 tional work in a work period to substitute for all pe-
15 riods of absence during scheduled overtime (as de-
16 scribed in paragraph (2)(F) or (3)(F) of subsection
17 (b)) within that work period, any accrued compen-
18 satory time off under section 5542(g) shall be applied
19 to satisfy the hours obligation.

20 “(4) INSUFFICIENT HOURS.—If a border patrol
21 agent has a remaining hours obligation of scheduled
22 overtime after applying paragraphs (2) and (3), any
23 additional work in subsequent work periods that
24 would otherwise be credited under section 5542(g)

1 *shall be applied towards the hours obligation until*
 2 *that obligation is satisfied.*

3 “(g) *AUTHORITY TO REQUIRE OVERTIME WORK.—*
 4 *Nothing in this section shall be construed to limit the au-*
 5 *thority of U.S. Customs and Border Protection to require*
 6 *a border patrol agent to perform hours of overtime work*
 7 *in accordance with the needs of U.S. Customs and Border*
 8 *Protection, including if needed in the event of a local or*
 9 *national emergency.”.*

10 (i) *OVERTIME WORK.—*

11 (1) *IN GENERAL.—Section 5542 of title 5,*
 12 *United States Code, is amended by adding at the end*
 13 *the following:*

14 “(g) *In applying subsection (a) with respect to a bor-*
 15 *der patrol agent covered by section 5550, the following rules*
 16 *apply:*

17 “(1) *Notwithstanding the matter preceding para-*
 18 *graph (1) in subsection (a), for a border patrol agent*
 19 *who is assigned to the level 1 border patrol rate of*
 20 *pay under section 5550—*

21 “(A) *hours of work in excess of 100 hours*
 22 *during a 14-day biweekly pay period shall be*
 23 *overtime work; and*

24 “(B) *the border patrol agent—*

1 “(i) shall receive pay at the overtime
2 hourly rate of pay (as determined in ac-
3 cordance with paragraphs (1) and (2) of
4 subsection (a)) for hours of overtime work
5 that are officially ordered or approved in
6 advance of the workweek; and

7 “(ii) except as provided in paragraphs
8 (4) and (5), shall receive compensatory time
9 off for an equal amount of time spent per-
10 forming overtime work that is not overtime
11 work described in clause (i).

12 “(2) Notwithstanding the matter preceding para-
13 graph (1) in subsection (a), for a border patrol agent
14 who is assigned to the level 2 border patrol rate of
15 pay under section 5550—

16 “(A) hours of work in excess of 90 hours
17 during a 14-day biweekly pay period shall be
18 overtime work; and

19 “(B) the border patrol agent—

20 “(i) shall receive pay at the overtime
21 hourly rate of pay (as determined in ac-
22 cordance with paragraphs (1) and (2) of
23 subsection (a)) for hours of overtime work
24 that are officially ordered or approved in
25 advance of the workweek; and

1 “(ii) except as provided in paragraphs
2 (4) and (5), shall receive compensatory time
3 off for an equal amount of time spent per-
4 forming overtime work that is not overtime
5 work described in clause (i).

6 “(3) Notwithstanding the matter preceding para-
7 graph (1) in subsection (a), for a border patrol agent
8 who is assigned to the basic border patrol rate of pay
9 under section 5550—

10 “(A) hours of work in excess of 80 hours
11 during a 14-day biweekly pay period shall be
12 overtime work; and

13 “(B) the border patrol agent—

14 “(i) shall receive pay at the overtime
15 hourly rate of pay (as determined in ac-
16 cordance with paragraphs (1) and (2) of
17 subsection (a)) for hours of overtime work
18 that are officially ordered or approved in
19 advance of the workweek; and

20 “(ii) except as provided in paragraphs
21 (4) and (5), shall receive compensatory time
22 off for an equal amount of time spent per-
23 forming overtime work that is not overtime
24 work described in clause (i).

1 “(4)(A) *Except as provided in subparagraph*
2 *(B), during a 14-day biweekly pay period, a border*
3 *patrol agent may not earn compensatory time off for*
4 *more than 10 hours of overtime work.*

5 “(B) *U.S. Customs and Border Protection may,*
6 *as it determines appropriate, waive the limitation*
7 *under subparagraph (A) for an individual border pa-*
8 *trol agent for hours of irregular or occasional over-*
9 *time work, but such waiver must be approved in writ-*
10 *ing in advance of the performance of any such work*
11 *for which compensatory time off is earned under*
12 *paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii). If a*
13 *waiver request by a border patrol agent is denied, the*
14 *border patrol agent may not be ordered to perform the*
15 *associated overtime work.*

16 “(5) *A border patrol agent—*

17 “(A) *may not earn more than 240 hours of*
18 *compensatory time off during a leave year;*

19 “(B) *shall use any hours of compensatory*
20 *time off not later than the end of the 26th pay*
21 *period after the pay period during which the*
22 *compensatory time off was earned;*

23 “(C) *shall be required to use 1 hour of com-*
24 *pensatory time off for each hour of regular time*
25 *not worked for which the border patrol agent is*

1 *not on paid leave or other paid time off or does*
2 *not substitute time in accordance with section*
3 *5550(f);*

4 “(D) shall forfeit any compensatory time off
5 not used in accordance with this paragraph and,
6 regardless of circumstances, shall not be entitled
7 to any cash value for compensatory time earned
8 under section 5550;

9 “(E) shall not receive credit towards the
10 computation of the annuity of the border patrol
11 agent for compensatory time, whether used or
12 not; and

13 “(F) shall not be credited with compen-
14 satory time off if the value of such time off would
15 cause the aggregate premium pay of the border
16 patrol agent to exceed the limitation established
17 under section 5547 in the period in which it was
18 earned.”.

19 (2) *MINIMIZATION OF OVERTIME.*—*U.S. Customs*
20 *and Border Protection shall, to the maximum extent*
21 *practicable, avoid the use of scheduled overtime work*
22 *by border patrol agents.*

23 (d) *RETIREMENT.*—*Section 8331(3) of title 5, United*
24 *States Code, is amended—*

25 (1) *in subparagraph (G), by striking “and”;*

1 (2) *in subparagraph (H), by inserting “and”*
2 *after the semicolon;*

3 (3) *by inserting a new subparagraph after sub-*
4 *paragraph (H) as follows:*

5 *“(I) with respect to a border pa-*
6 *trol agent, the amount of supplemental*
7 *pay received through application of the*
8 *level 1 border patrol rate of pay or the*
9 *level 2 border patrol rate of pay for*
10 *scheduled overtime within the regular*
11 *tour of duty of the border patrol agent*
12 *as provided in section 5550;”;* and

13 (4) *in the undesignated matter following sub-*
14 *paragraph (H), by striking “subparagraphs (B)*
15 *through (H)” and inserting “subparagraphs (B)*
16 *through (I)”.*

17 (e) *COMPREHENSIVE STAFFING ANALYSIS.—*

18 (1) *IN GENERAL.—Not later than 1 year after*
19 *the date of enactment of this Act, U.S. Customs and*
20 *Border Protection shall conduct a comprehensive*
21 *analysis, and submit to the Comptroller General of*
22 *the United States a report, that—*

23 (A) *examines the staffing requirements for*
24 *U.S. Border Patrol to most effectively meet its*

1 *operational requirements at each Border Patrol*
2 *duty station;*

3 *(B) estimates the cost of the staffing require-*
4 *ments at each Border Patrol duty station; and*

5 *(C) includes—*

6 *(i) a position-by-position review at*
7 *each Border Patrol station to determine—*

8 *(I) the duties assigned to each po-*
9 *sition;*

10 *(II) how the duties relate to the*
11 *operational requirements of U.S. Bor-*
12 *der Patrol; and*

13 *(III) the number of hours border*
14 *patrol agents in that position would*
15 *need to work each pay period to meet*
16 *the operational requirements of U.S.*
17 *Border Patrol;*

18 *(ii) the metrics used to determine the*
19 *number of hours of work performed at each*
20 *Border Patrol station, broken down by the*
21 *type of hours worked;*

22 *(iii) a cost analysis of the most recent*
23 *full fiscal year by the type of full-time*
24 *equivalent hours worked;*

1 (iv) a cost estimate by the type of full-
2 time equivalent hours expected to be worked
3 during the first full fiscal year after the
4 date of enactment of this Act; and

5 (v) an analysis that compares the cost
6 of assigning the full-time equivalent hours
7 needed to meet the operational requirements
8 of U.S. Border Patrol to existing border pa-
9 trol agents through higher rates of pay
10 versus recruiting, hiring, training, and de-
11 ploying additional border patrol agents.

12 (2) *INDEPENDENT VALIDATOR.*—Not later than
13 90 days after the date on which the Comptroller Gen-
14 eral receives the report under paragraph (1), the
15 Comptroller General shall submit to the appropriate
16 committees of Congress a report that—

17 (A) examines the methodology used by U.S.
18 Customs and Border Protection to carry out the
19 analysis; and

20 (B) indicates whether the Comptroller Gen-
21 eral concurs with the findings in the report
22 under paragraph (1).

23 (3) *DEFINITION.*—In this subsection, the term
24 “appropriate committees of Congress” means—

1 (A) *the Committee on Homeland Security*
2 *and Governmental Affairs and the Committee on*
3 *Appropriations of the Senate; and*

4 (B) *the Committee on Oversight and Gov-*
5 *ernment Reform and the Committee on Appro-*
6 *priations of the House of Representatives.*

7 (f) *RULES OF CONSTRUCTION.—Nothing in this sec-*
8 *tion or the amendments made by this section shall be con-*
9 *strued to—*

10 (1) *limit the right of U.S. Customs and Border*
11 *Protection to assign both scheduled and unscheduled*
12 *work to a border patrol agent based on the needs of*
13 *U.S. Customs and Border Protection in excess of the*
14 *hours of work normally applicable under the election*
15 *of the border patrol agent, regardless of what the bor-*
16 *der patrol agent might otherwise have elected;*

17 (2) *require compensation of a border patrol*
18 *agent other than for hours during which the border*
19 *patrol agent is actually performing work or using ap-*
20 *proved paid leave or other paid time off; or*

21 (3) *exempt a border patrol agent from any limi-*
22 *tations on pay, earnings, or compensation, including*
23 *the limitations under section 5547 of title 5, United*
24 *States Code.*

25 (g) *TECHNICAL AND CONFORMING AMENDMENTS.—*

1 (1) *Section 5547 of title 5, United States Code*
2 *is amended by—*

3 (A) *in subsection (a), in the matter pre-*
4 *ceding paragraph (1)—*

5 (i) *by striking, “and” before “5546”;*

6 *and*

7 (ii) *by inserting “, and 5550” after*
8 *“5546 (a) and (b)”;* *and*

9 (B) *by adding at the end the following:*

10 “(e) *Any supplemental pay resulting from receipt of*
11 *the level 1 border patrol rate of pay or the level 2 border*
12 *patrol rate of pay under section 5550 shall be considered*
13 *premium pay in applying this section.”.*

14 (2) *Section 13(a) of the Fair Labor Standards*
15 *Act of 1938 (29 U.S.C. 213(a)) is amended—*

16 (A) *in paragraph (16), by striking “or”*
17 *after the semicolon;*

18 (B) *in paragraph (17), by striking the pe-*
19 *riod at the end and inserting “; or”;* *and*

20 (C) *by adding at the end the following:*

21 “(18) *any employee who is a border patrol agent,*
22 *as defined in section 5550(a) of title 5, United States*
23 *Code.”.*

1 (3) *The table of sections for chapter 55 of title*
2 *5, United States Code, is amended by inserting after*
3 *the item relating to section 5549 the following:*

“5550. Border patrol rate of pay.”.

4 (h) *REGULATIONS.—The Director of the Office of Per-*
5 *sonnel Management shall promulgate regulations to carry*
6 *out this Act and the amendments made by this Act.*

Calendar No. 548

113TH CONGRESS
2^D SESSION

S. 1691

[Report No. 113-248]

A BILL

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

August 26, 2014

Reported with an amendment