

113TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

Mr. TESTER (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on

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**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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

8 (1) to strengthen U.S. Customs and Border  
9 Protection and ensure border patrol agents are suffi-

1       ciently ready to conduct necessary work and that  
2       agents will perform overtime hours in excess of a 40  
3       hour work week based on the needs of the employing  
4       agency; and

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

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

13       **“§ 5550. Border patrol rate of pay**

14       “(a) DEFINITIONS.—In this section—

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

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

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

3           “(A) detecting and preventing illegal entry  
4 and smuggling of aliens, commercial goods, nar-  
5 cotics, weapons, or contraband into the United  
6 States;

7           “(B) arresting individuals suspected of  
8 conduct described in subparagraph (A);

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

11           “(D) on approved annual, sick, or adminis-  
12 trative leave;

13           “(E) on ordered travel status;

14           “(F) on official time, within the meaning  
15 of section 7131;

16           “(G) on excused absence with pay for relo-  
17 cation purposes;

18           “(H) on light duty due to injury or dis-  
19 ability;

20           “(I) performing administrative duties or  
21 mission critical work assignments while main-  
22 taining law enforcement authority;

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

1           “(K) engaged in an activity similar to an  
2           activity described in subparagraphs (A) through  
3           (J) while temporarily away from the regular  
4           duty assignment of the border patrol agent;

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

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

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

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

16                 “(1) VOLUNTARY ELECTION.—

17                         “(A) IN GENERAL.—Not later than 30  
18                         days before the first day of each year beginning  
19                         after the date of enactment of this section, a  
20                         border patrol agent shall make an election  
21                         whether the border patrol agent shall, for the  
22                         following year—

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

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

3                   “(iii) decline to be assigned the level  
4                   1 border patrol rate of pay or the level 2  
5                   border patrol rate of pay.

6                   “(B) PROCEDURES.—The Director of the  
7                   Office of Personnel Management shall establish  
8                   procedures for elections under subparagraph  
9                   (A).

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

18                  “(D) FAILURE TO ELECT.—A border pa-  
19                  trol agent who fails to make a timely election  
20                  under subparagraph (A) shall be deemed to  
21                  have made an election to be assigned to the  
22                  level 1 border patrol rate of pay under subpara-  
23                  graph (A)(i).

24                  “(E) SENSE OF CONGRESS.—It is the  
25                  sense of Congress that U.S. Customs and Bor-

1           der Protection should take such action as is  
2           necessary to ensure that not more than 10 per-  
3           cent of the border patrol agents stationed at a  
4           location decline to be assigned to the level 1  
5           border patrol rate of pay or the level 2 border  
6           patrol rate of pay.

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

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

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

13                           and

14                           “(ii) 2 additional hours of scheduled  
15                           overtime during each day the border patrol  
16                           agent is scheduled to work under clause  
17                           (i);

18                   “(B) for the hours of regular time work  
19                   described in subparagraph (A)(i), the border  
20                   patrol agent shall receive pay at the level 1 bor-  
21                   der patrol rate of pay;

22                   “(C) for the hours of regularly scheduled  
23                   overtime work described in subparagraph  
24                   (A)(ii), the border patrol agent shall not re-  
25                   ceive—

1                   “(i) additional compensation under  
2                   this section or any other provision of law;

3                   or

4                   “(ii) compensatory time off;

5                   “(D) any hours during which the border  
6                   patrol agent is available to work during a work  
7                   period shall be included in the hours of regular  
8                   time or regularly scheduled overtime scheduled  
9                   under subparagraph (A);

10                  “(E) shall receive compensatory time off or  
11                  pay at the overtime hourly rate of pay for hours  
12                  of work in excess of 100 hours during a work  
13                  period, as determined in accordance with sec-  
14                  tion 5542(a)(7); and

15                  “(F) shall be charged leave in increments  
16                  of 8 hours for 1 shift of leave, regardless of the  
17                  length of the shift.

18                  “(3) LEVEL 2 BORDER PATROL RATE OF PAY.—  
19                  For a border patrol agent who has in effect an elec-  
20                  tion under paragraph (1)(A)(ii)—

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

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

24                  and

1                   “(ii) 1 additional hour of scheduled  
2                   overtime during each day the border patrol  
3                   agent is scheduled to work under clause  
4                   (i);

5                   “(B) for the hours of regular time work  
6                   described in subparagraph (A)(i), the border  
7                   patrol agent shall receive pay at the level 2 bor-  
8                   der patrol rate of pay;

9                   “(C) for the hours of regularly scheduled  
10                  overtime work described in subparagraph  
11                  (A)(ii), the border patrol agent shall not re-  
12                  ceive—

13                  “(i) additional compensation under  
14                  this section or any other provision of law;  
15                  or

16                  “(ii) compensatory time off;

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

22                  “(E) shall receive compensatory time off or  
23                  pay at the overtime hourly rate of pay for hours  
24                  of work in excess of 90 hours during a work pe-

1           riod, as determined in accordance with section  
2           5542(a)(7); and

3           “(F) shall be charged leave in increments  
4           of 8 hours for 1 shift of leave, regardless of the  
5           length of the shift.

6           “(4) BASIC BORDER PATROL RATE OF PAY.—  
7           For a border patrol agent who has in effect an elec-  
8           tion under paragraph (1)(A)(iii)—

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

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

16          “(C) the border patrol agent shall receive  
17          compensatory time off or pay at the overtime  
18          hourly rate of pay for hours of work in excess  
19          of 80 hours during a work period, as deter-  
20          mined in accordance with section 5542(a)(7).

21          “(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A  
22          border patrol agent—

23          “(1) shall receive premium pay for night work  
24          in accordance with subsections (a) and (b) of section  
25          5545 and Sunday and holiday pay in accordance

1 with section 5546, without regard to the election of  
2 the border patrol agent under subsection (b)(1)(A),  
3 except that section 5546(d) shall not apply and eligi-  
4 bility for pay for, and the rate of pay for, any over-  
5 time work shall be determined in accordance with  
6 this section and section 5542(a)(7); and

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

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

14 “(1) purposes of sections 5595(c), 8114(e),  
15 8331(3), and 8704(c);

16 “(2) any other purpose that the Office of Per-  
17 sonnel Management may by regulation prescribe;  
18 and

19 “(3) any other purpose expressly provided for  
20 by law.

21 “(e) AUTHORITY TO REQUIRE OVERTIME WORK.—  
22 Nothing in this section shall be construed to limit the au-  
23 thority of U.S. Customs and Border Protection to require  
24 a border patrol agent to perform hours of overtime work  
25 in accordance with the needs of U.S. Customs and Border

1 Protection, including if needed in the event of a local or  
2 national emergency.”.

3 (c) OVERTIME WORK.—Section 5542(a) of title 5,  
4 United States Code, is amended by adding at the end the  
5 following:

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

8 “(B) 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 assigned to the  
11 level 1 border patrol rate of pay under section  
12 5550(b)(1)(A)(i)—

13 “(i) except as provided in subparagraph (E),  
14 hours of work in excess of 100 hours during a 14-  
15 day 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           “(C) 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 to be eligible for the  
4 level 2 border patrol rate of pay under section  
5 5550(b)(1)(A)(ii)—

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

9           “(ii) the border patrol agent—

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

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

19           “(D) Notwithstanding the matter preceding para-  
20 graph (1) or paragraphs (1) and (2), for a border patrol  
21 agent who has in effect an election under section  
22 5550(b)(1)(A)(iii)—

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

1 “(ii) the border patrol agent—

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

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

11 “(E)(i) Except as provided in clause (ii), during a  
12 14-day biweekly pay period, a border patrol agent shall  
13 not perform and may not receive compensatory time off  
14 for more than 8 hours of overtime work.

15 “(ii) U.S. Customs and Border Protection may, as  
16 it determines appropriate, waive the limitation under  
17 clause (i) for hours of overtime work, but such waiver  
18 must be approved in advance of any work being performed  
19 that would be subject to compensatory time under sub-  
20 section (B)(ii)(II), (C)(ii)(II), or (D)(ii)(II).

21 “(F) A border patrol agent—

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

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

4 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

15           (2) The table of sections for chapter 55 of title  
16 5, United States Code, is amended by inserting after  
17 the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.