

SEC. 307. SUSPENSION OF FOREIGN SERVICE MEMBERS WITHOUT PAY.

(a) SUSPENSION- Section 610 of the Foreign Service Act of 1980 (22 U.S.C. 4010) is amended by adding at the end the following new subsection:

“(c)(1) In order to promote the efficiency of the Service, the Secretary may suspend a member of the Foreign Service without pay when the member’s security clearance is suspended or when there is reasonable cause to believe that the member has committed a crime for which a sentence of imprisonment may be imposed.

“(2) Any member of the Foreign Service for whom a suspension is proposed shall be entitled to—

“(A) written notice stating the specific reasons for the proposed suspension;

“(B) a reasonable time to respond orally and in writing to the proposed suspension;

“(C) representation by an attorney or other representative; and

“(D) a final written decision, including the specific reasons for such decision, as soon as practicable.

“(3) Any member suspended under this section may file a grievance in accordance with the procedures applicable to grievances under chapter 11 of this title.

“(4) In the case of a grievance filed under paragraph (3)--

“(A) the review by the Foreign Service Grievance Board shall be limited to a determination of whether the provisions of paragraphs (1) & (2) been fulfilled; and

“(B) the Foreign Service Grievance Board may not exercise the authority provided under section 1106(8) of the Act (22 U.S.C. 4136(8)).

“(5) In this subsection:

“(A) The term ‘reasonable time’ means—

“(i) with respect to a member of the Foreign Service assigned to duty in the United States, 15 days after receiving notice of the proposed suspension; and

“(ii) with respect to a member of the Foreign Service assigned to duty outside the United States, 30 days after receiving notice of the proposed suspension.

“(B) The term ‘suspend’ or ‘suspension’ means the placing of a member of the Foreign Service in a temporary status without duties and pay.”.

(b) CONFORMING AND CLERICAL AMENDMENTS-

(1) AMENDMENT OF SECTION HEADING- Such section, as amended by subsection (a), is further amended in the section heading by inserting “; suspension” before the period at the end.

(2) CLERICAL AMENDMENT- The item relating to such section in the table of contents in section 2 of such Act is amended to read as follows:

“Sec. 610. Separation for cause; suspension.”.

Sectional Analysis

Currently, a Foreign Service employee indicted for a crime, e.g., murder or child molestation, is allowed to use accrued leave or leave without pay (approved absence) if incarcerated pending trial. No administrative action can be taken against the employee until a conviction. However, a Civil Service employee (under Title 5) indicted for the same crime is placed on “indefinite suspension”. Similarly, there is no mechanism to suspend a Foreign Service member without pay where that member’s security clearance has been suspended and is pending revocation. This section would amend Section 610 of the Foreign Service Act to allow the Department to suspend without pay a member of the Foreign Service in cases where there is reasonable cause to believe that the employee has committed a crime for which he/she may be imprisoned or when the member’s security clearance is suspended. In these specific circumstances, this provision would give the Department the authority to suspend Foreign Service employees that it already has with regard to civil service employees under 5 U.S.C. 7513, and it would bring the Foreign Service in line with the holding by the Merit Systems Protection Board in *Jones v. Dept. of Navy*, 48 MSPR 680 (1991), *reaff’d*, 51MSPR 607 (1991) and affirmed by the Federal Circuit, *Jones v. Dept of Navy*, 978 F.2d 1223.

Provisions on the suspension of Foreign Service members without pay were included as section 309 in H.R. 2601 and as section 308 in S. 600 during the 109th Congress.