

staff of our subcommittee, both the majority and minority staff. I think there is no question they have done a fine job of that.

I think in the last analysis what we have done with the Senate is an excellent product going to this exemplar system, phasing it down and having a sunset provision in it at the end.

This bill should become law. We should all be proud of it. We should all pray that we never see the day when it has to be actually used, when the threshold is met. But if that day comes we will have a law on the books to deal with it.

Mr. Speaker, I yield one minute to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. I thank my colleague for yielding to me.

Mr. Speaker, I would like to recognize Chairman HUGHES for his leadership which he has displayed in this area and his willingness to cooperate to arrive at a solution that we believe is acceptable to all parties involved.

The greatest concern here I think rested with the ability to detect a firearm in the nature of the type described, less than 3.7 ounces, if that firearm were to come into existence.

We have now established the parameters under which that can be done. It does not currently address firearms that are in the market. So there is not a ban on any current firearm in the market. It provides the sunset clause. I think that it represents the cooperative effort the Committee on the Judiciary, those of us who remain very concerned about the second amendment rights of the citizens of this country and at the same time recognize the very real and important type of legislation that will produce the detectability that is necessary so that we can in fact avoid the consequence, if it were ever to exist, of an all-plastic gun that might not be detectable in the marketplace.

I think this amendment recognizes that and I would like to thank my colleague from Florida and the chairman, the gentleman from New Jersey [Mr. HUGHES] for their cooperation in the development of this legislation.

Mr. McCOLLUM. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and agree to the resolution, House Resolution 596.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 596, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

MAJOR FRAUD ACT OF 1988

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3911) to amend title 18, United States Code, to provide increased penalties for certain major frauds against the United States.

The Clerk read as follows:

Senate Amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Major Fraud Act of 1988".

SEC. 2. CHAPTER 47 AMENDMENT.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"§ 1031. Major fraud against the United States.

"(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

"(1) to defraud the United States; or

"(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises,

in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is \$1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both.

"(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$5,000,000 and

"(1) the gross loss to the Government or the gross gain to a defendant is \$500,000 or greater; or

"(2) the offense involves a conscious or reckless risk of serious personal injury.

"(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed \$10 million.

"(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).

"(e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including—

"(A) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the defendant;

"(B) whether the defendant previously has been fined for a similar offense; and

"(C) any other pertinent equitable considerations.

"(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.

"(g) Any individual who—

"(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and

"(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees."

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide for appropriate penalty enhancements, where conscious or reckless risk of serious personal injury resulting from the fraud has occurred. The Commission shall consider the appropriateness of assigning to such a defendant an offense level under Chapter Two of the sentencing guidelines that is at least two levels greater than the level that would have been assigned had conscious or reckless risk of serious personal injury not resulted from the fraud.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

"1031. Major fraud against the United States."

SEC. 3. LIMITATION ON ALLOWABILITY OF COSTS OF CONTRACTORS INCURRED IN CERTAIN PROCEEDINGS.

(a) IN GENERAL.—Chapter 15 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 293. Limitation on Government contract costs

"(a) Any proceeding costs incurred in connection with any proceeding brought by the United States or a State government that relates to a violation of, or failure to comply with, any Federal or State law or regulation on the part of the Contractor are not allowable costs in a covered contract if the proceeding results in any of the following:

"(1) an indictment by a Federal grand jury, or a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of such violation or failure to comply;

"(2) the assessment of a monetary penalty by reason of a civil or administrative finding of such violation or failure to comply;

"(3) a civil judgment containing a finding of liability, or an administrative finding of liability, by reason of such violation or failure to comply, if the charges which are the subject of the proceeding involve fraud or similar offenses;

"(4) a decision to debar or suspend the contractor or rescind, void, or terminate a contract for default, by reason of such violation or failure to comply; or

"(5) the resolution of the proceeding by consent or compromise, where the penalty or relief sought by the government included the actions described in paragraphs (1) through (5).

"(b) In any proceeding brought by the United States or a State government that does not result in any of the actions described in paragraphs (1) through (5) of subsection (a), costs for legal services incurred by a contractor in connection with such proceeding shall not be allowed in excess of the rate specified in the Equal Access to Justice Act (28 U.S.C. 2412(d)(2)(A); 5 U.S.C. 504(a)) unless the responsible contracting officer finds that a special factor (such as the limited availability of qualified attorneys or agents) justifies an award of higher rates.

"(c) For purposes of this section—

"(1) the term 'covered contract' means a contract for an amount more than \$100,000 entered into by a department or agency of the United States other than a fixed-price contract without cost incentives;

"(2) the term 'proceeding' means a civil, criminal, or an administrative investigation, prosecution, or proceeding; and

"(3) the term 'proceeding costs' means all costs relating to a proceeding incurred before, during, or after the commencement of the proceeding, and such term includes—

"(A) administrative and clerical expenses;

"(B) the cost of legal services (whether performed by an employee of the contractor or otherwise);

"(C) the cost of the services of accountants and consultants retained by a contractor; and

"(D) the salaries and wages of employees, including officers and directors."

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 15 of title 18, United States Code, by adding at the end thereof the following:

"293. Limitation on Government contract costs."

(c) APPLICABILITY.—The amendments made by this section shall apply to contracts entered into after the date of the enactment of this Act.

SEC. 4. ESTABLISHMENT OF ADDITIONAL ASSISTANT UNITED STATES ATTORNEY AND SUPPORT PROVISIONS.

(a) ESTABLISHMENT OF POSITIONS.—Subject to the funding authorization limitations in section (a), there are hereby established within the Department of Justice additional Assistant United States Attorney positions and additional support staff positions for prosecuting cases under both the criminal and civil statutes.

(b) FUNCTION OF PERSONNEL.—The primary function of individuals selected for the positions specified in subsection (a) shall be dedicated to the investigation and prosecution of fraud against the Government.

(c) LOCATIONS.—The Attorney General shall determine the locations for assignment of such personnel. In making such determination the Attorney General shall consider concentrations of government programs and procurements and concentrations of pending Government fraud investigations and allegations.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Subject to the provisions of subsection (b), for the purpose of carrying out the purposes of this Act there are authorized to be appropriated \$8,000,000 for fiscal year 1989, and such sums as may be necessary for each of the four succeeding fiscal years, to be available until expended.

(b) LIMITATION.—Before expending funds appropriated pursuant to subsection (a) to carry out the purposes of this section, the At-

torney General shall utilize available existing resources within the Department of Justice for such purposes.

SEC. 6. CONGRESSIONAL OVERSIGHT.

Commencing with the first year after the date of enactment of this section, the Attorney General shall annually report to the Congress with respect to—

(1) the number of referrals of fraud cases by the Department of Defense of defense contractors (with specific statistics with respect to the one hundred largest contractors), the number of open investigation of such contractors, and a breakdown of to which United States Attorney's Office or other component of the Department of Justice each such case was referred;

(2) the number of referrals of fraud cases from other agencies or sources;

(3) the number of attorneys and support staff assigned pursuant to this Act;

(4) the number of investigative agents assigned to each investigation and the period of time each investigation has been opened;

(5) the number of convictions and acquittals achieved by individuals assigned to positions established by the Act; and

(6) the sentences, recoveries, and penalties achieved by individuals assigned to positions established by this Act.

SEC. 7. RELIEF OF PAULETTE MENDES-SILVA.

(a) notwithstanding section 2675 of title 28, United States Code, and section 2401(b) of such title, or any other limitation on actions at law or in equity, the United States District Court for the District of Columbia shall have jurisdiction to hear, determine, and render judgment on any claim of Paulette Mendes-Silva against the United States for personal injuries which she allegedly incurred after an inoculation on March 12, 1963, by an employee of the Public Health Service of the United States Department of Health, Education, and Welfare. Any such claim of Paulette Mendes-Silva shall be brought within six months after the date of the enactment of this Act. The court shall apply the laws of the District of Columbia in such case.

(b) Nothing in this section shall be construed as an inference of liability on the part of the United States.

SEC. 8. LIMITATIONS ON ALLOWABILITY OF COSTS INCURRED BY FEDERAL GOVERNMENT CONTRACTORS IN CERTAIN PROCEEDINGS.

(a) AMENDMENT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 305 the following new section 306:

"LIMITATIONS ON ALLOWABILITY OF COSTS INCURRED BY CONTRACTORS IN CERTAIN PROCEEDINGS

"SEC. 306. (a) Except as otherwise provided in this section, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (1) relates to a violation of, or a failure to comply with, a Federal or State statute or regulation, and (2) results in a disposition described in subsection (b).

"(b) A disposition referred to in subsection (a)(2) is any of the following:

"(1) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (a).

"(2) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of

the violation or failure referred to in subsection (a).

"(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in subsection (a).

"(4) A final decision by an appropriate official of an executive agency—

"(A) to debar or suspend the contractor;

"(B) to rescind or void the contract; or

"(C) to terminate the contract for default,

by reason of the violation or failure referred to in subsection (a).

"(5) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

"(c) In the case of a proceeding referred to in subsection (a) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such subsection may be allowed to the extent specifically provided in such agreement.

"(d) In the case of a proceeding referred to in subsection (a) that is commenced by a State, the head of the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result of (1) a specific term or condition of the contract, or (2) specific written instructions of the agency.

"(e)(1) Except as provided in paragraph (3), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under subsection (a), but only to the extent provided in paragraph (2).

"(2)(A) The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)).

"(B) Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(3) In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if (A) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (B) the costs of such other proceeding are not allowable under subsection (a).

"(f) As used in this section:

"(1) The term 'covered contract' means a contract for an amount more than \$100,000 entered into by an executive agency other than a fixed-price contract without cost incentives.

"(2) The term 'proceeding' includes an investigation.

"(3) The term 'costs', with respect to a proceeding—

"(A) means all costs incurred by a contractor, whether before or after the commencement of such proceeding; and

"(B) includes—

"(i) administrative and clerical expenses;

"(ii) the cost of legal services, including legal services performed by an employee of the contractor;

"(iii) the cost of the services of accountants and consultants retained by the contractor; and

"(iv) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

"(4) The term 'penalty' does not include restitution, reimbursement, or compensatory damages."

(2) The table of contents in the first section of such Act is amended by inserting after the item relating to section 305 the following new item:

"306. Limitation on allowability of costs incurred by contractors in certain proceedings."

(b) AMENDMENTS TO TITLE 10.—Section 2324 of title 10, United States Code, is amended—

(1) in subsection (e)—

(A) by striking out subparagraph (N) and inserting in lieu thereof the following:

"(N) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).";

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2); and

(2) by striking out subsection (k) and inserting in lieu thereof the following:

"(k)(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

"(2) A disposition referred to in paragraph (1)(B) is any of the following:

"(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

"(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

"(D) A final decision by the Department of Defense—

"(i) to debar or suspend the contractor;

"(ii) to rescind or void the contract; or

"(iii) to terminate the contract for default.

by reason of the violation or failure referred to in paragraph (1).

"(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are

otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

"(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency.

"(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

"(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)).

"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

"(1)(1) In this section, the term 'covered contract' means a contract for an amount more than \$100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.

"(2) In subsection (k):

"(A) The term 'proceeding' includes an investigation.

"(B) The term 'costs', with respect to a proceeding—

"(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

"(ii) includes—

"(I) administrative and clerical expenses;

"(II) the cost of legal services, including legal services performed by an employee of the contractor;

"(III) the cost of the services of accountants and consultants retained by the contractor; and

"(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

"(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages."

(c) TECHNICAL AMENDMENT.—Section 832(b) of the National Defense Authorization Act, Fiscal Year 1989 is repealed.

(d) REGULATIONS.—The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 (as added by

subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

(1) shall be prescribed not later than 120 days after the date of the enactment of this Act; and

(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect with respect to contracts awarded after the date of the enactment of this Act.

SEC. 3. QUI TAM ACTIONS.

(a) AWARDS OF DAMAGES.—Section 3730(d) of title 31, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice."

(b) TECHNICAL AMENDMENTS.—Section 3730 of title 28, United States Code, is amended—

(1) in subsection (c)(4) by inserting "the" after "Government proceeds with"; and

(2) in subsection (d)(4), as redesignated by subsection (a)(1) of this section, by striking out "actions" and inserting in lieu thereof "action".

The SPEAKER pro tempore. Is a second demanded?

Mr. McCOLLUM. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from Florida [Mr. McCOLLUM] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I rise in strong support of the Major Fraud Act, H.R. 3911 as amended by the Senate. H.R. 3911 passed unanimously at both the subcommittee and full committee levels in the House Judiciary Committee and on May 10, 1988 passed the House of Representatives by a vote of 419 to 0.

This bill grew out of hearings by the Subcommittee on Crime and a review

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of numerous other congressional, Department of Justice and Department of Defense investigations of procurement fraud over the last two decades. I will not here reiterate the litany of successive scandals in spare parts, overhead overcharges, malfunctioning equipment, product substitution, and similar fraudulent acts that have been exposed in this testimony. To say the least, it documents a story of greed, malfeasance and fraudulent schemes that bilk the American taxpayers of billions of dollars and at the same time diminish our citizen's confidence in the executive branch's ability to efficiently administer essential governmental functions.

It was our feeling in the House that these investigations were not merely history lessons, but were a collection of facts that describe an extremely malignant blight on our society which is a continuing problem. Unfortunately, recent revelations indicate that we have not underestimated the seriousness of the problem.

While all of the details are not yet available it appears that the current scandal within the defense industry may be the worst in the Pentagon's history. Among other things, that suggests to me that our current federal statutes are not providing a sufficient deterrent to discourage such practices and that there is not enough information readily available to law enforcement agencies in order for them to discover and prosecute these illegal acts.

H.R. 3911 is fashioned to meet these problems and to create new deterrents to criminal fraud. It creates a new Federal procurement fraud offense involving contracts of \$1 million or more and is patterned after the Bank Fraud Act. Under current conditions, the bill would cover some 9,900 prime contracts.

The core violation of the bill and its penalties before us today are virtually the same as passed by the House and I believe that the amendments added in the Senate dealing with attorney fees, bolstering U.S. attorney offices capabilities to prosecute procurement fraud and the *qui tam* provisions are a positive addition to the bill.

A violation of this bill still contains a maximum potential prison sentence of 10 years and a fine of \$1 million. The fines increase up to \$5 million if the gross loss or gain is \$500,000 or greater or the offense involves "a conscious or reckless risk of serious injury." This latter phrase is a substitute for the House language of "a foreseeable and substantial risk of personal injury." The bill now provides a maximum fine of \$10 million except for an alternative fine which is contained in existing law (18 U.S.C. 3571d).

This bill, like the House version provides an extension of the statute of limitations in which prosecutions could be initiated to 7 years, rather than the normal 5 years, to accommodate the extensive investigation often required in this type of fraud.

At this juncture I must point out a major flaw in the Senate passed bill as compared with the House bill. In the House bill and the bill reported out of the Senate Judiciary there was a provision establishing a new system of rewards under which up to \$250,000 could be paid from the criminal fine to individuals who provide information leading to a conviction. This provision was important because it would have dealt with a serious problem inherent in procurement fraud cases, that is, the lack of sufficient information to successfully prosecute these complex and often secretive transactions. I have been informed that this provision was excised due to complications arising from the end of the session realities that face the Senate each Congress and that the Senate will revisit the issue next year. With this reassurance, I reluctantly urge my colleagues to accept this deletion.

The bill does still provide, however, "whistleblower" protection for those who come forward with information to aid in prosecutions under this act.

There were three other significant additions to the bill in the Senate. The first involved a limitation on the recovery of "proceeding costs" generally relating to defense attorney fees that involved contractors violations of Federal and State laws under chapter 15 of title 18. An additional similar amendment was added on the Senate floor which amends the Federal Property and Administrative Services Act of 1949 and title 10 of the U.S. Code to limit the allowability of costs incurred by certain contractors in connection with criminal, civil and administrative proceedings involving attorney fees. This amendment was developed in cooperation with the Armed Services Committee in both Houses. The second, would authorize additional expenditures by the Department of Justice to fund additional assistant U.S. attorneys and support staff involved in prosecuting criminal and civil procurement fraud. I consider this an extremely important and positive addition to the bill. The third amendment would make a change in the *qui tam* provisions of the False Claims Act and would prohibit anyone who was a primary architect of a scheme involving a willful violation of the False Claims Act from participating in the minimum share requirements of proceeds of action under that act.

The Senate also added the text of private legislation on behalf of Mrs. Paulette Mendes-Silva (S. 1456).

I believe this bill will become a major tool to fight procurement fraud. We must remember that the crime problem and the need for law enforcement is not just a matter of violent street crime or drug trafficking. The prosecution of white-collar crime, which silently robs millions of dollars from all of us, must remain a high priority for the Federal Government.

I urge my colleagues to support H.R. 3911, the Major Fraud Act of 1988.

Mr. Speaker, I reserve the balance of my time.

Mr. McCOLLUM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the gentleman from New Jersey [Mr. HUGHES] is very accurate in describing this piece of legislation. The bottom line is fairly simple. It is as he just stated. The question is what we are going to do about creating a new law to put on the books that for the first time actually creates the crime of procurement fraud and allows us to do something about these major fraud instances without having to use some other method that may be on the books by index, such as the mail fraud statute.

Mr. Speaker, it does it in a way that makes the message very clear. We are tough about this, we are about this, and we are not going to sit on our hands. We are giving law enforcement the tools to deal with it.

Mr. Speaker, everybody wants the contracting industry that is working with our defense to be able to produce fine products. It is important, and no one wants to shackle them with unnecessary burdens or restrictions, but, when it comes to the area of procurement where we had so many problems over the years, and recently the public has become aware of some of the scandals dealing with them, it seems to me, and I think most of my colleagues, that this is indeed an appropriate message to send, and it is an appropriate tool to add to the arsenal that the United States attorneys have in fighting procurement fraud.

Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana [Mr. COATS].

Mr. COATS. Mr. Speaker, I thank the gentleman from Florida [Mr. McCOLLUM] for yielding this time to me, and I congratulate both the chairman and the ranking member for bringing forward I think important and needed legislation.

Procurement fraud has been a major problem, and it needs to be addressed in the reforms that have been offered here, and many of them have been very worthwhile. I think, however, that as we look at the whole question of procurement reform we ought to remember a couple of things.

No. 1, there are defense manufacturers and defense contractors that have not been involved in the procurement fraud, and many defense contractors face mountains and mountains of regulations affecting procurement that adds to the cost of the weapons that they supply to our military. And so in our zeal to get at needed reforms and get at the fraud that occurs I would hope that we do not overstep our bounds and impose regulations on defense contractors that bring about nothing but inefficiency, ineffectiveness and a higher cost for the weapons they produce.

Second, as long as we are looking at reform, I think we ought to consider that reforms ought to be made here in Congress. We impose a great deal of cost ineffectiveness on defense manufacturers in purchase of equipment that is not needed, that is not requested by the Department of Defense. We require bases to remain open that ought to be closed. We required weapons systems to be purchased that are not needed or requested.

So, when we are looking at reform, let us not just look at the reform necessary within the defense manufacturing industry. Let us look at the reform that is necessary on the floor of this House of Representatives in terms of the impositions that we add to the cost of weaponry. If we are truly interested in reform, we ought to start here as well as working in the area of reform.

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. COATS. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, I think the gentleman from Indiana [Mr. COATS] has made a very important point. I could not believe some of the specifications that are promulgated, the regulations that these agencies have to deal with, but my colleagues know in this bill we are not dealing with that. We are not creating any new regulations.

Mr. Speaker, we are basically saying to those people that manufacture parachute cord that is 15 years old or nozzles for destroyers or frigates that are defective that, "If you do so, if you substitute inferior products, you're going to go to jail, and there's a minimum provision in here, and you're going to go to jail for a minimum period of time if you do that."

So, Mr. Speaker, that is what we are doing. We are creating new criminal penalties, and we are providing new tools for the prosecutors. We are extending the statute of limitations, and we are providing new tools for them to prosecute those that defraud the Government of billions of dollars. That is what we are doing.

What the gentleman is talking about is right on target, but that is going to be another day for us to deal with that. That is another serious problem. That is not what this is dealing with.

Mr. COATS. Mr. Speaker, I understand that, and I thank the gentleman from New Jersey [Mr. HUGHES] for making that point. What is being done here today is providing prosecutors with necessary tools to prosecute in areas where fraud has taken place and giving enforcement officials those necessary tools, and it is a necessary measure.

I wanted to make the broader point that there is additional, that we cannot just wipe our hands now and say we are done with the question of procurement reform or we are done with the problem of holding down costs of our defense products, that

there are additional reforms that need to be made in addition to what we are doing here today.

Mr. Speaker, I intend to support this legislation, and I commend the gentleman for offering it, but I wanted to make that additional point.

Mr. Speaker, I thank the gentleman for yielding.

Mr. McCOLLUM. Mr. Speaker, I reserve the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I wish to direct my remarks only to that section of the Major Frauds Act of 1988 that amends the False Claims Act. In the 99th Congress we passed legislation which I coauthored with the gentleman from Kansas to amend the False Claims Act to update the ability of the U.S. Government and private qui tam plaintiffs to combat fraud by Government contractors.

Some concerns have been raised that the 1986 amendments could conceivably result in a person who is primarily responsible for conceiving and perpetuating this fraud actually sharing in any recovery to the U.S. Treasury. The amendment we are voting on today will allay any criticism that the False Claim Act will encourage principal wrongdoers to file false claims actions solely motivated by the desire to profit from their own previous wrongdoing.

As we prepare to vote on this amendment, I want to make it clear that we intend for this amendment to apply retroactively to any conduct that may have occurred prior to its enactment, just as we intended all of the 1986 amendments to the False Claims Act to apply retroactively to conduct that predated those amendments. Such a statement by Congress should be unnecessary because of the presumption we in Congress operate under, a presumption articulated by the United States Supreme Court in *Bradley versus the School Board of the City of Richmond*. In the *Bradley* case the Supreme Court held that statutes are presumed to apply retroactively unless such an application would create a injustice or congressional intent was clearly to the contrary.

I have brought up this matter of retroactivity, Mr. Speaker, because some Federal courts are being asked by Government contractors which have been sued under the False Claims Act to rule that the 1986 amendments do not apply to conduct that occurred prior to the amendments' enactment. While most courts have properly rejected this argument, some courts have erroneously construed our silence on the issue of retroactivity to support an argument in favor of prospective application. Such a result would seriously frustrate Congress' intent to revitalize the act.

Now that Congress is once again about to vote on an amendment to the False Claims Act, and because there

will be no committee or conference reports on this amendment, it is important that we make it clear that our vote today is cast with the knowledge and intent that if this amendment is adopted, it is to apply retroactively to the fullest extent possible, and that the 1986 amendments also apply retroactively to conduct that occurred prior to the enactment of the 1986 amendments.

An additional provision in the bill as it comes back from the Senate was adopted with only one dissenting vote, and it confers jurisdiction on the district court in the matter of Paulette Mendisova, a woman who has been confined to a wheelchair for more than 26 years now as a result, she asserts, of actions taken by Federal agencies who treated her medically. This measure passed the House and the Senate unanimously in the 99th Congress. It passed the subcommittee and full committee of the Committee on the Judiciary this year. It provides no funds, but simply gives the district court jurisdiction to hear the merits of this assertion.

Mr. Speaker, I thank the gentleman from New Jersey [Mr. HUGHES] for yielding me this time.

Mr. McCOLLUM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman has explained the matter very accurately. I have no problem with it, and I have no problem with this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is a good bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3911.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.