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 sunup 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 arm in the market 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 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 Cof, foreword 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. CHARTER 417 AMENDMENT.

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

“§1351. Major fraud against the United States.

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

“(A) to defraud the United States; or

“(B) 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.

“(2) 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 or imprisonment does not exceed 20 years, if the gross loss to the Government or the gross gain to a defendant is $500,000 or more.

“(2) Nothing in this subsection shall preclude a court from imposing a fine in an amount not to exceed the maximum otherwise provided by law, if the court finds that the offense involves a conscious or reckless risk of serious personal injury resulting from the fraud or that the fraud has occurred.

“(3) If the court finds that the offense involves a conscious or reckless risk of serious personal injury resulting from the fraud, the court may impose a fine in an amount not to exceed the maximum otherwise provided by law, if the court finds that the offense involves a conscious or reckless risk of serious personal injury,

“(4) The court shall assess the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the facts and circumstances of the offense and the guideline 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 or victims;

“(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 in investigations for, initiation of, testimony for, or assistance in such prosecution),

“(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, 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 designating 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 otherwise have been assigned had a 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:

“$1351. Major fraud against the United States.”

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

(a) In General.—Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new section:

“§292. 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 an adverse judgment.

“(b) Any 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;

“(c) The assessment of a monetary penalty by reason of a civil or administrative finding of such violation or failure to comply;

“(d) Any judgment obtained in a civil or administrative proceeding involving 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 offense.

“October 20, 1988

CONGRESSIONAL RECORD — HOUSE

H 10637
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, the 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 to exceed the rate specified in the Equal Access to Justice Act (28 U.S.C. 2412(d)(2)(A)). Such rates are established by the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

(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' includes an 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.

Sec. 7. RELIEF OF PAULETTE MENDEZ-SILVA.

(a) notwithstanding section 2875 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 Mendez-Silva against the United States for personal injuries she allegedly incurred after an inoculation on March 12, 1983, by an employee of the Public Health Service of the United States Department of Health, Education, and Welfare. Any such claim of Paulette Mendez-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. LIMITATION 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:

"SEC. 306. (a) Except as otherwise provided in this section, 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) 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 other- than-reimbursable and under the single Government-wide procurement regulation issued pursuant to section 44(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 42(4)(A)).

(3) Regulations issued for the purpose of paragraph (2)(A) shall provide for appropriate consideration of the complexity of the 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.

(4) In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this section are not allowable under subsection (a).

(b) In the case of a civil 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).

(2) 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).

(3) A final decision by an appropriate officer of an executive agency with respect to—

(A) to deprive 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).

(4) 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).

Sec. 9. AUTHORIZATION OF APPROPRIATIONS.

Comencing with the first year after the date of enactment of this section, the Attorney General shall annually report to the Congress with respect to such purposes and components of the Department of Justice as the Attorney General deems necessary. The Congress shall appropriate such sums as may be necessary to carry out the purposes of this section, the Attorney General shall annually report to the Congress with respect to such purposes and components of the Department of Justice such case was referred;

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

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

the number of investigative and support staff assigned pursuant to this Act;

the number of investigative agents assigned to each investigation and the period such investigation has been opened;

the number of convictions and acquittal achieved by individuals assigned to positions established under this Act; and

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

Sec. 10. REPORTS AND STATISTICS.

(a) ESTABLISHMENT OF POSITIONS.—Subject to the provisions of this Act, the Attorney General shall annually report to the Congress with respect to such purposes and components of the Department of Justice such case was referred;

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

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

the number of investigative and support staff assigned pursuant to this Act;

the number of investigative agents assigned to each investigation and the period such investigation has been opened;

the number of convictions and acquittal achieved by individuals assigned to positions established under this Act; and

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

Sec. 11. LIMITATION ON ALLOWABILITY OF COSTS INCURRED BY FEDERAL GOVERNMENT CONTRACTORS IN CERTAIN PROCEEDINGS.

(a) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 15 of title 18, United States Code, at (5) is amended by inserting after paragraph (1) the following new paragraph (2):

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

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

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

the number of investigative and support staff assigned pursuant to this Act;

the number of investigative agents assigned to each investigation and the period such investigation has been opened;

the number of convictions and acquittal achieved by individuals assigned to positions established under this Act; and

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

Sec. 12. RELIEF OF PAULETTE MENDEZ-SILVA.

(a) notwithstanding section 2875 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 Mendez-Silva against the United States for personal injuries she allegedly incurred after an inoculation on March 12, 1983, by an employee of the Public Health Service of the United States Department of Health, Education, and Welfare. Any such claim of Paulette Mendez-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. 13. APPLICABILITY.—The amendments made by this section shall apply to contracts entered into after the date of the enactment of this Act.
"(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 costs 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 connection with a violation of, or failure to comply with, a provision of title 28, United States Code, is amended—

(b) AMENDMENTS TO TITLE 10.—Section 3234 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);"

(2) 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) Costs incurred by contractors in connection with such proceeding."

(2) In subsection (k):

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

(B) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under the covered contract if such costs are not allowable under paragraph (1), but only to the extent provided in subparagraph (b)(2); and

"(2) in subsection (k), as redesignated by subsection (a)(1) of this section, by striking out "and inserting in lieu thereof ":

"(b) Disposition referred to in paragraph (1)(B) is any of the following:

"(1) the cost of legal services, including legal services performed by an employee of the contractor in connection with such proceeding.

"(2) In subsection (k):

(A) 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 costs 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) 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).

"(3) 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).

"(4) 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).

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

SEC. 8. QUIET 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 3731(2) upon which the action was brought, then the court may, to the extent that the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraphs (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant factor in light of the specific relationship of the violator 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 3731(2), the 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 civil action, if the United States is represented by the Department of Justice.

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

(1) in subsection (d) 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, the 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 by both the subcommittees 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
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 damage the public'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 scam involving 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. The investigations conducted to date have failed 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. H.R. 3911 is fashioned to meet these problems and to create new deterrents to procurement fraud.

The core violation of the bill and its penalties before us today are virtually the same as before in the House. 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 harm to an individual's personal injury." This provision is patterned after the Bank Fraud Act. H.R. 3911 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 is 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 investigative attention 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 the bill reported out of the Senate had 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 effectively prosecute contractors' more complex and often secretive transactions. I have been informed that this provision was excused 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, moreover, provides, 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 Senate's bill. The first involved a limitation on the recovery of "proceeding costs" generally relating to defense attorney fees that involved contractors violations of 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 expenses by the Department of Justice to fund additional assistant U.S. attorneys 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). The bill, like the House version, adds whistleblower protection to the Senate version and is patterned after the Bank Fraud Act. It amends 18 U.S.C. 3571d to extend the period of time in which an award may be made to 10 years and a fine of $1 million. The Senate added provisions to the major provision of the bill, the major provision of the major act, the major act of the major act of the major act (18 U.S.C. 3571d).

The bill, like the House version, provides for a new major act of the major act of the major act (18 U.S.C. 3571d) to extend the statute of limitations in which prosecutions could be initiated to 7 years, rather than the normal 5 years, to accommodate the investigative attention often required in this type of fraud.

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. Hoeffler) is fairly accurate in describing this piece of legislation. The bottom line is fairly simple. It is as he just stated. The question is what do we 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 on 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 working as efficiently and as effectively as possible to produce the armaments we need to defend our defense to be able to produce fine products. It is important, and no one wants to shackel them with unnecessary burdens or restrictions, but, when it comes to the area of procurement fraud, one wants to make sure that the military get the weapons, that the contractors get the contracts, and that the Government gets the products.

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. I wish to 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, I hope that the bill that we are about to adopt that we 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 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. Mr. Speaker, 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 the 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 investigators, and 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, 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. Houser] 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. BERNSTEIN. 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 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 maintaining federal courts are being asked by Government contractors to 가지 jurisdiction to hear the merits of false claims actions.