The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? There was no objection.

MAJOR FRAUD ACT OF 1988

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

The Clerk read as follows:

H.R. 3911

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. 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—

"(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 for the Government, if the value of the contract for such property or services is $1,000,000 or more, shall be fined under this title or imprisoned not more than 10 years, or both.

"(b) (1) If the offense involves a foreseeable and substantial risk of personal injury, the term of imprisonment imposed under subsection (a) of this section shall not be less than 2 years. The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed $10,000,000 and—

"(i) the amount of the fraud is substantial in relation to the value of such contract and the sums involved to the Government or the gross grain to a defendant is $250,000 or greater; or

"(ii) the offense involves a foreseeable and substantial risk of personal injury.

"(2) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed.

"(b) Any Individual who is discharged, demoted, suspended, threatened, harassed, or in any other way 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 a prosecution), in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status that the individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and any other compensation or damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.

(b) 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."

The SPEAKER pro tempore. Is a second demanded?

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

The SPEAKER pro tempore. The second is ordered to the desk.

There was no objection.

The SPEAKER pro tempore. The second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The third will be considered as ordered.

There was no objection.

The Chair recognizes the gentleman from New Jersey.

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 support of the Major Fraud Act of 1988, H.R. 3911, which was reported favorably to the House of Representatives by the Committee on the Judiciary by voice vote on May 3, 1988. This major criminal procurement fraud bill will implement a recommendation taken in the 96th Congress on the civil side when we passed the False Claims Amendment Act of 1986 and the Program Fraud Civil Remedies Act.

The motivating force behind this new criminal fraud bill is that the development and enforcement of what is called white collar crime statutes is not only demanded in the interest of justice in this area, but can often result in substantial cost savings in the form or reduced losses in fraud to the Government.

A striking example of this phenomenon occurred in the late seventies and early eighties when the Department of Justice participated in wide-ranging prosecutions of bid rigging by highway contractors throughout the United States. As a result of this concentrated effort there were prosecutions in over 15 States which produced convictions of over 180 companies and 200 executives. Numerous jail sentences and fines totaling $41 million resulted from the enforcement rate of over 90 percent. In Early 1983 the Wall Street Journal, in a followup story, reported that the cost of constructing highways in the National area had fallen significantly, in some cases by as much as 25 to 30 percent below the engineering estimates. This was attributed, in part, to this massive law enforcement effort which had disrupted an illegal way of life in the highway construction business. This experience added credence to the thesis that the deterrent power of the law when enforced can be very strong, especially in the area of white collar crime.

H.R. 3911 is just such a bill. It is based upon 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 so forth that have been exposed in this testimony. But, the documents a story of greed, malfeasance and other fraudulent schemes that bilk the American taxpayers of billions of dollars and at the same time diminish our citizen's confidence in the efficient administration of essential government functions.

These investigations are not merely a history lesson, but are a collection of facts that describe a relatively small, but extremely malignant blight on our society which is continuing. For instance, the GAO just released a report in January 1988 in which it estimated a loss due to procurement fraud of $387 million in 148 open procurement cases reported to the Secretary of Defense from April 1, 1985, through March 31, 1988. The report also noted that in fiscal year 1986 there were some 1,819 new fraud investigations as compared to 1,555 in fiscal year 1985, when there were 870 such investigations.

This GAO study, by the way, included only 32 product substitution cases which are a priority for DOD. In the substitute product cases where contractors deliberately provide inferior products on DOD contracts which can directly cost Americans their lives, investigations have increased to the point where they have been 85 indictments since January 1986. As of October 1987 the Defense Criminal Investigative Service (DCIS) was actively involved in another 231.

H.R. 3911, as amended, is fashioned to provide a new criminal fraud offense that proscribes and to create a new deterrent 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, 18 U.S.C. 1344. This, I am told, would cover some 9,900 prime contracts under current conditions.

The maximum prison sentence that can be imposed is 10 years. This is consistent with the maximum in comparable legislation. The bill adds a clause providing for a mandatory minimum sentence of 2 years if the offense involves a "foreseeable and substantial..."
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risk of personal injury". This is to cover those egregious situations, usually in product substitution cases, where a contractor provides such items as defective parachute cords, faulty jet or deicing valves or defective boilers for fire fighting equipment on ships. These provisions should act as an additional deterrent to individuals.

The bill then proposes an alternate fine that could be imposed upon conviction of up to $10,000,000 which should be a new deterrent to corporate fraud. The bill also would provide 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.

In addition the bill establishes a new system of rewards under which up to $250,000 can be paid from the criminal fine to individuals who provide information leading to a conviction as well as private "whistleblowers" protection for those informants based upon provisions of the False Claims Act Amendments of 1986, 81 U.S.C. 3730H.

The bill does set limitations on who can receive these rewards, above and beyond the fact that the DOJ must recommend and the court must approve such a reward. Those ineligible are: First, Government employees performing their official duties; second, workers who could have come forward with information to an employer at the formative stage of an offense and could have prevented it or stopped it; and third, individuals who participated in the offense.

I believe the Major Fraud Act of 1988 will become not only a major deterrent to procurement fraud but an incentive for responsible individuals to come forward with information in the prosecution of major fraud when it occurs.

This bill will protect the taxpayers, the honest businessman and our procurement process. I urge my colleagues to support this important legislation.

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

Mr. Speaker, the problems of the Government contract have been around for a long time, and I suppose that any numbers of Congresses have tried to tackle it with various forms of deterrent legislation. But this is a particularly onerous time for us as we look at some of the examples the gentleman from New Jersey [Mr. Hughes] raised a couple minutes ago about how many of these frauds are going on today. I believe in this area where there is product substitute and the lives of individuals are placed in such great danger, especially the lives of our servicemen, who many times are on the wrong end of whatever it may be, our servicemen, who many times are in great danger, especially the lives of the contractor, the worker, the vendor.

We also have in this bill a 10-year maximum prison sentence or a 3-year mandatory sentence for frauds involving the foreseeable and substantial risk of personal injury. It is long overdue that we have a minimum mandatory sentence that really puts some teeth into the law. It is where some is substituting a product and he can foresee that that substitute product is likely to result in injury to somebody because that product is simply not suitable for the purpose for which it was intended.

In addition to that, as the chairman of the subcommittee has mentioned, the reward provisions of this I think will go a long way to deterring as well. There is a $250,000 provision for an individual who provides information leading to a conviction under this bill, however, there is an escape clause if that individual does not provide the same information beforehand to his company because we are concerned about the self-governing clauses that private industry has today in efforts to clean up Government fraud, and we do not want to do anything to upset those provisions. So, if somebody does not report whatever he observes and just goes greedily after the reward of this, he is not going to be eligible for the reward.

Mr. Speaker, I compliment the gentleman from New Jersey [Mr. Hughes] for this legislation, for the hard work that he has put in on it and for the staff members who have worked on the bill. It is a good product.

I reserve the balance of my time.
The prosecution of white collar crime, which silently robs millions of dollars from all of us, must remain a high priority for Federal law enforcement. I believe the Major Fraud Act of 1988 will assist and encourage Federal law enforcement in the Nation's procurement business.  

I urge my colleagues to support this needed legislation.

Mr. HUGHES. Mr. Speaker, I have no further requests for time.

Mr. McCOLLUM. Mr. Speaker, I have no further requests for 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 pass the bill, H.R. 3911, as amended.

The question was taken.

Mr. HUGHES. Mr. Speaker, on that I suspend the rules and pass the bill.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on H.R. 3911, as amended, the bill just under consideration.

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

There was no objection.

TERRORIST FIREARMS DETECTION ACT OF 1988

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4445) to amend title 18, United States Code, to prohibit certain firearms especially useful to terrorists, as amended.

The Clerk read as follows:

H.R. 4445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  

SECTION 1. SHORT TITLE

This Act may be cited as the “Terrorist Firearms Detection Act of 1988.”

SEC. 2. PROHIBITION: DETERMINATION OF TERRORIST FIREARMS

Section 922 of title 18, United States Code, is amended by adding at the end the following:

“(p) Except as otherwise provided in this chapter, it shall be unlawful for any person to manufacture, import, sell, transfer, or possess any plastic firearm.

“(q) As used in this subsection—

“(A) the term ‘plastic firearm’ means any firearm described in section 921(a)(13)(A) of this title—

“(i) containing less than 3.7 ounces of electromagnetically detectable metal; or

“(ii) of which any major component, when subjected to inspection by x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component; and

“(B) the term ‘major component’ means—

“(i) the slide or cylinder; and

“(ii) the frame or receiver.

“(c) 3. PENALTY.

“(1) Section 924 of title 18, United States Code, is amended—

“(A) by striking out “or” and inserting “or (c)” in lieu thereof; and

“(B) by adding at the end the following:

“(c) Any person who violates section 922(p) of this title, shall be fined not more than five thousand dollars, or imprisoned for not more than ten years, or both.”

SEC. 3. EXEMPTION FOR CERTAIN EXISTING FIREARMS

Section 925 of title 18, United States Code, is amended by adding at the end the following:

“(f) The prohibition of section 922(p) does not apply with respect to any firearm possessed in the United States before the date of the enactment of the Terrorist Firearms Detection Act of 1988.”

SEC. 4. REPORT

The Secretary of the Treasury shall, after consultation with other appropriate Federal agencies, report every two years to the Congress regarding the state of the art of firearm manufacture and firearm detection technology.

SEC. 5. EFFECTIVE DATE AND SUNSET PROVISION.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect the date of the enactment of this Act.

(b) SUNSET PROVISION.—Effective five years after such date—

“(1) subsection (p) of section 922 of title 18, United States Code, is repealed;

“(2) subsection (f) of section 924 of title 18, United States Code, is amended by striking out “or (c)” in lieu thereof; and

“(3) subsection (f) of section 925 of title 18, United States Code, is repealed.

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.

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

Mr. HUGHES. Mr. Speaker, the Committee on the Judiciary reports favorably by unanimous vote the bill H.R. 4445, the Terrorist Firearms Detection Act.

Mr. Speaker, one of the menaces of the modern age is the threat of terrorism that shadows us in our daily lives. Air passengers traveling around the country and around the world are always under some threat of a possible terrorist hijacking. Whether we have substantially eliminated that threat through our civil air security programs.

Similarly, those of us in public service are acutely aware of the terrorist threat to our national institutions and to our governmental offices. Those of us who work in and with law enforcement are very aware of the need for security in courthouses and prisons. Thus we have installed sophisticated equipment to detect weapons at the entrances of such facilities. However, we must always be alert to new circumstances that can be exploited by terrorists and criminals.

The benefits of technology are shared by all of us, law-abiding and criminal alike. Thus, we must act to protect against the innovations that have the potential to be misused by criminals and terrorists.

The Crime Subcommittee has taken extensive testimony, Mr. Speaker, and there are performance advantages from constructing firearms out of plastics. Firearms components are now being manufactured from plastics and polymers, and in the near future the technology will permit the manufacture of a virtually all-plastic handgun.

The danger is that currently a plastic firearm will not alert a metal detector nor be visible in an x-ray examination of carry-on luggage. It has been reliably predicted that the development of an undetectable plastic firearm is just around the corner.

To address this threat, the Subcommittee on Crime held four hearings to learn more about firearms which can potentially escape detection at security checkpoints. We have determined that plastic firearms, unless they can be detected, are an unacceptable threat to the safety of airline passengers and to the security of facilities such as the White House, Federal, and State office buildings, prisons, and courthouses, to mention just a few.

We have found sophisticated magnetometers are not being programmed to discriminate between weapons containing surprisingly small amounts of metal and innocuous objects, and pick up the weapons. Thus, we have reported this back to Washington. In the United States we have substantially eliminated that threat through our civil air security programs.

At the 3.7 ounce level, we are not banning any metal handguns that are currently on the market; nor are we creating any ambiguity about whether a particular firearm is legal or not.