

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. 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—

"(1) to defraud the United States; or

"(2) to obtain money or property from the United States 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) 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—

"(1) the amount of the fraud is substantial in relation to the value of such contract and the gross loss to the Government or the gross gain to a defendant is \$250,000 or greater; or

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

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

"(d)(1) Upon application by the Attorney General, the court may order a payment from a criminal fine under this section to an individual who furnished information leading to the conviction under this section. The amount of such payment shall not exceed \$250,000.

"(2) An individual is not eligible for such a payment if—

"(A) that individual is an officer or employee of a government who furnishes information or renders service in the performance of official duties;

"(B) that individual failed to furnish the information in a timely manner to the individual's employer, unless the court determines the individual had justifiable reasons for that failure; or

"(C) that individual participated in the violation of this section with respect to which such payment would be made.

"(e) Any individual who 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 a 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 attorneys' 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. 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 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 is a needed complement to action taken in the 99th 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 antifraud 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 of 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 indictments of over 180 companies and 200 executives. Numerous jail sentences and fines totaling \$41 million resulted from this effort with a conviction 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 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 theory 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, to say the least, it 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 executive branch's ability to efficiently administer essential governmental 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 but 148 open procurement cases reported to the Secretary of Defense from April 1, 1985, through March 31, 1986. The report also noted that in fiscal year 1986 there were some 1,919 new fraud investigations as compared with fiscal year 1983 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 product substitution area alone, cases where contractors deliberately provide inferior products on DOD contracts which can directly cost Americans their lives, investigations have increased to the point where there 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 meet many of these problems 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 could 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

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 ejection seat valves or defective nozzles 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 these informants based upon provisions included in the False Claims Act Amendments of 1986, 31 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.

□ 1545

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 especially in the 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 that has been substituted as a

result of this product fraud in the Government area.

It is also a very bad time for us when we consider the losses in dollars and cents, dollars and cents that we could use in the Federal Treasury both from the standpoint of balancing a deficit or for perhaps working for some project such as fighting the war on drugs that we really need the moneys for, but instead somebody rips us off.

So, this legislation that is here today on major fraud contracts is an effort to provide an additional deterrent, a really substantial deterrent, to make some people think twice whenever they are setting about methods that might result and would result in fraud on the Government in the contract area.

Mr. Speaker, it is a bipartisan bill. It had the unanimous cosponsorship of every member of the Subcommittee on Crime. I would like to go over for a minute the various aspects of this bill just to talk about what it consists of and explain it a little more.

Mr. Speaker, we are talking now about procurement contracts of \$1 million or more, very visible contracts, not the really tiny contracts with the Government. In addition to the fines that are already in existence, under two conditions that have to exist, one of two, there would be a new additional optional fine of up to \$10 million imposed for a single act of fraud. The conditions involve one of two things. The first would be that the amount of the fraud has to exceed \$250,000, or it must be substantial in relation to the value of the contract. The other condition is that the fraud, if it were not \$250,000 or substantial in relationship to the value of the contract, it must involve a foreseeable and substantial risk of permanent injury.

Mr. Speaker, both of these conditions on the \$10 million new fine were placed in the bill as a result of amendments that I offered in committee and subcommittee designed to protect the small businessman to make sure that what we are dealing within this bill is what we intended to deal with, and that is truly major fraud in the contract arena. The objective here is not to bankrupt small companies, but the objective here is to deter major fraud and to stop a lot of this stuff going on from going on.

I think that is what we have in this product, and I am very proud of what has come out in the end.

We also have in this bill a 10-year maximum prison sentence or a 2-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 in the area where somebody 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 furnishes 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.

Mr. RODINO. Mr. Speaker, I rise in support of H.R. 3911, the Major Fraud Act of 1988. This bill was crafted in the Judiciary Committee with bipartisan support and is a needed complement to the Congress' action in the 99th Congress when we passed the False Claims Amendment Act of 1986 and the Program Fraud Civil Remedies Act.

This bill was developed in order to address fraudulent activity by the private sector and inefficiency and acquiescence by the Federal Government in the area of procurement fraud that is documented in numerous congressional, Department of Justice, and Department of Defense investigations over the last 15 years.

H.R. 3911 creates a new Federal procurement fraud offense involving contracts of \$1 million or more and is patterned after the existing bank fraud statute.

The maximum prison sentence that could be imposed is 10 years. This is consistent with the maximum in the act prohibiting conspiracy to defraud the Government with respect to a claim. The bill further provides for a mandatory minimum sentence of 2 years if the offense involves a "foreseeable and substantial risk of personal injury." These two provisions should act as an additional deterrent to individuals.

The bill also proposes an alternate fine of up to \$10 million which would be used in aggravated situations and should be a new deterrent to fraud for large corporations. The bill would provide an extension of the statute of limitations to 7 years in which prosecutions must be initiated, rather than the current 5 years. This will enable the Department of Justice more time to thoroughly investigate these complicated cases.

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, and provides protection for these whistleblowers in a manner similar to protections included in the False Claims Act Amendments of 1986.

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 demand the yeas and nays.

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

"(2) As used in this subsection—

"(A) the term 'plastic firearm' means any firearm described in section 921(a)(3)(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 barrel;

"(ii) the slide or cylinder; or

"(iii) the frame or receiver.

"(3) It suffices, for the purposes of the requirements of paragraph (2)(A)(ii), that the required image results from the infusion into the component of barium sulfate or other compound.

"(4) This subsection does not apply to any conduct by or under the authority of the United States or any department or agency thereof, of a State, or a department, agency or political subdivision thereof."

SEC. 3. PENALTY.

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

(1) in subsection (a), by striking out "or (c)" and inserting ", (c), or (f)" in lieu thereof; and

(2) by adding at the end the following:

"(f) In the case of a person who knowingly violates section 922(p) of this title, such person shall be fined under this title, or imprisoned not more than five years, or both."

SEC. 4. 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. 5. 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. 6. EFFECTIVE DATE AND SUNSET PROVISION.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of the enactment of this Act.

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

(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 repealed;

(3) section 924(a) of title 18, United States Code, is amended by striking out ", (c), or (f)" and inserting "or (c)" in lieu thereof; and

(4) 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 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, 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 air hijacking. In the United States 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.

□ 1555

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 has 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 now being programmed to discriminate between weapons containing surprisingly small amounts of metal and innocuous objects, and pick up the weapons. Thus, we have reported a bill that bans firearms containing less than 3.7 ounces—a very small amount—of electromagnetically detectable metal because such firearms are not detectable at strict levels of security.

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.