

Oxley	Schulze	Stump
Parris	Sensenbrenner	Sweeney
Pease	Shumway	Swindall
Petri	Siljander	Synar
Porter	Skeen	Tallon
Pursell	Slattery	Tauke
Quillen	Slaughter	Tauzin
Ray	Smith (NE)	Thomas (CA)
Reid	Smith, Denny	Vucanovich
Ridge	(OR)	Walker
Roberts	Smith, Robert	Watkins
Roth	(NH)	Waxman
Rowland (CT)	Smith, Robert	Weber
Rudd	(OR)	Williams
Schaefer	Solomon	Wirth
Schneider	Stallings	Wylie
Schroeder	Stenholm	Yatron
Schuetz	Strang	Zschau

NOT VOTING—21

Barnard	Foley	Moore
Boland	Fowler	Ritter
Breaux	Grotberg	Rodino
Burton (CA)	Hansen	Roemer
Campbell	Jones (OK)	Stokes
Dannemeyer	Kennelly	Sundquist
Dingell	Kindness	Weiss

□ 1600

The Clerk announced the following pair:

On this vote:

Mr. Stokes and Mr. Barnard for, with Mr. Jones of Oklahoma against.

Messrs. **GEKAS, BROOMFIELD, WEBER, DASCHLE, SCHAEFER, PARRIS, DEWINE, PURSELL, PEASE, RAY, PACKARD,** and **KASICH, Mrs. BYRON, Mr. KLECZKA, Mrs. HOLT,** and Messrs. **MORRISON** of Washington, **ROWLAND** of Connecticut, **McHUGH, BATES, JACOBS,** and **HERTEL** of Michigan changed their votes from "yea" to "nay."

Messrs. **MOLINARI, STANGELAND, RAHALL, GOODLING, PACKARD, McHUGH, GILMAN, LATTA, REGULA,** and **WILSON** changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

□ 1610

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The **SPEAKER** pro tempore (Mr. **KILDEE**). Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the second motion to suspend the rules on which the Chair has postponed further proceedings.

AUTHORIZING CONSTRUCTION OF SALINITY RESEARCH LABORATORY AT RIVERSIDE, CA

The **SPEAKER** pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5215.

The Clerk read the title of the bill.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. **DE LA GARZA**] that the House suspend the

rules and pass the bill, H.R. 5215, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 326, nays 85, not voting 21, as follows:

[Roll No. 436]

YEAS—326

Abercrombie	Fascell	Martinez
Ackerman	Fazio	Matsui
Akaka	Feighan	Mavroules
Alexander	Fiedler	Mazzoli
Anderson	Fish	McCandless
Andrews	Flippo	McCurdy
Annunzio	Florio	McDade
Anthony	Foglietta	McGrath
Applegate	Foley	McHugh
Aspin	Ford (MI)	McKernan
Atkins	Ford (TN)	McKinney
AuCoin	Frank	Mica
Badnam	Franklin	Michel
Barnes	Frost	Mikulski
Bateman	Fuqua	Miller (CA)
Bates	Gallo	Mineta
Bedell	Garcia	Mitchell
Beilenson	Gaydos	Moakley
Bennett	Gedensson	Mollinari
Bentley	Gephardt	Mollohan
Bereuter	Gibbons	Montgomery
Berman	Gilman	Moody
Bevill	Gingrich	Moorhead
Biaggi	Glickman	Morrison (CT)
Boehlert	Gonzalez	Morrison (WA)
Boggs	Goodling	Mrazek
Boner (TN)	Gordon	Murtha
Bonior (MI)	Gray (IL)	Myers
Bonker	Gray (PA)	Natcher
Borski	Green	Neal
Bosco	Guarini	Nelson
Boucher	Hall (OH)	Nichols
Boulter	Hall, Ralph	Niowak
Boxer	Hamilton	Oakar
Brooks	Hammerschmidt	Oberstar
Brown (CA)	Hatcher	Obey
Bruce	Hawkins	Olin
Bryant	Hayes	Ortiz
Bustamante	Hefner	Owens
Byron	Hertel	Oxley
Carper	Hillis	Packard
Carr	Horton	Panetta
Chandler	Howard	Parris
Chapman	Hoyer	Pashayan
Chappell	Huckaby	Pease
Chapple	Hughes	Penny
Clay	Hunter	Pepper
Clinger	Hutto	Perkins
Coelho	Ireland	Pickle
Coleman (TX)	Jacobs	Price
Collins	Jeffords	Pursell
Combest	Jenkins	Rangel
Conte	Johnson	Ray
Conyers	Jones (NC)	Regula
Cooper	Jones (TN)	Reid
Courter	Kanjorski	Richardson
Coyne	Kaptur	Ridge
Crockett	Kasich	Rinaldo
Daniel	Kastenmeyer	Roberts
Darden	Kemp	Roe
Daschle	Kildee	Rogers
Daub	Kolter	Rose
Davis	Kostmayer	Rostenkowski
de la Garza	Kramer	Roukema
Dellums	LaFalce	Rowland (CT)
Derrick	Lagomarsino	Rowland (GA)
Dicks	Lantos	Roybal
DioGuardi	Leath (TX)	Russo
Dixon	Lehman (CA)	Sabo
Donnelly	Lehman (FL)	Savage
Dorgan (ND)	Leland	Saxton
Dornan (CA)	Lent	Scheuer
Dowdy	Levin (MI)	Schneider
Downey	Levine (CA)	Schroeder
Dreier	Lewis (CA)	Schuetz
Duncan	Lipinski	Schumer
Durbin	Lloyd	Seiberling
Dwyer	Loeffler	Sharp
Dymally	Long	Shumway
Dyson	Lowery (CA)	Sikorski
Early	Lowry (WA)	Sisisky
Eckart (OH)	Lujan	Skeen
Edgar	Luken	Skelton
Edwards (CA)	Lundine	Slattery
Edwards (OK)	Lungren	Smith (FL)
Emerson	MacKay	Smith (IA)
English	Madigan	Smith (NE)
Erdreich	Manton	Smith (NJ)
Evans (IA)	Markey	Smith, Robert
Evans (IL)	Marlenee	(OR)
	Martin (NY)	

Snowe	Thomas (GA)
Snyder	Torres
Solarz	Torricelli
Spence	Towns
Spratt	Trafficant
St Germain	Traxler
Staggers	Udall
Stallings	Valentine
Stangeland	Vander Jagt
Stark	Vento
Stenholm	Visclosky
Stratton	Volkmer
Studds	Vucanovich
Swift	Waldon
Synar	Walgren
Tallon	Waxman
Tauzin	Weaver
Taylor	Weber
Thomas (CA)	Wheat

NAYS—85

Archer	Gunderson	Petri
Arney	Hartnett	Porter
Bartlett	Hendon	Quillen
Barton	Henry	Rahall
Billakis	Hiller	Robinson
Bliley	Holt	Roth
Broomfield	Hopkins	Rudd
Brown (CO)	Hubbard	Schaefer
Burton (IN)	Hyde	Schulze
Callahan	Kiecicka	Sensenbrenner
Carney	Kolbe	Shaw
Cheney	Latta	Shelby
Coats	Leach (IA)	Shuster
Cobey	Lewis (FL)	Siljander
Coble	Lightfoot	Slaughter
Coleman (MO)	Livingston	Smith, Denny
Coughlin	Lott	(OR)
Craig	Mack	Smith, Robert
Crane	Martin (IL)	(NH)
DeLay	McCain	Solomon
DeWine	McCollum	Strang
Dickinson	McEwen	Stump
Eckert (NY)	McMillan	Sweeney
Fawell	Meyers	Swindall
Fields	Miller (OH)	Tauke
Frenzel	Miller (WA)	Walker
Gekas	Monson	Watkins
Gradison	Murphy	Whitehurst
Gregg	Nielson	White

NOT VOTING—21

Barnard	Fowler	Moore
Boland	Grotberg	Ritter
Breaux	Hansen	Rodino
Burton (CA)	Jones (OK)	Roemer
Campbell	Kennelly	Stokes
Dannemeyer	Kindness	Sundquist
Dingell	McCloskey	Weiss

Mr. **STRANG** changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1620

FALSE CLAIMS AMENDMENTS ACT OF 1986

Mr. **GLICKMAN**. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes, with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments, as follows:

In lieu of the matter proposed to be inserted by the amendment of the House of Representatives to the text of the bill insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) **LIABILITY FOR CERTAIN ACTS.**—Any person who—"

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

"(b) **KNOWING AND KNOWINGLY DEFINED.**—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) **CLAIM DEFINED.**—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) **EXEMPTION FROM DISCLOSURE.**—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) **EXCLUSION.**—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954."

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) **RESPONSIBILITIES OF THE ATTORNEY GENERAL.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) **ACTIONS BY PRIVATE PERSONS.**—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) **RIGHTS OF THE PARTIES OF QUI TAM ACTIONS.**—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a

finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the actions was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purpose of this paragraph, 'senior executive branch official' means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administra-

tive civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply."

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee 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. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection."

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the

United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730."

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is ap-

propriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means au-

thorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) **PERSONS PRESENT.**—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) **WHERE TESTIMONY TAKEN.**—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) **TRANSCRIPT OF TESTIMONY.**—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

"(5) **CERTIFICATION AND DELIVERY TO CUSTODIAN.**—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) **FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.**—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

"(7) **CONDUCT OF ORAL TESTIMONY.**—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise

object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provision of part V of title 18.

"(B) **WITNESS FEES AND ALLOWANCES.**—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(I) **CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.**—

"(1) **DESIGNATION.**—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) **RESPONSIBILITY FOR MATERIALS; DISCLOSURE.**—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) **USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.**—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) **CONDITIONS FOR RETURN OF MATERIAL.**—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) **APPOINTMENT OF SUCCESSOR CUSTODIANS.**—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that

person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and

may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(1) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or ac-

cessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A)."

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction,

"3733. Civil investigative demands."

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall be subject to a fine in the amount provided in this title".

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment be considered as read and printed in the RECORD.

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

Mr. WALKER. Mr. Speaker, reserving the right to object, I am just trying to figure out what it is we are doing here. I could not hear which bill number it was that we were proceeding with.

Mr. Speaker, I yield to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, this bill is called the False Claims Amendments Act of 1986. This is a bill which has already passed the House. The False Claims Amendment Act of 1986 is supported by the administration, has passed the other body, and is now coming back here with the Senate amendment which we are going to consider under unanimous consent. It has got the agreement of the minority and there is no objection by the administration.

Mr. WALKER. Mr. Speaker, I thank the gentleman for his explanation, and I withdraw my reservation of objection.

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

Mr. COBLE. Mr. Speaker, reserving the right to object, will the gentleman from Kansas [Mr. GLICKMAN] explain the amendment?

Mr. GLICKMAN. Mr. Speaker, in 1863, during the Civil War, the False Claims Act became law. This act,

sometimes referred to as the "Abraham Lincoln Law," was enacted amid reports of widespread corruption and fraud in the sale of supplies and provisions to the union government during the Civil War. As originally enacted, the statute imposed civil and criminal liability for false claims against the Government.

Unfortunately, fraud against the U.S. Government did not end with the conclusion of the Civil War in 1865. However, the act has only been amended twice in 123 years: Amendments to the qui tam provisions were enacted in 1943, and in 1982, technical amendments were made during the re-codification of title 31, where the civil false claims provisions are set forth in the United States Code. With this brief background of the False Claims Act, it is easy to understand why the current law is quite outdated.

On September 9, 1986, the House considered and passed H.R. 4827. The bill, S. 1562, now at the desk, and which we are considering this afternoon, is a compromise between the Senate and House bills. Several provisions in the two bills were different and required that a compromise be reached. The two major differences were the damages provision and the role of the qui tam plaintiff.

Under the House bill, damages were not less than \$5,000 and not more than \$10,000, as well as double damages, consequential damages and costs. The bill now before the House contains the same penalty of between \$5,000 and \$10,000, but provides for treble damages and deletes consequential damages. The bill also contains a provision which allows the court to assess not less than double damages if the defendant comes to the Government and reports the violation, and cooperates fully with the Government in the investigation.

The role of the qui tam plaintiff has been narrowed somewhat over the original House passed bill. Under the bill now at the desk, the qui tam plaintiff remains a party to the suit, but the court has discretion to limit the role of the qui tam plaintiff in the litigation. Among the limitations that the court can impose on the participation of the qui tam plaintiff are the calling of witnesses, cross-examination of witnesses and discovery. In fact, the court can stay discovery by the qui tam plaintiff, if the Government shows that it will interfere with another case on the same facts. This limitation can be imposed whether or not the Government enters the case.

I would also like to make it clear that while the Government may enter the case and proceed in an administrative forum, the qui tam plaintiff has the same rights as in the civil action, all of which is within the discretion of the presiding officer. I would also point out that it is not intended that the Government proceed against any person except in one forum or the other.

S. 1562, the False Claims Amendments Act of 1986, is a very important piece of legislation. The False Claims Act is the primary vehicle by which the Government prosecutes civil fraud. In 1986, with a deficit in the range of \$200 billion, I think it is imminently important that we modernize this statute so that the Government has a workable law through which to prosecute fraud and recoup the losses suffered by the Government.

The bill S. 1562, now at the desk, is a reasonable compromise and necessary in order for this legislation to become law. I would like to thank all those Members who participated in working out this compromise and would specifically like to thank the gentleman from California [Mr. BERMAN].

I urge my colleagues to support the bill, S. 1562.

Mr. COBLE. Mr. Speaker, I withdraw my reservation of objection.

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

Mr. BERMAN. Mr. Speaker, reserving the right to object, under my reservation, I simply want to congratulate the gentleman from Kansas [Mr. GLICKMAN], the chairman of the subcommittee, for in a very brief period of time, in less than 9 months, taking an issue which had been laying around in Congress for several years and moving forward, negotiating with a variety of parties and putting together what I think will soon be seen as perhaps the most effective antifraud legislation we will have enacted in this session of Congress.

I also would like to point out that the final version of the bill, as amended, that is before us at this time preserves and strengthens the role of the person initiating the action even if the Government enters the case.

The law makes clear that this person, the qui tam plaintiff, will be a party to the action with all the rights and responsibilities that a party receives under the Federal Rules of Civil Procedure.

The court may impose some limitations on the party's full participation only if the Government meets its burden of establishing that the person's conduct has violated the following standards set forth in the act: Undue delay, repetitious, irrelevant, interference or harassment.

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

Mr. BERMAN. Mr. Speaker, I include the following legislative history for the RECORD.

LEGISLATIVE HISTORY 1. ROLE OF THE PARTY

The final version of the Bill preserves and strengthens the role of the person initiating the action even if the Government enters the case. The law makes clear that this person ("qui tam" plaintiff) will be a "party" to the action with all the rights and responsibilities that a party receives under

the Federal Rules of Civil Procedure. The Court may impose some limitations on the party's full participation only if the Government meets its burden of establishing that the person's conduct has violated the following standards set forth in the Act: undue delay, repetitious, irrelevant, interference or harassment. The term "interfere" with the government's ability to prosecute the case is intended to mean some specific action proposed by the qui tam plaintiff which will have the likely probability of significantly disrupting the government's prosecution of the case. Inconvenience or minor disruption will not meet this standard. Moreover, a certain amount of overlap and inefficiency is expected with the dual participation of both the government and the qui tam plaintiff on the same side, but it is an anticipated part of the trade-off to bring to bear an increased amount of legal resources on behalf of the government's interest.

The term "repetitious" refers to the situation where without good cause the qui tam plaintiff repeats what the government has already done. It is not intended to limit what the qui tam plaintiff may do because the government is planning on a similar litigation activity in the future.

"Undue delay" is most likely to be applied in the context of the trial itself rather than pre-trial activity. If the qui tam plaintiff, for example, proposes to call numerous witnesses whose testimony may have little probative value, the Court may limit such testimony. Also, the term "undue delay" requires a showing by the government that the significant delay that may be caused by the specific activity proposed by the qui tam plaintiff and objected to by the government will substantially outweigh any possible benefit that would be obtained for the plaintiff's case.

The law that we vote on today is intended to encourage a working partnership between both the Government and the qui tam plaintiff. The public will be well served by having more legal resources brought to bear against those who defraud the Government. The qui tam plaintiff's role should be curtailed only when counsel for the qui tam plaintiff either lacks the competence to participate or when the person conducts himself in such a way in the federal court proceedings that results in undercutting the Government's ability to prosecute the case.

Another reason for providing for this full party status is to keep pressure on the Government to pursue the case in a diligent fashion. Even the United States Government is not without financial limitations. It is not uncommon for Government attorneys to be overworked and underpaid given the demanding tasks and frequently overwhelming case loads they maintain. I do not say this to impugn the ability or character of Government attorneys, but only to reflect the harsh reality of today's funding limitations of Government activities in all areas which include the budgets of the government's prosecuting agencies. If the government can pass a law that will increase the resources available to confront fraud against the government without paying for it with taxpayers' money, we are all better off. This is precisely what this law is intended to do: deputize ready and able people who have knowledge of fraud against the government to play an active and constructive role through their counsel to bring to justice those contractors who overcharge the government.

Settlement of Lawsuits

While the law enables the Government to enter into a settlement with the defendant, it does require Court review of that settle-

ment to determine whether it is fair, adequate and reasonable under all the circumstances, the same test that courts now apply to the settlement of class action claims. The person initiating the action is given an opportunity to object to the settlement, including the development and presentation of evidence at a hearing, before the court makes its final determination as to fairness.

2. WHO MAY BRING SUCH AN ACTION?

The final bill has adopted the Senate version of who may file an action under the False Claims Act. Before the relevant information regarding fraud is publicly disclosed through various government hearings, reports and investigations which are specifically identified in the legislation or through the news media, any person may file such an action as long as it is filed before the government filed an action based upon the same information. Once the public disclosure of the information occurs through one of the methods referred to above, then only a person who qualifies as an "original source" may bring the action. A person is an original source if he had some of the information related to the claim which he made available to the government or the news media in advance of the false claims being publicly disclosed. This person has the right to bring an action after these disclosures are made public as long as it is filed before an action is commenced by the Government.

3. PERCENTAGE RECOVERY

The final bill adopts the House version of the percentage of recovery provided for the person initiating the action. If the Government comes into the case, the person is guaranteed a minimum of 15% of the total recovery even if that person does nothing more than file the action in federal court. This is in the nature of a "finder's fee" and is provided to develop incentives for people to bring the information forward. The person need do no more than this to secure an entitlement to a minimum 15%. In those cases where the person carefully develops all the facts and supporting documentation necessary to make the case and presents it in a thorough and detailed fashion to the Justice Department as required by law, and where that person continues to play an active and constructive role in the litigation that leads ultimately to a successful recovery to the United States Treasury, the Court should award a percentage substantially above 15% and up to 25%. The only exception to this minimum 15% recovery is in the case where the information has already been disclosed and the person qualifies as an "original source" but where the essential elements of the case were provided to the government or news media by someone other than the qui tam plaintiff. In that case, the court may award up to 10% of the total recovery to the qui tam plaintiff.

4. WHISTLEBLOWER PROTECTION

The whistleblower protection section of the bill is extremely important and is designed to protect the person from any retaliatory action taken by his employer. This section is intended to afford full protection to the employee if the retaliatory action is in any way connected to a person's activities pursuant to this law. It does not have to be the primary reason for the employer's actions. As long as the retaliatory action by the employer is motivated in part because of the person's actions under this law, then all the protection specified in that whistleblower section shall be applicable.

5. KNOWING AND KNOWINGLY DEFINED

The bill adopts the Senate version of the knowledge standard that must be found to establish liability under this Act. It expressly acknowledges that no proof of specific

intent to defraud the government is required. There have been some erroneous court decisions that have misapplied the law in the past to require an intent to defraud. The language specified in this section of the law is intended to clarify what has been the law which has been properly interpreted in the case of *United States v. Cooperative Grain and Supply*, 476 F.2d 47, 56 (8th Cir. 1973). Subsection 3 of Section 3729(c) uses the term "reckless disregard of the truth or falsity of the information" which is no different than and has the same meaning as a gross negligence standard that has been applied in other cases. While the Act was not intended to apply to mere negligence, it is intended to apply in situations that could be considered gross negligence where the submitted claims to the Government are prepared in such a sloppy or unsupervised fashion that resulted in overcharges to the Government. The Act is also intended not to permit artful defense counsel to require some form of intent as an essential ingredient of proof. This section is intended to reach the "ostrich-with-his-head-in-the-sand" problem where government contractors hide behind the fact they were not personally aware that such overcharges may have occurred. This is not a new standard but clarifies what has always been the standard of knowledge required.

6. ATTORNEYS' FEES

This Act now expressly provides for the reasonable attorneys' fees to counsel for the person initiating the action. The term "reasonable attorneys' fees" is intended to incorporate the standard applied in the United States Supreme Court case of *Blum v. Stenson*, 104 U.S. 1051 (1984) where the court stated that attorneys fees should be paid at marketplace rates for all time reasonably spent. It is important, however, to draw a distinction between marketplace rates on a contingency case, such as a case filed under the False Claims Act, and marketplace rates paid by a client to an attorney where payment will be made on a previous (usually monthly) basis irrespective of the outcome of the matter. In those instances where attorneys' fees are paid on a monthly basis and not subject to any contingency, those market rates will be substantially below the marketplace rate which depend upon success for any payment and where payment does not come until after the case is concluded and all appeals are ended which can take years. Thus, a true marketplace rate in a False Claims Act case would be what competent counsel's expectations of an hourly rate would be at the time of the filing of the case understanding that payment will be made only after success is achieved, and only after the defendant is given the opportunity to challenge the amount requested, and where the judge or an appellate court may reduce the amount required, and where payment may not come until this process is concluded. In such cases, that rate would be substantially greater than a rate where payment was guaranteed on a monthly basis regardless of whether the case was won or lost. In that sense, the rates that should be applied here should be similar to those rates provided for in antitrust cases where there are similar contingencies.

ATTORNEY'S FEES AGAINST THE PARTY INITIATING THE ACTION

In order to deter frivolous and unfounded lawsuits under this Act, the law provides for very limited occasions when attorneys' fees can be awarded in favor of the Government contractors against the person initiating the action. In order for a court to award such fees, it must first determine that the lawsuit is totally without any merit whatsoever. The Court must also make an evaluation of

the subjective motives of the person initiating the action and determine that it was vexatious, or brought for purposes of harassment. Thus, the Court must make two findings in order to award fees against the plaintiff initiating the action: the Court must find both that the case is wholly lacking in merit, and the person's motives for pursuing the case demonstrated extreme bad faith, and fit within one of those terms expressly provided for in that section.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

EXTENDING THE AUTHORITY OF THE SUPREME COURT POLICE

Mr. GLICKMAN, Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, after line 8, insert:

Sec. 2. (a) Section 105(a) of the Legislative Branch Appropriations Act, 1979 (2 U.S.C. 72a note), as reenacted by section 115 of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1982, and for other purposes", approved October 1, 1981 (95 Stat. 963), is amended by striking out "September 30, 1986," and inserting in lieu thereof "February 28, 1987."

(b) The amendment made by subsection (a) shall take effect on October 1, 1986.

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

Mr. WALKER, Mr. Speaker, reserving the right to object, I am a little concerned about the number of bills that we are now beginning to run onto the floor by unanimous consent; and I understand that there have been clearances on them; but I am also understanding that we have a process underway that, where the majority may go to the Rules Committee and ask for the right for hand enrolling of bills so that they can be gotten down to the President quicker so that the situation can put the President in an additional