property, located 12 miles north of Goldsboro, and 4 miles southeast of Eureka, in Wayne County, N.C., and was buried to a depth of 7 feet.

"Recovery operations were conducted by the Army Engineers, District of Savannah, Ga. Severe damage to claimants' land was caused in these operations because they were performed during inclement weather when the ground was either frozen or extremely soft from heavy rains. Three acres were excavated to a depth of several feet; 9 acres were damaged by excavating and moving heavy equipment over the area; 7 acres, used by the reclamation crew as a storage area for tents and equipment, were covered by debris; and a drainage ditch was closed during the operations.

"Claimants' property consists of 169 acres of which 102 acres are tillable cropland, and 67 acres are woodland, as follows: 44 acres of highly productive and 20 acres of fair grade cropland; 36 acres of 'Johnson loan' cropland; 2 acres of building sites; and 67 acres of cutover swampy woodland. "The farm carries a tobacco allotment of 12.5 acres and a cotton allotment of 6.1 acres. The principal crops grown are tobacco, cotton, small grains, soybeans, and corn. The 44 acres of highly productive cropland are normally rotated with crops of tobacco and cotton, 12.55 acres of tobacco are planted every third year, and 6.1 acres of cotton are planted every 2 or 3 years. On the off years the area is usually planted with soil-building crops.

"Approximately 12 of the 44 acres of highly productive cropland were severely damaged, and it is estimated they will not produce income until 1971 or 1972. Production of crops on the residual area is expected to be impaired, and production costs increased, due to necessity of applying extra fertilizer and treating the soil with chemicals to control nematodes and crop diseases. The 20 acres of fair grade cropland are not well adapted for production of tobacco and cotton, but are adequate for beans, peas, corn, and small grain. The 36 acres of cropland are low land, subject to periodic flooding, and best adapted for production of corn, oats, and hay. The 12-acre area damaged by the crash and excavation has been leveled by filling holes and grading. The farm has no irrigation facilities.

"Six months after the crash, on July 26, 1961, Mr. G. S. Hart, real property appraiser, Army Engineers, District of Savannah, Ga., filed a report evaluating the damages to claimants' property caused by the crash and recovery operations. The evaluation was based on personal inspection of the property, records of the sales of three similar properties in the county on December 8, 1952, January 14, 1957, and October 15, 1958, respectively, and discussions with qualified local tobacco farmers, surveyors, engineers, and the claimants. Mr. Hart estimated the damages as follows:

"12 acres of cropland reduced in value from $750 to $50 per acre (this value for either planting to pines or a much later use for hay production)	$8,400
Damage to 32 adjoining acres of cropland at $100 per acre	3,200
Crop loss on 19 acres at $24 per acre	456
Payment for ditch closure (assessed against 32 adjoining acres at $6 per acre)	192
Total	12,248

"The survey by Mr. Hart was made for the purpose of securing for the United States a perpetual easement on 2½ acres of the property near the center of the crash area. An easement was secured on October 13, 1962, for which claimants were paid $1,000. The easement prohibits the land from being used for anything other than pastureland or growing crops, prohibits excavating to a depth of more than 5 feet, and authorizes agents of the United States to enter upon the easement for the purpose of inspection. Since this easement does not substantially affect the use of the land, some consideration should be given to the price paid for it in assessing damages.

"Mr. Hart believed that, in addition to the 19 acres of cropland discussed above, that suffered tangible damage by the reclamation operations, the remaining cropland was also damaged or reduced in value, because of the irregular shape of the remaining field and the further loss in production of tobacco due to the lack of area for proper crop rotation.

"When the crash site was inspected on January 24, 1964, by an Air Force claims officer, it was evident that the excavating and refilling operations had removed a considerable amount of topsoil and that subsoil had been mixed with the topsoil. It was also apparent that crop production on the area would not be profitable for a considerable time. However, the size of the lespedeza stubble observed from last year's growth indicated some progress toward recovery.

"The committee has examined into the circumstances surrounding the delay in filing the claim which is the only obstacle to payment of the claim for, as is indicated in the Air Force report, had the claim been filed on time, the Air Force would have paid the claim in the amount recommended by the committee. The Air Force advised the committee that when the inspection was made on January 24, 1964, one of the claimants, Mr. Charles T. Davis, Jr., advised Air Force representatives that he had delayed filing the claim because he did not know how much to claim until he had the opportunity to plant crops and see what the continuing damage to the land might be. Apparently the situation was further complicated by the fact that the owners had been paid for a perpetual restrictive easement on the 2½ acres near the center of the crash area. Further, the information submitted to the committee indicates that the claimants were not aware of the 2-year limitation concerning the filing of claims.

"The interval which has passed since the occurrence of the crash has made it possible to assess with more precision the continuing nature of the damage to the cropland. When the original estimate of damage was made, it was believed that the damaged area would not be out of production for as long as it is now anticipated. Whereas the original estimate was that the 32-acre tract of land could be back in production in 8 to 10 years, 3 years after the crash, it appeared that another 12 to 15 years would be required to put the land back into even partial production. For this reason, the Air Force has now concluded that an additional allowance of $75 for each of the 32 acres is appropriate and the damages should be assessed at $2,500 above the original estimate. This brings the Air Force figure to the amount of $14,648. Reducing this total by 25 percent of the $1,000 price paid by the United States for its easement, that is $250, brings the total loss figure to $14,398. This is done because the easement does not substantially affect the use of the land for crop production."

The committee, after a review of all of the foregoing, concurs in the action of the House of Representatives, and recommends that the bill, H.R. 10994, be considered favorably."

JUDGMENTS FOR COSTS AGAINST THE UNITED STATES

The bill (H.R. 14182) to provide for judgments for costs against the United States was announced as next in order.

Mr. ERVIN. Mr. President, I introduced in the Senate companion bills to this House bill and to House bills 13650, 13651, and 13652. These bills provide for much needed reform in the law.

H.R. 14182 is concerned with judgments for costs against the United States.

There is a substantial inequity in the present law covering the granting of costs in litigation involving the United States. When the United States sues on a claim and wins, it may be awarded costs; when the United States sues and loses, costs may not be awarded against it. When the United States is sued and wins, it may be awarded costs; when the United States is sued and loses, costs may not be awarded against it. Only in rare cases does the law provide for costs to be assessed against the United States when it is the losing party in civil litigation.

I have been interested in this problem for some years and on several occasions have offered amendments to specific bills requiring that the Federal Government accept liability for court costs when it is the unsuccessful litigant. I am most gratified that this administration supports this principle and this bill.

The basic general statute pertaining to costs in litigation involving the United States is section 2412(a) of title 28 of the United States Code. That statute provides that the United States shall be liable for costs only when such liability is expressly provided for by act of Congress, and there are relatively few statutes in which costs against the United States have been expressly provided for.

This measure will amend section 2412 of title 28 to provide that, except as otherwise specifically provided by statute, costs as set out in section 1920 of title 28 may be awarded to the prevailing party in actions brought by or against the United States or any agency or official acting in his official capacity. The amount of costs that may be awarded shall be in accordance with the amounts established by statute or by court rule or order. The bill makes it clear that the fees and expenses of attorneys and expert witnesses may not be taxed against the United States.

I ask unanimous consent to have printed in the RECORD at this point an excerpt from the report (No. 1329) explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the bill is to amend section 2412 of title 28 of the United States Code to provide that in any action brought by or against the United States or any agency or official of the United States acting in his official capacity costs may be awarded by the court to the prevailing party, so that costs may be awarded either the private litigant or the Government.

STATEMENT

A similar Senate bill, S. 3161, was introduced by Senator SAM J. ERVIN, Jr.

In its favorable report on the bill the Committee on the Judiciary of the House of Representatives said:

"The bill H.R. 14182 was introduced in accordance with the recommendations of an executive communication from the Department of Justice which recommends its enactment. The committee has considered this bill along with the bills H.R. 13650, H.R. 13651, and H.R. 13652 which are intended to improve the procedures for the disposition

of claims by and against the Government. These four bills have the common purpose of amending the law to incorporate features which will provide for a more fair and equitable treatment of the private individual or claimant when he must deal with the Government.

"The present law permits a disparity of treatment between private litigants and the United States concerning the allowance of court costs. This bill will correct this disparity by putting the private litigant and the United States on an equal footing as regards the award of court costs to the prevailing party in litigation involving the Government. As things now stand, only in rare cases can costs be awarded against the United States in the event that it is the losing party. On the other hand when it sues on a claim and wins, it can collect full costs. If an action is brought against the Government by a private litigant and he is successful it may be forced to pay costs only when a specific statute authorizes the award of costs. This is presently provided by the tort claims provisions of title 28 (28 U.S.C. 2412(c)), the Suits in Admiralty Act (46 U.S.C. 743) and by implication, the Public Vessels Act (46 U.S.C. 782). The Civil Rights Act of 1964 provides in three of its titles that the United States shall be liable for costs, the same as a private person. It is fundamental that the law should be uniform in its application. This bill will provide for uniformity of treatment in the award of costs. Apparently the present inequality is related to a governmental advantage derived from the principle favoring immunity of the sovereign from suit. Under modern conditions, there is no reason for this advantage when the law provides for suit against the Government.

"At the hearing conducted on the bill on April 6, 1966, the subcommittee members inquired of the Department of Justice witness as to what the cost of this provision might be on the basis of past litigation and by comparison to costs incurred in Government litigation. It was estimated that the cost per year would be about $334,000.

"The costs which are referred to in this bill are listed in section 1920 of title 28, United States Code, and include fees of the clerk and the marshal, necessary transcripts, printing, and docket fees. The amounts of fees which may be awarded are fixed either by statute, rules of court, or by a schedule of the Judicial Conference of the United States. For example, marshals' fees are fixed in section 1921 of title 28, and docket fees and costs of briefs in section 1923 of the same title. Witness fees are governed by section 1821. This is the section which was referred to in the committee's explanation of its amendment relating to witness fees. These fees are intended to compensate the average witness. This section does not make any special provision for expert witnesses so that any additional amounts paid as compensation in connection with the appearance of expert witnesses could not be included under this section as costs. As was noted, the committee therefore deleted the reference to expert witnesses in the bill as surplusage (*Henkel* v. *Chicago, St. Paul, Minneapolis & Omaha, Ry.*, 284 U.S. 44 (1932)). The authority for the fixing of other fees by rules of court is provided in 28 U.S.C. 1911 and section 1913 of title 28 provides for fees fixed by schedule of the Judicial Conference.

"The committee further points out that the bill provides that costs can be awarded in the discretion of the court. The court may award the costs. The bill does not require that costs be taxed for or against the Government, it merely makes it possible for the court, when deemed just, to award costs to whichever side prevails in the case before it.

"On the basis of the recommendation in the executive communication, the testimony presented at the hearing on the bill, and the considerations outlined in this report, it is recommended that the bill, as amended, be considered favorably.

"ANALYSIS OF THE BILL

"Section 1

"The first section of the bill, as amended, amends section 2412 of title 28 of the United States Code so as to provide that in any civil action brought by or against the United States or against any agency or official of the United States acting in his official capacity, the court may award a judgment for costs to the prevailing party. The costs referred to in the section do not include fees and expenses of attorneys, and the judgment for costs when taxed against the Government is limited to reimbursing in whole or in part the prevailing party for the costs incurred by him in litigation. Payment of a judgment for costs shall be made as provided in section 2414 of title 28 for the payment against the United States.

"Section 2

"This section repeals section 2520(d) of title 28 of the United States Code. Section 2520(d) presently provides for the taxing of the cost of printing the record against the losing party in cases in the Court of Claims "except when judgment is against the United States." This language is of course unnecessary with the addition of the uniform authorization for the taxing of costs provided by this bill. Further, the exception concerning the United States is rendered obsolete by this bill which eliminates this sort of inequality.

"Section 3

"This section provides how the provisions of the bill are to take effect upon enactment. The amendments added by the bill are to apply only to judgments entered in actions filed subsequent to the date of enactment. These amendments will not authorize the reopening or modification of judgments entered prior to enactment of the bill into law."

The bill as transmitted to the Congress by the Department of Justice was amended by the Committee on the Judiciary of the House of Representatives. The committee discussed the purpose of the amendments as follows:

"As originally introduced, the bill provided that the fees of expert witnesses were not to be included in a judgment for costs awarded to the prevailing party in an action brought by or against the United States. The committee has recommended that this reference to expert witnesses be deleted, because the courts do not distinguish between witnesses in allowing witness fees. That is, an expert witness is by statute allowed the same fee as other witnesses as far as the taxing of costs is concerned. The statute governing witness fees is section 1821 of title 28 of the United States Code. This means that any additional amounts paid as compensation or fees to expert witnesses cannot be taxed as costs in a Federal court even though they might be allowed by the State in which the court is situated. The Supreme Court case of *Henkel* v. *Chicago, St. Paul, Minneapolis & Omaha Ry.*, 284 U.S. 444 (1932) involved this issue and held that the fees provided in the Federal statute governed the allowance of fees as taxable costs. The court concluded:

" 'The present case is simply one of the amount to be allowed as witness fees, to be included in the taxable costs, and the Federal statute governs.'

"Accordingly the committee concluded that it would not be correct to retain the exception and recommended the deletion.

"The second amendment merely clarifies the intent of the bill in adding the word 'civil' before 'action' in line 8 so that the section will read that costs may be awarded to prevailing parties in civil actions."

The ACTING PRESIDENT pro tempore. The question is on the third reading of the bill.

The bill was ordered to a third reading, read the third time, and passed.

INCREASED AGENCY CONSIDERATION OF TORT CLAIMS AGAINST THE GOVERNMENT

The bill (H.R. 13650) to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes, was announced as next in order.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ERVIN. Mr. President, H.R. 13650 is intended "to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes."

The Tort Claims Act, with certain exceptions, makes the United States liable for the negligence, wrongful act, or omission, of a Government employee while he is acting within the scope of his office or employment, under circumstances in which a private person would be liable under the law of the place where the act or omission occurred.

Presently, a person who has a substantial claim arising under the act must bring an action in a Federal district court, and he can seek administrative settlement of his claim only if the claim is for less than $2,500. Experience under the Federal Tort Claims Act has demonstrated that of all awards allowed in cases filed under the act, 80 percent are made prior to trial. Since tort claims against the Government tend to arise in a few agencies, these agencies have considerable experience in settling such claims.

This bill would institute a procedure under which all claims would be brought to the appropriate agency for consideration and possible settlement before court action is instituted. A claim would first be considered by the agency whose employee's activity allegedly caused the damage and which possesses the greatest information concerning that activity. As a result, meritorious claims would be settled more quickly, without the need for expensive and time-consuming litigation or even for filing suit.

In order to provide the agencies with sufficient authority to settle a broad range of claims, the bill would give them authority to consider and settle any claim under the Tort Claims Act, irrespective of amount. Settlement and awards in excess of $25,000 would require the prior approval of the Attorney General. Any settlement of a claim in excess of $100,000 would be brought to the attention of Congress since claims over this amount would require approval through a supplemental appropriations bill.

Finally, in order to encourage claimants and their attorneys to make use of this new administrative procedure, the attorney's fees allowable under the act would be raised from the present 10 per-