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-

cent of the administrative award and 20 percent of the settlement of judgment after filing suit to 20 and 25 percent, respectively.

Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1327), 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 provide authority to the heads of Federal agencies for administrative settlement of tort claims against the United States. Settlements for more than $25,000 must have the prior written approval of the Attorney General or his designee. A claim would have to be filed with the agency concerned within 2 years after it accrues and any tort action must be brought within 6 months after final denial of the administrative claim. The bill would increase the limits for attorneys' fees in cases of administrative settlement from 10 to 20 percent and from 20 to 25 percent of amounts paid after suit is begun.

STATEMENT

A similar Senate bill, S. 3162, 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. 13650, is one of a group of three bills introduced in accordance with the recommendations of an executive communication transmitted to the Congress by the Department of Justice. The committee has considered these bills along with the bill H.R. 14182, providing for the award of costs in litigation involving the Government. These four bills have the common purpose of providing for more fair and equitable treatment of private individuals and claimants when they deal with the Government or are involved in litigation with their Government.

"This bill, H.R. 13650, with the two bills, H.R. 13651 and H.R. 13652, also introduced as recommended by the Department of Justice, are intended to improve the disposition of monetary claims by and against the Government. These are the matters which now comprise the bulk of civil litigation involving the Government. The proposals embodied in H.R. 13650 are intended to ease court congestion and avoid unnecessary litigation, while making it possible for the Government to expedite the fair settlement of tort claims asserted against the United States. In accomplishing these purposes, the more expeditious procedures provided by this bill will have the effect of reducing the number of pending claims which may become stale and long delayed because of the extended time required for their consideration. The committee observes that the improvements contemplated by the bill would not only benefit private litigants, but would also be beneficial to the courts, the agencies, and the Department of Justice itself.

"The Federal Tort Claims Act passed in 1946 made it possible for a person injured through the negligence or wrongful act of a Government employee to file suit against the United States for damages resulting from the injury when the employee was acting within scope of his employment. The codified provisions of that act now contained in title 28 of the United States Code provide for administrative settlement only in cases where the claim is for $2,500 or less. For claims over that amount, the individual has no alternative but to file suit. At a hearing conducted with reference to this bill on April 6, 1966, the Department of Justice presented testimony which included statistics which underscore the need for procedures which will permit early settlement of tort cases. At the hearing, it was noted that thousands of suits have been filed under this act and each year the Government pays out millions of dollars to persons who have brought suit against the United States. At that hearing, it was pointed out that a large number of cases are settled prior to trial. In the fiscal year 1965, the Department of Justice settled 731 tort cases after suit had been instituted. The claims in these cases totaled $24 million, while the cases were settled for a total of $6 million. Where the cases resulted in judgment against the Government, the record for the same year showed that there were 169 judgments which totaled approximately $4 million. The original claims as to these 169 cases totaled almost $24 million. Therefore, it is established that of meritorious claims filed against the Government under the tort claims provisions of title 28, about 80 percent are settled prior to actual trial.

"The committee has been supplied with information which indicates that the same trend is evidenced in connection with private tort litigation. A recent study indicated that each year in New York City an average of 193,000 claimants seek compensation for bodily injuries. Of this number 39,000 settle or abandon their claims without consulting counsel, 77,000 settle or abandon their claims after consulting counsel but without instituting suit. The remaining 77,000 sue. Of this latter class of cases, 7,000 reach trial, of which 2,500 go all the way to verdict. The study thus indicates that in private practice where prelitigation settlements are allowed, only 40 percent of claimants for personal injuries file suit and of these cases, less than 10 percent reach trial and only 3 percent go to verdict.

"The Department of Justice, in recommending this bill referred to its experience under the Federal Tort Claims Act which established that of all cases filed under the act, 80 percent are settled prior to trial. Tort claims against the Government for the most part arise in connection with the activities of a few agencies. These agencies include the Post Office Department, the Defense Department, the Veterans' Administration, the Department of the Interior, and the Federal Aviation Agency. These agencies therefore have a large degree of experience in settling such claims. The Justice Department recommends the procedure embodied in H.R. 13650 requiring all claims to be presented to the appropriate agency for consideration and possible settlement before a court action could be instituted. This procedure would make it possible for the claim first to be considered by the agency whose employee's activity allegedly caused the damage. That agency would have the best information concerning the activity which gave rise to the claim. Since it is the one directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing suit and possible expensive and time-consuming litigation. The committee observes in this connection that under the present provisions of law, even if the agency finds that it is clearly liable and desires to settle the claim quickly in the interest of justice and fairness, it cannot do so if the claim is for more than $2,500. Rather, a suit must be filed and a settlement negotiated after the action is begun in a U.S. district court.

"The requirement of an administrative claim as a prerequisite to suit has numerous precedents in statutes governing tort claims against municipalities. These laws often provide that a municipality must be given notice of an accident within a fixed time. The purpose of this notice has been summarized as being—

"'* * * to protect the municipality from the expense of needless litigation, give it an opportunity for investigation, and allow it to adjust differences and settle claims without suit (McQuillin, Municipal Corporations (3d ed.), section 53.153).'

"In this connection, it is relevant to note that section 1-923 of the District of Columbia Code includes the following language concerning suits for damages caused by employees driving vehicles—

"'* * * No suit shall be instituted * * * unless the claimant shall have first given notice to the District and shall have presented to the District in writing a claim for money damages in connection therewith, and the District has had 6 months from the date of such filing within which to make final disposition of such claim * * *.'

"Another example of a precedent in State practice is to be found in the laws of the State of Iowa (Laws of the 61st General Assembly, ch. 79 (Mar. 26, 1965)) which provide requirements very similar to those provided in H.R. 13650. This statute provides for tort claims against the State of Iowa and requires that a claim must first be presented to a State appeal board and further includes language providing that no suit is permitted unless the appeal board has made final disposition of the claim.

"This committee in recommending this legislation further points out that it grants the agencies of Government sufficient authority to make the administrative settlements a meaningful thing. The bill would provide the agencies with the authority to make settlement offers which could result in settlement in a large percentage of tort claims cases where under today's conditions the present $2,500 limit means that administrative settlements are limited to property damage claims and relatively minor personal injury claims. There is good reason to believe that even in many of these cases a claimant may decide to file suit because of the present limits upon administrative settlement. This is because as soon as the case is filed, the Government can negotiate a settlement without regard to that limitation. It does not appear that this procedure is conducive to efficient claims administration. The filing of the suit and the consequent expense to the Government in preparing the case would appear to be unnecessarily involved when the case is a proper one for early settlement.

"Another objective of this bill is to reduce unnecessary congestion in the courts. Each year between 1,500 and 2,000 new tort cases are filed in the court against the Government. The information available to this committee indicates that there is little likelihood that there will be any real decrease in the numbers of this type of claim.

"Accordingly, in the light of these considerations the committee has recommended these amendments to the Tort Claims Act to authorize the head of each Federal agency to settle or compromise any tort claim presented to him which arises out of the negligent or wrongful act of an employee of that agency who was acting within the scope of his employment at the time of the act. This authority of the agency head will be exclusive for settlement up to $25,000. Above that amount, the settlement must have the prior written approval of the Attorney General or his designee as well as of the agency head.

"The procedure provided in the bill would require a claimant to file his claim with the agency within 2 years after the claim accrues. The agency will then have 6 months to consider the claim prior to granting or denying it. Final denial in this connection includes instances where partial approval of a claim results in an offer unacceptable to the claimant and rejected by him. Thus the end result would be a denial of the claim. However if the agency fails to act in 6 months, the claimant may at his option elect to regard this inaction as a final denial and proceed to file suit. It is obvious that there will be some difficult tort claims that cannot be

processed and evaluated in this 6-month period. The great bulk of them, however, should be ready for decision within this period. In some cases where the agency does not reach a decision in 6 months, the claimant may feel that the agency is sincerely seeking to reach a fair decision. Under such circumstances, the claimant might wish not to break off negotiations and file suit. Therefore even though this 6-month period may prove insufficient in some instances, the committee does not believe that this period ought to be enlarged to attempt to insure time for final decision on all claims. This is the same position stated by the Department of Justice at the hearing.

"The bill will not assign novel tasks to the agencies. They now investigate all accidents involving their employees, prepare litigation reports on all tort cases, suggest Government defenses to claims, and, at the request of the Department of Justice, comment on all settlement offers presented to the Department. The views of the affected agency have always been taken into account by the Department in accepting or rejecting an offer of settlement.

"As has been noted, tort claims against the Government have arisen primarily in a few agencies that have extensive dealings with the public or whose operations require the use of a large number of motor vehicles. For example, as of the end of October 1965, 81 percent of the tort suits then pending against the Government arose out of the activities of only five agencies—Defense, Post Office, Federal Aviation Agency, Interior, and the Veterans' Administration. This concentration of tort claims has led to the development in the agencies of substantial expertise in the problems involved in tort litigation. The Post Office, probably because of its use of more than 80,000 vehicles, has had to pass upon a very large number of tort claims. In 1965, the Post Office processed over 5,000 claims in the dollar range of $100 to $2,500 and allowed 3,800 of them. Postal officials in the field allowed another estimated 5,200 claims for less than $100. In addition, the Post Office employees assisted the Justice Department in connection with the handling of about 900 cases in Federal courts, cases which involved claims against the Government of over $36 million and which involved alleged torts of postal employees. The point is that the Post Office and other agencies are now actually performing investigating and evaluating work on a large volume of tort claims against the Government.

"The procedure set forth in this bill will not become effective until 6 months after the enactment date. In this period of time the agencies can develop procedures and instruct personnel for these new responsibilities. The Civil Division of the Department of Justice will be available for advice and assistance to any agency desiring it and will furnish suggestions as to how the claims procedures should be handled. The committee notes that the Civil Division will undoubtedly continue to provide similar assistance and legal counsel when required concerning tort claims and the legal questions involved.

"The authority to settle claims for up to $25,000 and, above that amount, with the prior written approval of the Attorney General, seems sensible. If a satisfactory arrangement cannot be reached in the matter, the claimant can simply do as he does today—file suit.

"Agency settlement of substantial numbers of tort claims would enable the Civil Division to give greater attention to those cases which involve difficult legal and damage questions in such areas a medical malpractice, drug and other products liability, and aviation accidents. These areas of litigation are expanding at a steady pace.

"The part of attorneys, both Government and private, will be important in effecting settlements as provided in this bill. These tort claims will, as in the past, in many of the cases continue to require an attorney acting on behalf of the claimant. To assure competent representation and reasonable compensation in these matters, the proposed bill authorized increases in the attorneys' fees allowable under successful prosecution of these claims: 20 percent of the agency award and 25 percent of a court award or settlement after the filing of a complaint in court.

"The bill increases the allowable fee in agency proceedings from the present 10 to 20 percent. The committee feels this increase will encourage attorneys to take these claims. In recommending this increase the committee points out that increased work will be required in many of the larger claims. Also, this amendment will bring the fees more nearly in line with those prevailing in private practice. Similarly, allowable fees for claims involving litigation have been raised from 20 to 25 percent.

"CONCLUSION

"In the light of the considerations referred to in the executive communication and outlined in this report, the committee recommends that the bill, as amended, be considered favorably."

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

There being no objection the bill (H.R. 13650) was considered, ordered to a third reading, was read the third time, and passed.

STATUTE OF LIMITATIONS FOR CERTAIN ACTIONS BROUGHT BY THE GOVERNMENT

The bill (H.R. 13652) to establish a statute of limitations for certain actions brought by the Government was announced as next in order.

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

Mr. ERVIN. Mr. President, under existing law the Federal Government is not subject to any statute of limitations, unless there is a special statute so providing in specific instances.

H.R. 13652 would establish statutes of limitations for certain types of actions brought by the Government. The rule is that there is no limitation of time against the Government for bringing an action unless it is specifically authorized by statute. There are a few exceptions to this rule. For example, a civil suit brought by the Government on a false claim must be filed within 6 years; suits for penalties or forfeitures under the customs laws must be brought within 5 years; 2 years is the limit within which the Federal Housing Administration must sue to recover an overpayment on a guarantee of a home improvement loan. There are, however, no time bars against the great majority of Government claims.

Additional time limitations are desirable for a number of reasons. Application of statutes of limitation in tort and contract actions would make the position of the Government more nearly equal to that of private litigants. A corollary to this objective is the desirability of encouraging trials at a sufficiently early time so that necessary witnesses and documents are available and memories are still fresh.

Presently the cost of keeping records and detecting and collecting on Government claims after a period of years may exceed any return by way of actual collections. Also, this measure should encourage the agencies to refer their claims promptly to the Department of Justice for collection minimizing collection problems arising with respect to debtors who have died, disappeared, or gone bankrupt.

Accordingly, it is proposed that statutes of limitations be applied to important general areas where none are now in effect. The proposal would impose a 6-year limitation on the assertion of Government claims for money arising out of an express or implied contract or a quasi-contract. This time-bar corresponds to the 6-year limitation on those who sue the Government on similar claims under the Tucker Act.

Suits in tort are to be brought within 3 years, except those based on trespass to Government lands and those brought for the recovery of damages resulting from fire on such lands, and actions for conversion of Government property for which the limitation period will be 6 years.

A 6-year limitation would be imposed upon suits by the Government to recover erroneous overpayments of wages and other benefits made to military and civilian employees of the Government.

Mr. KUCHEL. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. KUCHEL. What effect, if any, does this tort claim have on liability of a citizen under the provisions in the Internal Revenue Code?

Mr. ERVIN. The bill expressly provides that it does not apply to tax claims. Consequently such claims are governed by other statutes of limitations under the Federal Internal Revenue law.

Mr. KUCHEL. Would the Senator say that where there are in the law today specific provisions, that this general law would not apply?

Mr. ERVIN. The Senator is correct. This bill does not cover tax claims. It merely establishes statutes of limitations for claims of the Government based on contracts or quasi-contracts or torts. Tax claims are neither contracts nor torts.

Mr. KUCHEL. I thank the Senator.

Mr. ERVIN. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1328), 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 establish statutes of limitations which will apply to contract and tort actions brought by the United States.

STATEMENT

A similar Senate bill, S. 3142, was introduced by Senator SAM J. ERVIN, Jr.