

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 as 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 one 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 en-

couraging 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.

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

"The bill, H.R. 13652, is one of three bills introduced in accordance with the recommendations of an executive communication from the Department of Justice. These bills, H.R. 13650, H.R. 13651, and H.R. 13652, have the common purpose of improving existing procedures for the disposition of monetary claims by and against the Government. These subjects now comprise the bulk of civil litigation of the Government. The three bills just mentioned, along with H.R. 14182, providing for payment of costs by the United States when judgment is entered against it, are intended to improve claims procedures and to provide a more balanced and fair treatment of litigants in civil actions involving the Government. The committee has considered these bills as a group. Their enactment will reduce unnecessary litigation and court congestion, speed up meritorious settlements and cut down on unproductive paperwork. At the same time, the private litigants can be assured of a more fair and balanced treatment when dealing with the Government.

"The bill H.R. 13652 was the subject of a hearing on April 6, 1966. At that hearing it was noted that the Government litigation covered by the bill arises out of activity which is very similar to commercial activity. Many of the contract and tort claims asserted by the Government are almost indistinguishable from claims made by private individuals against the Government. Therefore it is only right that the law should provide a period of time within which the Government must bring suit on claims just as it now does as to claims of private individuals. The committee agrees that the equality of treatment in this regard provided by this bill is required by modern standards of fairness and equity.

"Statutes of limitation have the salutary effect of requiring litigants to institute suits within a reasonable time of the incident or situation upon which the action is based. In this way the issues presented at the trial can be decided at a time when the necessary witnesses, documents, and other evidence are still available. At the same time, the witnesses are better able to testify concerning the facts involved for their memories have not been dimmed by the passage of time. The committee feels that the prompt resolution of the matters covered by the bill is necessary to an orderly and fair administration of justice. Stale claims can neither be effectively presented or adjudicated in a manner which is fair to the parties involved. Even if the passage of time does not prejudice the effective presentation of a claim, the mere preservation of records on the assumption that they will be required to substantiate a possible claim or an existing claim increases the cost of keeping records. As time passes the collection problems invariably increase. The Government has difficulty in even finding the individuals against whom it may have a claim for they may have died or simply disappeared. These problems have been brought to the attention of the committee previously in connection with other legislation. This bill provides the means to resolve these difficulties.

#### "CONTRACT ACTIONS—6 YEARS

"Subsection (a) of new section 2415 added by the bill provides for a 6-year limitation which would apply to all Government actions based on contracts whether expressed or implied in law or in fact. This provision would extend to obligations which are based on quasi-contracts. In all such contract matters, the action would be barred unless it were brought by the Government within 6 years after the right of action accrues, or within 1 year after a final decision in a required administrative proceeding, which-

ever is later. This last provision, which has the effect of tolling the running of the statute of limitations during mandatory administrative proceedings, is necessary because of the great number and variety of such proceedings made possible by current statutes. An administrative proceeding ordinarily consumes a considerable period of time and, as has been noted, the bill would permit the Government a year after the final administrative decision in which to present its case for judicial determination. An example of such an administrative proceeding are those which involve appeals under the 'disputes' clause of Government contracts.

"In a proviso to subsection (a), there is a provision that later partial payment or written acknowledgment of a debt will start the 6-year period running all over again. This provision embodies a familiar principle of law which is embodied in the law of many States. The obligation of a debt will continue where a debtor has acknowledged the debt and indicated his willingness to discharge the obligation.

#### "TORT ACTIONS—3 YEARS

"Subsection (b) of section 2415 provides that tort actions, that is, actions based on damage or injury from a wrongful or negligent act, must be brought by the United States within 3 years after the right of action first accrues. This 3-year statute applies to all Government tort actions except those that are expressly referred to in this subsection and are governed by a 6-year statute. These specific actions are those which are of a type which might not be immediately brought to the attention of the Government or would only be uncovered after some investigation. Included in this category of actions are those based upon a trespass on lands of the United States, including trusts or restricted Indian lands, and also actions to recover damages resulting from fire to such lands. Similarly, actions to recover for diversion of money paid under a grant program and actions for conversion of property of the United States are subject to a 6-year limitation.

#### "EXCEPTION AS TO GOVERNMENT ACTIONS AS TO TITLE TO REAL AND PERSONAL PROPERTY

"Subsection (c) makes it clear that no one can acquire title to Government property by adverse possession or other means. This is done by providing that there is no time limit within which the Government must bring actions to establish title to or right of possession of real or personal property of the United States. In other words, there is no statute of limitations applying to Government actions of this type.

#### "RECOVERY OF ERRONEOUS PAYMENTS

"Subsection (d) provides a 6-year statute of limitations for Government actions to recover money erroneously paid to civilian employees or members of the uniformed services of the United States. While payments of this type might be described as analogous to payments incident to a contract, it was felt that this type of overpayment of compensation should be the subject of a separate provision in the bill. Overpayments of this type usually occur in the process of auditing agency account books. The problems posed by this type of Government claim have been the subject of discussion by this committee on a number of occasions in connection with other legislation. The provisions of this subsection, when joined with the provisions of H.R. 13651 providing for a compromise of Government claims, for the first time provide for an equitable and realistic solution which is in the interest of both the Government and the individual concerned. In connection with the legislation before the committee in the 88th Congress, the Comptroller General expressed the opinion that a 6-year statute of limitations applicable to such collections would be in the interest of the Government. In a report to the committee dated

May 3, 1961, the Comptroller General stated that the audit experience of the General Accounting Office supported this conclusion. In this connection he stated:

"Viewed in the light of our audit experience and the periods fixed in connection with the records disposal programs of the various departments and agencies, and in line with the periods fixed in the present limiting provisions applicable in the case of suits in the Court of Claims (28 U.S.C. 2501), forged or altered checks (31 U.S.C. 129), and dual compensation (31 U.S.C. 237a), a period of 6 years would appear sufficient to adequately safeguard the Government's interest."

"The testimony presented in support of this bill at the hearing on April 6, 1966, further supports this conclusion. Whatever the nature or basis of the claim, it seems reasonable to give the Government the 6-year time period for discovering and acting upon these claims.

#### "RECOMMENCEMENT OF ACTIONS PREVIOUSLY DISMISSED WITHOUT PREJUDICE

"Subsection (e) of section 2415 provides for the situation where an action has been dismissed without prejudice by providing that the Government may recommence the action within 1 year regardless of whether the action would then be barred by this section. As was noted in the analysis of sections, the defendant in such a recommenced action is similarly not barred from interposing any claim which would not have been barred in the original action. The committee observes that this is in line with the underlying purpose of the bill of extending fair treatment to private litigants while providing adequate protection for the interests of the Government. In this connection, the Government is given a reasonable period for the recommencement of an action which it had originally brought in a timely manner and, at the same time, the opposing party is permitted to assert any claim which he might have interposed in the original action. This latter provision insures that the private party will not be placed in a disadvantageous position because the option is given the Government to recommence an action which had previously been dismissed without prejudice.

#### "OFFSETS AND COUNTERCLAIMS

"Subsection (f) of section 2415 contains carefully drafted provisions permitting the Government to assert its claims by way of offset or counterclaim in actions brought against the United States. Where the United States finds itself involved in litigation, it very often is to the interest of the Government to assert claims by way of counterclaim and the provisions of this subsection represent a very practical implementation and classification of the Government's rights in this regard. It is expressly provided that the limitations provided in the section will not prevent the assertion of a claim by the United States against the opposing party in such an action, or a coparty, or a third party when the claim of the United States arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. This merely gives the Government the right to a full hearing of all aspects of the case arising out of the same transaction or occurrence. When the claim of the United States does not arise out of the transaction or occurrence that is the subject of the opposing party's claim and is time barred, it may only be asserted by the United States to the degree that it offsets the other claim and cannot exceed the amount of the opposing party's recovery.

"The testimony at the hearing on the bill noted the fact that this bill does not affect the authority of each agency to offset on its own books and without resort to court any claim it may have against a person to whom it is about to make a payment based on the same or an unrelated transaction. There is