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 between private individuals or claimants 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 same requirements on the United States as are placed on the litigants. 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. When it is forced to pay costs only when it 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 1866 provides in three of its titles that the United States shall be liable for costs incurred in some private suits. 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, so that the present inequity is related to a governmental advantage derived from a principle favoring the sovereign freedom from suit. Under modern conditions, there is no reason for this advantage when the law provides for it.

At the hearing conducted on the bill on April 6, 1966, the subcommittee members inquired of the Department of Justice witness as to whether this provision should be on the basis of past litigation and by comparison to costs incurred in Government litigation. It was estimated that he was successful more than 8334,000.

The costs which are referred to in this bill are listed in section 1920 of title 28, United States Code, and include fees for witnesses as far as the taxing of fees is concerned. The Supreme Court case of Henkel v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 264 U.S. 44 (1924) involved the taxability of certain fees as taxable costs. The court ruled 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 because any additional amounts paid as compensation for services in connection with the appearance of expert witnesses could not be included under this section as costs. As was noted, the committee did not refer to the statement of expert witnesses in the bill as surpisse (Henkel v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 264 U.S. 44 (1924)) and the committee, on the other hand, directed the taxing of other fees by rules of court is provided in 28 U.S.C. 1921 and section 1922 of title 28 provides for fees fixed by the Supreme Court.

The committee further points out that the bill provides that costs can be awarded in the event of the granting of summary judgment, but does not require that costs be taxed or against the Government, it merely makes it possible for the Government to recover its costs for opposing 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 unfavorably.

**ANALYSIS OF THE BILL**

The first section of the bill, as amended, amends section 2421 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 in cases tried to the court. The section does not include fees and expenses of attorneys, and the 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 costs in a Federal court even though they are listed in section 1920 of title 28, and docket fees and 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. These amendments will not authorize the taxing of costs provided by this bill. Further, the exception concerning the payment against the United States is removed absolutely by this bill which eliminates this sort of iniquity.

**Section 3**

This section provides how the provisions of the bill are to be subject to enactment. The amendments authorized by this bill are to be applied only to judgments entered in actions filed subsequent to the date of enactment. These amendments will not authorize the reopening of actions or proceeding. These amendments will be filed subsequent to the date of enactment.

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 costs be awarded against the losing party in cases tried to the court. The committee, on the other hand, directed the taxing of other fees by rules of court is provided in 28 U.S.C. 1921 and section 1922 of title 28 provides for fees fixed by the Supreme Court.

In order to provide the agencies with sufficient authority to settle a broad range of claims, the bill would give them the option of maintaining 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. The aggregate amount of settlements 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...
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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 for the Federal agencies for administrative settlement of tort claims against the United States. Settlements for more than $2,500 are required to be approved by 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 provide that a claimant, in cases of administrative settlement from 10 to 20 percent and from 20 to 25 percent of amounts paid after suit is begun.

A similar Senate bill, S. 3182, was introduced by Senator Sax J. Enkin, 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. 13651, which was introduced for the award of the President for the settlement of tort claims involving in litigation involving the Government. These four bills have the common purpose of providing for fair and rapid treatment of private individuals and claimants when they deal with the Government or are involved in litigation with their Government agencies.

"This bill, H.R. 13650, with the two bills, H.R. 13651 and H.R. 13653, also introduced as recommended by the Department of Justice, are intended to improve the disposition of monetary claims by and against the Government. These matters now comprise the bulk of civil litigation involving the Government. The proposals embodied in H.R. 13650 are intended to ease the procedures and avoid unnecessary litigation, while making it possible for the Government to expedite the fair settlement of tort claims 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 of a Government employee to file suit against the United States for damages resulting from the negligence. 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 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 claims. At a hearing, the witnesses 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 such suits. In that hearing, it was pointed out that a large number of cases are settled prior to trial. In the case of the Department of Justice settled 731 tort cases after suit had been instituted. The claims in these cases totaled $44 million, while the cases were settled for less than $1 million. Of these cases, $34 million resulted in judgment against the Government, the record for the same year showed that the claims totaled approximately $4 million. The original claims as to these 169 cases totaled almost $24 million. Therefore, it is established that of the cases involving allegations of wrongdoing, 70 percent are settled prior to trial.

"The committee has been supplied with information which indicates that the same trend is evident in connection with tort suits filed against the Federal Government. Over 90 percent of the suits filed by injured parties are brought within 6 months after final denial of the administrative claim. The bill embodied in H.R. 13650 is intended to improve the disposition of such claims. The bill requires that a claimant be given a meaningful opportunity to present his claim to the agency whose employee allegedly caused the damage. That agency would have the best information concerning the tort claim. The bill allows the agency to make the administrative settlement of the claim. If no settlement is reached, or if the claimant is not satisfied with the settlement, he may bring suit against the United States. Settlements for more than $2,500 are required to be approved by 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 provide that a claimant, in cases of administrative settlement from 10 to 20 percent and from 20 to 25 percent of amounts paid after suit is begun.

"Another objective of this bill is to reduce unnecessary congestion in the courts. Each year the courts are faced with a large number of tort claims. There is good reason to believe that even in many of these cases a claimant may decide to file suit because of the delay and uncertainty of the administrative procedure. The bill provides that no suit is permitted to a State appeal board and further includes language providing that no suit shall be permitted against a State if a claimant has not first given notice to the State and shall have presented to the State the evidence upon which he relies in support of his claim. This committee indicates that there is little likelihood that a suit against a State will be brought in the light of 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 a claim against a State upon administrative settlement. This is because as soon as the claim is filed, the Government cannot settle it because of a Federal law. The present $2,500 limit will 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 directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing a claim and possible settlement before a court action. The committee believes that even in many of these cases a claimant may decide to file suit because of the delay and uncertainty of the administrative procedure. The bill provides that no suit is permitted to a State appeal board and further includes language providing that no suit shall be permitted against a State if a claimant has not first given notice to the State and shall have presented to the State the evidence upon which he relies in support of his claim. This committee indicates that there is little likelihood that a suit against a State will be brought.

"Accordingly, in the light of the experience under the Federal Tort Claims Act which established that of all cases filed under the act, 93 percent are settled prior to trial and only 7 percent reach trial and only 3 percent go to verdict.

"The Department of Justice, in recommending this legislation further points out that it grants the agencies of Government sufficient authority to make the administrative settlement of claims a meaningful procedure which would enable the agencies with the authority to make settlement offers which could result in settlement in a large number of cases. Under today's conditions it is apparent that 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 a claim against a State upon administrative settlement. This is because as soon as the claim is filed, the Government cannot settle it because of a Federal law. The present $2,500 limit will 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 directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing a claim and possible settlement before a court action. The committee believes that even in many of these cases a claimant may decide to file suit because of the delay and uncertainty of the administrative procedure. The bill provides that no suit is permitted to a State appeal board and further includes language providing that no suit shall be permitted against a State if a claimant has not first given notice to the State and shall have presented to the State the evidence upon which he relies in support of his claim. This committee indicates that there is little likelihood that a suit against a State will be brought.

"Another example of a precedent in State practice is to be found in the laws of the State of Iowa (McQuillin, Municipal Corporations (3d ed.), section 53.153)."
The division to give greater attention to those
questions in such areas as medical mal­
ers of tort claims would enable the Civil
day—file suit.
arrangement cannot be reached in the matter,
seems sensible. If a satisfactory ar­
procedures should be handled. The com­
not become effective until 6 months after  the
It is pointed out in the  executive communication
private practice. Similarly, allowable fees
claim must be filed within 6 years; suits
filing of a complaint in court.
20 percent of the agency award and 25 percent of a court award or
settlements as provided in this bill. These
tort suits then pending will be required in many of the larger claims. Also,
committees notes that increased work
will be important in effecting settlements as provided in this bill. These
will, as in the past, in many of the cases continue to require an attorney
by the committee and the request of the
the AGency in accepting or rejecting an offer
division, should be ready for decision within this pe­
In some cases where the agency does not reach a decision in 6 months, the claim­
and in the active tort litigation.
agencies that have extensive dealings with
of tort suits then pending is 81 percent of the tort suits then pending.
against the Government arose out of the
use of a large number of motor vehicles.
agency of substantial experience and
process of rejecting and accepting an offer
agency of substantial experi­
time for final decision on all claims. This
agency is the desirability of en­
duced by Senator Sam J. Ervin, Jr.
innovative design which the public or whose operations require the
use of a large number of motor vehicles. For end of October 1965, 81 percent of the tort suits then pending against the
arin the particular problems involved in tort litiga­
The Post Office, probably because of its use of more than 80,000 vehicles, has
to have been assured of the Department of
agents are now actually forming investigating and evaluating work
claimant. To assure competent representation and reasonable compensation in these matters, the proposed
be consistent with the principles of prompt and final settlement.
are large. The new, and in such instances, the committee does not believe that this period
ought to be reduced further. Industry is currently seeking to reach a fair decision. Under such circumstances, the claimant might wish not to
be held to unreasonable delays and delays cannot be
before even though this 6-month period may prove insufficient in some instances, the committee does not believe that this period
ought to be reduced further. Industry is currently seeking to reach a fair decision. Under such circumstances, the claimant might wish not to
be held to unreasonable delays and delays cannot be
The bill will not assign novel tasks to the agencies. They now investigate all accidents involving Federal employees, prepare investigation
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 and have
large volume of tort claims against the
The annual cost of tort claims, other than for claims settled promptly, is enormous. It has been estimated that
for the recovery of damages resulting from the use of a large number of motor vehicles. The Post Office, probably because of its use of
use of a large number of motor vehicles. For end of October 1965, 81 percent of the tort suits then pending against the
The Post Office, probably because of its use of more than 80,000 vehicles, has
The limitation period will be 6 years. The limitation period will be 6 years. It is important that
in connection with the handling of about 900 cases in Federal courts, cases which involved claims against the Government of over $20,000 and which involved alleged torts of postal employees.
The point is that the Post Office and other agencies are now actually forming investigating and evaluating work
on a large volume of tort claims against the Government.
These procedures 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 it will
furnish suggestions as to how the claims procedures should be handled. The committee approves the Civil Division's
proposed procedures. It has 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—litigate.
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 product 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 to assure competent representation and reasonable compensation in these matters, the proposed
be consistent with the principles of prompt and final settlement.
The ACTING PRESIDENT pro tem­
"There being no objection the bill (H.R. 13650) was considered, ordered to a third reading, was read the third time, and

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 tem­
Mr. ERVIN. Mr. President, under ex­
ing law the Federal Government is not subject to any statute of limitations, unless there is specific statutory provision to the
Federal Internal Revenue Code.
Mr. KUCHEL. Mr. President, will the

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

The ACTING PRESIDENT pro tem­
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. I yield.
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:

STREET STATEMENT
A similar Senate bill, S. 3142, was intro­
duced by Senator Sam J. Ervin, Jr.