contractor actually earned a profit of $34,202.86 on the entire contract. The audit report also discloses that this contractor earned a profit of $392,329.15 on all other Government business for the years 1944, 1945, and the first 5 months of 1946. Its commercial business during the same period also operated at a substantial profit.

My approval of this bill would establish the undesirable principle of Government underwriting any wartime losses incurred by contractors providing goods and services to the Government, regardless of the fact that such contractors did not sustain a net loss. I am unable to perceive any circumstances which would warrant preferential treatment for the claimant to the detriment of other wartime contractors. I am satisfied that it is my duty to oppose this bill.

Although my examination of the record in this case does not lead me to believe that there is an equitable basis for this claim, it is possible that a court through judicial processes might be led to determine otherwise. In complex situations like this one, it is my opinion that judicial rather than legislative remedy should be sought. I would, therefore, be willing to give my approval to a jurisdictional bill waiving the bar of any statute of limitations against the claim.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 31, 1954.*

On September 1, 1954:

MRS. MERLE CAPPELLER WEYEL

S. 45. I am withholding my approval of S. 45, a bill for the relief of Mrs. Merle Cappeller Weyel.

This enrolled enactment would pay the sum of $5,437.21 to Mrs. Merle Cappeller Weyel in full settlement of her claim arising out of the death of her husband after his release from active duty in the Navy in 1948.

The husband of the beneficiary of this bill was recalled to active duty in 1947, after having been retired following the completion of 30 years of service. Prior to his release from this tour of duty, he was given a particularly thorough physical examination because of indications that he might be suffering from high-blood pressure. However, a board of medical survey determined, as a result of this examination, that he was physically qualified for release from active duty, and he was accordingly again returned to his retired status in February 1948.

Subsequently, this officer was treated and X-rayed by a private physician in September 1948. The X-ray disclosed that he was suffering from a malignancy which caused his death in December 1948, after two unsuccessful operations in private hospitals.

This deceased officer's case was twice considered by the Board for the Correction of Naval Records, which was established by statute to correct records where this was necessary to remove an injustice. It was contended by the beneficiary that the malignancy should have been discovered at the time her husband was released from active duty and that, if it had been discovered, he would have been kept on active duty until his death. On the basis of this, it was further contended she was entitled to be paid the usual death gratuity, the difference between her husband's active and retired pay for the period between his release from active duty and his death and the amount of private medical and hospital expenses incurred on his behalf. The present measure is based on these same contentions.

After twice reviewing the case, the Board concluded that it was to be presumed that the malignancy had existed at the time the decedent was released from active duty and that, had its existence been discovered, he would not have been released at the time he was. However, the Board concluded that the decedent would not have been kept on active duty until his death, but in all probability would have been retired for physical disability not later than July 1948.

I can perceive no justification for the payment which the bill would make on account of the cost of private medical and hospital care incurred on behalf of the decedent. He was, at all times, entitled to such care at facilities operated by the Navy Department. There is no showing that any attempt was made to take advantage of these facilities. But, on the contrary, it appears that, for personal reasons, the decedent elected to be treated privately. If the Government is to establish medical facilities and make provision for the care of servicemen and veterans, as it has done, it cannot, at the same time, be expected to undertake reimbursement of such personnel when they decide, for personal reasons, to obtain care at their own expense from private physicians and hospitals.

Another reason why I am unable to approve this measure is that, as enacted, it is either unfair to the beneficiary or to the Government. This results from the fact that the bill excludes payment of the death gratuity of 6 months' pay which was originally claimed by the beneficiary but recognizes and authorizes the payment of the difference between active duty pay and retired pay for the entire period between the date of the decedent's release from active duty and the date of his death. It is obviously inconsistent to exclude the one and recognize the other. If the decedent is to be considered on active duty for the entire period in question for pay purposes, he certainly should be so considered with respect to the payment of the death gratuity. On the other hand, if his active duty is considered to have ended prior to the date of his death, then it is equally obvious an adjustment should be made in the pay differential award. In all fairness, it would appear that this inconsistency should be resolved one way or the other.

It should be stressed that notwithstanding disapproval of the bill, the beneficiary can now have her claim settled administratively. Since the time when the case was last reviewed by the Board for the Correction of Naval Records, legislation has been enacted which permits administrative settlement of claims based on changes in records made by the Board. Reconsideration of the beneficiary's claim under such legislation would result in an award which, I am confident, will be equitable from the standpoint of both the beneficiary and the Government. In this connection I should like to express my belief that the Board should take into account, in its reconsideration of the case, the possibility that had it been discovered prior to his release from active duty medical treatment of the decedent's condition might very well have led to his retention on active duty until the date of his death.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 1, 1954.*

E. S. BERNEY

S. 46. I have withheld my approval from S. 46, entitled "For the relief of E. S. Berney."

This bill would pay to E. S. Berney the sum of $4,750 as compensation for damages allegedly sustained by him as a result of certain representations made by a representative of the Navy during World War II.

It appears that in the summer of 1943 a representative of the Navy discussed with the beneficiary the potential use of his Nevada ranch and certain adjoining ones as a bombing range. Although the evidence on this point is conflicting, it appears that such representative indicated that he expected the Navy to begin operations that fall and that, prior to the beginning of such operations, all livestock would have to be removed from the land. The beneficiary alleges that on the basis of this information he disposed of his cattle and other property and vacated his ranch early in the fall. It developed, however, that the Navy did not need or begin to use his land until the following spring.

In subsequent condemnation proceedings, the court refused to recognize any damages occurring prior to the time when the Navy began using the land in question in the spring of 1944. On this premise the court awarded the beneficiary $766.67 for damages occurring after use by the Navy began. The present bill was designed to afford compensation for damages which were excluded by the court and which the beneficiary alleges were due to the premature vacation of his land.

Conceding the facts in this case to be as stated by the beneficiary, it still does not follow that he is entitled to the award proposed here. It has not been established that the damages allegedly sustained by the beneficiary were due to a reasonable reliance upon the representations of the Navy representative. There appears to have been no such reliance on the part of other ranch owners whose land was taken under similar circumstances and whose statements appear in the committee reports in support of some aspects of the beneficiary's claim.

In addition, there appears to be confusion as to the basis for measuring the damages which the beneficiary allegedly sustained. He made an unverified claim of damages in the amount of $12,000. Part of the damages so claimed are covered by the $766.67 condemnation award. The Congress reduced the claim

to $4,750, with no indication as to how this sum was arrived at.

From the foregoing, it seems to me, that the record in this case is inconclusive both with respect to the merits of the beneficiary's claim and as to the damages which he may have sustained. These uncertainties compel me to withhold my approval from this bill.

I would, however, be willing to approve legislation which would permit adjudication of the case by the appropriate district court. Such legislation should authorize the payment to the beneficiary of such damages as the court might determine to be reasonably attributable to his reliance upon the alleged representations made to him by the Navy representative. I believe that only by such means can the rather obscure elements of this case be considered and resolved in a manner fair to both the Government and the beneficiary.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 1, 1954.*

ELEPHANT BUTTE DAM

S. 417. I have withheld my approval from S. 417, a bill conferring jurisdiction upon the United States District Court for the District of New Mexico, to hear, determine, and render judgment upon certain claims arising as a result of the construction by the United States of Elephant Butte Dam on the Rio Grande.

Under S. 417, jurisdiction would be vested, notwithstanding any statute of limitations or lapse of time, in the United States District Court for the District of New Mexico, "to hear, determine, and render judgment upon any claim against the United States for compensation for the taking of or for damage to real or personal property as a result of the construction by the United States of Elephant Butte Dam on the Rio Grande."

The bill does not identify the persons to whom it would open the doors of the district court. It does not identify the date or dates on which the alleged taking of property or damage occurred. It does not identify the events which might be alleged to have caused the damage or the taking. Its only requirement is that suit be filed within 2 years from the date of enactment of the bill.

Construction of Elephant Butte Dam was commenced by the Interior Department in 1912. Approval of the bill would thus be an open invitation to anyone who believes that he has, at any time over the last 42 years, been injured in his property by the construction of this dam to bring the United States into court, no matter how stale his claim may be.

It appears that the cases around which the hearings on the bill principally turned are those of a number of persons who believe that the existence of the dam, taken in conjunction with the severe floods that descended the Rio Grande Valley in 1929, resulted in the permanent seeping or swamping, from and after that year, of their lands in the neighborhood of the now abandoned town of San Marcial. I am aware of no showing, however, that these landowners did not have an adequate opportunity to pursue their legal remedies within the period prescribed by general law or that there were sound reasons for their failure to do so. Still less am I aware of any reasons for including within the coverage of the bill not only these landowners, but also all others who, regardless of time, attribute a damaging or destruction of their property to the construction of Elephant Butte Dam.

The very purpose of a statute of limitations—whether it relates to suits between private citizens or to suits brought against the Government—is to avoid stale claims and to procure a reasonably prompt initiation of judicial action before records are lost or scattered, memories grow dim, and witnesses die or become unavailable. To say this is not to say that compliance with the statute must be insisted upon in cases where its waiver would avoid a clear inequity. The instant bill, however, is not in this exceptional category. On the contrary, the controversies with which it deals necessarily involve the resolution of questions of fact, of which some, at least, would require oral testimony from persons familiar with conditions as they were at the time when the claims originally arose. Thus, the nature of the claims here involved emphasizes the justice and wisdom of the general rule. Against this background, nothing in the terms or history of S. 417 of which I am informed offers any sound ground for the departure from existing law which the bill would sanction.

Beyond these considerations there is, in my judgment, no more merit to waiving the statute of limitations in order to permit the trying of cases which may range over all the forty-odd years of Elephant Butte history than there would be in the case of any other Federal river-control structure. In other words, I am seriously concerned that an exception as broad as that which S. 417 proposes to make in the case of Elephant Butte would be a precedent for attempts to secure similarly overgenerous legislation in the case of every other Federal river-control structure that anyone believes has caused him harm, regardless of how long ago the harm occurred.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *September 1, 1954.*

CUBAN-AMERICAN SUGAR CO.

S. 3304. I am withholding my approval from S. 3304, which would confer jurisdiction upon the Court of Claims of the United States to consider and render judgment on the claim of the Cuban-American Sugar Co. against the United States.

The problem at the root of the lawsuit and the private relief bills involves the company's World War I excess-profits taxes for the year 1917. The specific facts in this 34-year-old controversy are set forth fully in the report of the Senate Judiciary Committee (S. Rept. 1963, 83d Cong., 2d sess.). Basically, the taxpayer, for the year 1917, computed its excess-profits tax liability on the invested capital method. Some years thereafter, it felt that its tax liability was excessive and requested the Commissioner to compute the tax under the relief provisions of the law. When this was done, additional taxes were found to be due, and were paid. Several years later, in 1927, a claim for refund was filed on the ground that the tax computation by the relief method was erroneous. This claim was rejected on March 15, 1933, although later that year the taxpayer attempted to amend it, claiming that the invested capital method should be used. This method had been used in a settlement of the years 1918, 1919, and 1920, controversy with respect to which had been going on concurrently. The claim for refund filed in 1933 was rejected on the grounds it was not filed within the statutory period.

The overall effect of the legislation would be to direct the Court of Claims to determine the 1917 liability of the taxpayer by applying the invested capital method used in settling the years 1918, 1919, and 1920, before the Board of Tax Appeals (even though sec. 3 of the enrolled enactment states that nothing in the act is to be construed as an inference of liability on the part of the United States) since, as the committee report indicates, there is no question but that the taxpayer's taxes were overpaid.

Since the bill grants relief from the operation of the statute of limitation, special equitable circumstances should appear which require that this taxpayer be singled out for special relief. It is difficult to find such circumstances in this case. Basically, the Senate report urges that the taxpayer was denied a proper hearing by the Commissioner with respect to this claim. Yet, as the Senate committee report itself indicates, both prior to 1921, and after 1927, the taxpayer and the Commissioner's representatives had numerous conferences with respect to the taxpayer's 1917 liability. It would have served no purpose to hold further conferences in 1933 on a refund claim which was filed after the statute had run and based on another method of computation.

It is also suggested that the Bureau of Internal Revenue and the taxpayer "agreed" to postpone any action on the 1927 claim for refund until the 1918, 1919, and 1920 cases were determined.

No valid evidence appears that there was such an agreement. Indeed, the only information regarding any such discussion is, as the Court of Claims stated in a decision rendered in 1939 on this matter and involving this taxpayer that a representative of the taxpayer had written a letter to the Bureau "purporting to confirm a conversation" with a representative of the Bureau that further conferences on the year 1917 were to be indefinitely postponed for the reason that nothing further could be done regarding the special assessment question until such question had been settled by the Bureau or the Board of Tax Appeals. This unilateral statement not only does not seem adequate evidence of such an agreement but illustrates the desirability of a statute of limitations which disposes of stale claims and the necessity for retaining or securing evidence with respect thereto.