Mandatory programs are called for and I believe that the American people will respond positively to mandatory programs as long as they are convinced that sacrifices are not in vain and that they are shared equitably by all Americans. In that regard I agree with the President that the people of our Nation are capable of great sacrifice, if only they can see a clear goal worthy of the effort.

My bill requires that the President file a schedule with the Congress within 60 days of the enactment of this legislation which sets forth maximum import levels through 1985 and that from the date of such report, imports not exceed 5,500,000 barrels per day for the remainder of 1975, and that there be further reductions over the next 4 years so that in 1980 petroleum imports do not exceed 3,000,000 barrels per day, and in 1985 2,000,000 barrels per day. Imports which are specifically committed by the President to establishing and augmenting a National Strategic Energy Reserve System would not be counted for the purposes of my amendment.

At this point I would invite discussion of the implementation of any restriction on imports. We must consider in detail the different effects on our domestic economy of importing refined products while excluding crude oil and vice versa. We must not only look for a Band-Aid to cover our current painful problem, but seek long-range solutions that relate to both our energy needs and to our fiscal future. It may well be that imported product has a greater adverse impact than imported crude. The mix between product and crude will have important ramifications for independent and major oil companies; for the siting of domestic refiners; for conversion of utilities to coal and for our balance-of-payments deficit. I believe imported crude should be favored over imported product.

It would be a contradiction in terms to create greater dependence on foreign technologies as we implement Project Independence. The ration of crude to refined imports is a complex decision that should be thoroughly aired and thoroughly understood.

Let me detail the kinds of reductions that are proposed in my amendment. The American Petroleum Institute tabulated aggregate U.S. crude imports in the 4 weeks ended November 22, 1974 at 3,858,000 barrels per day, up from 3,541,000 barrels in the same period a year earlier. Aggregate product imports were 3,034,000 barrels per day in the 1974 period versus 2,005,000 barrels per day a year earlier. We are up substantially over last year in both categories. From this data we can estimate that total imports for refined product and crude oil range between 6,500,000 barrels and 7,000,000 barrels per day. My amendment would require a reduction of slightly less than 22 percent to 5,500,000 barrels; a reduction of slightly over a million barrels per day for calendar year 1975. This represents only an 8-percent reduction in our petroleum use and just over a 3.5-percent reduction in total energy use.

The President would then have the discretion to set import levels at this 1975 level or below until 1980 when the ceiling would drop to 3,000,000 barrels per day. I would envision the President using these 4 years to make a staged reduction in imports as energy conservation measures in this country improve in sophistication and begin to yield meaningful results and additional domestic supplies are brought on line. The next target would be in order. In the immediate future we take no precipitous action, but only do what is necessary to provide leadership and reduce balance-of-payments deficits.

As the Senate well knows, it would not be enough to simply slash imports without at the same time implementing strategies for reducing domestic consumption and bringing on additional supply. The Congress passed the Petroleum Allocation Act and that machinery is still in place to determine who is entitled to what level of imported crude and product. That Allocation Act also can serve to distribute energy within the borders of the United States.

It cannot, however, determine energy supply at the retail level. We have had experience with oil conservation through inconvenience and it is clear that a more orderly and equitable system is required. The Allocation Act will create burdensome lines if implemented at a retail level.

The transportation sector of our economy is the most fruitful area for energy conservation for two reasons. First, we find a very high percentage of energy consumption in this sector. Second, wasteful consumption is significant and can be drastically reduced without creating unemployment or other great hardship.

As we fashion a mandatory conservation program, a number of goals must be kept in mind. Such a program must reduce gasoline consumption; not discriminate against people on the basis of wealth; not create black markets, hoarding or artificial shortages, and finally, not strengthen present recessionary or inflationary pressures in the economy, but rather weaken such pressures.

Proposals may be grouped in two general categories; rationing or taxing. Rationing can be of the World War II type where nontransferrable coupons are issued. I reject this approach because I believe a black market would be soon created in coupons. I suspect that sanctions for dealing in the black market would meet with widespread apathy and that consequently the force of law would be weakened. Another drawback would be the administrative costs associated with establishing this system. Transferrable coupons would eliminate the possibility of a black market, but in my opinion once transfer of coupons is permitted, we have created a mixture of tax and subsidy. Those who desire gas beyond their quota will incur additional costs imposed by the rationing system and those who use less than their quota can exchange extra entitlements for money. There may be a more sophisticated method through our tax system. If we can rebate gas tax revenues on a weekly, monthly, or yearly basis under our existing tax system; we can work equity for all our people at every income level. Those who are not reached by the tax can receive a rebate through various subsidy mechanisms. A further advantage to a tax system is that funds not rebated are available to find solutions to the energy problem.

I have dealt at some length with how we should reduce domestic consumption of energy because my bill will signal the necessity for such efforts and should trigger a debate, not only in Congress, but also in the country. It states in the clearest terms that we will protect ourselves from bankruptcy through self-indulgence; that we are prepared for sacrifice. Winston Churchill in "The Gathering Storm" recites some lines from an unknown author:

"Who is in charge of the clattering train?
The axles creak and the couples strain;
And the pace is hot and the points are near,
And sleep has deadened the driver's ear;
And the signals flash through the night in vain,
For death is in charge of the clattering train."

Certainly there are many differences between 1974 and the late 1930's, but one aspect is similar. Just as the democracies could have best opposed German rearmament at the first instance of violated treaties, so consuming nations can best respond to the OPEC oil cartel now rather than later. There is a tendency for institutions, particularly democratic institutions, to shrink from complex problems. Not only is our energy problem complex, but it is remote. People are aroused by shortage and their leaders respond. But we have no shortage, rather we have an increasing debt and this is not yet so immediately threatening as to arouse broad public concern, unified leadership, and effective action. We drift on in the hope of better times. This is a vain hope because better times will only come through immediate efforts to conserve fuel and generate alternative supply. We cannot be hypnotized into inaction.

By Mr. CHILES (for himself, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. CLARK, Mr. CRANSTON, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. MATHIAS, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. WEICKER, Mr. STONE, Mr. GARY W. HART, Mr. NELSON, Mr. PHILIP A. HART, and Mr. HASKELL):

S. 5. A bill to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes. Referred to the Committee on Government Operations.

Mr. CHILES. Mr President, in January 1973, I introduced S. 260, the Federal Government in the Sunshine Act. The purpose of this bill is to provide for more public access to the work of the legislative and executive branches of Government by making most meetings of congressional committees and Federal agencies open to all interested persons.

Since the introduction of the bill, we have had a conference cosponsored by Common Cause and two rounds of hear-

ings at which a number of agency officials and Members of Congress testified. After each discussion on the bill, we considered the many thoughtful suggestions and made revisions to reflect the most discerning of them.

The bill that I am reintroducing today as S. 5, is, therefore, a much more refined bill, a bill which has been carefully examined by many of the people who will be affected by its passage.

Support for the bill within the Senate has been encouraging. The concept of opening up congressional markup sessions and conferences has been overwhelmingly accepted by the Democratic conference. Last Congress, we had 26 cosponsors for the bill. This Congress we hope to have even more.

Secrecy in Government has become synonymous, in the public's mind, with deception by the Government. While some matters must be discussed in closed session, these are few and are specifically provided for in the bill, to insure that the bill itself will not become a shield behind which Government can hide its deliberations from the people.

The experience we have had with open meetings in the 93d session shows that committees can work as effectively or more effectively in the public. For the past 2 years the Government Operations Committee, the Banking, Housing, and Urban Affairs Committee, and the Interior Committee have held open markup sessions. They have dealt effectively and openly with such important, and often controversial, legislation as the Congressional Budget and Impoundment Control Act of 1973, the Energy Reorganization Act of 1973, Federal Regulation of Lobbying Amendments, the Housing and Community Development Act of 1974, control of export-import banking, energy allocation, land use policy, Executive privilege, consumer protection, surface mining, and mineral leasing.

I hope that the Senate will act on the bill this Congress. With the public so keenly aware these days of the things that can go wrong in the governmental decisionmaking process, it is incumbent upon the Senate to show them that we are willing to eliminate the practices which foster wrong decisions.

Mr. President, I ask for unanimous consent to have the bill printed in full at this point in the RECORD.

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

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government.

SEC. 3. DEFINITIONS.—For purposes of this Act—

(1) "National defense" means—

(A) the protection of the United States and its military forces against actual or potential military attack by a foreign power;

(B) the obtaining of foreign intelligence information deemed essential to the military defense of the United States or its forces;

(C) the protection of information essential to the military defense of the United States or its forces against foreign intelligence activities; or

(D) the protection, to the extent specifically found necessary by the President in writing, of the United States against overthrow of the Government by force; and

(2) "Person" includes an individual, partnership, corporation, associated governmental authority, or public or private organization.

TITLE I—CONGRESSIONAL PROCEDURES

SEC. 101. SENATE COMMITTEE HEARING PROCEDURE.—(a) The Legislative Reorganization Act of 1946 is amended—

(1) by striking out the third sentence of section 133(b);

(2) by striking out subsections (a), (b), and (f) of section 133A;

(3) by adding after section 133B the following:

"OPEN SENATE COMMITTEE MEETINGS

"SEC. 133C. (a) Each meeting of each standing, select, or special committee of the Senate, or subcommittee thereof, including meetings to conduct hearings, shall be open to the public: *Provided,* That a portion or portions of such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by a vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided,* That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further,* That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committeee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(b) Each standing, select, or special committee of the Senate, or subcommittee thereof, shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the committee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript shall be made of each meeting of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of diplication. Notwithstanding the provisions of subsection (d), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of each such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(e) A point of order may be raised in the Senate against any committee or subcommittee vote to close a meeting to the public pursuant to subsection (a) of this section, or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section, by committee or subcommittee members comprising one-fourth or more of the total number of members of such committee or sub-

committee present and voting for or against such action. Any such point of order shall be raised in the Senate within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the President pro tempore, the leader of the majority party, and the leader of the minority party. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section, or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee shall report to the Senate within five calendar days (excluding days where the Senate is not in session) a resolution containing its findings. If the Senate adopts a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Committee on Meetings shall not be subject to the provisions of subsection (a), (b), (c), or (d) of this section."

(b) Subsection (a) of subsection 242 of the Legislative Reorganization Act of 1970 is repealed.

(c) Paragraph 7(b) of Rule XXV of the Standing Rules of the Senate is repealed.

(d) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:

"133C. Open Senate committee meetings.".

SEC. 102. Clause 27(f)(2) of Rule XI of the Rules of the House of Representatives is amended to read as follows:

"(2)(A) Each meeting of each standing, select, or special committee or subcommittee, including meetings to conduct hearings, shall be open to the public: *Provided*, That a portion or portions of such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(i) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(ii) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(iii) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(iv) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(v) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(I) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(II) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(B) Each standing, select, or special committee or subcommittee shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the committee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(C) A complete transcript shall be made of each meeting of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in paragraph (D), a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of paragraph (D), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(D) In the case of meetings closed to the public pursuant to subparagraph (A), the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subparagraph (C), portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of material specified in subsection (i), (ii), (iii), (iv), or (v) of subparagraph (A). A separate vote of the committee or subcommittee shall be taken with respect to the transcript of such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in subsection (i), (ii), (iii), (iv), or (v) of subparagraph (A). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(E) A point of order may be raised against any committee or subcommittee vote to close a meeting to the public pursuant to subparagraph (A), or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subparagraph (D), by committee or subcommittee members comprising one-fourth or more of the total number of the members of such committee or subcommittee present and voting for or against such action. Any such point of order must be raised before the entire House within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Committee on Meetings consisting of the Speaker of the House of Representatives, the majority leader, and the minority leader. The select committee shall report to the House within five calendar days (excluding days where the House is not in session) a resolution finding that the committee vote in question was not in accordance with the relevant subsection, it shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public or the portion or portions of any meeting transcript improperly deleted from the publicly available copy.

"(F) The Select Committee on Meetings shall not be subject to the provisions of subparagraph (A), (B), (C), or (D) of this section."

SEC. 103. (a) JOINT AND CONFERENCE COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(3) of this Act, the following new section:

"OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. (a) Each meeting of each joint committee and each subcommittee thereof, and each committee of conference shall be open to the public: *Provided*, That a portion or portions of such meetings may be closed to the public if the committee determines by vote of a majority of a quorum of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or administration;

"(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;

"(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement

authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, or (E) endanger the life or physical safety of law enforcement personnel; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

"(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person.

A separate vote of the committee shall be taken with respect to each committee or subcommittee meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each committee member participating in each such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the committee shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

"(b) Each joint committee, subcommittee, and committee of conference shall make public announcement of the date, place, and subject matter of each meeting at least one week before such meeting unless the committee or subcommittee determines by a vote of a majority of a quorum of the committee or subcommittee present that committee business requires that such meeting be called at an earlier date, in which case the committee shall make public announcement of the date, place, and subject matter of such meeting at the earliest practicable opportunity.

"(c) A complete transcript shall be made of each meeting of each joint committee, subcommittee, and committee of conference (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of subsection (d), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.

"(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the joint committee, subcommittee, or committee of conference may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.

"(e) A point of order may be raised against any committee vote of a joint committee, subcommittee, or committee of conference to close a meeting to the public pursuant to subsection (a) of this section, or any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section by committee or subcommittee members comprising one-fourth or more of the total number of the members of such committee or subcommittee present and voting for or against such action. Any such point of order shall be raised in either House within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of order shall immediately be referred to a Select Joint Committee on Meetings consisting of the President pro tempore of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders from each House. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section, or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee shall report to both Houses a concurrent resolution within five calendar days (excluding days where either House is not in session) containing its findings. If both Houses adopt such a resolution finding that the committee vote in question was not in accordance with the relevant subsection, they shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public, or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.

"(f) The Select Joint Committee on Meetings shall not be subject to the provisions of subsection (a), (b), (c), or (d) of this section."

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"133D. Open joint and conference committee meetings.".

SEC. 104. EXERCISE OF RULEMAKING POWERS.—The provisions of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE II—AGENCY PROCEDURES

SEC. 201. (a) This section applies, according to the provisions thereof, to any agency, as defined in section 551(1) of title 5, United States Code, where the body comprising the agency consists of two or more members. Except as provided in subsection (b), all meetings (including meetings to conduct hearings) of such agencies, or a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting consists of any procedure by which official agency business is considered or discussed by at least the number of agency members (or of members of a subdivision of the agency authorized to take action on behalf of the agency), required to take action on behalf of the agency.

(b) Subsection (a) shall not apply to any portion or portions of an agency meeting where the agency determines by a vote of a majority of its entire membership, or, in the case of a subdivision thereof authorized to take action on behalf of the agency, a majority of the membership of such subdivision, that such portion or portions of the meeting—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the necessarily confidential conduct of the foreign policy the United States;

(2) will relate solely to individual agency personnel or to internal agency office management and administration or financial auditing;

(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this paragraph shall not apply to any Government officer or employee will respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting this paragraph shall not apply unless the witness requests in writing that the meeting be closed to the public;

(4) will disclose information pertaining to any investigation conducted for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (D) disclose investigative techniques and procedures, (E) endanger the life or physical safety of law enforcement personnel; or (F) in the case of an agency authorized to regulate the issuance or trading of securities, disclose information concerning such securities, or the markets in which they are traded, when such information must be kept confidential in order to avoid premature speculation in the trading of such securities; or

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

(A) a Federal statute requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit and the information must be kept secret in order to prevent grave and irreparable injury to the competitive position of such person;

(6) will relate to the conduct or disposition (but not the initiation) of a case of adjudication governed by the provisions of the first paragraph of section 554(a) of title 5, United States Code, or of subsection (1), (2), (4), (5), or (6) thereof.

A separate vote of the agency members, or the members of a subdivision thereof authorized to take action on behalf of the agency, shall

be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to this subsection. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Within one day of such vote, the agency shall make publicly available a written copy of such vote and, if a meeting or portion thereof is closed to the public, a full written explanation of its action.

(c) Each agency shall make public announcement of the date, place, and subject matter of each meeting, and whether open or closed to the public, at least one week before each meeting. Such announcement shall be made unless the agency determines by a vote of the majority of its members, or in the case of a subdivision thereof authorized to take action on behalf of the agency, a majority of the members of the subdivision, that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity.

(d) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting of each agency (whether open or closed to the public). Except as provided in subsection (e) of this section a copy of the transcript or electronic recording of each such meeting, together with any official minutes of such meeting, shall be made available to the public for inspection, and additional copies of any such transcript, minutes, or recording (or a copy of a transcription of the electronic recording), shall be furnished to any person at the actual cost of duplication or transcription. Notwithstanding the provisions of subsection (e), in the case of meetings closed to the public, the portion of such transcript made available for public inspection or electronic recording shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidental source, or endanger the life or physical safety of law enforcement personnel.

(e) In the case of meetings closed to the public pursuant to subsection (b) of this section, the agency may delete from the copies of transcripts, electronic recordings, and minutes made available or furnished to the public pursuant to subsection (d) of this section, those portions which the agency determines by vote of a majority of its membership consist of materials specified in paragraph (1), (2), (3), (4), (5), or (6) of subsection (b) of this section. A separate vote of the agency shall be taken with respect to each transcript, electronic recording, or minutes. The vote of each agency member participating in such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the meeting transcript, electronic recording, and minutes made available to the public, the agency shall supply a full written explanation of why such portion was deleted and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), (5), or (6) of subsection (b). The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting (including those portions deleted from copies made available to the public), for a period of at least two years after such meeting, or until one year after the conclusion of any proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within three hundred and sixty days after the enactment of this Act, following consultation with the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) inclusive of this section. Such regulations must, prior to final promulgation, receive the approval in writing of the Assistant Attorney General, office of Legal Counsel, certifying that in his opinion the regulations are in accord with the requirements of this section. Any citizen or person resident in the United States may bring a proceeding in the United States Court of Appeals for the District of Columbia Circuit—

(1) to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein; or

(2) to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) inclusive of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (a) through (e) inclusive of this section by declaratory judgment, injunctive relief, or otherwise. Such actions shall be brought within sixty days after the meeting whose closing is challenged as a violation of this section: *Provided*, That if public notice of such meeting was not provided by the agency in accordance with the requirements of this section, such action shall be brought within sixty days of such meeting or such public announcement, whichever is the later. Such actions shall be brought against an agency and its members by any citizen or person resident in the United States. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the agency to sustain its action. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned a hearing and trial at the earliest practicable date and expedited in every way. In deciding such cases the court may examine any portion of a meeting transcript or electronic recording that was deleted from the publicly available copy and may take such additional evidence as it deems necessary. Among other forms of equitable relief, including the granting of an injunction against future violations of this section, the court may require that any portion of a meeting transcript or electronic recording improperly deleted from the publicly available copy be made publicly available for inspection and copying, and, having due regard for orderly administration and the public interest, may set aside any agency action taken or discussed at an agency meeting improperly closed to the public. The jurisdiction of the district courts under this subsection shall be concurrent with that of any other court otherwise authorized by law to review agency action. Any such court may, at the application of any person otherwise properly a party to a proceeding before such court to review an agency action, inquire into asserted violations by the agency of the requirements of this section and afford the relief authorized by this section in the case of proceedings by district courts.

(h) In any action brought pursuant to subsection (f) or (g) of this section, the reasonable costs of litigation (including reasonable fees for attorneys and expert witnesses) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate. In the case of apportionment of costs against an agency or its members, the costs may be assessed by the court against the United States.

(i) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 202. Title 5 of the United States Code is amended by adding after section 557 the following:

"EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING

"SEC. 557A. (a) DEFINITIONS.—For purposes of this section—

"(1) 'Ex parte communication' means a communication relevant to an on-the-record agency proceeding where such communication is not made on the record, or openly at a scheduled hearing session in such proceeding, and reasonable notice thereof is not given to all parties to, or intervenors in, such proceedings.

"(2) 'Interested person' means any person (including a member or employee of any Government agency or authority) other than a member or employee of the agency before which the on-the-record proceeding is pending who communicates with an agency member or employee with respect to any such on-the-record agency proceeding.

"(3) 'On-the-record agency proceeding' means any proceedings before any agency where the agency action, or a portion thereof, is required by law to be determined on the record after an opportunity for an agency hearing.

"(b) This section applies to any on-the-record agency proceeding.

"(c) In any agency proceeding which is subject to subsection (b) of this section—

"(1) no interested person shall make or cause to be made to any member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding any ex parte communication;

"(2) no member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding shall make or cause to be made to an interested person any ex parte communication;

"(3) a member of the agency in question, administrative judge, or employee who is or may be involved in the decisional process of the proceeding, who receives a communication in violation of this subsection, shall place in the public record of the proceeding—

"(A) any written material submitted in violation of this subsection; and

"(B) a memorandum stating the substance of each oral communication submitted in violation of this subsection; and

"(C) responses, if any, to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon obtaining knowledge of a communication in violation of this subsection prompted by or from a party or intervenors to any proceeding to which this section applies, the agency members or member, the administrative judge, or employee presiding at the hearings may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party or intervenors to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation.

"(d) The prohibitions of this section shall not apply—

"(1) to any proceeding to the extent required for the disposition of ex parte matters as authorized by law;

"(2) to any written communication from persons who are neither parties or intervenors to the proceeding, nor government officials acting in their official capacity, where such communications are promptly placed in the public docket file of the proceedings.

"(e) The prohibitions of this section shall apply at such time as the agency shall designate, having due regard for the public interest in open decisionmaking by agencies, but in no case shall they apply later than the time at which a proceeding is noticed for hearing. If the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions of this section shall apply at the time of his acquisition of such knowledge. In the case of any person who files with an agency any application, petition, or other form of request for agency action, the prohibitions of this section shall apply, with respect to communications with such person, commencing at the time of such filing or at the time otherwise provided by this subsection, whichever occurs first.

"(f) Every agency notice of an opportunity for participation by interested persons in a hearing shall contain a statement as follows:

"(1) if such notice relates to an on-the-record agency proceeding, it shall state that the proceeding is subject to the provisions of this section with respect to ex parte communications;

"(2) if such notice relates to an agency proceeding not on-the-record, it shall state that the proceeding is not subject to the provisions of this section with respect to ex parte communications.

If a notice of hearing with respect to any proceeding before an agency fails to comply with this section, the proceeding shall be deemed to be an on-the-record agency proceeding for purposes of ex parte communications.

"(g) Each agency subject to the requirements of this section shall, within three hundred and sixty days after the enactment of this section, following consultation with the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment, promulgate regulations to implement the requirements of this section. Any citizen or person resident in the United States may bring a proceeding in the United States Court of Appeals for the District of Columbia Circuit—

"(1) to require any agency to promulgate regulations if the agency has not promulgated such regulations within the time period specified; or

"(2) to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of this section, and to require the promulgation of regulations that are in accord with this section.

"(h) Nothing in this section shall be construed to permit any communication which is prohibited by any other provision of law, or to prohibit any agency from adopting, by rule or otherwise, prohibitions or regulations governing ex parte communications which are additional to, or more stringent than, the requirements of this section.

"(i) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (c) and (e) of this section by declaratory judgment, injunctive relief, or otherwise. The action may be brought by any citizen of or person resident in the United States. The action shall be brought in the district wherein the plaintiff resides or has his principal place of business, or where the agency in question has its headquarters. Where a person other than an agency, agency member, administrative judge, or employee is alleged to have participated in a violation of the requirements of this section, such person may, but need not, be joined as a party defendant; for purposes of joining such person as a party defendant, service may be had on such person in any district. Among other forms of equitable relief, the court may require that any ex parte communication made or received in violation of the requirements of this section be published, and, having due regard for orderly administration and the public interest, may set aside any agency action taken in a proceeding where the violation occured. The jurisdiction of the district courts under this subsection shall be concurrent with that of any other court otherwise authorized by law to review agency action. Any such court may, at the application of any person otherwise properly a party to a proceeding before such court to review an agency action, inquire into asserted violations by the agency of the requirements of this section, and afford the relief authorized by this section in the case of proceedings by district courts.

"(j) In any action brought pursuant to subsection (g) and (i) of this section, cost of litigation (including reasonable fees for attorneys and expert witnesses) may be apportioned to the original parties or their successors in interest whenever the court determines such award is appropriate."

SEC. 203. This title and the amendments made by this title do not authorize withholding of information or limit the availability of records to the public except as provided in this title. This title does not authorize any information to be withheld from Congress.

By Mr. WILLIAMS (for himself, Mr. RANDOLPH, Mr. MAGNUSON, Mr. BENTSEN, Mr. BROOKE, Mr. CANNON, Mr. CHILES, Mr. PHILIP A. HART, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. MCGEE, Mr. MONDALE, Mr. MOSS, Mr. PASTORE, Mr. PELL, Mr. SCHWEIKER, Mr. STAFFORD, Mr. STEVENS, Mr. MCGOVERN, Mr. PERCY, Mr. CRANSTON, Mr. CLARK, and Mr. CULVER):

S. 6. A bill to provide financial assistance to the States for improved educational services for handicapped children. Referred to the Committee on Labor and Public Welfare.

THE EDUCATION OF ALL HANDICAPPED CHILDREN ACT

Mr. WILLIAMS. Mr. President, with Senators RANDOLPH and MAGNUSON, I am reintroducing a bill entitled "The Education for All Handicapped Children Act." The bill was introduced at the beginning of the 93d Congress, and throughout that Congress the Committee on Labor and Public Welfare, through our Subcommittee on the Handicapped, conducted extensive hearings both in Washington and throughout the United States. As originally introduced, this bill followed on the record of a series of landmark court cases establishing in law the right to education for all handicapped children. Since those initial decrees in 1971 and 1972, the progress toward establishing the right and the remedy for handicapped children has continued, leaving clear today that this right is no longer questioned. Response by numerous States through the courts or through the legislatures has moved us far beyond where we originally stood when this legislation was first introduced.

Furthermore, steps taken by the 93d Congress have brought us much closer to achieving the implementation of the right of all handicapped children to go to school with their peers. These provisions, adopted as part of the Education Amendments of 1974, laid the basis for comprehensive planning, the delivery of additional financial assistance to the States, and the protection of the rights of parents and their children in receiving educational services from the schools of this Nation. These provisions—

Mandated the States to prepare and submit to the Commissioner a comprehensive planning document, establishing a goal of full educational opportunity for each handicapped child within the State and requiring a detailed timetable for accomplishing this goal. This document is due on August 21, 1975, and must be submitted in order for the State to receive funds after June 30;

Established a priority in the use of Federal funds under that program for children not presently receiving an education program;

Changed the State grant program into an entitlement program based on the number of children in average daily attendance and thus vastly increased the funding available to the States for fiscal year 1975;

Mandated a plan for the provision of full due process guarantees to all handicapped children and their parents;

Mandated the States to submit in detail a plan demonstrating how children will be educated in the least restrictive environment;

Mandated a plan from the States demonstrating how they will prohibit the classification of children in a racially or culturally discriminatory manner; and

Underscored the mandate for a least restrictive environment by providing an incentive under title I for the return of children now served by State agencies to their local educational agency.

The culmination of this action has been increased appropriations under the supplemental appropriations bill passed by the 93d Congress and signed by the President, making available to the States $100 million for fiscal year 1975 and $100 million for fiscal year 1976, or slightly more than double the appropriations available in the previous fiscal year. While there are few Senators in this Chamber who agree that this level of funding is sufficient, it does represent a vitally needed increase of funds which will be well used by the States.

The bill I am introducing builds on that important record and on the hearings held throughout the 93d Congress. It amends part B of the Education of the Handicapped Act to provide an entitlement to States of 75 percent of the excess costs involved in educating handicapped children for fiscal years 1976 through 1980, and to lay in place a reorganization of that part of existing law which I believe will revitalize and make clear the responsibilities of State and local educational agencies in delivering services to handicapped children. In brief, this bill—

"(c) When a plan requires presentment or surrender of securities or the performance of any other act as a condition to participation under the plan, such action must be taken not later than five years after the entry of the order of confirmation. Persons who have not within such time presented or surrendered their securities or taken such other action shall not participate in the distribution under the plan. Any securities, moneys, or other property remaining unclaimed at the expiration of the time allowed for presentment or surrender of securities or the performance of any other act as a condition to participation in the distribution under a confirmed plan shall become the property of the petitioner.

"(d) The court may direct the petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any instruments required to effect a transfer of property pursuant to the confirmed plan and to perform such other acts, including the satisfaction of liens, as the court may determine to be necessary for the consummation of the plan.

"RETENTION OF JURISDICTION

"SEC. 819. The court may retain jurisdiction of a proceeding under this chapter for such period as it determines is necessary to assure execution of the plan.

"REFERENCE OF ISSUES AND COMPENSATION

"SEC. 820. (a) The judge may refer any special issues of fact to a referee in bankruptcy, magistrate or another special master for consideration, the taking of testimony, and a report upon such special issues of fact, if the judge finds that the condition of his docket is such that he cannot take such testimony without unduly delaying the dispatch of other business pending in his court, and if it appears that such special issues are necessary to the determination of the case. Only under special circumstances shall reference be made to a special master who is not a referee in bankruptcy or a magistrate. A general reference of the case to a master shall not be made, but the reference, if any, shall be only in the form of requests for findings of specific facts.

"(b) The court may allow reasonable compensation for the services performed by any such sepcial master who is not a salaried Federal employee, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of adjustment. An appeal may be taken from any order making such determination or award to the United States court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

"SEPARABILITY

"SEC. 821. If any provision of this chapter, or the application thereof to any agency, instrumentality, or subdivision is held invalid, the remainder of the chapter, or the application of such provision to any other agency or intsrumentality or political subdivision shall not be affected by such holding.".

OPEN COMMITTEE MEETINGS

The Senate continued with the consideration of the resolution (S. Res. 9) amending the rules of the Senate relating to open committee meetings.

Mr. CANNON. Mr. President, I ask unanimous consent that the following Rules Committee staff people be granted the privilege of the floor during the consideration of the pending legislation: William Cochrane, John Coder, Peggy Parrish, and Louise McPherson.

Mr. CHILES. Will the Senator yield?

Mr. CANNON. I yield.

Mr. CHILES. I ask unanimous consent, Mr. President, that during the consideration and votes on Senate Resolution 9 and all amendments thereto, and Senate Resolution 5 and all amendments thereto, the following staff members have the privilege of the floor: Jim Davidson, George Patton, Bob Rackleff, Claudia Ingram, Paul Hoff, Marilyn Harris, John Childers, Gary Klein, and Charles Morrison.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Will the Senator yield?

The PRESIDING OFFICER. I yield.

Mr. HATFIELD. Mr. President, I ask unanimous consent that James Schoener and Larry Smith of the committee staff and Charles Morrison of the Government Operations Committee be granted the privileges of the floor during the debate on the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Senate Resolution 9 is before the Senate.

Mr. CANNON. Is there a time agreement?

The PRESIDING OFFICER. Time for debate on this resolution is limited to 1 hour to be equally divided and controlled by the Senator from Nevada (Mr. CANNON), the Senator from Delaware (Mr. ROTH), and the Senator from Florida (Mr. CHILES), with 30 minutes on any amendment, except one to be offered by Mr. ROTH, on which there shall be 1 hour, and one to be offered by Senator CHILES, on which there shall be 1 hour, and with 20 minutes on any debatable motion, appeal, or point of order.

Mr. CANNON. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CANNON. Senate Resolution 9, amending the rules of the Senate relating to open committee meetings, was unanimously reported to the Senate by the Committee on Rules and Administration with an amendment in the nature of a substitute for section 1 of the resolution. The amendment proposes a different approach from that defined in the resolution as originally introduced by Mr. CHILES. It does not, however, and I emphasize does not, take away any right of any committee to hold every single meeting in open session.

While the amendment reported by the Rules Committee leaves to each standing committee the right to adopt special procedures to meet any needs of its own differing from that of another committee, there is nothing in the proposed amendment to require a committee to hold closed meetings. There is a proviso that all meetings shall be open "unless the testimony to be taken at that hearing may related to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or Government regulations."

To the contrary of holding closed meetings, if any committee declines to adopt any changes in its own rules with regard to open and closed sessions, all of its meetings, with the above exception as to hearings, will be in open session unless it votes in open session to go into closed session at any specific meeting for consideration of a matter relating to national security, to reflect adversely on the character or reputation of a witness or any individual or divulge matters deemed confidential by other provisions of law or government regulations.

It is just not fair for anyone to make a statement that the amendment reported by the Committee on Rules and Administration repeals all requirements in the existing rules for open session, for example the rules reqiuring open session for the Committee on the Budget, unless that person acknowledges the fact that a committee would have to take further action by adopting rules of its own in order to hold closed meetings.

Under the change proposed by the Committee on Rules and Administration any committee could adopt a rule that would absolutely require every meeting, with the exception pointed out above, to be open regardless of what was considered in the meeting, unless contrary to law; and if it took no action at all, the meetings would be open.

In the case of the Committee on the Budget, if the committee amendment were adopted, that committee on the very next day could readopt the same provisions found in the Budget Act defining what meetings should be open and when it would be in order to move to go into closed session; and as I have already stated, if it took no action, all of its meetings would be open unless that committee in open session voted to go into closed session.

The main difference in the two proposals is to be found in the language of the amendmnt which leaves it to the committee to define its procedure without forcing each committee to operate under the same procedure by compulsion.

As I have already stated, the reported resolution requires no committee to close its doors or to hold closed meetings. It merely gives to each the right to do so if it feels its obligation to the public demands that procedure. Instead of requiring committees to hold closed meetings, the reported amendment by the Committee on Rules and Administration emphasizes the responsibility of standing committees and subcommittees

thereof to conduct their business in open session, but at the same time, reserves to each committee—which obviously is in a better position to know best what the public interest and the obligations of the committee to the public are—the right on any particular occasion to make decisions to accomplish such ends. "Any committee meeting at the commencement of a new Congress to adopt or to change its rules relative to closed or open sessions would be convened in open session, and could go into closed session only by vote of the committee."

The resolution as reported to the Senate, if agreed to, would provide that each committee from the beginning of a new Congress would have to begin its first meeting in open session. It could then vote to go into closed session and adopt a set of standing rules as to which meetings should be open and which should be closed. This would become a standing rule of that committee until changed. But such action would not be taken by a committee of a previous Congress; any such action would have to be taken by each committee by a majority vote of the members of any said committee after its new membership had been appointed in that Congress. Likewise, if any committee failed or refused to adopt a set of standing rules as to whether or not its meetings were to be open or closed, that committee would have to begin each meeting in open session until it voted to the contrary; otherwise, all meetings would be open.

Any committee, particularly if its jurisdiction involved legislation not secretive in nature, would not have to worry about making any rule changes; all of its meetings would then be open. The proposed rule change emphasizes this point.

While all of the work of some committees might well be transacted in open session, the work of other committees might be of such nature that it would be essential for them to hold certain closed meetings. Much of the work of the Committee on Armed Services, the Committee on Foreign Relations and the Committee on Appropriations, to name some of them, might have need for closed sessions for certain purposes which the Senate may not now be in a position to anticipate. This resolution as reported would give committees handling such sensitive matters, particularly national security and rights of witnesses, the right to prescribe procedures best fitted to meet their own situation.

On the other hand, the resolution as originally submitted by Mr. CHILES would require a different procedure. Each committee meeting would always have to begin in open session; it might then vote to go into closed session. The resolution as referred to the Committee on Rules and Administration provides that "Each meeting of a standing, select, or special committee of the Senate, or subcommittee thereof * * * shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present. * * *"

The comparable language proposed in S. 5, to provide that meetings of Government agencies and of congressional committees shall be open to the public, as reported by the Committee on Government Operations recommends the same general procedure. Note that language: "Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions * * *"

What does the above language in the two introduced measures mean? Under any parliamentary procedure in order for a committee to vote to go into closed session, unless specifically worded otherwise, the chairman or someone would have to make a motion or to put the question, stating why the committee should go into closed session, after which the vote would be taken in open session. To carry this to an extreme, in what predicament would the United States have found itself preceding and during World War II, when the subcommittees of the Committees on Appropriations of the Senate and the House of Representatives, met to consider the Manhattan Project to develop the atomic bomb, had they been forced to adopt a motion stating: "Shall the Subcommittee go into closed session to discuss the development of the atomic bomb?"

In this day and time, when things are changing so rapidly and becoming so complex, why should we not, in keeping with democratic procedure, allow a committee by a majority vote to make a decision as to whether or not a matter to be discussed by that committee merits closed consideration, with any action to be taken to be reported later to the press if the divulging of such information would not be deemed contrary to the best interest of our country.

It should be emphasized that the committee's recommendation would also require any rules changes adopted by a standing committee in this regard to be printed in the CONGRESSIONAL RECORD not later than March 1 of that year or not later than 60 days after the adoption of any such rule.

Mr. President, I reserve the remainder of my time.

Mr. HATFIELD. Mr. President, will the Senator from Florida yield?

Mr. CHILES. I yield 3 minutes to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I find myself in the unhappy situation of not being able to support my chairman, or the committee that has this bill before the Senate today; but I do believe that the "Government in the Sunshine Act" is just another step of many designed to bring the American people closer to their representatives and their Government. The fact that some 49 States have adopted similar measures in recent years is an indication of the general public's desire to know more about their Government.

Mr. President, for too long the major decisions affecting the lives of millions of Americans have been made behind closed doors. The pictorial image of smoke-filled rooms, unfortunately, has not only been applied to political conventions, but to the Congress as well. Like most things in politics, image is a very important factor in cultivating the confidence of the voter. The Senate has a unique opportunity today to say to the citizens of America that their representatives have nothing to hide, and that the doors to the backrooms of all committees are going to be open to the general public, some for the first time in history.

It has taken almost 200 years to remove the cloaks of secrecy from the windows of Congress, and it is a step long overdue. The term, "Sunshine in Government," is a fitting description for this legislation.

No citizen, whether an elected official or not, should be permitted to more information of the governmental process than another citizen. If the Senate should refuse today to open its doors as it has the opportunity to do, then such action might well lead observers to term this institution as the "imperial Congress" as they have done to the Presidency.

If the Senate should refuse to open its doors and then require the executive departments to operate in the sunshine, then the American people will have been provided with the perfect example of the double standard. If the Senate is going to refuse to accept guidelines for the closing of committee meetings, then in all fairness it should not require the executive departments to operate under the guidelines of S. 5.

Long ago, our Founding Fathers firmly decided against the idea of royal titles or a class structure. While a somewhat loose economic class structure has been established over the years, we can also say that no law or statute has endorsed or supported this sociological and economic phenomenon. The Constitution provides that every man and woman 18 years of age and older who is a citizen of the United States has the right to vote. Today, the Senate can take this one step further by formally adopting the principle that every citizen has the right to know what and how decisions are made in the legislative and executive branches of their Government.

Mr. President, as a member of the Senate Committee on Interior and Insular Affairs, I can attest to the fact that a committee can do its work, and very successfully, out in the open. We hold all of our meetings and markups in the open unless they concern committee personnel matters or the financial matters relating to the nominees before our committee. Mr. President, the Senate Budget Committee and the Senate Interior Committee have proven to the Senate that committees can operate in the sunshine with efficiency and dispatch. I am confident that the other committees in the Senate will also find this to be true and possible.

Mr. President, I strongly urge my colleagues to support efforts to restore the original language to Senate Resolution 9 and for the passage of S. 5. A vote in favor of these measures will be a vote of confidence in favor of the American people.

I thank the Senator from Florida.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. Mr. President, I yield myself such time as I may require.

On January 15, 1975, I, along with nearly 40 other Senators, introduced legislation which would have required that all meetings of governmental agencies and congressional committees be open to the public, with certain clearly defined exceptions. A comprehensive regulation of executive branch and congressional meetings was contained in S. 5 as introduced. Regulations for meetings of Senate committees only were contained in the first provision of title one, which consists of the same language as the original version of Senate Resolution 9.

On September 18, these measures were reported from the Senate Committee on Rules and Administration in a form which not only would halt the advance of open and accountable government, but would also mark an unfortunate return to the politics of secrecy and concealment.

In reporting these measures, the Senate Rules Committee deleted all references to House-Senate conference committee meetings from S. 5, and greatly weakened the proposed reform in Senate Resolution 9.

The report on Senate Resolution 9 states, in part,

> While the committee generally agrees with the concept of more openness as expressed in S. 5, it believes that in respect to congressional committees such purpose would more properly be served by direct amendment of the standing rules of the Senate.

Let us examine their amendments to see if they properly serve the purpose of reform.

As originally introduced, Senate Resolution 9 would have required all meetings, including hearings, of each Senate standing, select, or special committee to be public.

Under its terms Senate committees, however, would have been permitted to vote, in open sessions without the use of proxies, to close a meeting if one of five specific issues would be raised in the course of the meeting: namely, if the subject or testimony, first, "will disclose" national defense or foreign relations secrets; second, "will relate" to committee staff matters; third, "will tend to charge" a person with a crime or misconduct; fourth, "will disclose" an informer's identity; or fifth, "will disclose" commercial or financial secrets.

The Committee on Rules and Administration version of the resolution, on the other hand, permits the meetings to be closed if the subject "may relate" to national security, "may tend to reflect adversely" on an individual, or "may divulge" confidential matters. Lawyers will recognize immediately the significance in the wording. The Committee on Rules and Administration version of the resolution permits an unacceptable degree of latitude in closing committee meetings. The interests of an informed public, and even an informed Senate, require more stringent guidelines to close committee meetings.

It is also important to note that in voting to close committee meetings, the Rules Committee version would permit the use of proxy votes. It is difficult to understand how a Senator not present at the meeting could be fully aware of the subject requiring the meeting to be closed. A Senator voting by proxy is not able to hear the arguments favoring or opposing an executive session. Our resolution as originally introduced did not permit the use of proxy votes. But these are not the only objections to the committee version of the resolution.

The committee version limits the open meeting rule only to standing Senate committees; our version made the open meeting rule applicable to special and select committee sessions as it sees fit. There is no safeguard in the committee version to prevent a Senate committee from adopting rules whereby virtually all meetings could be closed to the public. Not only does the committee version allow for an increased number of closed committee sessions, and a continuation of proxy voting, it also encourages a needless diversity in committee procedures when the intent of our reorganization acts has been to rationalize and standardize the legislative process.

The removal of all mention of legislative procedure from Senate Resolution 9 is also regrettable. Our version of Senate Resolution 9 contained procedures for keeping accurate transcripts of all committee meetings, as well as proivsions by which the decision to close a meeting could be appealed to the respective House. Under those provisions, each House would have a select committee on meetings, composed of both its parties', leadership and presiding officer, which if it decided that a meeting had been closed without sufficient justification, could recommend to its parent body that the committee's decision be reversed and that the meeting be open, the transcript made public, or both.

The appropriate House would have to concur in this recommendation for it to take effect. S. 5 also proposed a joint select committee to propose remedial action for joint and conference committees. But, with no comparable language inserted in Senate Resolution 9, no transcripts of closed meetings need be taken, no avenue of appeal exists, and a meeting closed for whatever justification remains secret.

The language removed from S. 5 also contained provisions for open joint committees. Without that language, the deliberations, for example, of the Joint Committee on Atomic Energy could regularly be closed to public scrutiny.

If we are to prepare a comprehensive energy policy, the public needs to be informed of the deliberations of this important joint committee. S. 5 as it now stands could not guarantee the public's right to know. Moreover, S. 5 as reported from committee would continue the practice of closed conference committee meetings. It is in the House and Senate conferences that the final form of legislation is determined. In closed conference, major items in bills are retained or removed often without public knowledge and too frequently with little publicity.

Earlier in this session, both Houses went on record as favoring the concept of open conferences, but have done little to implement those promises. The removal of open-meeting joint and conference committee rules from S. 5 is another failure to implement well-advised reforms.

In my remarks made at the time S. 5 was introduced, I observed that

> Secrecy in Government has become synonymous in the public's mind with deception by the Government.

The form in which S. 5 and Senate Resolution 9 were reported by the Rules Committee cannot help but continue this public perception because Congress fails to apply to itself the same standards that it requests of the executive branch. When are we going to admit that this kind of double standard is unacceptable? Now that people are particularly aware of the fact that things can go wrong in the governmental decisionmaking process, it is incumbent upon the U.S. Senate to show them that we are willing to eliminate the practices which have fostered ill-advised decisions.

We can show this willingness by rejecting the Rules Committee version of Senate Resolution 9 and again making the Congress subject to the same "sunshine" requirements that we must, and plan to, require of the executive branch.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, 2½ years ago, I joined Senators CHILES, HUMPHREY, and others in offering an amendment to require a general rule opening most Senate markup meetings to the public. That amendment was narrowly defeated, although we were successful in getting the Senate to permit individual committees to open their mark-up meetings at their own discretion. Today the Senate has an opportunity to reverse that mistake and join our colleagues in the House of Representatives in requiring committees to be open and in opening conference committees.

In my judgment, there are serious defects in the proposal of the Committee on Rules and Administration.

The most serious defect, in my judgment, in the Committee on Rules and Administration proposal, is its provision to allow individual committees to adopt rules different from the proposed general Senate rule favoring openness. This would encourage the development of a haphazard system of individual rules for individual committees. The legislation Senator CHILES and I are proposing would give the private citizen the same basic right of access for all committees.

When committees are closed to the

public, it should be because of the nature of the specific issue involved in that meeting, not because the prevailing sentiment in that committee is for open or closed meetings.

Everyone agrees that there are certain matters—where national security or defense secrets are involved, or personal privacy, or details of an on-going negotiation—that require confidentiality in the public interest, and I emphasize the words public interest. That is not the issue. We provide flexibility in such cases. The question here is whether any committee should be allowed to operate in secrecy when ordinary business is being transacted and when there is no compelling reason for confidentiality.

I agree with Patrick Henry who once said:

> To cover with a veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man.

The business of Congress is public business. We are accountable not just for the decisions we take as a collective unit, but we are also accountable as individuals for our votes in committees and conference committees, for the admendments we propose in committees, and for the positions we take. When part of the legislative process is unnecessarily hidden from the public eye, then part of that accountability is lost to the voter.

I believe that when we rid the government of unnecessary secrecy, there will be greater respect for the times when confidentiality is essential.

It is especially fitting that the "sunshine proposals" should come for a vote the day after when many local elections took place. Elections are the most basic institution of our participatory democracy. The rules change which Senator CHILES, I, and many others are proposing would guarantee that the voter would have the fullest possible accesss to the entire legislative process consistent with the need for protecting certain, limited, special categories of information. This rules change will help give the voter the information he needs to make intelligent decisions and help educate the public about the procedures of Congress. Most important of all, I believe and hope it will help bridge a chasm between Washington and the rest of the country and make the voter in Lewes, Del., or Crescent City, Calif., feel that the Federal Government is indeed his government.

Mr. President, I point out that in both committees on which I serve, the Committee on Government Operations and the Committee on Finance, the current practice has been to adopt an open rule. Despite the reservations many people on both these committees had at one time, I think it can be said with all fairness that we have found that the open rule has in no way inhibited the free discussion and the transaction of important legislative business. Instead, it has promoted an openness and the opportunity for everyone to know what those committees are doing.

For that reason, I urge my colleagues to reject the Rules Committee amendment to Senate Resolution 9 and restore the original language.

Mr. CHILES. Mr. President, I yield to the Senator from Maine.

The PRESIDING OFFICER. How much time does the Senator yield?

Mr. CHILES. Such time as is needed for colloquy.

Mr. MUSKIE. Mr. President, I rise principally on the basis of the experience I have had in the Committee on Government Operations and the Budget Committee in open meetings, including markup and conference sessions.

I had some of the misgivings that other Senators have had and have experienced on the floor of the Senate with respect to a consistent open rule, but under the experience we have had for the last 3 years, beginning with the writing of the Budget Control Act in the Committee on Government Operations 3 years ago—and since then in the Government Operations Committee and in the conduct of business in the Budget Committee—we have operated fully with an open meeting rule, consistent with the original text of Senate Resolution 9.

Despite the warnings last year that open meetings would inhibit frank discussion and compromise in the committee, I have found just the opposite. Open meetings have encouraged responsible decisionmaking. They have improved our access to public opinion, and they have broadened both the debate and public involvement in deciding where our tax dollars will be spent.

From the point of view of the media, I find that they have found these open sessions extremely enlightening in terms of understanding some of the complex issues and problems with which we have had to deal in this new budget process.

We in the Budget Committee also have had open conference sessions with the House Budget Committee on the first concurrent resolution. That, by traditional standards, surely was a hazardous undertaking. This was a new process which Congress had never undertaken before. We had gotten through our respective Houses successfully and survived; but in connection with the question of accommodating the kind of debate and compromise in conference which we had come to expect in the tough kinds of confrontation we have between the two Houses, there was some danger that the process might be perceived as extremely provocative, abrasive, divisive, chaotic, or what have you.

There was some fear that having open conferences with those risks was a hazardous undertaking. On the contrary, I think the press were impressed by the fact that we were able to disagree constructively, that we were able to debate our disagreements and reach constructive conclusions. I believe that the general reaction of the press, insofar as I was exposed to it, was most positive.

So I say to the Senate that, as the one committee which has operated under the open rule that was put into our charter, into the statute which created the process, the experience has been wholly positive, without any negative implications whatsoever.

It is on the basis of that experience, Mr. President, that I joined in cosponsoring Senate Resolution 9; and it is on the basis of that experience that I urge the Senate to adopt that kind of open rule for all Senate committees. I see no risks in it.

I believe that the five reasons stated in Senate Resolution 9, in the original text, for closing meetings, are sufficient to protect any real need for closed meetings that anyone could conceivably conjure up.

I ask unanimous consent that those reasons be printed in the RECORD.

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

"(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disagree or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enformement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires that information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.".

Mr. MUSKIE. Mr. President, I intend to vote to reject the Rules Committee language contained in Senate Resolution 9 that would limit drastically the open Senate meeting provisions in the Government in the sunshine bill.

In doing that, I hope that we can restore the original language approved this summer by the Government Operations Committee, which would require open meetings by Senate committees, joint committees, and conference committees, except in certain circumstances.

As a long-time supporter of open committee meetings, I believe that failure to reject the current language of Senate Resolution 9 would mean a giant step backward in meeting our obligation to

open up the decisionmaking process in Congress.

I am especially concerned because the current language would repeal the provision of the Budget Reform Act that requires open meetings by the Senate Budget Committee.

As Budget Committee chairman, I can testify to the success of our present open meetings rule. I want to see that requirement continued.

Despite warnings last year that open meetings would inhibit frank discussion and compromise in the committee, I have found the opposite. Open meetings have encouraged responsible decisionmaking. They have improved our access to public opinion. And they have broadened both the debate and public involvement in deciding where our tax dollars willl be spent.

Mr. President, it might help to remember the times we live in.

We have never, in modern times, seen public confidence in Government so low. We can congratulate ourselves for our conduct in exposing Watergate corruption, but we cannot rest until we take the affirmative steps necessary to restore public confidence in Government.

Louis Harris stated recently that 63 percent of Americans report that "the people running the country do not care what happens to you," up from 33 percent in 1966. Forty-one percent report that "I feel left out of things going on around me," up from only 9 percent in 1966.

During that same period, the number of Americans who expressed great confidence in Congress went from 42 percent to 13 percent, and in the executive branch, from 43 percent to 13 percent.

Finally, 85 percent of all Americans feel that most politicians are afraid to tell it like it is, to tell the public the hard truth about the key problems of today.

While Harris found deep frustration with Government, he also found a deep desire by people to participate in Government—to be let in on the hard facts, and have a chance to make an impact on Government decisions.

That deep frustration is very real, I can say from personal experience. I have seen it first-hand among the voters in Maine, as I am sure all of you have seen it in your own States.

I do not know many of those frustrated citizens who would be satisfied with the current language. It shows a clear double standard in stating, "OK, the executive branch better open up its meetings, but we will keep ours closed."

That kind of double standard certainly will not help restore confidence in Congress.

The public instead would be moved to ask, "What is the Senate afraid of? Is it afraid to tell us where it stands on issues? Is it afraid to show us how Government works? What has it got to hide?"

Indeed, Mr. President, what have we got to hide? If any of us here are afraid to tell people how things really are, then we are in the wrong business. We are certainly not cut out for a career of public service.

Remember also that we are not taking a perilous step into the unknown. By adopting an open meeting requirement, the Senate would simply be catching up with the House, which requires all committee meetings to be open, unless a majority votes to close them. We would be catching up with several Senate committees, and with many State and local governments which long ago adopted and used successfully the principle of open meetings.

Once the current language of Senate Resolution 9 is rejected, I will urge adoption of the sunshine bill, S. 5.

We must enact a sunshine bill that opens up congressional committee meetings, that requires open meetings by executive agencies, including meetings to conduct hearings, and that prohibits ex parte contact in any on-the-record agency proceeding.

Once we have completed that task, we can be proud to have reaffirmed the general principle that the people must decide. We can be proud to have taken a simple, but profoundly important step toward restoring faith in Government.

Mr. President, I should like to ask the Senator from Florida one question, so that I might understand fully the meaning of the committee amendment.

Mr. CHILES. I yield.

Mr. MUSKIE. I have listened to the distinguished chairman, Senator CANNON, as to his interpretation of the committee language; and I was reassured at least by the general intent that Senator CANNON expressed. But as I understand this language, what troubles the Senator from Florida—and if it is correct, it will trouble me—is this: The committee language would permit any committee to close any meeting for any of the five reasons stated in the original text of Senate Resolution 9, or for no reason at all—simply because a majority of the committee wished to close that meeting. Am I correct?

Mr. CHILES. I think that is correct. It would also allow a committee, at the beginning of a session, in adopting its rules, to just adopt a rule that all its meetings would be closed, period.

Mr. MUSKIE. It could adopt a rule that would close its meetings for the session?

Mr. CHILES. For the session; that is correct.

Mr. MUSKIE. Without the necessity to reconsider that position at subsequent individual meetings?

Mr. CHILES. I think that is correct.

Mr. MUSKIE. That is the way I interpreted it. I ask the Senator from Nevada about that.

Mr. CANNON. I wish the Senator would ask me, as chairman of the committee, because I say that the interpretation is categorically wrong; and a reading of it will make very clear that it is wrong. The author of the amendment is here, and he can speak to it himself.

Mr. MUSKIE. May I read the language that troubles me and ask the Senator?

Mr. CANNON. Certainly.

Mr. MUSKIE. The language begins, "Each meeting," and then I go to line 22:

> shall be open to the public unless any such committee or subcommittee thereof in open session determines by a record vote of a majority of the Members of the said committee or subcommittee that the proposed meeting shall be closed because of the nature of the matter to be considered by that committee or subcommittee.

What troubles me about that language is that the words "nature of the matter" are not defined. "Nature of the matter" undefined could mean anything that any Member suggested as a reason.

Is it that loose, may I ask the Senator?

Mr. CANNON. No. I say categorically that it is not that loose.

It relates back to the premise which is substantially the same as the premise of the Senator from Florida, which follows:

> unless the testimony to be taken at that hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or government regulations.

In other words, we start with the premise that the meeting is open, and it does leave to each committee the right to adopt its rules at the beginning of the session, if it so desires, in which event it would have to take action in open session and specify under what terms and conditions, subject to this limitation, it could close the meeting by majority vote.

Mr. MUSKIE. I should like to follow my question with another.

The Senator from Nevada has said that the words "nature of the matter" are intended to be defined by the language on page 3, lines 18 through 22. Does that language also apply to meetings other than hearings? Because that language in parentheses on page 3 appears to modify only the word "hearings." I am concerned, also, with conferences and markup sessions.

Mr. CANNON. It does refer to both. Most of the committees already have prescribed the hearings to be open. "Meetings" is all inclusive, and includes the term "hearings."

The Senator has pointed out a problem that, in my judgment, is not precisely in this one, but it relates to the conference committees with the House which he mentioned earlier.

I ask this of the Senator: Did he ever, in connection with a conference with the House, have a caucus among some of the majority or minority members of the conference to try to determine the position?

Mr. MUSKIE. With respect to the Committee on the Budget?

Mr. CANNON. Yes.

Mr. MUSKIE. I think we probably did.

Mr. CANNON. I am sure that they did, and I am told that they did. This points up the fallacy and the difficulty of the whole proposition. I am serving, right now, as a member of the conferees on the Energy Committee, as is the distinguished Senator from South Carolina, who just came in.

Mr. MUSKIE. I am a member, too, although I have not been able to attend.

Mr. CANNON. We acted immediately, when that conference was organized, to open the meetings to the public. Then what did we do? We had to get confidential information that could be presented to make an assessment as to what our position would be. We had to find out the

position of the administration. We had to find out the position of the House. We have had caucuses, we have had one every day. I have one right here, on my schedule for tomorrow morning. We had to develop in closed caucus, if you will—we can call it anything we want, but we had to develop a position that would permit us to go into the conference and try to develop some legislation out of that conference.

I am simply saying that we are using a lot of fancy terms as window dressing and we are going right around and doing the same thing. Sure, that energy conference is open and the room is filled there. One cannot get in without walking in the back and going down the aisle and fighting one's way in. I have attended a lot of caucuses to try to develop a position, to consider the administration's position, to decide how far we can go, what kind of a compromise we can get, to be briefed by the staff people on the effect of these things. Then we go in and present our position in open conference, in open session—which I approve of. Any votes that we take will be voted there in open session.

Mr. MUSKIE. I think that is a matter that can be covered—matters similar to that are covered by the second exception to the original resolution, that a meeting can be closed for the purpose of discussing or taking testimony that will relate "solely to matters of commitee staff personnel or internal staff management or procedure." It is a simple matter to add language that will cover the contingency that the Senator describes.

May I say that I think it was in the spirit of that that we held our caucuses—very few caucuses, I might say—in the conference on the Committee on the Budget.

If we go to the other side, there is some need for privacy in developing matters for negotiation. I would not challenge that. But I do not think the need for that kind of exception justifies adopting a rule that will permit broadening the exception, to closed meetings for frivolous reasons.

Mr. CANNON. But the Senate's proposal does not permit that. A lot of people have read into it things that it simply does not do.

Mr. MUSKIE. Let me read the next language, which troubles me more than the language we have just been discussing. This begins on line 4 of page 4:

> . . . unless any such committee shall, following the appointment of its membership at the commencement of each Congress, adopt rules specifically prescribing a different procedure to protect its own needs and at the same time conform to the public interest . . .

It seems to me that, on its face, that language would permit a committee to adopt a closed rule for the remainder of the session.

Mr. CANNON. I say to the Senator, that was not the intent and that is not our advice from our drafting people as to what it does. It certainly was not intended.

In other words, the intent was that a committee could adopt, at the beginning of a session, a rule with relation to these exceptions.

Mr. CHILES. Mr. President, I understand this is all on my time right now.

The PRESIDING OFFICER. The time of the Senator from Florida has expired and the Senator from Nevada has 20 minutes.

Mr. CANNON. Mr. President, if we need to carry it further, I shall yield further time on the bill.

Mr. MUSKIE. I do not need additional time myself, but I think the answer to that question would be very helpful to me. I am not challenging the Senator's intent, but that language that I just read is particularly troublesome to me. It is really of more concern than the earlier language, which I think the Senator probably has covered by interpretation. This language would seem to open the doors to closed rules, and that troubles me.

Mr. CANNON. I am advised by our drafters and by our Parliamentarian Emeritus that it relates back to previous language on line 18, page 3:

> (unless the testimony to be taken at that hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or Government regulations),

That simply says that if a committee wants to adopt a rule at the beginning of the Congress to govern its procedures, it can do it then, rather than come in and say, "We have a hearing today and we want to consider the terms of the Manhattan Project and therefore, I will put a motion to have us go into closed session."

That is the sort of thing that I think would encumber the work of the committee by having to act each precise time it wants to go into closed session. If it has adopted a rule—for example, I serve on the Committee on Armed Services. I should think that the Committee on Armed Services would want to adopt a rule—which, incidentally, must be adopted and voted on in open session—at the beginning of the session that says that when a matter involves the national security of the United States, the chairman shall have the authority to call an executive session of the committee, and let the committee vote on that as a rule. If they approve it, then he would have that authority to say, "The hearing today involves matters involving national security or classified information"—which is the same thing—"and therefore, the hearing will be closed."

Really, the difference between the amendment of the Senator from Florida and the amendment of the Senator from West Virginia, or their positions, is very negligible. In both instances, the hearing would be open, the meeting would be open, unless action is taken to close it. Substantially, in both instances, the reasons for closure are the same.

The basic differences are two: One, the amendment of the Senator from West Virginia leaves out special committees and select committees that ought not to be in there. When we form a special committee on the floor of the Senate, we give them instructions.

I imagine that when we formed the select committee for the investigation of the CIA, we did not want to write in there that they had to hold all their meetings in open session, because they certainly could not do it effectively, in my judgment. Therefore, those things ought to be considered at the precise time.

On the other hand, if we form a select committee to investigate the Small Business Administration or matters relating to small business, it would seem to me that those meetings ought to be held open. So that is one difference.

The other difference is this: the committee could act at the beginning of the session, in open session, to adopt a rule and say, "Under these conditions, we will now vote to approve a rule to permit that type of procedure." If they do not do that, and they would not do it under the amendment of the Senator from Florida, each time that they go into a meeting and start a meeting open, they define what the reason is that they need to close it and vote on it at that time.

Mr. PERCY. Mr. President, will the Senator yield for a question?

Mr. MUSKIE. May I comment on that?

Mr. CANNON. First, let me give the Senator an opportunity to comment on that.

Mr. MUSKIE. Just 30 seconds, because I have used up more than my fair share of the time.

I still think that language is subject to the interpretation that I put upon it, and I think that either ought to be stricken or modified to indicate more clearly the intent which the Senator has just spelled out, and which I think is a vast improvement and expresses what the committee had in mind in the language of the bill. I think we ought to adopt a rule here today that will govern committees, that it ought not to be an open question at the beginning of each session of Congress. We should adopt it now and establish it so that we can become accustomed to it and use it and not leave it open to further juggling in subsequent Congresses. That is my own view of that language.

Mr. CANNON. I certainly would have no objection, though I do not know about the Senator from West Virginia, to inserting, after the word "interest", "in accordance with the limitations in this paragraph heretofore set forth."

Mr. MUSKIE. Why should the question be opened at each session of Congress?

Mr. CANNON. Because a committee may, from 1 year to 1 year, decide to change its basic rules. Almost every committee adopts rules to govern its procedure at the beginning of Congress. The matters relating, for example, to Armed Services Committee matters, 3 or 4 years ago, all would have been thought to be classified. Yet in my own Tactical Air Power Subcommittee, we have held a lot of our hearings open this year because we have been able to direct the administration to come up and prepare to testify in open session, and then only hold closed sessions when we had to go in for strictly security matters. So times change. This is why I do not like to see something fixed here. We want to leave that up to

that committee and its members to determine.

You are going to have to assume that every member of a committee is operating in good faith. I think you also have to assume that secrecy is one thing and confidentiality is another. We saw the results of secrecy in the Watergate affair, and that is what brought this whole thing on. We do not want to see that again.

But we must recognize that there has to be some confidentiality in matters. The Attorney General just a short time ago said, "A duty of complete disclosure would render impossible the effective operation of Government."

Mr. PERCY. Mr. President, would it be all right with the majority if I yielded myself a few minutes so I can make my opening statement and then we can get to go into the details of the bill?

Mr. President, the bills before us today, Senate Resolution 9 and S. 5, are the products of many long months of work by the Senate Government Operations Committee as well as the Senate Rules Committee. I would like to pay particular tribute to those members of the Government Operations Committee who have contributed so much to this legislation. Senators CHILES, WEICKER, and ROTH have been working on this legislation since the subcommittee stage and are to be highly commended for their efforts. Senators RIBICOFF, JAVITS, and BROCK also took active roles within the full committee and helped to draft this legislation. It has been a pleasure to work with all of them.

I would also like to compliment the staff of the committee, both majority and minority, and staff personnel from the Justice Department and the Office of Management and Budget who have worked long and hard in this effort.

I would like to divide my remarks into two parts—first, comments on Senate Resolution 9, and then later, when it is called up, on S. 5.

SENATE RESOLUTION 9

Using the original Senate Resolution 9 as a starting point, the Government Operations Committee included as title I of S. 5 this year strong provisions requiring the committees of Congress to be open except for certain specified reasons. Title I included all standing, select, and special committees of the Senate and any subcommittee of such a committee. Committee meetings would have to be open to the public unless the committee or subcommittee votes to close the meeting based on one or more of five specific grounds: First, national security; second, personnel matters; third, personal privacy; fourth, law enforcement secrets; or fifth, trade secrets. Joint committees are also included with the same reason for closing meetings. Conference committees are also mandated open unless the managers of either House vote to close them. In the case of conference committees, no specific reasons are necessary.

When S. 5 was referred to the Rules Committee, title I was split off from S. 5 and then reported out as Senate Resolution 9, which is before us today. However, the Senate Resolution 9 on the floor today is neither the original Senate Resolution 9 nor is it title I of S. 5 as reported by the Government Operations Committee.

The PRESIDING OFFICER. Will the Senator from Illinois suspend. On whose time is he proceeding?

Mr. PERCY. I yield 2 minutes on the resolution.

The PRESIDING OFFICER. On which?

Mr. PERCY. Senate Resolution 9, the resolution before us.

The PRESIDING OFFICER. It is the Chair's understanding that the time on Senate Resolution 9 is under the control of the Senator from Nevada. Does he yield to the Senator from Illinois?

Mr. CANNON. I do not have the time on both sides of it. I have it only on one side.

The PRESIDING OFFICER. The time on the other side, I am advised, has expired.

Mr. CANNON. Not on the resolution itself. That was on the amendment. The committee amendment is pending and there is time on the resolution under the unanimous-consent agreement.

Mr. PERCY. Is there not 1 hour on the resolution?

The PRESIDING OFFICER. There is 1 hour on the resolution. The time is equally divided between the Senator from Nevada (Mr. CANNON) and Senator ROTH and Senator CHILES, and their time has expired.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished chairman would have no objection, I would suggest that we expand the time a little bit.

TIME FOR DEBATE EXTENDED 30 MINUTES

Mr. President, I ask unanimous consent that the time allotted to Mr. CHILES be extended for an additional 20 minutes, and 10 minutes to the chairman.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Does the Senator from Florida yield to the Senator from Illinois?

Mr. CHILES. I yield.

Mr. PERCY. The Rules Committee version of Senate Resolution 9 covers only standing committees or any subcommittee of a standing committee. It does not cover select or special committees. It does not cover conference committes. It does not cover joint committees. It also eliminates a uniform set of rules for all Senate committees by stating that the above provisions shall apply unless the committee adopts a different set of rules at the beginning of each Congress "to protect its own needs and at the same time conform to the public interest." This would mean that any committee of the Senate could set whatever rules it wanted for itself. Not only would there be no uniformity among Senate committees, but committees could even set rules less conducive to openness than they now have.

Therefore, Mr. President, I feel that the Senate should reject the Rules Committee version of Senate Resolution 9 so that we can then go back to the original text of Senate Resolution 9 as the bill under discussion today. I will be working with my colleagues on the Government Operations Committee today to attempt to have strong open committee provisions.

The Government Operations Committee adopted a strong open committee rule at the beginning of the 93d Congress which has permitted public access and exposure to the work of the committee. The work of the committee has not suffered due to openness. Indeed, I feel it has definitely been enhanced. I feel that no one need fear having his committee meetings open. But, in cases where national security, personnel matters, personal privacy, law enforcement secrets, or trade secrets are involved, a committee can vote to close its meetings. But the presumption in what we are trying to do today is openness, unless the necessity arises to close a meeting, not the other way around.

Mr. President, just in closing, I would like to say I have listened with great interest to some of the objections. It is very fortunate that the Government Operations Committee has operated under this rule all this year. It has the Permanent Investigating Subcommittee dealing with highly sensitive matters, and at no time were our procedures not adequate to meet the needs; and at no time have we been subjected to criticism.

I feel this period of testing we have had now with the Government Operations Committee in all of the work of our committee in many areas, highly sensitive, have definitely proven the value of this procedure.

Mr. President, I ask unanimous consent that John Pearson, of the staff of the Government Operations Subcommittee on Permanent Investigations be granted access to the floor during the debate and votes on Senate Resolution 9 and S. 5.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, I yield 3 minutes to the distinguished Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I want to give very high praise to Senators CHILES, ROTH, and PERCY for making this resolution possible.

I rise in strong support of Senate Resolution 9 as originally introduced by Senator CHILES and in opposition to the substitute wording adopted by the Rules Committee.

As representatives of the people in a democracy, the Senate has a special obligation to conduct its business in a way that is fully open to the public. The public has a right to know what its representatives are doing when they conduct the people's business. Senate Resolution 9 would translate these principles into reality in compliance with the vote this year in both the Democratic and Republican caucuses.

Senate Resolution 9 is patterned very closely on the rules governing the meetings of the Senate Budget Committee which the Senate approved last year by a vote of 55 to 26. It would require all meetings, including hearings, of each standing, select or special committee to be open to the public. It would allow, however, Senate committees to vote in open sessions to close a meeting for certain specified reasons wherever neces-

sary. These grounds cover such matters as national security, invasion of personal privacy, staff personnel, trade secrets, and law enforcement investigations.

A similar provision was contained in title I of S. 5 which the Government Operations Committee unanimously reported on July 31.

The Government Operations Committee has conducted all of its full committee markups in open session for 2 years. As chairman of the committee, I firmly believe that the practice has been beneficial to the committee and to the public. I firmly believe that the practice has not inhibited the committee's discussion or unnecessarily lengthened its meetings.

As a matter of fact, just to the contrary. Every member of the committee realizes that it is open, and there is very little time wasted. The discussions are pertinent and to the point and, from my experience as chairman of the committee, I find that our work has been expedited instead of having been delayed.

Open meetings allow the press and the public to learn exactly what action the committee takes and why. The chance for news leaks and distorted accounts are eliminated. Any chance that secrecy will lead to public distrust or suspicion is avoided.

Other committees have also adopted open meeting rules. The Senate Committee on Banking, Housing and Urban Affairs, and the Committee on Interior and Insular Affairs have had similar rules since 1973. The Senate Budget Committee has followed a rule of openness since it was created last year.

These committees have successfully considered a number of important bills in open sessions such as the Urban Mass Transportation Act (S. 662), the National Housing Act (S. 1271), strip mining legislation (S. 7), and Outer Continental Shelf legislation (S. 521).

The experience in the House indicates that the great majority of the committee meetings may be open to the public. In 1972, about half of all committee meetings in the House were closed. Since the House changed its rules in 1973 to create a presumption of openness, however, about 90 percent of its meetings have been open. This shows that openness is widely applicable to all committees regardless of the nature of their work.

As a participant in a number of open conference committee meetings last year I also know that open meetings do not hinder the work of conferences. Twelve conferences successfully met in open session in 1974. The House has already approved a rule that would make conference committees open unless the managers for either the House or Senate voted to close them.

Legislatures in some 35 States have laws making the deliberations of legislative committees open to the public.

Clearly open government is not a notion that must be limited to just one House or to just one type of committee.

Today the Senate should not miss its opportunity to also go clearly and definitely on record in favor of a rule of openness.

This rule of openness should be generally applicable to all Senate committees. The Senate should agree on the general reasons which justify a committee closing its meeting and establish the principle that each meeting should be open unless it falls within any of these reasons. Senate Resolution 9 as originally introduced would do all this. At the same time the resolution will allow any committee to conduct its business in private where necessary.

The rules governing hearings presently require a committee to meet in the open unless it must close the meeting for one of three specified reasons. To my knowledge, committees have had no difficulty operating under this rule. There is no reason why the Senate should have significant difficulty operating other committee meetings under a similar rule.

The full Senate has always considered, amended, and passed legislation in public session. There is no reason why the Senate's preliminary, but equally important consideration of the same legislation in committee should not also be open to the public.

Senate Resolution 9 will still let each committee close a meeting where necessary. But only approval of Senate Resolution 9 as originally introduced will put the Senate as a whole in favor of openness in the Senate as a whole. This is the way it should be. The people have a right to know whether the entire Senate is willing to take forceful action to open its committee proceedings to the public, not just whether a few committees are willing to do so.

Senate Resolution 12, a companion resolution to Senate Resolution 9, would establish the same important principle of openness for conference committees. At the same time, it preserves the right of the Senate managers to close any conference it feels must be closed. It makes equally good sense.

In 1913 Woodrow Wilson characterized legislative secrecy in the following way:

> Those are private processes. Those are processes which stand between the people and the things that are promised them, and I say that until you drive all of those things into the open, you are not connected with your government; you are not represented; you are not participants in your government. Such a scheme of government by private understanding deprives you of representation, deprives the people of representative institutions. It has got to be put into the heads of legislators that public business is public business.

I strongly urge the Senate to vote for a meaningful policy of openness.

I strongly urge the Senate to support Senate Resolution 9 as originally introduced, and to adopt a rule requiring conference committees as well to be open to the public.

Now, Mr. President, I see my distinguished chairman of the Finance Committee here, and I know there were great questions raised by many members of the Finance Committee concerning open sessions.

Yet, as I look back at the open sessions we have had—and I would say the inclination of our chairman of the committee is to have as many open sessions as possible—it has not delayed the work of the Finance Committee either; these complex matters in open session have expedited the work and, I believe, the open sessions have brought better work from the committee than closed sessions.

Mr. LONG. Mr. President, will the distinguished Senator yield?

Mr. RIBICOFF. Yes.

Mr. LONG. Mr. President, I am happy to continue the open sessions as long as we have a rule that that does not preclude us from doing certain things we should do.

For example, the proposal that was made by the Senator and his cosponsors in the beginning——

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. LONG. Mr. President, I ask that I be allowed 1 more minute.

The PRESIDING OFFICER. The Senator from Nevada is yielding. The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, there is more than meets the eye here. For one thing, this proposal should be amended to conform to the rules of the Senate. The rules of the Senate place a burden on the Presiding Officer to clear the galleries if they are engaging in a demonstration that prevents the Senate from moving in an orderly fashion, and this proposal should be similarly amended.

I have never seen a case where the Presiding Officer was forced to clear the galleries, but if the Presiding Officer does not have that power, then it is almost a standing invitation for someone to break up any meeting by just conducting a disorderly demonstration. That should be taken care of.

Furthermore, this proposal fails to make clear that a closed meeting should be held where we are discussing the negotiating position of the United States in an international conference.

The Senator is well aware, for example, that those who come to tell us what we hope to achieve in these trade negotiations should be expected to tell us not only what the position of the United States is, but what the fallback position would be, what we think we would settle for if we cannot get what we are asking for.

I really do not think that they could hope to protect this Nation's interest and discuss these matters with us unless they could do so confidentially, otherwise, I think they would have to refuse to tell us.

Mr. RIBICOFF. If the Senator will yield, I agree with him, but I believe the committee took care of that by one of the exceptions:

> Matters relating to trade secrets or financial or commercial information.

It is my feeling that that, together with——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. STONE. I seek 3 minutes.

Mr. CHILES. I yield 3 minutes to the Senator from Florida.

The PRESIDING OFFICER. The

Senator from Florida is recognized for 3 minutes.

Mr. STONE. Mr. President, the chairman of the Rules Committee has just attempted to make a distinction without a difference in saying that secrecy is bad, but confidentiality is good.

That is the same thing that the most recent President was trying to do in calling the shield of secrecy "executive privilege."

What it is is attempting to call something confidentiality and in reality claiming legislative privilege.

When this Senator, with the chairman of the Interior Committee, sought to open the energy conference now in progress to the public, several protested that opening such a sensitive conference—it is probably the most vital conference that we have had this year—that opening it to the public would bring on grandstanding and outside pressures and a delay of the work.

Instead, within 1 day after the conference was open and commenced, Chairman HARLEY STAGGERS of the House side, and the full conference, complimented all of the conferees.

The fact was that we were moving and we were moving rapidly, effectively and efficiently.

I understand how uncomfortable it must be in trying to dive into the ice cold pool of total openness. But in the State of Florida, where we have done that, we find that after a couple of laps of the pool, it gets to be very comfortable.

The fact of the matter is that the grandstanding that otherwise is predicted is put at a minimum because the public and its observers through the press catch it for what it is.

So the junior Senator from Florida urges the defeat of this amendment and the sustenance and the passage of the basic resolution.

The PRESIDING OFFICER. The time has expired.

Mr. CHILES. I yield 4 minutes to the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Florida.

First of all, I join my colleagues in commending Senator CHILES, Senator STONE, Senator ROTH, and Senator PERCY for pursuing this matter with the diligence that they have, for also carrying their arguments to the caucuses of both the Democrat and Republican parties in the Senate earlier this year.

I think Senator STONE, by his statement refusing to participate in meetings which are closed, has pointed up this issue in a way which is increasingly understood and appreciated by the American people.

Mr. President, I vigorously support the efforts of the Senators to restore Senate Resolution 9 to the meaningful "sunshine" reform it should be if the Senate is to function as an open institution in our open form of government.

The question before us is a simple one—whether the public business of the Senate is to be carried out in public.

I believe that the time is overdue for our Senate committee meetings and our Senate conferences on legislation with the House to be carried out in open sessions open to the public, subject only to the strict exceptions provided in Senate Resolutions 9 and 12 as originally introduced, and in S. 5 as reported by the Committee on Government Operations.

Secrecy is the enemy of democracy. It is also the servant of delay and incompetence, of obstruction and arbitrariness and corruption. Even worse, secrecy breeds the appearance of these serious evils, even when they may not exist in fact.

In ways like these, secrecy and the aura of secrecy undermine the confidence of the public in Congress and the institutions of our government, at a time when public confidence in Congress and government is already touching historic lows. We have to take a stand to stop the slide. We cannot afford to sink still lower.

Perhaps the most surprising thing about today's debate is that the debate is taking place at all. The reform efforts of recent years have taught us that Congress can function better, that Congress can improve its self-respect, and the respect in which the public holds us, by reforming our procedures and opening up our actions to public scrutiny and attention.

In a variety of ways, we have been moving in the Senate in recent years toward changes and reforms in areas like campaign financing, lobbying, and the control of the Federal budget. We are breaking the stranglehold of seniority on the committee system and committee chairmanships. We have formed an independent commission to study our Senate procedures and recommend reforms, and we are opening up government agencies to responsible requests for information from the public in the Freedom of Information Act.

Now we can take another major step toward improving the quality of action by Congress at two of the most important stages of our responsibility—our committee markup sessions, where the vast majority of the real business of Congress is carried out, and in our conferences with the House, where the final shape of bills is hammered out before they are presented to the President for his signature.

None of us need have any reservations about the impact of these reforms. A number of Senate committees and a number of Senate-House conferences have already experimented with open meetings and that point has been elaborated during debate. They have found the experience not only satisfactory but desirable—not least because committee members are more likely to arrive on time for committee sessions, and to arrive better prepared to do committee business. As a result, committee work is expedited, sessions are more productive, and Congress is better served.

The Budget Reform Act already requires that sessions of both the House and Senate Budget Committees must be open to the public. As the Senate Budget Committee has recently reported, the experience with open meetings has been so successful that these two new companion committees have agreed to open their Senate-House conference sessions to the public, although they are not required to do so by the statute. In the case of Senate committee markup sessions, the Chiles proposals are carefully drafted to require all sessions to be open, except in the limited range of situations where closed sessions may be appropriate—such as national defense and confidential aspects of foreign policy, trade secrets, and other sensitive financial information, committee staff personnel matters, criminal investigations and charges of misconduct, and personal privacy considerations.

These exceptions will apply only if a majority of the members of a committee or subcommittee present at a markup session determines that they are applicable. The exceptions are carefully drafted to give generous protection to the legitimate needs of congressional business and the confidentiality of sensitive information. But they accomplish these goals without allowing the exceptions to swallow up the principle of openness, and without falling into the error of delegating too much latitude to each committee to close its business to the public.

In the case of conference committee sessions, the reforms proposed by the Roth amendment will require conference meetings to be open to the public unless a majority of either the Senate or House conferees votes to close them. As originally introduced, the provisions on open conference meetings contained exceptions similar to those applicable to Senate committee meetings. But the House of Representatives has already adopted a rules change for its conferees similar to the pending Senate proposal. Implementation of the House change is contingent on Senate action. Although I would have preferred to apply the same restrictive exceptions to open conference meetings as we are applying to open Senate committee meetings, I believe we should act at this time to adopt the Roth amendment. By such action, the open conference requirement will take effect immediately, without requiring further action by the House.

It is an understatement to say that these reforms are overdue. Unlike other institutional reforms in recent years, the Senate is well behind the House of Representatives on this issue. We are also well behind the States—49 of the 50 States now have open meetings laws, and more than two-thirds of the State legislatures require open committee meetings.

In fact, the Senate is in danger of being the caboose on this open government reform. By acting now to pass these measures, we can at least end that stigma, if not avoid it. And in the process, we shall become more accountable to our constituents than we have ever been before.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If neither side yields time——

Mr. CHILES. Mr. President, I am prepared to yield back the remainder of my time.

Mr. CANNON. What is the time situation now, Mr. President?

The PRESIDING OFFICER. The Chair says that as far as time on the bill is concerned, there are 14 minutes for the proponents and 11 minutes for the opponents. Half an hour on the committee amendment has not been used.

Mr. CANNON. Then, Mr. President, would it be in order to yield back the time on the committee amendment, at which time the committee amendment would be open for further amendment?

Mr. LONG. Mr. President, I ask unanimous consent that Mike Stern be granted privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS and Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Chair is seeking to respond to the Senator from Nevada.

The Parliamentarian advises that if all time is yielded back on the committee amendment, then the committee amendment would be ready for a vote, unless there is an amendment to the committee amendment.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Senator from West Virginia.

Does the Senator yield to the Senator from Alaska for a parliamentary inquiry?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I just wanted to inquire of the Chair whether it was possible to offer an amendment to the committee amendment before all time is yielded back in this situation.

The PRESIDING OFFICER. The Chair understands that the time would have to be used or yielded back before an amendment would be in order to the committee amendment.

Mr. CANNON. I am prepared to yield back the remainder of the time on the committee amendment.

Mr. CHILES. I am prepared to yield back the remainder of the time.

Mr. CANNON. If the opposition is willing, I am prepared to yield back the remainder of the time on the committee amendment in order that amendments would be in order.

Mr. CHILES. As I understand, the distinguished Senator from Nevada wishes to offer an amendment to the committee amendment and feels he cannot do so until time is yielded back?

Mr. CANNON. That is what the Parliamentarian has just said.

Mr. CHILES. If that is correct, though I do not understand it, I am prepared to yield back our time.

Mr. ROTH. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROTH. The committee amendment has not been accepted yet; is that correct?

The PRESIDING OFFICER. That is correct. The committee amendment has not been acted upon.

Mr. ROTH. Once there is a vote on it, if it is accepted, then it is open to amendment; is that correct?

The PRESIDING OFFICER. No. If the amendment should be agreed to, then it would not be subject to further amendment except by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is this an amendment to the committee amendment?

Mr. ROBERT C. BYRD. It is.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CANNON. Yes. I understand the Senator from Florida is willing to yield his time back, and I am willing to yield my time back on the committee amendment.

Mr. CHILES. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHILES. If the time is not yielded back, it would still be in order, once time had expired, would it not, for them to seek to amend the committee amendment?

The PRESIDING OFFICER. That is correct.

Mr. CHILES. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The amendment will be stated.

The legislative clerk read as follows:

On line 8, page 4, after the word "interest," insert the following: "in accordance with the limitations set forth above in this paragraph in parenthesis."

Mr. TAFT assumed the Chair at this point.

Mr. ROBERT C. BYRD. Mr. President, the purpose of this amendment would be to address the point raised by the distinguished Senator from Maine (Mr. MUSKIE) earlier during the colloquy so as to make clear that that portion of section 1(b), paragraph 1, relating to the adoption of a rule by any committee following the appointment of its membership at the commencement of each Congress would be based upon the justification set forth in the parentheses beginning on line 18, page 3, of Senate Resolution 9.

In other words, any standing committee or subcommittee at the beginning of each Congress could, following the appointment of its membership, adopt a rule specifically prescribing a different procedure to protect its own needs and to conform to the public interest, to wit, "Unless the testimony to be taken" at any hearing or meeting "related to a matter of national security or tended to reflect adversely on the character or reputation of the witness or any other individual, or divulge matters deemed confidential under other provisions of law or Government regulations."

Mr. President, I believe the matter is clear. The Senator from Maine raised the question. I think it was a logical question and was a point well taken. This amendment is intended to abet that point and to clarify the language so as to make it clear that committees in adopting rules at the beginning of any new Congress could provide for closed sessions only under the circumstances as set forth in the verbiage contained in the parenthesis.

Mr. ROTH. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. ROTH. If I understand what the Senator is trying to do, it is to apply the limitations on page 3 that are in the parenthesis to the following sections where there is a different procedure.

Mr. ROBERT C. BYRD. Yes.

Mr. ROTH. But if I also understand, so long as it falls within those limitations—I am not saying that it would—the committee rules could provide that a chairman alone could close the committee as long as it was within those restraints. Is that correct?

Mr. ROBERT C. BYRD. No, that would not be correct.

Mr. ROTH. Let me ask it a little differently.

Mr. ROBERT C. BYRD. The committee would have to authorize it.

Mr. ROTH. I appreciate that. A new committee is formed with its new members and they adopt the rule, according to the procedures set out in the section——

Mr. ROBERT C. BYRD. By a record vote.

Mr. ROTH. By a record vote——

Mr. ROBERT C. BYRD. And in open session.

Mr. ROTH. That the committee subsequently could be closed for national security purposes by action, let us say, of the chairman and ranking member together.

Mr. ROBERT C. BYRD. No.

Mr. ROTH. That is not correct.

Mr. ROBERT C. BYRD. If the committee authorized that, but that would be——

Mr. ROTH. That is what I am saying. Comes January and we have a new Armed Services Committee. They, in open session, by a majority rule, vote that the procedure will be henceforth during the current 2 years that the chairman and the ranking member can decide whether or not to close the committee for national security purposes. That could be done subsequently in closed session, if they wanted to do it.

Mr. ROBERT C. BYRD. Not the original action.

Mr. ROTH. I am not talking about the original action. I am talking about subsequent action. So it would be perfectly possible for one man to make that decision if the committee was willing to delegate that authority to the chairman.

Mr. ROBERT C. BYRD. If the majority of the committee, by a record vote in open session, authorized the chairman to do that, then that would be a rule of the committee for that Congress.

Mr. ROTH. In other words, there would be no limitations on the kind of procedures that could be set up.

Mr. ROBERT C. BYRD. Pardon?

Mr. ROTH. There would be no limitations on the procedures. I mean could a chairman not do it, or by a simple majority, or by less than a quorum?

Mr. ROBERT C. BYRD. Whatever the committee authorized.

Mr. ROTH. Whatever the committee originally authorized.

Mr. ROBERT C. BYRD. Whatever the majority of the committee originally authorized. But once in closed session a majority of the committee could also vote to open that session.

Mr. ROTH. Mr. President, it seems to me that that opens the door very, very wide. We could give very broad authority to one or two people to make as a general rule a closed session.

As a matter of fact, if I understand this, there would be no limitation as to how often they have to act on that. We are really closing the door very substantially by this proposed change.

Mr. ROBERT C. BYRD. No, the door is not being closed substantially or otherwise. In the first place, the majority of the committee would have to vote in open session by record vote to authorize the chairman to go into closed session and only then would he be authorized to go into closed session under certain well-defined limitations that are set forth in the language of the committee substitute.

At any time after such committee went into closed session, a majority of the committee would have the right to vote to open the session again. I call attention to the fact that under rule XXXV of the Standing Rules of the Senate, any Senator may ask that there be a closed session of the Senate. He does not have to state his reasons. It need only be that, in his opinion, ample and proper reasons exist to request a closed session. If that Member is seconded by a second Member, the Senate automatically goes into closed session, and the Chair orders the doors to be closed and the galleries to be cleared. Once in closed session, of course, a majority of the Senators can vote to go back into open session.

We are not requiring, in the committee substitute, that kind of a rule to apply to committees or subcommittees. But I want to call it to the attention of the distinguished Senator from Delaware that the present Standing Rules of the Senate do allow two Senators to put the Senate into closed session without any explanation of their reason, and that once in closed session, the majority may vote to go back into open session.

Under the rule proposed here by the committee, any committee could, at the beginning of a new Congress, establish a rule to authorize closed sessions to meet certain circumstances that might arise during the course of that Congress, and at any time a majority of the committee wished to open the sessions of that committee it could vote to do so, even though the matter thought to be sensitive was still under discussion.

The language I have proposed in my amendment to the committee substitute would clarify the intent of the subcommittee and the committee as to the meaning of the amendment. It would bring out that clear intent, and make it comport with the intent that the distinguished Senator from Maine expressed concern about, and that he felt ought to be the intent, although he did not agree with the chairman or with me, for that matter, as to what the clear intent of this verbiage is. This amendment would serve to clarify that.

Mr. MUSKIE. Mr. President, may I say, if the Senator will yield, the Senator from Maine does approve it to that extent, with one reservation, which I think represents the difference of view between the distinguished Senator from West Virginia and myself, which is that in my view we have had experience under the open rule that is sufficient to adopt it as a permanent rule, and the Senator believes, for the reasons he has expressed, that the committees ought to be given more flexibility than that. I think that, now, is the difference between us. But I think his amendment clarifying the limitations under which the Senate committees could exercise that flexibility has improved the language of the committee substitute.

Mr. GRIFFIN. Mr. President, will the Senator from West Virginia yield to me for a comment?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. I think the Senator's amendment to the committee amendment is a good one. But, addressing myself to the basic question which is raised in the choice between the original text and the proposed committee amendment, it seems to me that rule XXXV of the Senate points up a difficulty which I think many Senators may be overlooking.

It is recognized in all of these versions that there are some matters which legitimately should be handled and discussed in closed session: matters involving national security, matters that tend to defame or impugn the integrity of individuals, and so on.

Rule XXXV recognizes that the discussion and debate on whether or not a particular matter fits in that category is a matter to be discussed by the Senate in closed session. In other words, any Senator, with the support of another Senator, can close the doors of the Senate and call the attention of the Senate to information or details justifying why the matter should be handled in closed session.

I do not understand how, if a Senator believes that the matter about to be discussed involves national security, he is supposed to be able to convince his colleagues in open session that the matter involves national security. It seems to me that the arguments he would have to present would be of such a nature that they should be presented in closed session. If we recognize that the Senate as a whole would decide that kind of a question in closed session, it seems to me we are making it awfully difficult for a committee to make a similar decision which could be just as important.

I would not be quite so concerned if the so-called sunshine resolution followed the guidelines and provisions of Senate Rule XXXV. In other words, all meetings of the committees should be open unless upon motion of one Senator seconded by another, the committee would go into closed session to consider whether the committee should proceed in closed session, and no other business could be transacted except to decide that motion.

Of course, as the Senator from West Virginia has pointed out, a majority could immediately turn around and vote to open it up, not having been convinced that there was justifiable reason to be in closed session.

With that kind of a question, I have difficulty in accepting the original version. I think the committee version is better, unless we would conform to the Senate rule in terms of the Senate as a whole.

The PRESIDING OFFICER. The time of the Senator from Delaware has expired. The Senator from West Virginia has 15 minutes remaining.

Mr. CHILES. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. CHILES. Would the Senator from Delaware agree if perhaps the Senator from West Virginia would be willing to consent? I do not think it goes as far as Senate Resolution 9 goes, and I would still oppose it, but I would think if we could adopt it by unanimous consent, we would be in a position of moving to the adoption of the committee amendment as amended.

Mr. ROTH. That would be agreeable.

Mr. GRIFFIN. Mr. President, I would object. I wonder if the Senator from Florida would address himself to the question I have raised. Because we would then be in a position of voting on the committee amendment, and would be at a point where it would be difficult to consider this question again.

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

Mr. GRIFFIN. I am glad to yield.

Mr. ROTH. Is the Senator suggesting that the original language would be acceptable to him, if we added an additional provision, I guess it would be section 5, providing that two members of a committee could close a session only for the purpose of deciding whether or not there should be a closed session? Is that what the Senator is suggesting?

Mr. GRIFFIN. That would certainly be an improvement. My question is, if you need a majority vote of the committee in open session to close the committee meeting, how do you, in open session, convince your colleagues that the matter they are about to take up involves national security? Are we supposed to do that in open session? That is the kind of situation in which we are going to put all committees of the Senate. I realize it is not very important in many committees. Maybe the Committee on Public Works never would have that kind of a problem. But other committees do.

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

Mr. GRIFFIN. I am glad to yield.

Mr. MUSKIE. We have not had experience with all contingencies covered by the five positions in the original text, but we had experience with some.

For example, with respect to item 2, which has to do with matters of committee staff personnel or internal staff management or procedure, when such matters arise involving a frank discussion of possible candidates for commit-

tee staffing, in my case the chairman advises the committee that that is the nature of the discussion that we are about to undertake and that I would recommend that we close the session for that purpose. We do not actually get into the detail of the matter. We do not have to make a case, deciding the substance of why we go into closed session. I would think that what was proposed to be discussed is classified information, and that the chairman advising the committee that what he wants to put before them is certain classified information is sufficient in and of itself to justify a vote to go into closed session. I do not think we have to go into great detail about the discussion that will take place. So I do not think it is quite as complicated as might appear on the face of it.

On the other hand, I think the Senator from Delaware, perhaps, has a useful suggestion to obviate the kind of problem that disturbs the distinguished minority whip. I certainly would be interested in pursuing that because it could conceivably, in some circumstances, create difficulties of persuading a majority to make a decision on closing the meeting.

Mr. GRIFFIN. There is nothing personal in this. But there are Senators who do not believe that any session should be closed—maybe I am wrong on that—and who would be very reluctant to go along only with the suggestion that something involves national security. They would want to be convinced. Are we going to convince them in private? Maybe that is what would be done. But that is going to be against the sunshine rule. We have to convince them in open public session.

Mr. MUSKIE. What would happen, if either side of such an issue were operative, is the committee might well make it possible for itself to act. The situation would clarify itself.

But I have no objection pursuing the suggestion, provided that going into closed session for the purpose of discussing the merits of one of these conditions is limited to that.

Mr. GRIFFIN. I can conceive of the situation, for example, where the reputation of an individual might be involved in a hearing, and the question might be much more difficult than the question of whether national security is involved. It might take a good deal of factual information and argument to convince the committee, particularly in a difficult case, that it would not be fair to the individual, and would be an unwarranted invasion of his civil rights, or whatever. It might not be able to make the case in open session without doing the very damage that should be avoided.

Mr. MUSKIE. I would agree. The Senator is raising a legitimate point. I think it is manageable along the lines of the suggestion of the Senator from Delaware. Of course, if the original text of Senate Resolution 9 becomes the pending business, I assume the Senator from Delaware would pursue his suggestion.

Mr. ROTH. That would be the intent of the Senator from Delaware.

If there is no further debate, Mr. President, I am ready to yield back the remainder of our time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CHILES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME LIMITATION AGREEMENT: H.R. 10029—MILITARY CONSTRUCTION APPROPRIATION

Mr. MANSFIELD. Mr. President, the Senate has already agreed to allow 1 hour on an amendment to be offered by Mr. CULVER and 1 hour on an amendment to be offered by Senator PROXMIRE. The first is relative to Diego Garcia; the second is relative to the Defense Medical School.

I am referring to the military construction defense appropriations bill which will follow the disposal of the pending business.

I ask unanimous consent that there be a time allocation of 1 hour on amendments to that bill, 30 minutes on amendments to amendments, motions or appeals, and 1 hour on the bill itself.

The PRESIDING OFFICER. Is there objection?

Mr. NUNN. Mr. President, reserving the right to object, does this mean that any amendment offered on the Diego Garcia amendment would also have 1 hour.

Mr. MANSFIELD. Yes, and the amendment would have to be germane. Therefore, I ask that the regular procedure be followed.

Mr. NUNN. I have no objection.

The PRESIDING OFFICER. The Chair advises the rule requires germaneness of amendments in any case when a general appropriations bill is involved.

Mr. MANSFIELD. Yes, I have made that request that all amendments be germane.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That, during the consideration of H.R. 10029 (Order No. 428), an act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and that debate on any amendment in the second degree, debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment, debatable motion, appeal, or point of order, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

Ordered further, That, on the question of the final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Majority and Minority Leaders, or their designees: *Provided*, That the said Leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

OPEN COMMITTEE MEETINGS

The Senate continued with the consideration of the resolution (S. Res. 9) amending the rules of the Senate relating to open committee meetings.

ADDITIONAL STATEMENTS SUBMITTED ON COMMITTEE AMENDMENT IN NATURE OF A SUBSTITUTE

Mr. HANSEN. Mr. President, today the Senate will consider and vote on matters which affect the openness of Senate committees to the public. I support openness in Government and am a cosponsor of S. 5, the Government in the Sunshine Act.

Openness in Government, in my opinion, is in the best interest of the people of this great Nation, who are affected by what we do here, and in the best interest of the Government itself, which in these times is largely responsible for implementing the laws passed by the Congress.

We are a nation that places great importance upon the free interchange of ideas in the public forum. This belief is deeply rooted in our democratic system of government. It seems to me that this belief, as it pertains to the legislative process, is enhanced by making our committee meetings open to the public.

This is not to say that all meetings of Senate committees are to be open. I recognize that there is certain subject matter which must remain confidential, such as an issue that pertains to national security. However, generally speaking, the meetings, markups, and hearings of the Senate committees and subcommittees should be open. At the beginning of the 93d Congress, the Senate Committee on Interior and Insular Affairs, of which I am a member, conducted open hearings and meetings. It has worked.

It concerns me that in recent years, the public's confidence in its Government has waned. It seems to me that there is no better way to restore the public's confidence in Government than by opening up the legislative deliberative process.

As a cosponsor of S. 5, I support the Government in the Sunshine Act. I support it as it was favorably reported by the Senate Committee on Government Operations on July 31, 1975.

The Government Operations Committee report summarized S. 5 in the following way:

The bill requires Congressional committees and all Federal agencies subject to the legislation to conduct their meetings in the open, rather than behind closed doors. As a result of this legislation, the public will, for the first time, have the right to observe most of the meetings held by all Congressional committees, and by 47 Federal agencies.

The vote of the committee was unanimous in reporting the bill out.

Title I of S. 5 would require that all meetings of standing, select or special committees of both the Senate and House be open to the public. This includes meetings of subcommittees. There are specific exceptions to the openness requirement. For example, where a majority of the committee votes to close the meeting because of national security, foreign policy, or personal privacy. Additionally, title I would require conference committees between the Senate and House to be open except when a majority votes to close. Joint committee meetings between the House and Senate are subject to the same rules on open meetings as conference committees.

Briefly, title II of S. 5 would require meetings of multimember Federal agencies, and of their subdivisions, to be open. Again, there are certain exceptions to the openness requirement.

The following Federal agencies will probably be affected: the Consumer Product Safety Commission; the Federal Farm Credit Board within the Farm Credit Administration; the Federal Home Loan Bank Board; the Federal Trade Commission; the Indian Claims Commission; the National Council on Quality in Education; the Ocupational Safety and Review Commission; the Railroad Retirement Board; and the U.S. Civil Service Commission. For those who argue against the closed, arbitrary actions of Federal agencies, this could be a partial solution.

As stated previously, I favor both parts of S. 5 because it opens meetings of committees of Congress—(this includes markups—and meeting of Federal agencies.

Because title I of S. 5 deals with Senate procedure, this bill was referred to the Senate Committee on Rules and Administration. On September 18, 1975, the Rules Committee struck title I from S. 5. The Rules Commitee stated the changes pertaining to Senate committees should be effectuated by direct amendment to the Standing Rules of the Senate, rather than a bill which must be approved by the House and signed by the President. Although I find the Rules Committee position has some merit, it is my thought that the need for openness in Government, on balance, should be effected at this time and procedure should give way to the substantive advantages of openness.

The status of Senate Resolution 9 must also be noted here. Senate Resolution 9, as introduced, would have required the same open meeting requirements for standing, select or special committes that are found in title I of S. 5. The Senate Rules Committee reported Senate Resolution 9 out of committee with a substitute amendment. This substitute authorizes a closed session if voted upon by a majority of the standing committee or subcommittee. This is a substantial departure from the concept of openness as expressed in S. 5 and Senate Resolution 9 before the amendment. Rather than a step forward, the action of the Rules Committee is a step in the opposite direction.

In concluding, I believe in openness of Senate committee and subcommittee meetings, markups, and hearings. In order for openness to become a more meaningful concept in this body, I intend to vote consistently with the philosophy and spirit of S. 5 as originally introduced and reported favorably out of the Senate Operations Committee.

Mr. BEALL. Mr. President, I rise to state my strong opposition to the actions of the Rules Committee in substantially weakening Senate Resolution 9, legislation now before us which is designed to open up congressional processes to greater public scrutiny.

As an original cosponsor of S. 5, the "Government in the sunshine" bill, I consider the amendments offered by the Rules Committee to be a giant step backward, and thus I hope my colleagues will join me in rejecting this attempt to reverse the commendable trend toward openness in our governmental processes.

Mr. President, last spring I conducted a survey of my constituents to determine their views on many of the major issues facing our Nation today. The final question on this survey was, "Do you have confidence in the Congress to deal effectively with today's problems?"

Of the 119,000 answers I received, over 63 percent responded with a resounding and disturbing "No." I believe that part of the reason for this obvious lack of confidence is due to the fact that, to most Americans, Congress seems to do its work behind locked doors.

In my judgment, it is time to unlock those doors. The people of this country will not be able to fully evaluate the effectiveness, the integrity, and the worthiness of their elected representatives until they are permitted to observe the full legislative process.

Originally, title I of S. 5 directed that Senate committee meetings be held in open session, unless the committee voted to close that session on one of five very specific grounds: National defense and foreign policy, personnel matters, criminal or civil investigations, personal privacy, or trade secrets. However, it was decided, and I believe rightly so, that since the Constitution provides that "each House may determine the rules of its proceedings," this problem could best be handled in the Senate through a simple resolution, thus making unnecessary action by the House of Representatives or the President on the measure.

However, the Rules Committe in reporting out Senate Resolution 9 has cut the heart out of this measure by permitting any committee to adopt rules to close its sessions at the beginning of a new Congress, or in fact to shut its doors in the future for any reason whatsoever.

Mr. President, this is a superficial approach to a very serious matter. Instead, we in the Senate must establish a standard of openness, and only deviate from that standard when absolutely necessary, and then only for certain specified reasons.

Further, as a member of the Senate Budget Committee, I object to the fact that the Rules Committee by this action would repeal the existing rule of openness in our committee. This action has been taken without the knowledge or support of the Budget Committee, and in fact runs against my experiences to date in the committee. The Budget Committee has been operating under the mandatory sunshine provision of the Budget Act for over a year, and I have seen no evidence where our discussions have been inhibited in any way.

I also want to take this opportunity to voice my support the amendment sponsored by Senator ROTH, which I have cosponsored, which will open up House-Senate conference committees. I have long felt that conference committees are the most overlooked part of the legislative process, and by opening their deliberations to the public eye, our citizens can better understand the immense importance of their work.

Mr. President, S. 5 requires that Government agencies open their meetings to the public view. I ask the Senate to act favorably on this bill. But before we can take that action, we must first get our own house in order by passing Senate Resolution 9 as originally offered, without the debilitating amendments which the Rules Committee has proposed.

I urge my colleagues to let the sunshine in on our work.

Mr. CLARK. Mr. President, I first want to commend the distinguished senior Senator from Florida (Mr. CHILES) on the outstanding leadership he has provided in the struggle to achieve open government. Without his perseverance and determination, this historic debate might never has taken place. The distinguished Senator from Delaware (Mr. ROTH) is also to be applauded for the long hours he has worked to bring us to this point.

Mr. President, I hope no one is confused about the vote we are about to take.

I hope no one thinks that in voting for the Rules Committee amendment to Senate Resolution 9 he is voting for open government. He is not.

I hope no one thinks that in voting for the committee amendment he is voting to improve the rules of the Senate by providing increased public access to the decisionmaking process. He is not.

And I hope no one thinks that in voting for the committee amendment he is voting to improve the public's horribly low regard for the Congress of the United States. He is not.

The Rules Committee proposal would allow each Senate committee to establish its own policy as to whether meetings should be closed or open. They are saying, in effect, that the Senate, as a body, has no responsibility for deciding whether the American people will be allowed to see what their elected representatives are doing.

The Rules Committee proposal would even repeal the Budget Act requirement

for open meetings of the congressional Budget Committees. They are saying that this provision, adopted by the Senate on a 55-to-26 vote last year, is now null and void.

The Rules Committee proposal ignores the experience of the House of Representatives, where, since the adoption of an open meetings rule in 1973, fewer than 10 percent of the committee meetings have been closed to the public. Opponents of opening up committee meetings in the House made the contention that it would interfere with House business and decrease efficiency. But this has not been the case. Common Cause made a survey of House Committees last year and found the committees were doing at least as much work as they had done under the old system. But the Rules Committee proposal says, in effect, that the Senate—for some reason—has a greater need for secrecy than the other body of Congress.

Mr. President, we have a long way to go in the effort to restore public trust and confidence in the institutions of Government. Passage of the original version of Senate Resolution 9 will surely help. Adoption of the Rules Committee proposal, however, can only make matters worse, and I urge its defeat.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment as amended. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. METCALF), and the Senator from Misouri (Mr. SYMINGTON) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE) is absent on official business.

I also announce that the Senator from Misissippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Nebraska (Mr. CURTIS), and the Senator from Pennsylvania (Mr. SCOTT) are necesarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania (Mr. SCOTT) would vote "yea."

The result was announced—yeas 16, nays 77, as follows:

[Rollcall Vote No. 468 Leg.]

YEAS—16

Buckley	Goldwater	Scott, William L.
Byrd, Harry F., Jr.	Griffin	Stevens
Byrd, Robert C.	Hruska	Talmadge
Cannon	Long	Williams
Case	McClellan	Young
	Pell	

NAYS—77

Abourezk	Dole	Huddleston
Allen	Domenici	Humphrey
Baker	Durkin	Inouye
Bartlett	Eagleton	Jackson
Bayh	Eastland	Javits
Beall	Fannin	Johnston
Bellmon	Fong	Kennedy
Bentsen	Ford	Laxalt
Biden	Garn	Leahy
Brock	Glenn	Magnuson
Brooke	Gravel	Mansfield
Bumpers	Hansen	Mathias
Burdick	Hart, Gary	McClure
Chiles	Hart, Philip A.	McGee
Church	Hatfield	McGovern
Clark	Hathaway	McIntyre
Cranston	Helms	Mondale
Culver	Hollings	Montoya
Morgan	Percy	Stevenson
Moss	Proxmire	Stone
Muskie	Randolph	Taft
Nelson	Ribicoff	Thurmond
Nunn	Roth	Tower
Packwood	Schweiker	Tunney
Pastore	Sparkman	Weicker
Pearson	Stafford	

NOT VOTING—7

Curtis	Metcalf	Symington
Hartke	Scott, Hugh	
Haskell	Stennis	

So the committee amendment, as amended, was rejected.

The PRESIDING OFFICER. The resolution is open to further amendment.

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a perfecting amendment to the resolution.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an amendment:

On page 2 line 4 after the word "present" insert the following: "in accordance with the provisions set forth in Rule XXXV and paragraph 2 of Rule XXXVIII of the Standing Rules of the Senate relating to closed sessions,".

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. The Senate will be in order. There are 15 minutes on each side on the amendment. Who yields time?

Mr. ROBERT C. BYRD. I yield myself such time as I may require.

May we have order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. ROBERT C. BYRD. Yes.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Mickey Barnett of my staff be granted floor privileges during the remainder of the debate on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRIFFIN. Mr. President, will the Senator from West Virginia allow me to be a cosponsor? I hope it will not lose him any votes.

Mr. ROBERT C. BYRD. Yes; I ask unanimous consent that Mr. GRIFFIN and Mr. CANNON be permitted to be named as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. The Senate has just rejected the committee substitute which would have been an improvement over the present standing rule contained in paragraph 7(b) of rule XXV of the Standing Rules of the Senate.

Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. I regret that the attendance on the floor was not good during the discussion of the committee amendment. The committee amendment, nevertheless, has been voted down. For the record I should point out again that the committee amendment was an improvement insofar as opening up the sessions of standing committees of the Senate are concerned—over the present rule.

The present rule, paragraph 7(b) of rule XXV of the Standing Rules of the Senate, only deals with standing committees. The committee substitute which has just been voted down dealt with standing committees and any subcommittees thereof.

The present rule of the Senate provides that meetings for the transaction of business of each standing committee—saying nothing about the subcommittees—"shall be open to the public except during closed sessions for marking up bills or for voting."

In other words, under the present Standing Rules of the Senate any meeting of a standing committee for marking up a bill or for voting shall be closed, except in two instances: One, when the committee, by majority vote, orders it open or when a committee, by standing rule, decides that such closed sessions shall be open to the public.

So under the present rules of the Senate, markup sessions are closed—period—unless a committee, by rule, determines that such sessions shall be open or, in the alternative, a majority of the committee votes to open those committee meetings.

Now, the committee substitute, that Senators have just overwhelmingly voted down, provided that each meeting and markup session of a standing committee or any subcommittee shall be open to the public unless any such committee or subcommittee in open session determines by a record vote of a majority of the members of the committee or subcommittee that the proposed meeting shall be closed because of the nature of the matter to be considered. That language sets forth certain circumstantial situations in which the meetings of the committee might be closed or the meetings of a subcommittee might be closed.

It also allows committees and subcommittees at the beginning of each new Congress to adopt a rule, if the committee desires to do so, embracing circumstances in which the committee meetings throughout that new Congress would be closed.

It was the committee's position that each committee of the Senate should be able autonomously to make its own rules with respect to closed sessions based upon the nature or subject matter of the legislation coming before each committee, rather than having the Senate as a whole establish a rule for all committees.

Now that the committee substitute has been voted down, however, the amendment I have offered would seek to perfect the language of the resolution introduced by Mr. CHILES, for himself and others, so as to address the point raised by the distinguished Senator from Michigan (Mr. GRIFFIN), to wit, that in the event a committee or a subcommittee would wish to meet in closed session to discuss certain matters of a security nature, or dealing with foreign relations of the United States, or relating solely to matters of committee staff, personnel,

and so on, and so on, or matters which would tend to charge an individual with a crime or misconduct, or matters that would disclose the identity of any informer or law enforcement agent, or any information relating to the investigation or prosecution of a criminal offense, such committee would not have to reveal the nature of that subject matter in open session, but could go into closed session and determine whether or not continued closed session of that committee to discuss that particular sensitive subject would be justified.

As I stated earlier today, under rule XXXV of the Standing Rules of the Senate, any Senator may put the Senate into closed session if he can get one other Senator to second his motion. He does not have to disclose his reason, he does not have to explain why he thinks the Senate should go into closed session. He merely demands a closed session and upon a second of that motion by another Senator, the Chair will automatically clear the galleries, close the doors, and the Senate then will proceed to discuss the matter in closed session.

A majority of Senators, once the Senate is in closed session, may vote to open the Senate.

Under the language of the Chiles resolution, if it is not amended by my amendment, a committee may go into closed session if that committee or subcommittee determines in open session by record vote by a majority of the members of the committee or subcommittee, that the matters to be discussed or the testimony to be taken, of such portion or portions, will disclose such and such matters that should be discussed only behind closed doors. In other words, committee members would have to have an open discussion and a public airing of the very national security matters that ought to be discussed in closed session before the committee can even vote to go into closed session.

My amendment merely brings the committee procedure into conformity with the rules of the Senate, thus allowing any member of that committee to demand a closed session and, if that member is seconded by another Senator, that committee will go into closed session to discuss whether or not the subject matter merits open session or closed session, and the majority of the committee will then determine the proper action.

I hope that Senators will accept this amendment. I think it would improve the language of the amendment offered by the distinguished Senator from Florida (Mr. CHILES).

I think it would protect committees that do have jurisdiction over national security matters or other sensitive matters and would allow them to make a determination as to whether or not a session ought to be closed or open to the public without revealing in open session, the nature of the sensitive subject matter to be discussed.

Mr. THURMOND. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. THURMOND. As I understand what the Senator is advocating, it is that with a committee, a Member of the Senate, a member of the committee, could ask that a session be closed, then if he is seconded, which is similar to the entire Senate where a member can ask that the Senate go in closed session if the motion is seconded——

Mr. ROBERT C. BYRD. Exactly, and under rule XXXVIII of the Standing Rules of the Senate, once the Senate is in closed session to discuss a nomination, or whatever it may be—I believe it pertains mostly to nominations—the Senate may by a majority vote determine that that particular subject shall be considered in closed executive session. In which case, all subsequent proceedings with respect to the particular subject shall be closed.

That brings up another point. Under the language by Mr. CHILES, as I understand it, each day that the committee meets, if it met on Monday and decided that the subject matter was of a nature that would require a closed session, it would vote to go in closed session. If it met on Tuesday, again on the same subject matter, it would have to make that same determination and vote to go into closed session. If it met on Wednesday on the same subject, it would have to make the same determination and vote to go into closed session.

But under the amendment I have offered, once that committee, by majority vote, determines that the subject matter is of such a sensitive nature as to require a closed session, that vote by that committee, that one vote, will determine that each proceeding daily thereafter dealing with that particular subject matter would also be closed until such time as the majority of the committee votes to open or until the sensitive matter is disposed of.

Mr. THURMOND. As I understand it, under the Senator's amendment the majority of the committee at any time after they are in closed session could open up the meetings?

Mr. ROBERT C. BYRD. Yes.

Mr. THURMOND. Just as the majority of the Senate could open up the Senate?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. THURMOND. The same way?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. THURMOND. That appears to be a very reasonable amendment. I shall be pleased to support it.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER (Mr. TOWER). Who yields time?

Mr. CHILES. Mr. President, I would like to ask the distinguished Senator from West Virginia if he will yield for a question.

Mr. ROBERT C. BYRD. Yes.

Mr. CHILES. What I am trying to determine is, once two Senators, or a Senator seconded by another Senator, made the motion that the committee go into closed session so that it could discuss a proposition, one of the five exemptions——

Mr. ROBERT C. BYRD. Yes.

Mr. CHILES. Would that session then remain closed until a majority voted to open, which would be the provisions that we have in the Senate, or would it be, as Senate Resolution 9 now requires, that you have to vote in an open session to close for one of these reasons?

Now, as the Senator from Maine has explained, what has happened in the Budget Committee, and we have closed some sessions of the Budget Committee when we were talking of purely staff personnel, or on the budget, or the committee matters, he simply said, "Today we want to discuss some staff matters," and we went into a closed session.

What I am concerned about, if the Senator's language would just have two members being enough—with a second—to close a session and if henceforth we would have to take a majority vote to open it up, and that majority vote could be in the closed session, I guess, we would be going against what the thrust of Senate Resolution 9 is, and Senate Resolution 9 is to not have the secret information come out in advance, but to at least have a public vote on the fact that we are going to close a session for one of the purported reasons. At least, that it was for one of the five reasons.

My concern, as I say, and I do not completely understand the language of the Senator, is if he would require a majority vote to henceforth open up the session, then I think he has gone backwards from the Senate rules amendment which would have required a majority vote in an open session to close. Now we would have to have a majority vote in a closed session to open up.

Mr. RIBICOFF. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. RIBICOFF. I do not believe there is a difference of opinion between the Senator from Florida and the Senator from West Virginia. Could this be resolved by having the vote to open or close after the preliminary discussion has been had in an open session? Would the Senator from West Virginia object to that?

Mr. ROBERT C. BYRD. No, I would be very agreeable to that modification of the amendment. I think the Senator from Florida has raised a pertinent point. I would be agreeable to the Senator's resolution, if this amendment were adopted so as to give the same protection to a committee that the Senate Rules now give to the Senate as an entire body in the discussion of sensitive matters. I would also be agreeable that once the committee goes into closed session—and there is a discussion of the necessity for closed session—for the committee then to vote in open session, as the Senator from Connecticut has suggested, on whether or not the meeting would be open or closed. I think just a little change in the verbiage could provide that, although I do not believe it is needed.

Mr. CHILES. If the Senator is in agreement to that, I think we are on the same wavelength. I have no objection, if the Senator is concerned that we would have to air these matters before we could close the meeting. I do not think as a practical effect we have to do that. But if the Senator is concerned about that, I would have no objection that a Senator could make a motion, it could be seconded, and then we could close the session for a

discussion as to whether they qualified for one of the five. Then they would go into open session and take that vote.

The PRESIDING OFFICER. The time of the Senator from West Virginia has expired.

Mr. CHILES. It might well be that we could go to another amendment——

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. I yield such time as we need.

It might well mean that we could go to another amendment and just work out the language or perhaps the Senator thinks we can work it out right now. I think we are kind of saying the same thing right now.

Mr. ROBERT C. BYRD. I disagree with the distinguished Senator that without this language the chairman could go into closed session. The chairman cannot go into closed session, under Senate Resolution 9, without this amendment. He would have to have a majority of the committee to go into closed session. The lagnuage says, "Each meeting of the standing, select, or special committee of the Senate shall be open."

Mr. CHILES. That is not exactly what the Senator from Florida said. The Senator from Florida says when we are taking up an issue dealing with national security, I think it is a practical thing that the committee would go along with that.

Mr. ROBERT C. BYRD. Not automatically under this.

Mr. CHILES. I have said I am willing ot go along with the Senator's amendment as long as we come back out and in open session take the vote.

Mr. ROTH. Will the Senator yield?

Mr. CHILES. I yield.

Mr. ROTH. As I said earlier, I think the Senator from Michigan raised a valid point, and an amendment was in order to take care of the situation where we did not want to discuss in the reason for needing to close the committee meeting.

If the Senator from West Virginia would care, I have language which I think basically accomplishes what he proposed to do, but I could not really offer it as a substitute to his.

What I provide is that after line 15 we would add the following language:

> Notwithstanding paragraph (b), on a motion made and seconded to close the door of a standing, select or special committee, the chairman shall direct the audience to be cleared, provided that discussion while the door of such committee is closed shall be limited only to the question whether the committee should vote pursuant to paragraph (b) to close the remainder of the meeting on that day for the reasons specified in paragraph (b)

On the motion of one person and seconded, that would enable the meeting to be closed to consider whether or not the committee or subcommittee should go into closed session. It seems to me this accomplishes in rather simple fashion the concern that has been well expressed this afternoon. If the Senator from West Virginia would like to consider this language——

Mr. ROBERT C. BYRD. I have language at the desk which accomplishes the purposes set forth by the Senator.

Mr. ROTH. Let me ask the Senator from West Virginia one question: Once they decide to close on a particular subject matter, could they keep it closed indefinitely or would it be only for that day?

Mr. ROBERT C. BYRD. No; a majority of the committee could vote against having closed sessions.

Mr. ROTH. What I am asking is this: If under this language there is a reason to close for one of the reasons listed, let us say on Tuesday, what happens on Wednesday? Would they continue to be closed or would they have to again vote to close it?

Mr. ROBERT C. BYRD. A majority of the committee could determine in that first closed session that this subject matter is of such a nature that any meetings dealing with that subject matter should be closed. A majority of the committee could determine that all subsequent meetings, as long as they dealt with only that subject matter, would be closed. A majority of the committee at any point thereafter could vote to open such meeting. This would remove the necessity of going through the same motions and the same votes every day as long as the committee was considering that particular sensitive subject matter.

Mr. LONG. Will the Senator yield at that point?

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. It seems to me that the Senator's amendment makes it completely clear. I can explain it as far as the Finance Committee is concerned. Let us say we are meeting to talk about the trade negotiations going on in Geneva. If this Nation proceeds to tell what its back-up position is, what we would hope to settle for, if we cannot get what we are asking for, we have lost the starting point to begin with. We are back to the fall-back position for starters rather than negotiating where we might have gotten even better than that. So as a practical matter, if those who come down to tell us about that cannot talk about it in a closed session, there is just not going to be any meeting. Just forget about it. We are just wasting our time.

What we can do, of course, is just walk across the hall and say, "This is no longer a meeting of the Finance Committee. Anybody who wants to chat with this man, come on over and we will talk to him. We will agree that this is a confidential meeting and nobody will talk about what goes on in this room."

But as a practical matter, why not just say, "We are going to meet to talk about the negotiations in Geneva. Obviously, that is a confidential matter. We will be glad to give a vote."

What is the point in meeting and talking about it and then opening the doors and saying "Come on in, Press." We will call the roll. "Now get out." It kind of offends people, to tell the truth, to invite them in and run them out again. We might as well say "This is going to be a closed meeting."

Suppose somebody does not want it to be closed and insists that it be open. Then we can vote and decide that. If a majority votes that it be an open meeting, we will do the business that the majority wants to do.

Mr. ROBERT C. BYRD. Under the present rule, rollcalls taken in committee are made public.

Mr. LONG. That is correct.

Mr. ROBERT C. BYRD. If the committee votes to go back into open session or if it votes to stay in closed session, that rollcall vote, under the present rule, is made public.

Mr. LONG. I do not know why I would want to vote to tell the press to come over here, we are going to have a vote, and then we call the roll and tell them to get out. They do not know what the discussion was or what was voted on. They do not know what it is all about. What is the point of bringing them over to have a rollcall?

If we are going to have the meeting open, invite them over to come see the proceedings. If we are not going to have it open, what is the point? If we know it is going to be a closed meeting to begin with, why not put it in the paper that it will be a closed meeting?

If you cannot have a closed meeting, there is not going to be one.

Mr. ROBERT C. BYRD. I agree.

Mr. President, I modify my amendment as follows. I do not think this language is necessary, because the present rules would provide for it anyway, but we can nail it in, and it would accomplish the wishes of the distinguished Senator from Florida:

> Provided the vote to stay in closed session is made public.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. ROBERT C. BYRD. Will the clerk please read the entire amendment as modified?

The assistant legislative clerk read as follows:

> On page 2, line 4, after the word "present" insert the following: "in accordance with the provisions set forth in Rule XXXV and paragraph 2 of Rule XXXVIII of the Standing Rules of the Senate relating to closed sessions, provided the vote to stay in closed session is made public."

Mr. ROTH. Mr. President, I have one question I would like to ask. If the Senator will refer to rule XXXV, it speaks of any business which may, in the opinion of a Senator, require secrecy; so it is somewhat broader than the language we have just adopted by a vote. We have enumerated those areas where they could close down. I do not know whether the Senator intended that difference, or whether——

Mr. ROBERT C. BYRD. This language would not negate the conditions set forth in the Chiles resolution.

Mr. ROTH. And that would be the purpose of going into closed session.

Mr. ROBERT C. BYRD. Exactly.

Mr. CHILES. Mr. President, I think I have indicated, as the Senator from Delaware has indicated, that we think the Senator from Michigan has a point. We are willing to try to do something on this point. The Senator from Delaware has some language that I think would take care of that, which would say, at the end of the provision, that on a motion made and seconded, there could be a closed discussion for the purpose clearly set forth of determining whether one of

the five causes would lie, and then they would go back into open session. This is a result of our clear desire to take care of the problem of the Senator from Michigan. The language proposed by the Senator from West Virginia is talking about rules of the Senate that are to protect the Chamber itself, with a motion made and seconded, and then the Chamber is closed, with reference to rule XXXV.

I will say to the Senator from West Virginia that if the Senator wants to pass over this matter temporarily and take up another amendment, I will sit down with him and try to work something out.

To say that on a motion made and seconded, thereafter the meeting remains closed, if they take that vote in a closed session, even though they later announced the vote, I think it goes against the thrust of what we are trying to do here. I think it is confusing as to whether it does apply to the five particular grounds that we have set forth, and I would have to reluctantly resist the amendment we now have.

I am willing, as I say, to work something out on the proposition, so that we can do it. I am perfectly willing to do that; but I think the language we have here, I am not sure how far it goes, but I do not like a situation in which any two Members, by making a motion, can automatically go into closed session, and then the burden is on the majority to open up that session. I think that is exactly the reverse of what we were trying to do in Senate Resolution 9, by putting the burden on the majority to close the session.

Mr. ROBERT C. BYRD. Mr. President, I am perfectly willing to shift the burden to say that the meeting shall be open unless a majority votes to close it.

Mr. CHILES. Does the Senator from West Virginia have any problems with the language of the Senator from Delaware, or with language like that that we can come up with, without referring back to a rule that relates to open sessions of the Senate?

Mr. ROBERT C. BYRD. I think the language of the amendment I have presented is clearer, because it refers to rules of the Senate that are already well-known to us—rules XXXV and XXXVIII. It makes it eminently clear as to the conditions that would require closed meetings.

Let us eliminate, for the moment, the language that I have sent to the desk, and say:

May be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present

And here is where the amendment comes in—then again quoting:

that the matters to be discussed or the testimony to be taken at such portion or portions will disclose matters necessary to be kept secret.

It is perfectly clear that the record vote by the majority of the members of the committee or subcommittee present in order to close that meeting would be based on this premise, to wit, that the matter to be discussed would disclose the enumerated matters necessary to be kept secret.

The PRESIDING OFFICER. All time on the amendment has expired. The question is on agreeing to the amendment of the Senator from West Virginia, as modified.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that my amendment may be temporarily laid aside and that Senator LONG may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I call up my amendment, which is at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an amendment.

The amendment is as follows:

On page 5, after line 15, insert the following:

"Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chair to enforce order on his own initiative and without any point of order being made by a Senator. When the Chair finds it necessary to maintain order, he shall have the power to clear the room, and the committee may act in closed session for so long as there is doubt of the assurance of order.

Mr. LONG. Mr. President, I yield myself such time as I require.

Mr. President, this amendment simply places in the chair of a committee the same duty and right that exists in a presiding officer of the Senate.

When the galleries are in disorder, all presiding officers know that it is their duty to say that these people in the galleries are here as the guests of the Senate. They are required to maintain order and, if they will not maintain order, then the Chair will have to clear the galleries.

I have been around here for 26 years, and I have observed the Senate from the time I was 14. I can never recall a time when a Chair was forced to clear the galleries, but the fact that the Chair had the power to clear the galleries was adequate to allow the Chair to simply say that if the galleries continue this disturbance we will have to clear the galleries, and so the people then maintain order.

Without this provision in the rules, some group of militants, who are very much opposed to what a committee is trying to do, would have it within their power to keep the committee from reporting its legislation by constant turmoil, screaming, shouting, and engaging in various other kinds of disorderly conduct.

I would hope that this power in the Chair would never have to be used, but it ought to be there, because the mere threat of it is enough to maintain order in most cases. It has been adequate in the Senate for the last 50 years, and I think it would have been an oversight if we failed to provide a committee with what it would take to maintain order.

It is the first duty of any committee to maintain order so it can do its business. This would simply give the committee what it requires in order to do that.

This is patterned after the rules of the Senate.

I hope there will be no objection to the amendment.

Mr. CANNON. Mr. President, as manager of the bill, I have no objection. I do not know whether the people in favor of the Chiles amendment have an objection to it or not.

Mr. LONG. I have discussed this with the distinguished sponsor.

Mr. CHILES. Mr. President, on the basis of the discussion that has been made by the Senator from Louisiana, I do not think we would have any objection to this amendment. I feel that is sort of an inherent power that resides in a chairman anyway. He has the power, through the Sergeant at Arms or the policemen that are in those committee rooms at any time, to usher people out who are disorderly. So I think that power resides there now, and so I really do not see any objection to it.

Mr. ROTH. Mr. President, I have great sympathy with what the distinguished chairman of the Committee on Finance is trying to accomplish.

Let me ask a question or two. If it becomes necessary for the chairman to clear the room——

Mr. LONG. The committee room.

Mr. ROTH. The committee room, yes—and there were a difference of opinion, for purposes of illustration, say, between the majority of the committee and the chairman, would the chairman have the sole say under those circumstances?

Mr. LONG. I have no objection to that. The committee can always vote its chairman down if it wishes, so I have no objection to that. One could appeal the ruling of the chair and vote the chair down.

Mr. ROTH. I am satisfied, if that is the Senator's intent, to have the record show that.

Mr. LONG. As a matter of fact, if the amendment is agreed to and on studying this if the Senator from Delaware, the Senator from Florida, or anyone can think of some better language to achieve the same purpose, I would be happy to have the amendment reconsidered and modified in that fashion. All I wish to do is to maintain the power in the committee so that it can maintain order and act.

If we have the power to overcome a riot, then people are not going to do that to us. If we do not have the power they might try it.

Mr. ROTH. I agree with what the chairman is trying to do. I have no objection.

Mr. CANNON. I yield back the remainder of my time.

Mr. GRIFFIN. Mr. President, before the Senator yields back the time, since

we are limited on time as far as the bill is concerned, and there is no question the Senator's amendment is going to be adopted, I wonder if he will yield me a few minutes to talk on a related matter.

Mr. CANNON. Yes.

Mr. CASE. Why not vote now and have the time oin the amendment afterward, unless there is going to be a shortage of time.

Mr. LONG. It will be on my time.

Perhaps the Senator from Nevada will yield time as well.

Mr. CANNON. I am glad to yield some of my time on the amendment. I think we are running short on the bill.

Mr. GRIFFIN. I will do it either way.

Mr. CANNON. Better take it on the amendment because we are going to be short of time on the bill.

Mr. LONG. How much time remains?

Mr. CASE. I agree with that. I think we ought to vote first.

The PRESIDING OFFICER. (Mr. BROCK). The amendment of the Senator from Louisiana has 8 minutes remaining.

Mr. LONG. Why do we not ask unanimous consent, after the amendment has been agreed to, that the Senator from Michigan be recognized for 10 minutes.

Mr. GRIFFIN. All right.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. GRIFFIN. Mr. President, I do not have an amendment, but an amendment could easily be drafted to address the matter I am about to discuss. The Senator from Louisiana put his finger on an oversight of considerable importance.

Now, let me read from rule XXXV of the Senate Rules.

> On a motion made and seconded to close the doors of the Senate, on the discussion of any business which may, in the opinion of a Senator, require secrecy, the Presiding Officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.

I call attention to the fact that insofar as the Senate as a whole is concerned this body is not limited to the five categories which the drafters of this particular resolution have enumerated, I raise the question: Have they thought of everything?

Mr. ROBERT C. BYRD. That is a good idea.

Mr. President, will the Senator yield?

Mr. GRIFFIN. Yes.

Mr. ROBERT C. BYRD. That was the reason why I thought this amendment ought to be tied to rules XXXV and XXXVIII of the Standing Rules of the Senate. Once they get in closed session, they could determine whether or not——

Mr. GRIFFIN. I wonder if the amendment the Senator has offered will take care of that concern? The amendment would make it possible for one Senator, if supported by a second Senator, to have a closed session. But I suppose that if his case does not fit within the five listed categories, then theoretically, a majority could say, "You're right. We should not be talking about this matter in a public session, but your case does not fit within the rules." That would be perhaps an unusual situation, but it could happen.

Mr. ROBERT C. BYRD. Mr. President, the point that the Senator is making is a valid one.

Under the language of the resolution as it now stands, the committee could be put into closed session only for those reasons that are specified, and the discussion of them would have to be first in open session. The language of the amendment that is now drawn will allow two Senators to put the committee into closed session.

Let us take for granted that the authors of the resolution perhaps have not been able to foresee all possible contingencies. Once that committee is in closed session, if there is a contingency that has not been foreseen by the authors of this resolution, and if it is a valid one and serious enough, a majority of the committee, I think, would say, "Well, we ought to vote that this discussion be in closed session."

Mr. GRIFFIN. Even though the rules did not allow it?

Mr. ROBERT C. BYRD. Even though the language of the rule did not foresee that particular emergency or that particular contingency.

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

Mr. GRIFFIN. I am glad to yield.

Mr. ROTH. I point out that one can always think of some extreme situation that might arise which might not be covered. But, after all, the Senate is in session, and the committee can always come to the Senate floor, if there is some unusual set of circumstances, to make an exception.

Mr. ROBERT C. BYRD. That would have to be by unanimous consent. Otherwise, it would change the rule of the Senate that requires written notice one day in advance.

Mr. ROTH. If one had to move that day, that is correct. But, frankly, the Senate usually moves on unanimous consent, so I do not find that that concerns me too much. I doubt that there are many situations in which it would have to be done the same day.

The question was asked by the distinguished Senator from Michigan whether any consideration was given to this matter. I will say that we did give careful consideration to discussion of this matter in the Committee on Government Operations. It was felt that the language was adequate and covered most situations.

If experience shows that there should be modification or change, as a general rule there is nothing to prevent that being done. We agreed with the original concern of the Senator. I think it was a justified one, and we are hopeful that we can reach agreement on that. But this is not written on cement. We still can change, if experience shows that we have to broaden it.

Mr. GRIFFIN. In many bills or resolutions of this part, it is common to spell out the most obvious situations but then to add a more general category which would give a majority on a committee some flexibility to handle a situation which obviously should have been covered. For example, what about a matter involving the security of the Capital of the United States? I wonder if that would be covered?

Mr. CHILES. If the Senator will yield, the Senator from Florida will tell him why he is smiling.

Mr. GRIFFIN. I yield.

Mr. CHILES. If I close my eyes, I am listening to the debate on the sunshine bill in the Florida halls as it took place a few years ago. I never found anybody there who really was against the proposition of sunshine, but there were always a few who had just a few things that were not cleared up, and there were just a few more amendments that needed to be made and a little more study that needed to be done. There were always a few knots that had not been tied.

We have tried to think of the legitimate reasons that anyone conceivably could raise, but the Senator suggests this one, or that if we just want to close a meeting, that is the catchall.

We cannot ever spell out everything. We have operated in the Budget Committee. The Senator has heard the chairman of the Budget Committee say that he has had no problems with it, nor have any of the other members of the committee.

Mr. GRIFFIN. With all due respect, the Budget Committee is not the Committee on Foreign Relations or the Committee on Armed Services or the CIA Committee. Some committees have problems that are quite different from those of the Budget Committee.

Mr. CHILES. No, but we deal with budgets of all those agencies. We deal with the budgets and look at them.

It is just a question that at some stage we have to determine that we have covered the waterfront.

Mr. SPARKMAN. Mr. President, does the Senator from Florida have the floor?

Mr. CHILES. No, I do not.

Mr. ROBERT C. BYRD. Mr. President, it was for this particular reason that the committee substituted the following language, which I think is more embracive, more far reaching:

> Unless the testimony to be taken at that hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or government regulations.

The committee, in its deliberations, made the effort to bring out language that would be flexible enough to deal with situations that are not necessarily foreseen in the language of the Chiles resolution. The committee sought not to be too detailed and too specific, so that in the event circumstances should arise that were not foreseen by the language of the resolution, the committee would not be inhibited from acting to protect either individuals or the Nation, whichever the case might be.

Mr. President, I withdraw my amendment and offer a modification in the nature of a substitute.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk read as follows:

On page 2, line 1, strike all beginning with the word "if" down to and including the word "portions" on line 5 and insert: "On a motion made and seconded to go into closed session to discuss only the matters enumerated in paragraphs (1) through (5) followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such portion or portions".

Mr. ROBERT C. BYRD. Mr. President, the amendment I have sent to the desk, and now hold in my hand, removes the objections that were raised by Senators with respect to the language of the previous amendment, which pointed specifically to the provisions in rules XXXV and XXXVIII of the Standing Rules of the Senate. Yet, it will accomplish the same purposes. It allows a single Senator to move to go into closed session. It allows the committee to go into closed session if that motion is seconded. It requires an immediate discussion of the sensitive matter and requires an immediate vote in open session; following that discussion, as to whether or not the nature of that subject matter is such as to require closed sessions of the committee thereon.

The conditions under which the majority of the committee could vote to close are limited to those that are set forth in paragraphs numbered 1 through 5 of the resolution offered by Mr. CHILES.

Mr. CHILES. Will the Senator point out to me the provision in that that will make it clear that only in the event of a motion and a second, when they went into the closed session, they could discuss whether the matter fell within one of the five paragraphs and therefore could be considered——

Mr. ROBERT C. BYRD. Yes, the word is "only":

On a motion made and seconded to go into closed session to discuss only whether the matters enumerated in paragraphs (1) through (5)

That has to be followed immediately by a record vote in open session. The only matters that can be discussed in that preliminary closed session would be these matters set forth in paragraphs (1) through (5) of the able Senator's resolution.

Mr. CHILES. May the Senator from Florida see a copy?

Mr. ROBERT C. BYRD. Yes.

Mr. President, I suggest the absence of a quorum, without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I modify my amendment and ask that the clerk state the amendment as modified.

The PRESIDING OFFICER. The clerk will state the amendment as modified.

The legislative clerk read as follows:

On page 2, line 1, strike all beginning with the word "if" down to and including the word "portions" on line 5 and insert: "On a motion made and seconded to go into closed session to discuss only whether the matters enumerated in paragraphs (1) through (5) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such portion or portions".

Mr. GRIFFIN. Will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. Does that mean that if the committee has a meeting and someone makes a motion that they go into closed session, they then have a discussion and decide the Member is bringing up a matter that really should be decided in closed session, then they go into open session again and vote and then go back into closed session?

Mr. ROBERT C. BYRD. Yes. I do not see the necessity for going back into open session, because the present rules of the Senate provide that the votes of any committee shall be made public, but in order to conform with the wishes of the authors of the original resolution, I agreed to have the verbiage that way.

Mr. GRIFFIN. Does the CIA Investigating Committee have to go through this every day, because I understand they have very few open sessions, and I think most people would agree they are operating pretty responsibly.

Mr. ROBERT C. BYRD. I would hope that later, after we can act on this amendment and some other amendments, I could prevail upon the authors of the resolution to accept an amendment to delete the words "select or special committees."

Originally, a select committee of the Senate was intended to be a committee in which the membership was to be selected by the Senate itself. The membership of a special committee was to be designated, on the other hand, by the majority leader, the Vice President, or some other individual. Today, it is a distinction without a difference.

But in the resolution creating select and special committees, the Senate may make such provision as to open or closed meetings if it wishes to do so.

I doubt that we ought to have a standing rule of the Senate that would provide for open meetings of select and special committees when such committees might be of the nature of the CIA Investigating Committee or the Ethics Committee, and such committees ought not to be restricted by the Standing Rules of the Senate. They ought to be guided by the resolution which creates them.

So I shall offer an amendment later to strike those four words, although I may or may not be successful.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. As I understand now, as we have the amendment, it is clear that what we are doing is allowing on a motion and a second that you would be able to go into a closed session purely to discuss whether there was reason under the five exemptions to close the session, to discuss those subjects and, as soon as you had that discussion, you would go back into open session and take a vote.

Mr. ROBERT C. BYRD. Yes, the Senator is correct.

May I ask the Senator——

Mr. CHILES. Under this it would be further clear that it would not be necessary—he would not have to go into a closed session under this feature. You could discuss it in open or would it have to be closed session?

Mr. ROBERT C. BYRD. I do not understand the Senator's remarks.

Mr. CHILES. Even though the motion was made and seconded, and you went into the closed session, you could come back, you might decide you did not need to go into a closed session, so no vote would be necessary, you would just be back in open session to take up the business.

Mr. ROBERT C. BYRD. Well, the committee would have a vote.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. I do not yield time at the moment.

The PRESIDING OFFICER. Who yields time? The Senator's time is running.

Mr. ROBERT C. BYRD. Yes, my time is running, I realize that.

The requirement of the amendment—in the context of the resolution—would be that it would have to be on a record vote in open session by a majority of the Members. They could, by that vote, decide to stay in open session. I think if a Senator is going to demand that there be a closed session, and that demand is seconded, there is justification for a record vote one way or the other to determine whether or not the matter is serious enough to have a closed session or an open session.

Mr. CHILES. I think we can accept the amendment.

Mr. ROBERT C. BYRD. Before I yield back my time I want to ask the Senator, in order to establish some legislative history, whether or not, in his opinion, under the language of my amendment—and this language would not vary his language in this respect—a committee would be required repeatedly to go through this proceeding if day after day its discussions dealt with the same sensitive subject matter?

Mr. CHILES. I would say that that proposition ought to be considered separately. I think that would be separate from this amendment we are dealing with, and we should consider it separately.

Mr. ROBERT C. BYRD. I agree with the Senator because his language says "each meeting shall be open."

Mr. CHILES. Right.

Mr. ROBERT C. BYRD. So even with the adoption of this amendment the committee would have to daily go through this same proceeding, even though it might be discussing the same subject matter, in order to have a closed session after the first day. In other words, it could not vote on that first day's meeting in closed session that all subsequent sessions dealing with that same subject matter would be closed.

Mr. CHILES. I think that would be correct. I think it is correct.

Mr. GRIFFIN. Would the Senator from Florida intend that to apply to the CIA investigating committee, and they would have to do this every day?

Mr. CHILES. The way this would now state it, it would read that way. I think the Senate at any time it set up a select committee it could, if it wanted to, provide an exemption for that select committee or set certain rules for that select committee if it so desired to do.

Mr. CANNON. Mr. President, will the Senator yield for a further question?

Mr. CHILES. Yes.

Mr. CANNON. Would this affect the situation where a committee is frequently polled on a particular issue? Many times you are unable to get a quorum and a committee is polled or a subcommittee is polled on a written issue.

Would the Senator's proposal affect that situation in any way?

Mr. CHILES. I think that would be covered by the general rules. Most of that polling we do is illegal now. It violates the rules now. I do not think this would make it legal.

Mr. ROBERT C. BYRD. Mr. President, I will offer an amendment later to attempt to make it possible for a committee at one meeting to determine that subsequent daily meetings of that committee, as long as they deal with that same sensitive subject matter, could be closed without repeatedly going through this procedure. That amendment may carry or it may not.

I yield back the remainder of my time on this amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. ROTH. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from West Virginia.

The amendment, as modified, was agreed to.

AMENDMENT NO. 968

Mr. ROTH. Mr. President, I call up amendment No. 968.

The PRESIDING OFFICER. The clerk will report.

The legislation clerk read as follows:

The Senator from Delaware (Mr. ROTH) proposes for himself and others amendment No. 968.

Mr. ROTH. Mr. President, I ask unanimous consent to dispense with the further reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the resolution, add the following new section:

SEC. . (a) Rule XXVII of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph:

"3. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate or the House of Representatives in open session determine by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.".

(b) The amendment made by subsection (a) shall not become effective until a similar rule is adopted by the House of Representatives.

(c) The caption of such rule XXVII is amended to read as follows:

"CONFERENCE COMMITTEES; REPORTS; OPEN MEETINGS".

Mr. ROTH. Mr. President, amendment No. 968 would require House-Senate conference committees to be open to the public except when a majority of either the House or the Senate managers present voted to close the conference. Similar language has already been adopted by the House, so that if the Senate passes this amendment and the resolution, open conference committees would become the rule, not the exception.

The PRESIDING OFFICER. Will the Senator yield for a question from the Chair? Is this an amendment on which the Senator desires 1 hour?

Mr. ROTH. That is correct.

The PRESIDING OFFICER. I thank the Senator.

Mr. ROTH. The rationale for open conferences is exactly the same as for open Senate markup meetings. Openness increases the accountability of Members of Congress to the voters; it gives the private citizen and the press the same access to the legislative process as any lobbyist; it will increase the accuracy of public understanding of the legislative process and of the pros and cons of the issues at stake. In my judgment, it will strengthen the bonds between the citizen and the Congress.

There is no logical reason to exclude conference committees from the general practice of opening up the legislative process. If the rest of the legislative process is to be open—from hearings, to markups to floor debate—then why close the last, the least representative, and in many ways, the most important part of the entire legislative process—the conference committee? Very often the most difficult and most controversial compromises are left until the very last. If there is a public right to know, then it cetrainly includes the conference committees.

Both the Republican and Demorcatic conferences in January passed resolutions endorsing the concept of open conference committees. As I said, a similar rule has already been adopted in the House. A number of important bills have been dealt with in open conference—including the Budget Reform Act and the Energy Research and Development Administration Act. Currently the Standby Energy Authorities Act, S. 622, is being considered in open conference.

Two and a half years ago, when I offered an amendment to require that most markup meetings of Senate committees be open to the public, some Members who opposed the amendment were afraid that open markups would prevent effective handling of legislative business. But those members of individual committees which did open their markups to the public found that this was not the case. Today, I am afraid that some Members are afraid that if conference committees are open to the public, Congress cannot operate effectively and responsibly. I personally believe that just the opposite will be true. It will not be as cozy or convenient, but Senate procedures are not established to be convenient or cozy.

I am greatly concerned about the future of our democracy. We are a democracy under pressure. Polls indicate that people are disenchanted with the basic institutions of American democracy—the Presidency, the political parties, and the Congress. It is in no way demeaning Congress to recognize that, frankly, there are many people in this country who do question whether Congress can operate effectively and openly.

We are the first to insist, along with the public, that the President be open and frank. The public demands the same of Congress. We have many substantive issues to address. We cannot afford to be diverted by procedural issues. When Congress makes decisions in secret, that in itself becomes an issue. It draws attention away from the merits of the action that we are taking or not taking. At this time, it is important that the real issues of energy, the economy, and foreign policy be addressed squarely and openly. When there is a compelling reason for secrecy, I believe that the American public will understand. When there is not, we should have the courage to say publicly what we think about these issues in open deliberations.

I urge my colleagues, in the interest of better, more democratic government, to support this amendment to open most Senate-House conference committees to the public.

Mr. President, there are many cosponsors of amendment No. 968, Senator CHILES being the primary sponsor with me:

Senator Bill Brock.
Senator Dick Clark.
Senator J. Glenn Beall.
Senator Joseph R. Biden, Jr.
Senator John C. Culver.
Senator Philip A. Hart.
Senator Vance Hartke.
Senator Floyd K. Haskell.
Senator Ernest F. Hollings.
Senator Hubert H. Humphrey.
Senator Edward M. Kennedy.
Senator Patrick J. Leahy.
Senator Charles McC. Mathias, Jr.
Senator Frank E. Moss.
Senator Charles H. Percy.
Senator William H. Proxmire.
Senator Robert T. Stafford.
Senator Adlai E. Stevenson.
Senator Robert Taft, Jr.
Senator Lowell P. Weicker, Jr.

In closing, I would just like to emphasize, Mr. President, two points. One is that this language has been adopted by the House and, for that reason, I think it is important that the Senate act.

I think it is also important to recognize that under our proposed language a majority of the Members of either the Senate or the House has the right to close a session, so we protect the rights of both Houses.

Mr. CHILES. Mr. President, I join with my distinguished colleague from Delaware and support his amendment, that we do provide that conference committees will be open unless a majority of the Members of either House would vote

to close the conference meeting. I think that this is an important step forward that we can take.

We do have a clear history now that in those conferences that have elected to be open, they have proceeded and they have been able to carry out the business and do it well and the public was better able to view and understand the legislative process.

When we now find that this is one of the most important parts of the legislative process, very little or not very well understood by the public at all, that regardless of what the two legislative bodies do, then we have this caucus which many times ends up in rewriting legislation, in writing almost new legislation for the first time, and many times they see a bill that is passed by the Houses and they read what has happened to that bill and suddenly they see what comes out and, in effect, becomes law as a result of a conference, and they cannot understand it.

Under this process, of course, where the conferences are open, they would better be able to understand. They would be able to see what is a part of our legislative process, of the give and take between the House and the Senate, and, in effect, a part of the checks and balance system that was designed. It would certainly, I think, add to their confidence and their understanding of how the process works.

While we might well say, and some people do, "Well, on many conferences they are opening themselves up anyway, so you don't need this." What I saw happen recently to one of the conference, both the House and Senate said, "We were willing for it to be open, but the other side was not." Well, it ended up being closed and both sides trying to blame the other as to why it was not open.

If we were to adopt this amendment, and I think we should, then at least we would know which side elects to close the conference and we would have a rollcall vote on why they have elected to close the conference. It might well be, if there are sensitive matters to come up, that it should be voted to close the conference; if so, that can take place.

I think the distinguished Senator from Delaware has also said, and I certainly emphasize the fact, that the House has already passed this rule and now stands waiting upon the Senate. So they are ready to go to open conferences, unless one side or the other votes, and they are simply waiting for us to adopt this rule.

I think it is certainly a step we should take.

Mr. HUMPHREY. Will the Senator yield?

Mr. CHILES. I yield to the Senator.

Mr. HUMPHREY. I am pleased to hear the remarks of the Senator from Florida, and also the sponsorship and the remarks of the distinguished Senator from Delaware, because it just tells me that finally we are coming down to the point where it really counts in the matter of open sessions.

Regrettably, in the past, in some of the conference committees, word got out to the press, so and so did this, so and so compromised that, a deal was made here, and so forth, and there was no way of ascertaining the truth or even protecting one's flanks.

This way, two things, it will either be open so everybody can be there, or, if it is not, we will have a rollcall vote and find out who desires to close it, and if it is to be closed there will be justifiable reasons because that will be debated, and it will work.

We had a conference committee not long ago. I believe the distinguished Senator from Iowa (Mr. CLARK) remembers our conference on the school lunch program. It was quite a conference. We had a hard battle with the other body, with the House of Representatives, and we came out, we thought, with a reasonably good piece of legislation.

Subsequently, it was returned to conference for a reduction. Again an open conference.

I think these open conferences are desirable and I do not think they are going to hurt anything, particularly if we have the proviso that if there is a highly sensitive matter that we have the right to exercise our vote and do that responsibly, or if there is a personal matter where an individual's reputation is involved in other open meetings, then we also have, again, the opportunity to go on record as to what our views are in terms of opening or closing.

But what we are trying to do here is establish the general rule of openness, and that general rule will be found, I think, to apply with no difficulty of any measurable degree. Quite frankly, the difficulties of the open rule will be less than the difficulties of the closed rule which generally permit one simply to rush out of the conference, get his favorite reporter and say that this is what I did, or what happened, and stick it to somebody over here and say, "Do you know who sold us out?"

That I do not go for any more and I say that it has got to stop. It does not help anyone.

This way, we are all on record and can be counted one way or the other.

Sometimes there is trouble, but so what? What is new?

Mr. CHILES. I thank the distinguished Senator from Minnesota.

I yield to the Senator from Massachusetts.

Mr. KENNEDY was recognized.

Mr. ROTH. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. ROTH. I would like to find out how much time we have remaining.

The PRESIDING OFFICER. The Senator has 18 minutes.

Mr. ROTH. I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I associate myself with the remarks made by the Senators from Delaware, Florida, and Minnesota. I believe one of the very unfortunate experiences that we saw a few years ago was in what happened to the effort made by the Senate to end the Vietnam war. A series of amendments was added to various Senate legislation and sent to conference with the House of Representatives. The conferees would meet, and out of that conference would come the information that a particular amendment had been dropped. We were unable to find out who made the effort to change the expressed view of the Senate, or the reasons for the change. We were unable to find out how extremely important and valuable efforts by the Senate were undermined. I think open meetings by the conferees might well have led to a different result.

Let me mention some other examples. I have served on a number of conferences, but one in which I believe the whole sunshine process could have been of great value was a conference committee on which I served with both the chairman of the Rules Committee and the Senator from Iowa. That was the conference on the campaign financing bill. This, I believe, was an extremely important piece of legislation. The Senator from Nevada and the Senator from Iowa, along with others, including the minority leader, Senator SCOTT of Pennsylvania, were extremely active in the development of that legislation, and we went to conference on that measure.

Mr. President, the kind of consideration that was given to the Senate's position was unbelievable. In an effort by the Senator from Iowa and myself to open up the meeting, we were only able to get two votes. And then, behind closed doors, the Senate positions were just hammered down by the House Members, particularly on the points of extending campaign financing reform to congressional elections and providing an election enforcement agency to police the law. The Senate had gone on record that what was good enough for Presidential elections should be good enough for the Members of the House and Senate. But the House conferees resisted, and we wound up with a double standard in the present law.

The disdain that was demonstrated by the House conferees on this issue, and the cavalier attitude that was taken on this enormously important and significant reform, would never have occurred, if the meetings had been open, if the public and the members of the press had been there to record the actions that were taken.

A dramatic contrast is another conference I attended, with members of the Judiciary Committee on the Freedom of Information Act. We were working out differences with the House Members in a variety of areas. We considered national security issues, the classification of various files, criminal investigations, and a number of other extremely sensitive matters. These discussions were conducted in an open, sensitive exchange. The legislation that we ultimately accepted was a tribute to the House and Senate Members who participated. It reflected to me very clearly that, even in dealing with complex, important, sensitive issues, the openness of these conferences is essential if we are to proceed in a sound legislative manner.

I hope the amendment that has been put forward, and which is supported by the Senators from Delaware and Florida, will be agreed to. The case for it has been effectively made here by those who have had experience in various conferences. This is a position on which we cannot turn our backs. I am hopeful that the amendment will be approved.

Mr. CLARK. Will the Senator yield 2 minutes?

Mr. ROTH. I am happy to yield 2 minutes to the Senator from Idaho.

Mr. CLARK. I join with my colleagues in support of this amendment. I believe most of the essential points have been made, but I would like to briefly mention two factors which I feel have not been made.

First of all, the two caucuses, the Democratic caucus and the Republican caucus, discussed this subject very carefully at the beginning of the year. Both adopted a positive position, I believe by significant votes, on opening both meetings of the Senate and conference meetings.

Secondly, a point which I think has not yet been made is that we have already tried this. It is not a simply a question of whether it will work or not. In fact, in the last Congress some 12 separate conferences committees were, in fact, conducted in public view. The conferences were in varying combinations made up of a number of four Senate committees and five House committees. The success of those initial open conferences has continued with a number of open conferences this year, which Senator KENNEDY and others have referred to. So we have some basis for making a decision to open conference committees.

If there is some evidence that these conference committees have not worked effectively, that these open meetings have somehow stood in the way of the legislative process, then it certainly would seem that this is the time to hear about it. If, on the other hand, they have worked as well as reports have indicated, then certainly that ought to weigh in our consideration.

Lastly, often the opponents of open conference committees have made the argument that it will then prevent, if we have these open meetings, Members from coming down on the floor and offering rather irresponsible, perhaps politically motivated, amendments which they know very well are going to be dropped in conference.

Well, that may be the case. If these committee meetings are opened, perhaps it would embarrass Members who never intended to have their amendments taken seriously. But if that is the case, so be it. That ought not to be the practice in the Senate, for people simply to come down and offer amendments which they know could not be accepted in legislation.

That is a good place to stop the practice, and I think it is another good reason not to support closed meetings. It is another reason for opening the conference committee meetings.

Mr. CANNON. Mr. President, may I say to my colleague I favor the opening of the conference committees. He suggested if anyone had any evidence of the fact that they do not work they ought to say so now. I said so earlier today and pointed out how they do not work. Even the distinguished Senator from Maine admitted that even though his conference committee is open, the conference with the House, they did have some caucuses during the process of the meeting.

I pointed out that the same thing has happened in the energy bill. I am a conferee and I voted to open the conference. We did open it. But we have had a caucus of the majority members practically every day during the weeks that we have been in conference. We have to be able to get information of a confidential nature, information that cannot be brought out for the first time in a conference and expect to resolve something.

I just could not let that go by without saying that it does not work the way it is intended. I can assure the Senator of that from firsthand experience. In caucuses or meetings across the hall, whatever you call them, we will have to be able to continue to get information for the conferees representing the Senate to try to present a unified position, to try to understand how far we can go in negotiating, to try to understand what the administration's position is, and so on.

I think a lot of it is simply window dressing, but I do offer that information.

I yield 3 minutes to the Senator from Texas.

Mr. TOWER. I thank my friend from Nevada. It looks as though no one wants to speak against this. I know it is a very popular cause to advocate. I would be dishonest, I believe, if I did not speak out on this.

In my view, there is probably nothing more calculated to turn the legislative process into a shambles than trying to open these conference committees. To begin with, how can we hold an open session in St. 146 or EF-100 when we barely have enough room to get the conferees and the staff in there? How will we do it? We will be forced into going to large chambers to hold the conference committees and that will delay the conference committee process.

There are a few other things. We already have 16 or 17 House conferees on a lot of these conferences. If we open them up to the public and they get a little chance to politicize, they will put every member of the committee on the conference.

Further, far from people being honest, being open or candid in an open session, I think it is going to politicize these conference committees.

Talk about people being there to see whether lobbyists are going to unduly influence Senators, the lobbyists themselves will be sitting there, eyeballing you. If old George Meany is sitting there, or one of the other labor lobbyists, looking down your throat, what are you going to do?

I believe all these matters ought to be seriously considered. I think what we would do is make the legislative process, or the expedition of legislative business, far more difficult, if we adopt this measure. I hope it will be defeated, but I have no illusions about that.

Mr. CANNON. Mr. President, I yield 5 minutes to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Committee on Rules and Administration, by a rollcall vote of 7 to 1, tabled Senate Resolution 12, amending the Standing Rules of the Senate to provide for open meetings of conference committees.

The assignment of a conference committee is to resolve differences between the versions of a measure as approved by each House. The conference committee, by its very nature, is a creature designed for the sole purpose of resolving such differences. This makes the role of the conferees an assignment of compromise.

Conferees historically have met in closed session, and I am sure the decision for this procedure did not arise solely out of a desire to be secretive. Every action taken by a conference committee must be made public because the new language agreed upon by the conferees, and that is all a conference committee does, must be presented to each House for approval. Therefore, when the report is made to each House for action it is made available to the entire public.

Even though for nearly 200 years conferees have been meeting in closed session there is no rule or requirement for such procedure. In fact there have been exceptions through the years when the conferees did meet in open session, and, as a rule, following each important meeting of a conference committee, a press conference is held to inform the press what progress was made at the meeting.

The reason conferees have concluded to meet in closed session through the years is apparently based on experience that it is easier to resolve compromises behind closed doors.

When the last House to pass a bill adds an amendment or amendments to a bill passed by the other House the conferees of the House adding the amendment have the choice of insisting on the amendment, receding from its amendment completely, or the conferees must reach some kind of a compromise thereon. Somebody must give, somebody has to yield, somebody has to lose, and the loser's efforts to reach a compromise will be impaired if he cannot be totally candid as he can be in a closed session.

Compulsory open sessions would inevitably, in the debate and struggle for a compromise: First, stimulate sectional or interstate jealousies where conference action on a matter appeared to enhance that of another State or area while appearing to detract from that of another State or area; second, jeopardize individual members who may be required to make choices in public which would be legislatively necessary but politically unwise and maybe not best for the country; and third, render virtually impossible the climate or state of mind essential to compromise.

The attitude of Members toward an introduced bill seemingly does not become aggravated as emotionally as when the bill has passed both Houses and attains the state of almost becoming law. At that stage of the game the state of mind of the parties involved are more apt to become intense and, if resolved in public debate, could mean that com-

promise would be impossible much more so than in a closed session.

It is clear than an inflexible rule could prevent the harmonizing of the relative interests of States, congressional districts, and of the Nation, not to mention the interests of individual conferees.

Mr. President, the distinguished Senator from Iowa (Mr. CLARK) has stated that in his opinion a rule providing for open conferences will obviate the necessity, in so many instances, of having to vote on the floor of either body on politically motivated and unwise amendments. I hope the Senator is correct, and I do not question the sincerity of his judgment; but I doubt that his judgment is correct. I realize that my own judgment may also be in error.

I feel that in many instances the conferences have served the purpose of eliminating amendments that were purely politically motivated and unwise, and as a result conferences have prevented many bad laws from being enacted. I am sure that every Senator in this body has on one occasion or another voted for an amendment which he knew was unwise, which he knew was inordinately costly and unjustified, but which he knew would be dropped in conference. I think every Senator has done that. I am sure that I have done it. When I was in the House of Representatives I used to say, "Thank God for the Senate." After coming to the Senate I have said many times, "Thank God for the third house, the conference committee."

As I say, I hope the Senator is correct, but I doubt that it will work that way. I imagine that Senators will continue to offer amendments for political mileage, and will realize that they are not going to be conferees, perhaps, and that whether or not the conference drops the amendment they are going to offer it on the floor and get a vote on it. In my judgment, the Senators who go to conferences are going to bear an even heavier burden in the future of eliminating those bad amendments than they have had in the past.

Also, I believe that Senators who act as conferees ought to go to conferences and uphold the position of the Senate on a particular matter in disagreement.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROBERT C. BYRD. Will the Senator yield me another 2 minutes?

Mr. CANNON. I yield the Senator 2 additional minutes.

Mr. ROBERT C. BYRD. But an open conference may make it difficult for that Senate conferee to stand by the position of the Senate. He may feel that it is absolutely necessary for him to support the position of the other body, rather than the Senate position, in order to protect himself, his section of the country, or his State.

So I think there are many problems involved here which do not appear to the naked eye, but which are real to those of us who have served on many conferences throughout the years.

It is good politically to vote for open conferences. I can understand the imagery that is created in the minds of the public as to Senators who vote against closed conferences and those who vote against open conferences. If the conferees want conferences to be open, that is fine; but I do not believe that the Senate ought to vote for a rule to require that conferences be open.

We also have to keep in mind that conferences are matters that are participated in by both bodies, and that the Senate, by changing its rules here today, cannot automatically force upon the House of Representatives mandatory open conferences.

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

Mr. ROBERT C. BYRD. I am attempting to say, Mr. President, that if this amendment carries, and it probably will, it will not carry with my vote, but if it does carry, the country is going to see more and more bad laws emanate from conferences that are forced to be open, because Senators going to open conference will not always act as statesmen, but will sometimes act as politicians—to the country's detriment.

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

The PRESIDING OFFICER. The Senator's additional time has expired.

Mr. CANNON. I yield the Senator 5 minutes.

Mr. LONG. Mr. President, I address what I am going to say to the Senator from West Virginia.

The important thing in a conference is that we reach an agreement. One of the difficulties that I foresee is a situation where we have a lot of amendments on a major piece of legislation, and those who sponsor such amendments are oftentimes very sincere saying of their handiwork: "This is the best piece of legislation ever offered in the history of mankind." It relates to a pride of authorship. A man has an idea, he thinks it is a wonderful idea. He is identified with it, and has campaigned for it throughout the country.

When a person sits there in the room, hears a debate and is satisfied that a better argument could have been made for his amendment than was made, he then feels that there is no way that the Senator can satisfy a fellow that everything has been done that could be done. The author of the amendment is satisfied that if he had been one of those Senate conferees he would have made the conferees agree to his amendment. Oftentimes it might have been that way because he would have probably insisted on that above all. Above everything else, he would have insisted on his amendment.

I can foresee great difficulty in some situations reaching agreement on some of these different things because, when we cannot get the other side to take some of our amendments and we have to compromise, then a fellow feels if the conferees had made the kind of fight he would have made for his amendment they would have come back with that amendment.

I can think of some of the days when I was a junior Senator here, and I first began to be on these House-Senate conferences on the revenue bills. I would have an amendment on the bill that I thought was one of the finest ideas that had been generated in the history of the Republic, and then, when the conference dropped it out, I filibustered here in the Chamber. Sometimes I would keep the Senate in session 3 days running. I felt confident if they had fought for my amendment that it would have passed. That was a problem that occurred by just opening it to the Senator from Louisiana, putting him inside that room to make a fight on that amendment. The Senator from Louisiana kept the Senate in session days on end fighting conference reports because if he had his way the conferees would have stayed by him and stopped at nothing other than success on the amendment of the Senator from Louisiana.

Other Senators can certainly be expected to take that attitude. Go attend to the conference, sit in the room and then if anything is compromised contrary to what one thinks it ought to be, especially where his amendment is concerned, he is satisfied that the fight was not adequate; therefore, he is in here fighting the conference report. I can see the kind of difficulty we can get into on some of this. The purpose ought to be to make it possible for the two sides to graciously get together without wounding too many feelings so that people can come in and report that they have done the best they could do, all things considered, and I really fear that we are really getting ourselves into a very difficult situation.

I agree with the Senator that in a great number of conferences it would not make much difference, but I can see some of the crucial ones where it might greatly impede the ability of the Senate to legislate.

Mr. KENNEDY. Mr. President, will the Senator from Delaware yield 2 minutes?

Mr. ROTH. I yield 2 minutes to the Senator from Massachusetts.

Mr. KENNEDY. The Senate already has gone on record in favor of open sessions for markups. As important as that reform is, I do not think it is as important as open conferences. Obviously, any one who fails to achieve his views in the markup sessions has another opportunity to prevail, in the open forum of debate on the floor of the U.S. Senate. But we do not have that kind of recourse from the results of conferences with the House of Representatives. That really is the final court of appeal for the position of the Senate.

I feel strongly, if we had to make a choice, and thankfully we do not, that the open conferences are more important than open markup sessions. There is no real appeal from the results of the conference. We have an opportunity to reject a conference report, but everyone is completely familiar with how complex, difficult, and reluctant we are to reject a conference report because of one or two particular items. So the conference is the final arbiter of these issues. Therefore, I think the conferences have a greater need for openness, and I am hopeful that the amendment will be accepted.

I thank the Senator.

Mr. ROTH. Mr. President, I yield myself 2 minutes.

I endorse what the Senator from Massachusetts says. I think this is really the most important part of the entire legislative proposal to open up. If we do not make that the general rule, at this stage, it seems to me that we are really not accomplishing what the American people want, and that is to understand fully how the legislative process works.

I find it hard to understand the reservations that are given from time to time. We heard last year and 2 years ago about the problems with opening up the markup sessions. I really cannot say that I have seen any difficulty develop with that rule in the committee where it has been adopted.

I will say the same thing for the Senate Chamber. We debate here. We have votes here, and they are always open, with rare exception.

Of course, I should point out again that my amendment is very broad. It is really quite simple. It permits closing in those cases where it is necessary. I emphasize again that it protects the right both of the Senate and the House of Representatives. It does not require joint action. It also only requires action on the part of the majority of those present. So it is not a very rigid rule.

But I think to take this step will be far more significant than anything else we have done from a legislative point of view in opening up Government.

The PRESIDING OFFICER. Who yields time?

Mr. PERCY. Mr. President, I ask for 3 minutes to respond to some of the comments that have been made by the opponents of this amendment. I support the Roth amendment or open conference committees.

As I said earlier in my opening statement, the Committee on Government Operations is not asking the Senate to adopt any rules that it has not conformed to itself. We have had a trial run on this for some time now. I am particularly appreciative of Senator CANNON being in the Chamber because he has raised some very serious objections.

I must say, when I first approached this whole openness and sunshine approach to doing business, it went against the pattern to which I had been accustomed in corporate life. I could not imagine holding a board meeting in the open. We had an annual meeting of stockholders, and that is out in the open, but we never discussed anything that could not appear on the front page of any paper. The sensitive matters we discussed in a closed board meeting.

So I approached this subject some time ago with concern. Yet, we felt it was worth trying in the Committee on Government Operations.

This amendment is on the subject of open conferences, and we have had at least two conferences that I can think of where I had some concern going into a conference. One was on the Federal Energy Administration Act, because this dealt with a whole new area of Government control over a major segment of our economy, the energy industry which affects everyone. I really wondered whether emotions in that conference might be such that we could not conduct our business properly. Then I wondered whether Senators and Congressmen would really speak frankly, openly, and discuss the matter as if we were in a closed session.

In that conference and in the one we had on the creation of ERDA and NRC which determines the whole thrust of our investment in energy research and development and nuclear power, I was absolutely astounded how well those conferences went. They were extraordinarily well attended, better attended than any other conferences I had been involved in. There was absolute respect by everyone in those packed rooms for the unusual situation they were in.

I think the public came out feeling that the conference process was not a secretive, behind the closed door one, but that they were in a room where history was being made and legislation was really being written affecting their lives and the lives of this country.

They respected that. I talked to a great many of the visitors later, some of whom the decisions went against, and they said they walked out of that room with a tremendous respect for the deliberative process, the intelligence level of the Congressmen and Senators participating, the probing nature of their questions, and the way solutions were arrived at when they were contesting points of view. Those conferences went on for days. I became convinced. I went into the conference as a skeptic but I came out absolutely convinced about openness. However, we have never hesitated in our Committee on Government Operations and particularly in the permanent Investigations Subcommittee to close the meeting whenever someone's reputation would be on the line.

The PRESIDING OFFICER (Mr. STONE). The Senator's time has expired.

Mr. PERCY. I ask for 1 additional minute.

Mr. ROTH. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. ROTH. I yield 1 minute to the Senator.

Mr. PERCY. Whenever we have dealt with matters that we felt affected highly sensitive areas, where the work of the Senate and the committee would be impaired, we never hesitated to close the doors. I have never found a Senator who was reluctant to vote to close them and justify it when we really could; nor have I, in the experience we have had in the Government Operations Committee, seen evidence of any criticism by anyone when we moved to close a meeting, because people know that, on the whole, we try to hold those meetings in the open.

So I support the amendment. I am sympathetic with the concerns that have been expressed. This dialogue has been extraordinarily helpful and useful. Others have those concerns. From our experience on Goverment Operations, I would vote for the amendment.

Mr. HASKELL. Mr. President, the question for us today is, Shall the Senate restore the original provisions of S. 5 as introduced by the distinguished Senator from Florida (Senator CHILES) and the distinguished Senator from Delaware (Senator ROTH)?

It is appalling to me that this question has become an issue. The fact that it has suggests some of us have learned absolutely nothing from the lessons of the past few years. It suggests that some of us either do not know or do not care how we are perceived by the people of this country and how much congressional secrecy has contributed to that perception.

Mr. President, I do not believe there is any reasonable argument against the original provisions of S. 5, the Sunshine Act. To be sure, an argument has been offered to the effect that open committee meetings will chill and inhibit the process—that we cannot conduct the public's business in public.

That is utter nonsense. Those of us who serve on the Senate Interior Committee know that better than most. Perhaps one of the reasons I feel so strongly about this matter is that my first Interior Committee meeting early in the 93d Congress was also the one at which the Interior Committee became the first Senate panel to open markups to the public. It was also the first to open conferences to the public.

It is no revelation that openness has worked on Interior. No one has to apologize for the record of this committee since we opened the doors. We have not abandoned hard work for posturing because the public we serve is watching. Hard bargaining and debate have not suffered from the public presence. And no one has to wonder what interests and forces shape the legislation which the Senate Interior Committee reports to the floor, for that legislation takes shape in full public view.

The Senate Budget Committee has had a similar experience with openness, which is a provision of the legislation that established it.

I have enough confidence in my colleagues to believe that they will not act much differently in public or in secret committee sessions. But it is not what happens in secret sessions which is dangerous; it is what the public thinks happens. We cannot afford any suspicions, any questioning of motives. The Nation cannot afford it, either.

Certainly we have learned that much during the past 3 years. Or have we? If we have, what are we doing debating the value of openness in Government and the right of our constituents to know what we are doing at every stage of the process?

Mr. President, we have enacted campaign reforms to reduce the influence of special interests. It now remains for us to eliminate the abuse, the potential for abuse and the appearance of abuse which will persist so long as we continue to conduct the public's business behind hearing room doors closed to the public.

We can accomplish that by supporting the original sponsors of S. 5 in their ef-

forts to restore the original, tough provisions of that bill.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. CANNON. Mr. President, unless someone else desires time, I am willing to yield back the remainder of my time.

Mr. ROTH. I yield back the remainder of my time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GRIFFIN. Mr. President, is an amendment to the Roth amendment now in order?

The PRESIDING OFFICER. It is in order.

Mr. GRIFFIN. I sent an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, after line 5, insert:

4. (a) In committees of conference, a manager on behalf of the Senate may give his proxy to another manager on behalf of the Senate provided such proxy shall comply with Section 190a(d) of the Legislative Reorganization Act of 1970.

(b) In committees of conference, a quorum for the transaction of business by the managers on behalf of the Senate shall consist of a majority of such Senate managers.

5. The caption of rule XXVII is amended to read as follows: "Conference Committees; Reports; Open meetings; Proxies; Quorum".

Mr. ROBERT C. BYRD. Mr. President, I am in sympathy with the Senator's amendments, but are these amendments germane?

The PRESIDING OFFICER. By the previous order, there is a requirement that all amendments must deal with open committee meetings, and this amendment does not so deal. Therefore, it is not in order.

Mr. GRIFFIN. Does the Chair so rule?

The PRESIDING OFFICER. The Chair rules——

Mr. GRIFFIN. Will the Chair listen to any argument?

The PRESIDING OFFICER. The Chair will listen.

Mr. ROBERT C. BYRD. Mr. President, I will not raise a point of order at this point. I would like the Senator to discuss his amendment. I would support the amendment; but under the agreement, I do not think we can allow this amendment to come in.

The PRESIDING OFFICER. The point of order will not be in order until the time has expired.

Mr. ROBERT C. BYRD. I will make the point of order at the proper time.

Mr. GRIFFIN. Mr. President, if the Senator from West Virginia is correct, that the amendment is subject to a point of order, it is unfortunate. The Roth amendment does deal with committees of conference. Without question, the conference committee is a most important step in the legislative process. It seems to me to be very important to the Senate as an institution if we are going to conduct conference committee sessions in public, to see that credit will be reflected on the Senate.

I offer this amendment with some recent experience in mind. The committee on conference having to do with the energy legislation has been meeting. We have the ridiculous situation of one-fourth of the membership of the U.S. Senate—25 Members—having been appointed to serve on the conference committee.

The other day, a very controversial and important matter was presented to that conference committee for a vote, and a number far short of a quorum, so far as the Senate managers were concerned, was present. The chairman of the Senate conferees, ultimately exercised proxies, which I believed were general proxies and did not conform with the Reorganization Act.

One of the reasons why I offer this amendment and call this situation to the attention of the Senate is that upon inquiry of the Senate Parliamentarian, the informal ruling was provided that a quorum of the Senate managers was not necessary to take a vote; that one Senator, with a handful of proxies, even though there are 25 members of the conference committee on behalf of the Senate, could sit there and transact the business of the Senate.

Regardless of whether that makes sense otherwise, it certainly is not going to look very good to the public if we have our conference committees operating in that way. I think it would make good sense to adopt a rule in connection with this change that a quorum would be necessary.

I wonder whether the Senator from West Virginia, who serves on the Rules Committee with me—perhaps I should address my question to the chairman of the Rules Committee, since he is in the Chamber—would agree that the matter of proxy voting and what constitutes a quorum might be appropriate matters for the Rules Committee to address itself to—particularly now that we are out in the sunshine.

Mr. CANNON. I certainly think it would be proper for the committee to address itself to the question that the Senator has raised. I was inclined to support the proposition he has stated. I think he makes good sense. But if it is not germane, that is something else. Many of these matters properly should be considered, I suppose, by the Rules Committee.

Mr. GRIFFIN. I hope so. Not only is it in the interest of sound legislative procedure to provide that a quorum be present in order to transact business, but also it would make the Senate look a little better in the sunshine of the public scrutiny that we are providing for ourselves.

I offer this amendment because it is a fair assumption that the amendment of the Senator from Delaware probably will be adopted.

I hope the Chair will see its way clear to find the amendment germane.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Illinois?

Mr. CANNON. I yield 1 minute to the Senator.

Mr. PERCY. Mr. President, I am sympathetic with the objectives, but I agree with the Senator from West Virginia (Mr. ROBERT C. BYRD) that we simply could not open up this measure. We could go through the whole Senate and find ways to improve our operating procedures.

Mr. ROBERT C. BYRD. Not only improve them, but we also could make them much worse.

Mr. PERCY. I do not think this is the time or the place to do it. There will be the proper time. The distinguished Senator is on the Rules Committee. I certainly would support and back many of the things he has proposed, but I think the rule of germaneness should apply. Otherwise, we would never finish this measure.

Once having accomplished this, perhaps we will find that we will have to improve many of the procedures as we operate, and perhaps it is all for the good. Perhaps we will have to show up on time at the meetings.

The PRESIDING OFFICER. Who yields time?

Mr. CANNON. If no one desires any additional time, I yield back the time.

Mr. GRIFFIN. I yield back my time.

Mr. ROBERT C. BYRD. Mr. President, it is not that I am not in sympathy with the Senator's amendment, but I feel that, under the unanimous-consent agreement, his amendment did not agree with open and closed meetings of committees, subcommittees, and conferences. Therefore, the amendment is not germane and I shall have to make that point of order. Otherwise, other amendments could come in that likewise are not germane.

Mr. GRIFFIN. Mr. President, I recognize the argument and technically, the argument is right. I think it is unfortunate that we restricted ourselves to this extent in the unanimous-consent agreement. We should have had an agreement with more latitude, enough to take care of the problems that we are creating along the way as we are making the amendments to the rules of the Senate that are being voted upon. Recognizing that, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The question is on agreeing to the amendment of the Senator from Delaware.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Ohio (Mr. GLENN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) and the Sena-

tor from North Carolina (Mr. MORGAN) are absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) and the Senator from California (Mr. TUNNEY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Pennsylvania (Mr. HUGH SCOTT) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. BAKER), the Senator from Oregon (Mr. HATFIELD), and the Senator from Pennsylvania (Mr. HUGH SCOTT) would each vote "yea."

The result was announced—yeas 81, nays 6—as follows:

[Rollcall Vote No. 469 Leg.]

YEAS—81

Abourezk	Garn	Mondale
Allen	Goldwater	Montoya
Bartlett	Gravel	Moss
Beall	Griffin	Muskie
Bellmon	Hansen	Nelson
Bentsen	Hart, Gary	Nunn
Biden	Hart, Philip A.	Packwood
Brock	Haskell	Pastore
Brooke	Hathaway	Pearson
Buckley	Helms	Pell
Bumpers	Hollings	Percy
Burdick	Hruska	Proxmire
Byrd, Harry F., Jr.	Huddleston	Randolph
	Humphrey	Ribicoff
Cannon	Inouye	Roth
Case	Jackson	Schweiker
Chiles	Javits	Sparkman
Church	Johnston	Stafford
Clark	Kennedy	Stevens
Cranston	Laxalt	Stevenson
Culver	Leahy	Stone
Dole	Magnuson	Taft
Domenici	Mansfield	Thurmond
Durkin	Mathias	Weicker
Eagleton	McClure	Williams
Fannin	McGee	Young
Fong	McGovern	
Ford	McIntyre	

NAYS—6

Byrd, Robert C.	Scott, William L.	Tower
Long	Talmadge	
Metcalf		

NOT VOTING—13

Baker	Hartke	Stennis
Bayh	Hatfield	Symington
Curtis	McClellan	Tunney
Eastland	Morgan	
Glenn	Scott, Hugh	

So Mr. ROTH's amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk and ask that it be stated by the clerk.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an amendment: On page 1, line 6 strike out the words "that a portion or portions of any such meeting" and insert in lieu thereof "that a meeting or series of meetings by a subcommittee thereof on the same subject".

On line 5 of page 2 strike out "portion or portions—" and insert "meeting or meetings—".

Mr. TALMADGE. Mr. President, may we have order so that we can hear what is going on.

The PRESIDING OFFICER. Will the Senate kindly come to order. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, may I have the attention of Senators?

The PRESIDING OFFICER. Will the Senate come to order? Will Senators kindly limit their attention to the Senator from West Virginia?

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I would like to take advantage of the opportunity to speak to a fairly full representation of the Senate for once today. Inasmuch as we have a good number of Senators here now, I ask unanimous consent that the time on any remaining amendment be limited to 10 minutes, to be equally divided between the mover of the amendment and the chairman of the committee.

Mr. JAVITS. Mr. President, reserving the right to object, does that apply to S. 5 or S. 9?

Mr. ROBERT C. BYRD. Only Senate Resolution 9.

The PRESIDING OFFICER. Does the Senator's request cover the current amendment of the Senator?

Mr. ROBERT C. BYRD. It covers my own amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CHILES. I object. I do not know what amendments will be offered at this time.

Mr. ROBERT C. BYRD. All right.

Mr. PERCY. Mr. President, I have an amendment. It is fully acceptable to me. Could we poll the membership to see who has amendments?

Mr. ROBERT C. BYRD. I think we know.

Let me explain my amendment.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I will close it up in 5 minutes.

Mr. President, the Senate has rejected the committee amendment and up to this point has approved of the resolution offered by Mr. CHILES and other Senators, as amended by my own amendment. As it now stands, any standing committee of the Senate, select or special committee of the Senate, or subcommittee thereof, or one member of any committee, may demand that the committee go into closed session and if that demand is sustained by a second, a committee will go into closed session to determine whether or not closed meetings are justified in that they would involve discussions about any one or more of the five paragraphs enumerated, (1) through (5) of the resolution.

As the resolution now stands, if a committee were, on Monday, to determine that it should go into closed session on Monday because of the sensitive nature of the subject matter, on Tuesday it would have to go through this whole proceeding again, even though it were talking about the same subject matter.

On Wednesday, it would have to go through the same proceeding again, even though it were talking about the same subject matter.

My amendment would allow the committee, once it went into closed session and made a determination that the subject matter was of such a nature to require closed discussions, to authorize closed sessions daily until such sensitive subject matter were disposed of, thus saving the time of the committee and obviating the necessity of going through the same proceedings day after day after day when the subject matter were sensitive and had been determined so by the committee in the first instance.

Mr. GRIFFIN. If the Senator will yield for this observation, he omitted that in the procedure, even though the committee does discuss in closed session whether or not it is advisable to have the meetings in closed session, they must go into open session first to take the vote.

Mr. ROBERT C. BYRD. Yes; Senators have required today that when the committee goes into closed session to determine that the subject matter is sensitive to the extent that closed sessions are required, the committee then has to go back in open session to so vote, even though the present rules of the Senate require that such committee votes be made public.

Mr. GRIFFIN. I think it is important for Senators that have not been on the floor to realize that.

It seems to me the Senator's amendment is particularly applicable to a committee like the CIA Intelligence Committee. Do we want this committee to go through this folderol every day?

Mr. ROBERT C. BYRD. Every day.

Mr. GRIFFIN. Even though they are considering the same sensitive matter.

Mr. ROBERT C. BYRD. Have a closed session, go back to open session to vote a closed session, then go back into closed sesion every day. My amendment would obviate that.

Mr. CHILES. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. CHILES. I can see the point that the Senator is raising by virtue of his amendment. The concern the Senator from Florida has with the amendment as it is now stated is that one could hold, again, one meeting, like at the beginning of the year, and say, "We are going to be dealing with the subject of this particular matter," and with a majority vote then one could attempt to close the meetings of that committee for the rest of the year.

I wonder if the Senator would agree to language, following the first paragraph that he has where that is on the same subject, and add:

For a period of no more than 14 days.

Mr. ROBERT C. BYRD. Well, I say this, and I hope the Senator will not misunderstand me. I say with all due respect to the Senator that I believe if a committee acted otherwise, the majority of that committee could be charged with bad faith.

Mr. CHILES. I think, though, when we say for a period of no more than 14 days, we are really getting to the point that the Senator from West Virginia is raising on having to do with every day.

In almost every instance, that is going to cover a bill that we are debating on a subject matter, and I do not think it is going to be a great inconvenience in a committee if once they have had the debate and they are going more than 14 days, they simply take a vote, they do not have to go through any process.

Mr. ROBERT C. BYRD. Mr. President, I have no quarrel with this. I do not think it is necessary at all. I do not

know what the Senator means by 14 days, whether he means 14 days of committee sessions or 14 calendar days, but it is all right with me, whatever the Senate wants to do on this.

I do think this amendment would be an improvement over the language in the resolution.

Mr. CHILES. If the Senator would agree to that language, then I would certainly agree to his amendment.

Mr. ROBERT C. BYRD. Would he suggest 14——

Mr. CHILES. Calendar days.

Mr. ROBERT C. BYRD (continuing). Calendar days.

All right, including Sundays and holidays.

Mr. PASTORE. Vote.

Mr. ROBERT C. BYRD. Mr. President, I accept the modification.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified, is as follows:

On page 1, line 6 strike out the words "that a portion or portions of any such meeting" and insert in lieu thereof "that a meeting or series of meetings by a subcommittee thereof on the same subject for a period of no more than 14 calendar days".

On line 5 of page 2 strike out "portion or portions—" and insert "meeting or meetings—".

Mr. PASTORE. Vote.

Mr. ROBERT C. BYRD. I yield back the remainder of my time.

Mr. CHILES. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia, as modified.

The amendment, as modified, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, the contingencies that are set forth in the committee bill, quite possibly, do not include any and all emergencies that might arise requiring a closed session.

If Members will look at the Senate resolution on pages 2 and 3, Members will see the five sets of contingencies that will justify closed meetings of the committees.

I would propose to offer an amendment adding a paragraph numbered (6), which would read as follows, and if Senators will look on page 3, beginning with line 21 and going into line 22, they will find this language:

or may divulge matters deemed confidential under other provisions of law or government regulations.

I propose to amend the bill by adding a paragraph (6) which would include that very language so that there is a type of catch-all language that would take care of situations that are not now envisioned by the first five paragraphs.

Mr. LONG. Will the Senator yield at that point?

Mr. ROBERT C. BYRD. I yield.

Mr. LONG. As the Senator knows, an amendment will be offered by Senator PERCY which has to do with opening up the sessions of the joint committees. I discussed this matter with the Senator from Illinois. Much of the activity of the Joint Committee on Internal Revenue and Taxation is dealing with somebody's tax return. Under the law, that is confidential information and cannot be divulged.

The Senator has language which perhaps could be seized upon to contend that this should be a closed meeting, but as a practical matter, the language that the Senator is suggesting would take care of that. Obviously, I do not think anybody, by Senate rules, wants to be required to to break the law of the land, and the law of the land does not permit us to divulge the confidentiality of a tax return which is not otherwise public. Would this language take care of that?

Mr. ROBERT C. BYRD. Yes.

That is all I have to say. I hope the Senators will accept my amendment.

The PRESIDING OFFICER. Is the Senator offering that as an amendment?

Mr. ROBERT C. BYRD. Yes; I am.

The PRESIDING OFFICER. Can the Senator send that to the desk?

Mr. ROBERT C. BYRD. Yes; for the benefit of the clerk, this would add a paragraph numbered 6 on page 3, following line 15, beginning on line 16, and it would consist of the verbiage in the parens that I have marked on lines 21 and 22 of page 3.

The PRESIDING OFFICER. Who yields time? Do Senators yield back their time?

Mr. CHILES. Mr. President, I yield such time to myself as I might need to discuss the amendment. I am not sure this amendment fits the argument which has been raised that we need sort of a catchall provision for something that we have no thought about. This particular amendment says "may divulge matters deemed confidential under provisions of law or other governmental regulations."

I do not see how that really hits any of the speculative matters that people were trying to raise at one time that might not be covered. It seems to me, for example, on a person's income tax return, that would be covered where we speak in paragraph 3 about a clearly unwarranted invasion of the privacy of an individual. So we have taken care of that exception.

I really do not know what the language means.

Mr. LONG. Will the Senator yield?

Mr. CHILES. Yes.

Mr. LONG. How about a corporate tax return? A corporation is not an individual.

Mr. CHILES. It also provides in section 5, "will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to" given persons. I think it would be covered under that, too.

I do not think we are going to pass a rule that is going to be able to contradict a privilege of law that we now have by another statute, and we are not purporting to do that.

I do not know what the amendment means. I do not know what it seeks to do. I do not know what it seeks to add to the bill.

Mr. LONG. No one wants to vote for a Senate rules that requires a Senator to break the law. Just to state the obvious, we ought to make it clear that by this rule we are not trying to make somebody break the law because, obviously, he could not very well do it anyway. We could not make him do that. Why would we want him to break the law and then have him say "I did that because the Senate rule required me to do it."

We would be better off to say, "If it is the law you are talking about and somebody would be required by a Senate rule to break the law, we make it clear that there is nothing in this rule that would make you break the law because you would have no business doing that."

Insofar as the regulations are involved here, the Senator may be referring to the regulations of the Internal Revenue Service, for example, which protect the rights of the individuals. We would not want to break that.

Mr. CHILES. I wonder if the Senator from West Virginia would agree to a modification that would say "or may divulge matters" and strike the word deemed" and insert in lieu thereof "required to be kept confidential under other provisions of law or Government regulations"?

Mr. ROBERT C. BYRD. That is fine with me.

The PRESIDING OFFICER. The amendment is so modified.

Mr. ROTH. I do not believe I have any objections to this amendment, but I would like to have the Senator explain more precisely what he means by Government regulations. Are those just regulations that would be issued such as the CFR's, or would it be almost any order put out by the military or anyone else? What do we mean by the word "regulations"?

Mr. ROBERT C. BYRD. Whatever they are, they would protect confidentiality. That is what we are talking about. For any Senator to raise an objection to an open meeting I would think he would have to produce evidence that whatever matters are going to be discussed are required to be kept confidential under other provisions of law or Government regulations.

Mr. ROTH. I guess I am asking the Senator from West Virginia does the word "regulations" have any precise meaning?

Mr. ROBERT C. BYRD. I do not think so.

Mr. ROTH. Would it be just a letter that was issued, say, by the chief of an agency?

Mr. ROBERT C. BYRD. I think that would not be a regulation. It would be a matter that the committee could determine. I do not think I have to determine right here what a regulation is. This precise language has been lifted out of the standing rules of the Senate dealing with committee hearings. That is where this language came from.

Mr. LONG. Will the Senator yield on that point?

Mr. ROTH. Yes.

Mr. LONG. It seems to me the question before the committee would be "Will we respect this regulation or will we not?" I can recall when President Eisenhower issued a kind of regulation that nobody in the entire executive branch

could tell anything to a congressional committee unless the President had given them consent to do so.

We did not have any respect for that regulation and refused to abide by it. Conceivably, if these people have a regulation that says that they will not divulge this confidential information and we want them to divulge it, we are going to have to let them divulge it in a closed session. Otherwise, they would stand on the regulation and say, "If I break that regulation, I will be fired anythow."

Mr. ROBERT C. BYRD. May I cite to the distinguished Senator from Delaware the verbiage in the present Legislative Reorganization Act? Section 133 A, paragraph (b):

Each hearing conducted by each standing, select and special committee of the Senate, except the Committee on Appropriations, shall be open to the public except when the committee determines that the testimony to be taken at that hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual or may divulge matters deemed confidential under other provisions of law or Government regulation.

That is the language in the present law—not just in the Standing Rules of the Senate—and it deals with committee hearings.

All the committee was trying to do in bringing out the language that the committee substituted today was to use the very verbiage that is now in the Legislative Reorganization Act dealing with hearings and apply it to committee markup meetings. The Senate voted down that committee substitute. I am attempting to use the same language now as a bit of additional protection so as to include situations not now foreseen.

Mr. ROTH. As I said in the beginning, I was not saying that I objected, but I am trying to get a better feel for what the Senator from West Virginia intended.

In essence, is the Senator saying "confidential under other provisions of law or Government regulations issued pursuant thereto"? I mean would these be regulations issued pursuant to law?

Mr. ROBERT C. BYRD. I am not going to tweedle-dum and tweedle-dee all night over this.

Mr. ROTH. I find this rather important.

Mr. ROBERT C. BYRD. I know the Senator does, but let the Senator ask the Senators who drew up the Legislative Reorganization Act what they meant. I have lifted the language precisely out of that law.

Mr. ROTH. The Senator is proposing the amendment, though.

Mr. ROBERT C. BYRD. But I am using the same identical language, and "Government regulations" means here what "Government regulations" means there. It will be the same for committee markups and meetings as it already is for committee hearings.

Mr. ROTH. All I am asking the distinguished Senator from West Virginia is, if this language is already used, does it have any defined meaning? I gather it really does not, even though the language has been used before.

Mr. ROBERT C. BYRD. I do not know that it is a word of art. I doubt it.

Mr. ROTH. Would an executive order be a Government regulation issued by the President?

Mr. ROBERT C. BYRD. I suppose it could be. That would be something the committee could determine at the time.

Mr. STEVENS. The committee could vote on it.

Mr. ROTH. I realize it could.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. ROBERT C. BYRD. I yield back the remainder of my time.

Mr. ROTH. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia, as modified.

The amendment, as modified, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I have one additional amendment, which would be to strike—I send the amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 1, line 3, after "standing" strike ", select, or special".

Mr. ROBERT C. BYRD. Mr. President, this amendment would delete from the language of the resolution the words "select or special" with reference to Senate committees. It is the feeling of myself and those on the subcommittee who reported out the committee substitute that a Senate rule dealing with open sessions should deal only with standing committees and subcommittees, not with select or special committees.

The Senate, in creating a select or special committee, can, by the creating resolution, specify whether or not the committee should operate under closed sessions or open sessions, or leave it up to the committee to do whatever it deems best. I do not believe we ought to enact a standing rule of the Senate today governing the proceedings by which select or special committees will act in respect to open or closed sessions.

Mr. CHILES. Mr. President, I have to oppose this amendment. If we adopt the House amendment, most of the special and select committees that we have operating today would not be under the rules that we are providing for standing committees. I see no reason why we should not have the same rules for the Select Committee on Nutrition and Human Needs, the Select Committee on Small Business, the Special Committee on Aging, or the Special Committee on National Emergencies and Delegated Emergency Powers. All of them should open their meetings and conduct them in the open, just as we are providing for standing committees.

In the event that we have a special committee that is going to be brought into being by resolution or by legislation, we could at the time provide, if we wanted to, some special rules. But we have accommodated the provisions so they would not have to close their meetings every day. They now have 2 weeks on the subject matter, in which to keep the meetings open; and even on our intelligence committees they can go for 2 weeks on one particular subject, and that is as long as they are going to need to go on any particular subject having full sessions.

I think this amendment would greatly weaken the resolution by putting under a different rule the select committees. We are seeing more and more that some of the select and special committees are becoming committees of great importance. Certainly the Committee on Aging is, and certainly its meetings should be open.

The other point is that most of the select committees do not even have markup sessions, because they are not marking up legislation, so why in the world should they need to close their meetings, or, in the event they do, why should they not follow the same rules and procedures that we have for other committees?

I oppose the amendment, and I hope we can defeat it. And, Mr. President, if this is a proper time, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRIFFIN. Mr. President, is there still time on the amendment?

The PRESIDING OFFICER. There is time remaining on the amendment.

Mr. GRIFFIN. Will the Senator yield to me?

Mr. ROBERT C. BYRD. I yield. How much time does the Senator wish?

Mr. GRIFFIN. Three minutes.

Mr. ROBERT C. BYRD. I yield the Senator 3 minutes.

Mr. GRIFFIN. Mr. President, I think when we get to the rollcall vote, without taking up other amendments, we are going to want to get out of here. I would like to ask a question for the purpose of legislative history.

It was pointed out by the Senator from Louisiana, when he talked about these categories—and I read one of the categories:

will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person.

One of the oldest arguments in the law is whether or not a corporation is a person. Almost any bill that uses the word "person" must define the word to make it clear whether or not a corporation is a person. I do not know what is intended here by the drafters of this resolution, but obviously the trade secrets that we will be talking about, in many instances, will be trade secrets of a corporation or business association of one kind or another, rather than an individual person.

I could offer an amendment; but perhaps legislative history will suffice. At least, I would like to know if there was an intention to say that trade secrets of a corporation, if they were trade secrets, would be disclosed.

Mr. CHILES. I think the intent would be the same intent as has been held to

be the law in most instances, especially where you are talking about trade secrets, that you would be talking about corporations as well as individuals.

Mr. GRIFFIN. I thank the Senator for that legislative history. I think it is important to have it in the record.

Mr. PERCY. Mr. President, will the Senator yield me 1 minute, to comment on the Byrd amendment?

Mr. ROTH. I yield the Senator 1 minute.

Mr. PERCY. Mr. President, I shall oppose this amendment. I serve on two select committees, the Select Committee on Aging and the Select Committee on Nutrition and Human Needs. I see no reason on earth why they should ever have closed meetings. We are dealing with older people, we are dealing with food stamps, and we are dealing with critical issues that affect people. I think that is all the more reason that the meetings should be open, as a standard procedure, unless there is some special reason that they should be closed.

There are operating procedures established in this legislation whereby they can be closed if there is reason to. But I see no earthly reason that they should be closed as a general procedure.

Mr. ROBERT C. BYRD. Mr. President, I agree with the Senator as far as those particular committees are concerned; but take the Ethics Committee. That is quite a different matter.

What I am saying is that when the Senate creates a special or select committee, I think it should be up to the Senate, based on what the work of that committee is to involve, to determine whether or not the meetings will be open or closed, or whether to leave it up to the committee. I think we ought not to adopt a Senate rule here that mandates a special or select committee, to be created in the future, to do one thing or another.

Mr. PERCY. I think the whole purpose of our legislation, however, is to place the burden of proof or require the preponderance of the evidence to show that they should be closed, but have the prevailing factor be that they should be open. Then those who want them closed have to take the initiative, rather than the other way around.

I say again, as to the Committee on Ethics, there is no question, if a committee meeting involves a question as to the integrity, reputation, or character of an individual to be discussed, it should be closed, and there would not be any problem about having such a meeting closed.

Mr. ROBERT C. BYRD. What about the Special Committee on Investigation of CIA?

Mr. PERCY. I would think the same thing would apply. The amendment specifically provides that national defense and foreign policy are matters that permit closed meetings.

But I say respectfully that if we had a little more openness about intelligence gathering in the past and we had found out how much we were spending on it and who was doing it, we might not have all the difficulties we have today. It was this utter cloak of secrecy, in which the CIA said in effect: "This was none of your business", that has led to the present problems. This is our business; it is our Government's business, and the people of this country are depending on us to watch. The only way they can have absolute assurance we are watching is to know what is going on. We all know we do not know in the Senate what is going on in many of these committees. We would be much better informed if we had a good deal more openness about the way we conduct our business.

Mr. ROBERT C. BYRD. Mr. President, the Senate, creating the committee, could make that determination.

I yield back my time.

The PRESIDING OFFICER. The question is on the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The clerk will suspend.

Mr. PASTORE. Mr. President, I should think in view of what has been said here today that the Senator should withdraw his amendment. If we create a special select committee where it is all confidential and secretive, we can say so at that time. But to be consistent, if we are going to open it up, leave it all open. I would hope that the Senator would withdraw this amendment.

Mr. ROBERT C. BYRD. Mr. President, in deference to the able Senator from Rhode Island, I withdraw the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is withdrawn.

Mr. STEVENS. Mr. President, I call up my amendment No. 1041, which is at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment as modified to add a new section at the end of amendment No. 1031.

The amendment is as follows:

At the end of section 1 insert the following: "Each committee shall prepare and keep a complete transcript of electronic recording adequate to fully record the proceedings of each meeting or conference whether or not such meeting or any part thereof is closed under this paragraph, unless a majority of said members vote to forego such a record.".

Mr. STEVENS. Mr. President, let me state briefly what this is for. I found in some of these executive sessions that have been open we have people who are there taking notes and we have no record. We have members of the audience who are stating our intent in regard to a particular amendment, according to their information, which was contrary to that of the person who offered it. It seems to me that, if we are going to open these meetings—and I supported opening them—we ought to have a record of what transpired so there could be no question as to who was involved.

I see my good friend from Illinois here. We share almost the same name and are on the same conference committee right now.

Confusion can arise in terms of these proceedings unless there is a record.

I have checked, and ten of the committees of the Senate already maintain a record of the meetings that are, in fact, open to the public. We should set a standard that all of them should maintain a record unless a majority of the Members vote otherwise.

I am hopeful the managers of the bill will accept the amendment.

Mr. ROBERT C. BYRD. Mr. President, is this amendment germane?

Mr. STEVENS. I have checked with the Parliamentarian, I will say to the Senator from West Virginia, and was informed that it was. It pertains to the recording proceedings of open meetings.

Mr. ROBERT C. BYRD. But under the agreement no amendments would be germane if they did not deal with the subject of open or closed meetings.

Mr. STEVENS. I specifically address that.

Mr. ROBERT C. BYRD. I am in sympathy with the Senator's amendment. I am for it. I do not wish to open the door to any nongermane amendments, though.

The PRESIDING OFFICER. The Chair advises that in the broad sense the amendment can be considered within the unanimous-consent agreement as being germane in that it provides for transcripts regardless of whether the meetings are open or closed and provides for the ability to dispense with them.

Mr. CHILES. Mr. President, we think that is a good amendment and we certainly accept the amendment.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. ROTH. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. PERCY. Mr. President, I am quite agreeable to a 10-minute time limitation on either side if that would be acceptable. I send an amendment to the desk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a 10-minute limitation on the pending amendment, the time to be equally divided in the usual manner to each side on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. PERCY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the Resolution, add the following:

SEC.—(a) Rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph:

"8. Each meeting of a joint committee of

the Senate and House of Representatives, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(A) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(B) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(i) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(ii) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

"In the case of public hearings, the proceedings may be broadcast by radio or television, or both, as the committee may determine, and under such rules and regulations as that committee may adopt."

(b) The amendment made by subsection (a) shall not become effective until a similar rule is adopted by the House of Representatives.

(c) The caption of such rule XXV is amended by inserting immediately below item 25.7 the following:

"25.8 OPEN JOINT COMMITTEE MEETINGS".

Mr. PERCY. Mr. President, I shall explain my amendment briefly.

This is a simple amendment to complete the circle of coverage of open meetings in congressional committees. It would apply to joint committees of the Senate and House of Representatives precisely the same rules for open meetings as are contained in S. Res. 9 for standing, select and special committees of the Senate. The only stipulation would be that this change in the Senate rules covering joint committees would not go into effect until a similar rule has been adopted by the House.

Under my amendment the general rule for joint committees would be openness just as the general rule for individual committees of the House and Senate is openness. Meetings could be voted closed for specific cause, under exactly the same criteria as we have already established for Senate committees.

In my mind there is no difference between the activities of the joint committees of the two Houses and the activities of the standing, select, and special committees of the Senate. Joint committees conduct hearings, take testimony, consider legislation, and make reports to their respective Houses. There is no reason whatever why these joint committees should be exempt from the general rule that is applied to all other committees. Their meetings should be conducted in the open and in full view of the public they serve.

This is an amendment I offered in the Committee on Government Operations, and which was adopted unanimously by that committee.

Mr. President, fully adequate experience has already been gained for the procedure called for in this amendment. The House committees have been operating under an open meetings rule for nearly 3 years now. The Senate Committees on Government Operations, Interior and Insular Affairs, and Banking, Housing and Urban Affairs have also been fully open for nearly 3 years. How much more experience do we need to demonstrate that this procedure has been working and working well? We should open all remaining committees of both Houses of Congress, including the joint committees of the House and Senate.

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

Mr. PERCY. I hope that the leadership will accept my amendment as a conforming change in the Senate rules, subject to adoption to a similar rule in the House.

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

Mr. PERCY. I do realize that there are obviously sensitive matters that must be taken up, and there is adequate provision in the amendment, I think, to cover every single contingency so that sensitive meetings can be closed and will be closed when needed.

I am happy to yield to our distinguished colleague.

Mr. PASTORE. I realize in the general context of this resolution matters that have to do with security are protected provided, of course, there is a vote taken.

But in the Joint Committee on Atomic Energy most of our hearings are executive, and we deal with very sensitive information having to do with nuclear weapons, and what have you.

Does that necessarily mean that every time we call a hearing on sensitive information of that kind we have to debate whether or not it is going to be open or closed?

Is that what we are getting into?

Mr. CANNON. Yes.

Mr. PASTORE. I hope that the Senator would exempt the Joint Committee on Atomic Energy because that is exactly what our function is. We are dealing with weapons about every time we meet. If we are going to get in a hassle over whether or not we are going to be open or closed, we are going to waste our time on procedure rather than on substance.

I hope that, if the Senator does include joint committees, he takes into consideration that we are the only joint committee of Congress that has legislative authority. We are the only committee of Congress that has the right to be currently informed on all developments of nuclear weapons. I hope that there would be an exemption in the Senator's particular amendment with reference to the Joint Committee on Atomic Energy.

Mr. PERCY. I thank our distinguished colleague for his comments, and I have the highest regard for the way in which he has conducted the Joint Committee on Atomic Energy.

I do feel, however, that as to these matters, openness is good in general, with the exemptions we have provided. The Committee on Government Operations has dealt with ERDA. It has dealt with the Federal Energy Administration. We have dealt with the problems of nuclear safeguards and held hearings on them both in this country and abroad. I do feel that openness in the discussion of some of the problems involved is good.

Whenever it gets into an area of national security, where it is simply because of the aid and comfort or information it might give to our adversaries, we simply have to close it. But many of the issues involved in the Joint Committee on Atomic Energy, I should think, deal with issues in which groups in this country, citizens of this country, Members of this body, are deeply involved and deeply interested.

I would tend to think that procedures for closing a meeting are there, and as long as you have a quorum for the meeting, anyway, you can certainly vote to to close it. Members of that committee would know.

Again, the question has to be asked. What are we dealing with that the public cannot be included in? What are we dealing in that is so sensitive that we cannot discuss it?

Mr. PASTORE. We are dealing with atomic bombs, not with safeguards with relation to a nuclear reactor. I am not talking about that. We are dealing with sensitive information. We meet at 2 o'clock. It is a joint committee—nine from the House and nine from the Senate. Ninety-nine percent of the time we are dealing with weapons.

This idea of opening it up to the public—to whom? To Russia? To Red China? Is that what we are talking about?

After all, let us be a little sensible. I think we can run away with ourselves here tonight. I am saying that this is very sensitive. We have open hearings when it has to do with safeguards on a nuclear reactor.

But I am talking about the Polaris, and I am talking about the Trident, and I am talking about MIRV, and I am talking about bombs. Where are they? How many?

I tell the Senator that every time we have to talk about sensitive information of that kind, we are going to spend half our day discussing just whether it should be open or closed. All I am saying is that this is an area where there should be an exception, for the simple reason that this is a special law that was created for the reason. I hope we would talk a little sense here tonight.

Mr. PERCY. If I may reply to the comments that have been made, this reminds me of the arguments we had more than a quarter of a century ago on tariffs and trade. Every industry, time after time, said, "But you do not understand our situation. It is different." Yet now

we have passed uniform laws in that area.

Many committees maintain that they are different, but here we provide, right in the amendment, under paragraph a, the exemption for matters that "will disclose matters necessary to be kept secret in the interest of national defense or the foreign policy of the United States."

All we require is a simple 1-minute vote by the majority of the committee, and that is all that has to be done. I cannot imagine that those meetings go on day after day, talking about the number of bombs and where the bombs are, and all that. I would think that that subject would be talked out.

There must be many matters of policy involving the public, involving where this Nation is going, that should be discussed openly, so that more people know about the direction that Congress is taking.

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

Mr. PERCY. I yield.

Mr. PASTORE. The Senator is not familiar with the situation, but we have a policeman outside that door. He is there 24 hours a day. When the Senator had his hearings on Watergate, where does he think the secretive information was kept? With our permission, it was kept right up there in the vaults of the Joint Committee on Atomic Energy. That room is debugged every day. That is what I am talking about.

As to the matter of the public being entitled to know, the Senator is talking about an entirely different subject. All I am asking is that the Senator exclude the Joint Committee on Atomic Energy. That is all I am saying.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. CANNON. I yield to the Senator.

Mr. PERCY. Will the Senator yield me 30 seconds?

Mr. CANNON. I yield.

Mr. PERCY. The Senator from Illinois has participated in meetings in that room for 9 years. A policeman can stay there as long as he is there, 24 hours a day, guarding those secrets; he is there every day. But it does not prevent any of us from holding meetings whenever that room is open. We have had the public there in virtually every meeting I have attended, including conferences on ERDA and the Energy Administration. So I do not feel that the arguments hold water, and I say so respectfully.

Mr. PASTORE. Mr. President, I move to lay the amendment on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The motion to table was agreed to.

The PRESIDING OFFICER. The resolution is open to further amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield me 30 seconds?

Mr. CANNON. I yield.

Mr. ROBERT C. BYRD. Mr. President, I want to make a correction in my amendment.

I ask unanimous consent that, notwithstanding the fact that an amendment in the nature of a substitute was agreed to with the words "portion or portions" therein, the amendment later adopted that changed those words be held as having been in order and considered as having been adopted.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution.

Mr. CHILES. Mr. President, I send to the desk a technical amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 16, strike out "Section" and insert in lieu thereof "The first sentence of section 133 (b) of the Legislative Reorganization Act of 1946, section".

Mr. CHILES. Mr. President, this is a technical amendment, on page 4, line 16, correcting the references to the provision in the Legislative Reorganization Act now governing Senate hearings and markups. It adds wording with respect to Senate hearings except Appropriations Committee hearings. The sentence is no longer necessary, since Senate Resolution 9 establishes its own standards and procedures governing such hearings.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. CANNON. I yield back the remainder of my time.

Mr. CHILES. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on agreeing to the resolution.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PERCY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PERCY. I realize that Senators are anxious to leave, but would it be possible to have a reconsideration of the motion to table the Percy amendment?

The PRESIDING OFFICER. That motion is in order.

Mr. PERCY. And a rollcall. I ask unanimous consent for reconsideration, and for a rollcall vote on that.

Mr. GRIFFIN. Mr. President, is the motion debatable?

The PRESIDING OFFICER. The motion to reconsider is debatable.

Mr. GRIFFIN. I ask for recognition.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

There are 20 minutes on the motion.

Mr. GRIFFIN. Mr. President, I point out that the amendment as offered by the Senator from Illinois also would include and cover the joint committee that determines the secret service protection for Presidential candidates, as another example. I do not know whether that is intended. Perhaps it is all right. I would not think that that committee should be required to hold its deliberations in public, and I challenge anyone to point to one of these categories as covering that situation. There are joint committees having to do with the security of the Capital of the United States.

Furthermore, we cannot legislate with respect to joint committees. It would at least take an act of Congress to do so.

So I hope that the motion to reconsider will not be adopted.

Mr. CANNON. Mr. President, I move to table the motion to reconsider.

Mr. PERCY. Mr. President, perhaps we can even eliminate the need to vote. Would it be possible for the Rules Committee to discuss this issue in committee? I think there should be more debate on this issue.

The Senator from Rhode Island has brought up some very good points, as has the Senator from Michigan.

I do not want to foreclose the possibility that the Rules Committee can give consideration to what can be done. As long as the Rules Committee would offer a commitment that it would give consideration to this, I would withdraw the request for reconsideration.

Mr. ROBERT C. BYRD. Mr. President, as chairman of the subcommittee, I will not offer any commitment as to the date when the subcommittee will consider this. We have had enough of a go-round on this already.

Mr. CANNON. Mr. President, I ask unanimous consent to withdraw my motion to table.

Mr. PERCY. Mr. President, I ask unanimous consent to withdraw my request for reconsideration.

The PRESIDING OFFICER. Without objection, the motion to reconsider is withdrawn.

ADDITIONAL STATEMENTS SUBMITTED ON S. RES. 9

Mr. CHILES. Mr. President, I want to pay particular thanks and appreciation to the following members of my staff and the committee staff who have worked very hard on this resolution: George Patten, Margaret Marusch, Vicki Smith of my staff, and Paul Hoff, Marilyn Harris, and Jim Davidson of the staff of the Government Operations Committee.

In addition, Professor Dick Stewart gave valuable assistance in the early drafting stages.

Also to the members and staff of Common Cause whose efforts were invaluable both in developing this resolution and working for its passage.

Mr. BIDEN. Mr. President, the legislation before us today marks another chapter by the Congress to improve itself.

Four years ago, the ability of the Congress to legislate more efficiently and effectively was improved by means of passage of a legislative reorganization act, the first major one in 25 years. Shortly thereafter came enactment of the Federal campaign financing bill designed, in part, to curb the influence of large-scale private financing of campaigns and to reduce the tremendous edge that sitting Senators and Representatives hold in their re-election campaigns against nonincumbents—a condition that some observers have called the "tyranny of the incumbency."

Today, the Senate has still another op-

portunity to demonstrate to the American people that it wishes to conduct its legislative affairs in an open and aboveboard manner. I refer to Senate Resolutions 9 and 12 and S. 5, as they were originally introduced. In broadest terms, these three measures, taken together, would provide that meetings of agencies of the executive branch and standing, special, and select congressional committees, including subcommittees and Senate-House conferences, shall be open to the public.

The premise underlying these measures is that the Government should conduct the public's business in public—hence the name assigned them, "sunshine" legislation. Events in recent years should make this need even more compelling than ever. The legislation includes provision for closed sessions, if an individual's character is in question or when matters need to be kept secret in the interests of national defense. I believe these are proper exceptions to the principle of open meetings. This is why I oppose the Rules Committee amendment to Senate Resolution 9 that would restrict the requirement of open meetings to standing committees only. This runs counter, in my judgment, to the general move to greater openness in our legislative affairs as one means of reversing a decline, as evidenced in public-opinion polls, in confidence in Government.

Passage of this openness legislation, as originally proposed, will be one of the outstanding steps forward the Senate has taken in a long time.

Mr. TAFT. Mr. President, as a cosponsor of the so-called sunshine bills I want to express my support of the measure before the Senate today without the committee amendment.

Secrecy in Government has become synonymous in the public's mind with deception by the Government. While some matters must be discussed in closed session, these are few and far between. In some exceptional cases, such as when national security is at stake, I support closed committee session. But the Government must remove the overall shield of secrecy that has hidden its deliberations from the American people for too long.

I will also support the amendment to open up the House-Senate conferences that have traditionally been closed to the public. I have participated in many conferences and I am convinced that it is only the very rare circumstances when they merit to be held behind closed doors.

The current Senate rules state that a meeting is closed unless a vote is taken to open the meeting. The House has taken a step further than the Senate by having committee meetings open unless a vote is taken to close them. In this measure we are going one step further and specifying the limited reasons for closing a committee meeting from the public. I think this is a step in the right direction.

While I feel it is essential that the Congress set an example for open government we must also pass S. 9 to insure that the executive branch also see the sunshine of public exposure.

I have been a strong advocate of regulatory reform. I believe that through more public exposure of the regulatory agencies there will be more accountability added to these bodies.

Passage of Senate Resolution 9 is a step we must take to restore public confidence in Government.

GOVERNMENT IN THE SUNSHINE—A STEP FORWARD

Mr. HUMPHREY. Mr. President, today marks a very important day in the history of the Senate. For it is today that this distinguished body will begin considering legislation which will help bring Government closer to the people.

Secrecy in Government has become synonymous in the public mind with deception. The public is entitled to the fullest practicable information regarding the decisionmaking process of the Congress and the Federal Government. For this reason, I am one of the cosponsors of the original versions of Senate Resolution 5, Senate Resolution 9, and Senate Resolution 12, calling for open committee meetings and open meetings of specified Federal agencies.

There are tremendous gains to be made through this action—gains for the American citizen, for the Congress, and for the Federal Government in general.

First, increased public interest, knowledge, and discussion of issues and problems facing the Nation cannot help but contribute favorably to the decisionmaking process.

Second, it will greatly enhance the public's understanding of decisions reached by the Government and make the Government and the Congress more accountable for those decisions.

Third, increased cooperation between the public and Government agencies cannot help but follow. Often agencies face difficult choices, and must weigh many facts and policies while considering various alternatives. Opening this process to public scrutiny should increase the public's confidence in Government by permitting the public to observe firsthand the responsible way agency heads and their elected representatives carry out their duties. Public exposure should help insure that the quality of work remains at the highest possible level.

On the other hand, where Government is not functioning as well as it could, it is far less damaging if the facts, regardless of their nature, are disclosed openly to the public and the press, rather than emerging only indirectly or inaccurately through speculation, scandal, and partisan or self-serving statements.

And, finally, greater understanding promotes greater compliance, whether one is talking about Government or any other personal or business relationship.

The success already experienced by the Congress confirms the effectiveness and practicality of the "Sunshine" legislation. In the last 2 years, various House and Senate committees have dealt effectively in open sessions with such important and often controversial legislation as the Congressional Budget and Impoundment Control Act of 1974; the Housing and Community Development Act of 1974; the Export-Import Bank; and legislation concerning energy allocation, land use policy, consumer protection, and surface mining and mineral leasing.

The general consensus by those participating in this process has been that the open meeting rule has neither interfered with their work nor inhibited free and open discussions. Openness, in fact, has enhanced the process rather than retarded it.

Open meeting laws are also a widely accepted and successful part of State laws. Forty-nine States now have open meeting laws and 35 States have constitutional provisions relating to open government.

The passage of this important legislation is just one step toward increasing the public's access to their Government. As the elected representatives of the public, we must open the processes by which we make our decisions. Only when we have removed, to the greatest extent possible, the veil of secrecy which shrouds committee actions, will the public know the full extent, quality, and integrity of their representatives.

Mr. TUNNEY. Mr. President, I would like to take this opportunity to indicate my firm support for the course on which the Senate has embarked today, the opening up of congressional and executive branch deliberations to the scrutiny of the public. If we are ever to reverse the erosion of confidence in Government which is presently going on throughout the country, we must start by opening the processes of the Federal Government to the participation of our citizens.

We have three propositions before us. The first is the question of opening up Senate committee meetings. I favor that proposition, and I support the provisions of the original proposal, Senate Resolution 9, made by the distinguished Senator from Florida (Mr. CHILES), and the distinguished Senator from Delaware (Mr. ROTH). Indeed, I have supported that resolution since its original introduction in the last Congress, and I have joined in sponsoring it during both the 93d and 94th Congress.

The amended version of Senate Resolution 9 brought before us today from the Rules Committee would cut back substantially on the provisions of the original resolution. It would leave the closing of committee meetings as a far more discretionary matter than I believe is necessary. Accordingly, I shall vote to defeat the substitute proposal voted by the Rules Committee, and to accept the language originally contained in the resolution, and I urge my colleagues to do the same.

The second proposal before us would open House-Senate conference committees for the first time. Again, the original language of Senate Resolution 9 would have accomplished this goal; but the legislation before us now will not. I intend to support proposed changes in the final version of the legislation before us which would open conference committee meetings except under carefully delimited circumstances. Every Member of the Congress knows how important the work of House-Senate conferences can be in

determining the final shape of legislation. I believe it is high time that the public saw that process as well.

Finally, of course, we have S. 5 in front of us which would do for the executive agencies what the other two measures would do for the Congress. The executive is no less responsible to the people of this country than the Congress, and for that reason executive decisions should be as open to the public as those made in the halls of Congress, except under certain narrow circumstances. Consequently, I strongly favor the provisions of S. 5, and I will vote in favor of that legislation.

In sum, the legislation before us today would establish as an undeniable fact the people's right to know what they are entitled to know about their government. All three of these proposals will accomplish this goal, and all three are urgently needed if we are to rip the last remaining veils of unneeded secrecy from the Federal governing process. I support all three proposals and I hope we will act to ratify these creative and worthwhile initiatives.

Mr. WEICKER. Mr. President, as we proceed with consideration and debate on Senate Resolution 9, I suggest that we should keep in mind the business of the Senate which will follow—namely, S. 5, The Government in the Sunshine Act.

When we turn to S. 5, the Senate will consider whether or not to require that multiheaded Federal agencies open their proceedings to the public. S. 5 would mandate openness on the part of these Federal agencies. It would require that the agencies open meetings and discussions regarding the conduct of agency business, deliberations on pending business, and the disposition of business to the purview of the public. Most importantly, S. 5 would establish a standard whereby open government would become the rule and closed government the exception.

The passage of this important legislative initiative is just one step toward increasing the public's access to their Government. However, it is an important step toward bringing the Government closer to the people and, thereby, achieving a more responsive and more accountable Government.

Before we turn to the business of establishing a new standard of conduct on the part of Federal agencies, it is only fitting that we first consider our own rules of Senate procedure and thereby put our own house in order.

Presently, Senate rules require that all markups and other voting sessions of committees will be closed unless the committee votes to open or unless the committee adopts its own general "open" meeting rule. The current standard, therefore, presumes closed meetings and places the burden upon committees to open—thus, fostering the suspicion that all committee decisions are the result of back room deals.

As originally introduced, Senate Resolution 9 would have established a standard which presumes "open" meetings for all Senate committees, except in circumstances where a committee considers a particularly, sensitive subject matter. The original version of Senate Resolution 9 would have changed our current standard from "closed" to "open" and would have gone further to enumerate the specific instances in which a meeting could be closed.

We now have before us a Rules Committee substitute to Senate Resolution 9 which would negate any uniform standard of conduct for Senate committees.

This substitute provides that a standing committee of the Senate must hold open meetings. However, the loophole establishes that a committee may vote to close a meeting "because of the nature of the matter to be considered" or, that any committee may adopt rules specifically prescribing a different procedure, "to protect its own needs." The substitute further proposes to repeal the "Sunshine Amendment" to the Congressional Budget and Impoundment Act which required that our own Senate Budget Committee hold open meetings.

This substitute does not at all conform to the intent of sunshine in government. The adoption of the Rules Committee proposal would conceivably eliminate what little sunshine we have today in the conduct of Senate committee business and would institute a dual standard of accountability on the part of this body.

Nothing illustrates this more than the unfortunate choice of language by the Rules Committee in writing the "escape clause" from open government which would allow an individual committee to adopt rules of procedure "to protect its own needs." There is a vague reference to the public interest; but, nowhere is there a reference to the needs of the public. At best, this language represents an unfortunate mistake. At worst, it places the needs and convenience of committees above the needs of the public by whom we are elected and to whom we remain accountable.

The very essence of our form of government is accountability. Secrecy is fatal to accountability. Secrecy is a main contributor to rumors, leaks, misconstrued facts, and distrusts of Government officials.

We are all keenly aware of the national trauma from which we are attempting to recover. We know all too well that the public has not forgotten the breach of faith and the half-truths generated about the operations of their government and the conduct of Federal officials.

The fallout from Watergate remains with us today. The net result has been a pervasive lack of faith in the integrity of our governmental processes. In the collective mind of the public, the Congress fares no better than the executive branch in this regard.

In fact, in a survey taken in mid-Summer, pollster Louis Harris reported that only 18 percent of the public gives the Congress a positive rating for inspiring confidence in government—only 18 percent.

One of the key criticisms of the Congress is that it is cumbersome and unresponsive. The low ratings have been attributed to a lack of public knowledge about the workings of the Congress.

If there is a lack of public knowledge about the way we conduct the public's business, we are the guilty parties. Through Senate rules and procedures which maintain that committees may operate behind closed doors to protect their own interests, we have fostered the criticism that the Congress is unresponsive.

As the elected representatives of the public, we bear every responsibility to open the processes by which we make our decisions—whether these processes be committee markups or joint House-Senate conference committees. Only then can we be held fully accountable for our actions. Only when we have removed, to the greatest extent possible, the veil of secrecy which shrouds committee actions will the public know the extent, quality, and integrity of their representation.

We now have an opportunity to perform an important service for our constituents. Before we go forward and decide whether we will require a high standard of visibility and accountability on the part of Federal agencies—we must decide whether the Senate will abide as high a standard—or whether we will adopt a lesser standard and, thus, place the interests of the public subservient to our own.

As for myself, I urge that the Senate approve a standard of open government and apply it to committee meetings and conference committees alike. To do so, we must first reject the Rules Committee substitute amendment.

Mr. DURKIN. Mr. President, in November 1973, many communities throughout New England observed the establishment two centuries ago of the first revolutionary Committees of Correspondence. Many couriers, including Paul Revere, braved foul weather, long distances, and arrest by the Redcoat army to carry news of the independence movement to the anxious citizenry of the colonial States. These reports were a significant factor in building and maintaining the drive toward democratic government during America's 7 year struggle for self-determination.

When it convened in 1775, the Continental Congress recognized this critical need for the regular flow of information by appointing Benjamin Franklin as the first Postmaster General of the United States. It was one of the first acts of that body, the revolutionary predecessor of this Congress.

Mr. President, we, today, are the custodians of the traditions established 200 years ago—traditions of public awareness and public involvement in the daily running of Government.

But, sadly, we of the 20th century have not played our custodial role well. We have failed to maintain the traditions of openness for which men and women of the 18th century risked their lives. Where once a legislature convened in public defiance of military occupation to give birth to a nation, its successor now conducts its affairs behind closed doors.

Mr. President, how can a representative democracy exclude from the crucial processes of government the very people

it supposedly represents? What happens to accountability when Federal officials cloak their decisions—or lack of decisions—with a veil of secrecy? What has become of the crackerbarrel candor and the courage of conviction that has always been embedded in the Yankee traditions of this Nation?

I fear that the answers to these questions can be found in the cavalier attitude of the Government toward those it serves. And for that attitude, all Americans have paid a price—the price of public disenchantment with government.

Mr. President, two centuries ago, in defending the concept of a new Federal Government, James Madison wrote:

> The truth is that all Men having Power should be distrusted.

How much less trustworthy, then, are we to consider the faceless public officials handing down anonymous decisions from behind their masks of secrecy.

Unfortunately, here I must include the Congress. As long as this institution persists in functioning in closed sessions, we will continue to lose public support.

The opinion polls reflect it; voter turnout reflects it; and certain what our constituents tell us by mail and in person leaves no doubt.

Let us face up to it: we will never escape the simplistic slogans of "do-nothing Congresses" and "mindless bureaucracies" until the public is permitted to examine, however closely it wishes, the inner workings of these institutions.

Mr. President, 48 States including New Hampshire have enacted sunshine laws to reopen the operation of government to the light of day. The experience has been a tremendous success in two fundamental ways. First, the quality of government at the local level has improved significantly: legislators and administrators show up better prepared—and in greater numbers—when the public and press are in attendance. Second, the public comes away from most proceedings with a heightened awareness of the complexity of those issues with which we wrestle.

Mr. President, I am proud to be a cosponsor of S. 5. It is one of the first pieces of legislation to which I asked to have my name added when I came to the Senate. I could hardly do otherwise than support this bill. The citizens of my State sent me to Washington, after a long period of testing, because they came to believe that I would fight to let them freely participate in their own national government.

A Congress proud of its accomplishments and proud of its continuing efforts is a Congress that has no need for secrecy. Mr. President, I hope that today, November 5, will be the day that the Senate votes to let the sunshine in.

Mr. JACKSON. Mr. President, today the Senate is considering S. 5, a bill to mandate open meetings for Federal regulatory agencies. Under this legislation the decisionmaking processes of approximately 50 agencies will be opened to public scrutiny. I am proud to be a cosponsor of this legislation and I am proud to be associated with the efforts of the distinguished Senator from Florida (Mr. CHILES) who authored this bill and who has brought it to the verge of Senate passage.

As a cosponsor of S. 5 and as chairman of the Senate Interior Committee I would like to say a few words in support of the original title I of the bill which would apply the same principles of openness to the Congress that the bill would apply to the covered executive branch agencies. The provisions of title I are contained in the amendment which the Senator from Florida (Mr. CHILES) has proposed to Senate Resolution 9. The Senator's amendment would make openness the rule and secrecy the exception in the Senate just as S. 5 would make openness the rule in the executive branch agencies.

I believe that the Congress should set its own house in order before it undertakes to reform the procedures of the regulatory agencies. We would be applying a double standard if the Congress chooses to tell the executive branch that it must reform its operating procedures in ways that the Congress is not itself willing to abide by.

As one who has had some experience with open meetings I want to assure the Senate that we have nothing to fear by opening up our committee meetings to the public. The Interior Committee during the 93d Congress was the first Senate committee to open up virtually all markup sesisons to the public. The Interior Committee is now the first Senate Committee to hold a public conference committee meeting with the House by opening up the conference on the Energy Standby Authorities Act. In light of my experiences with open meetings I strongly believe that opening up the committee processes to the public has had a salutory effect on the legislative process.

Opening committee markups to the public has not impaired or impeded the committee's ability to perform its legislative functions. To the contrary, as a result of open meetings the legislative product of the committee has been improved. Individuals and groups who are interested and concerned about specific legislation are able to be present and to make a contribution to the development of legislation. Knowledgeable individuals, representatives of private organizations, and representatives of the executive branch can participate in the legislative process and more importantly can be better informed about important decisions of the Congress which affect them.

At the same time I want to make it very clear that the amendment proposed by Senator CHILES does take into account those circumstances in which there is a legitimate reason for a committee meeting to remain closed. His amendment contains five exceptions to the open meetings rule which may be invoked by a majority vote of a committee to close any meeting. These carefully drawn exceptions include meetings in which the following matters are discussed: First, matters relating to the national security or defense of the United States; second, matters relating to personnel or internal committee staff management; third, matters which tend to charge an individual with crime or misconduct; fourth, matters which would disclose the identity of an informer or law enforcement agent, and fifth, matters disclosing trade secrets, or financial and commercial information which should not be disclosed.

I believe that the amendment proposed by Senator CHILES is sensible and responsible. It establishes the important principle that openness rather than secrecy should be the rule and at the same time it protects from disclosure information which for some legitimate reason should not be released.

Mr. President, at the beginning of the 93d Congress I was active in support of a change in the Senate rules which would permit Senate committees to hold open hearings. At the time we had no experience with open hearings, nor had the House of Representatives had any experience with open meetings. At that time legitimate concerns were expressed that an open meetings policy might disrupt the legislative process. I did not share those concerns, however, I recognized that in the absence of any experience with such a policy such concerns were understandable. I now believe that the favorable experience which many Senate and House committees have had with open meeting in the 93d Congress and so far in the 94th Congress should allay the fears and concerns of individual Senators. I am speaking not just of the Interior Committee but, for example, of other Senate committees including the Government Operations Committee and the Budget Committee which have conducted open meetings under the leadership of Senators Ervin, RIBICOFF, and MUSKIE, respectively.

The Senate can today make a significant contribution to restoring public confidence in government in general and certainly in the Congress by letting the public in to observe the decisionmaking process. I want to be on record as strongly supporting the amendment proposed by Senator CHILES and I encourage my colleagues in the Senate to give this measure your support.

The PRESIDING OFFICER. The question is on agreeing to the resolution, as amended. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Ohio (Mr. GLENN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE) is absent on official business.

I also announce that the Senator from North Carolina (Mr. MORGAN), the Senator from Michigan (Mr. PHILIP A. HART), and the Senator from Mississippi (Mr. STENNIS) are absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) and the Senator from California (Mr. TUNNEY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Pennsylvania (Mr. HUGH SCOTT) are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. BAKER), the Senator from Oregon (Mr. HATFIELD), and the Senator from Pennsylvania (Mr. HUGH SCOTT) would each vote "yea."

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 470 Leg.]

YEAS—86

Abourezk	Goldwater	Moss
Allen	Gravel	Muskie
Bartlett	Griffin	Nelson
Beall	Hansen	Nunn
Bellmon	Hart, Gary	Packwood
Bentsen	Haskell	Pastore
Biden	Hathaway	Pearson
Brock	Helms	Pell
Brooke	Hollings	Percy
Buckley	Hruska	Proxmire
Bumpers	Huddleston	Randolph
Burdick	Humphrey	Ribicoff
Byrd, Harry F., Jr.	Inouye	Roth
Byrd, Robert C.	Jackson	Schweiker
Cannon	Javits	Scott, William L.
Case	Johnston	Sparkman
Chiles	Kennedy	Stafford
Church	Laxalt	Stevens
Clark	Leahy	Stevenson
Cranston	Long	Stone
Culver	Magnuson	Taft
Dole	Mansfield	Talmadge
Domenici	Mathias	Thurmond
Durkin	McClure	Tower
Eagleton	McGee	Weicker
Fannin	McGovern	Williams
Fong	McIntyre	Young
Ford	Metcalf	
Garn	Mondale	
	Montoya	

NAYS—0

NOT VOTING—14

Baker	Hart, Philip A.	Scott, Hugh
Bayh	Hartke	Stennis
Curtis	Hatfield	Symington
Eastland	McClellan	Tunney
Glenn	Morgan	

The resolution (S. Res. 9), as amended, was agreed to as follows:

S. RES. 9

Resolved, That paragraph 7(b) of rule XXV of the Standing Rules of the Senate is amended to read as follows:

"(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by a subcommittee thereof on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in paragraphs (1) through (5) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

"(6) or may divulge matters required to be kept confidential under other provisions of law or Government regulations.

Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.

"(c) Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chair to enforce order on his own initiative and without any point of order being made by a Senator. When the Chair finds it necessary to maintain order, he shall have the power to clear the room, and the committee may act in closed session for so long as there is doubt of the assurance of order.

"(d) Each committee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceedings of each meeting or conference whether or not such meeting or any part thereof is closed under this paragraph, unless a majority of said members vote to forego such a record."

SEC. 2. The first sentence of section 133(b) of the Legislative Reorganization Act of 1946, section 133A(b) of the Legislative Reorganization Act of 1946, section 242(a) of the Legislative Reorganization Act of 1970, and sections 102 (d) and (e) of the Congressional Budget Act of 1974 are repealed.

SEC. 3. (a) Rule XXVII of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph:

"3. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate or the House of Representatives in open session determine by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.".

(b) The amendment made by subsection (a) shall not become effective until a similar rule is adopted by the House of Representatives.

(c) The caption of such rule XXVII is amended to read as follows:

"CONFERENCE COMMITTEES; REPORTS; OPEN MEETINGS".

Mr. ROTH. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I congratulate the Senator from Florida (Mr. CHILES) and the Senator from Delaware (Mr. ROTH) and other Senators who cosponsored the resolution, Senate Resolution 9. I think they worked hard, they certainly lined up their votes well, and educated Senators to their persuasion, and they are entitled to a great deal of credit for the work that they did.

I sought to buttonhole not a single Senator. I felt this was a matter on which the Senate ought to work its will, and while I respected the viewpoint of Senators whom I have named, I felt the committee substitute was the better approach. It was an improvement over the present rule, notwithstanding some of the propaganda that has floated around on the Hill to the contrary.

But with the amendment which I offered and was adopted making it possible for one Member, with a second, to move a committee into closed session so as to debate the necessity for remaining in closed session; my amendment allowing a committee with one decision to go into closed session for a period of 14 calendar days while on the same sensitive matter; and my amendment which broadened the number of conditions on which closed sessions could be based and justified, I think these amendments helped considerably to make the resolution a better one, and the enacted change in the Senate rule a more defensible one—even though I would have preferred the committee substitute.

Certain areas of the committee language were incorporated by these amendments into the resolution that passed, and I, therefore, voted for the resolution on final passage.

I thank all Senators, whether or not they stood with those who supported the resolution or whether they stood by the committee amendment. It was certainly not an easy thing to defend a committee substitute dealing with a measure that has to do with open meetings. I congratulate the Chairman of the Rules Committee, Mr. Cannon, for a job well done. I think the record will show that those of us who supported the committee's substitute did so because we thought it was the best for the country in the long run. And the future may sustain our position. The committee substitute was, indeed, an "open committee" amendment, and was a step forward rather than backward as some have suggested, and it was an improvement over the present committee rule.

Mr. CHILES. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. CHILES. I want to thank the distinguished Senator from West Virginia, the distinguished majority whip, for his kind words.

I also want to add that the Senator from Florida is grateful for the courtesies and also for the fact that the Senator from West Virginia at all times, while he had some differences from the ultimate view of the Senator from Florida, was very cooperative and told me exactly how long a time the Rules Committee would take from the time S. 5 came out of the Committee on Government Operations. That was a short and reasonable time and I appreciate that, and that the

Rules Committee did work on it and that they did report it back.

I concur with the action of the Rules Committee in taking out the Senate portion of S. 5 and then coming out with the resolution, Senate Resolution 9, at the same time, which gave the Senator from Florida and the Senator from Delaware an opportunity to seek to work their amendments which had gone in on Senator Resolution 9.

I just wanted to add my thanks to the Senator. I think his debate was certainly on the merits and I think he did add some amendments to the bill which could be helpful to the resolution and I am delighted with it.

Mr. ROBERT C. BYRD. I thank the able Senator. It is always a pleasure to work with him, and as he has pointed out, he agreed to the suggestion that S. 5 be stripped of the language dealing with the Senate rules.

I think there was some misunderstanding around as to why the committee stripped that section from S. 5. The reason was that, under the Constitution, each House shall be the judge of its own rules, and those of us on the committee did not feel that the other body ought to have any input into the Senate rules or that the President of the United States ought to have any jurisdiction over the Senate rules.

To have included a Senate rules change in S. 5, would have required action by the other body and eventually the approval by the President of the United States, unless he were to veto the measure.

So by stripping this area from S. 5, it left the Senate solely the judge of its own rules and procedures.

I thank the Senator for his courtesy and for his good work in this body.

Mr. ROTH. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. ROTH. Mr. President, I, too, would like to join the Senator from Florida in thanking the majority whip for the role he played, cooperating with us.

I think that the debate today has been meaningful and we have ended up with legislation that is a change in the rules that is a major step forward.

I also wish to express my appreciation to the minority whip. I think he raised some valid points and we have ended with better legislation than we started with.

Mr. President, I would like to thank the following staff members of the Government Operations Committee who worked on Senate Resolution 9: Gary Klein, John Pearson, John Childers, Claudia Ingram, Lyle Rytter, and Charles Garrison.

Mr. ROBERT C. BYRD. Mr. President, I am glad that the able Senator from Delaware made reference to the distinguished Republican whip. The point that was raised by Mr. GRIFFIN was an important one and the Senate deemed it thusly.

Mr. CHILES. It did, and I certainly add myself to that.

Mr. ROBERT C. BYRD. So did the authors of the resolution.

Mr. President, I ask for the regular order now.

GOVERNMENT IN THE SUNSHINE ACT

The PRESIDING OFFICER (Mr. FANNIN). Under the previous order, the Senate will now proceed to the consideration of S. 5, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 5) to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Government Operations and the Committee on Rules and Administration, each with an amendment.

The amendment of the Committee on Government Operations is to strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information, while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

SEC. 3. DEFINITIONS.—For purposes of this Act the term, "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency.

TITLE I—CONGRESSIONAL PROCEDURES

SEC. 101. SENATE COMMITTEE MEETINGS.—(a) The Legislative Reorganization Act of 1946 is amended—

(1) by striking out the first sentence of section 133(b);

(2) by adding after section 133B the following:

"OPEN SENATE COMMITTEE MEETINGS

"SEC. 133C. Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This section shall not apply to meetings to conduct hearings."

(b) Paragraph 7(b) of Rule XXV of the Standing Rules of the Senate is repealed.

(c) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:

"133C. Open Senate committee meetings.".

SEC. 102. HOUSE OF REPRESENTATIVES COMMITTEE MEETINGS.—Clause 2(g)(1) of Rule XI of the Rules of the House of Representatives is amended to read as follows:

"(g)(1) Each meeting of a standing, select, or special committee or subcommittee, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions—

"(A) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(B) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(i) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(ii) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This clause shall not apply to meetings to conduct hearings.".

SEC. 103. (a) CONFERENCE COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(a) of this Act, the following new section:

"OPEN CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate or the House of Representatives in open session determine, by a rolical vote of a majority of those managers present, that all or part of the remainder of the meeting on

the day of the vote shall be closed to the public.".

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"133D. Open conference committee meetings.".

SEC. 104. (a) JOINT COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133D, as added by section 102(a) of this Act, the following new section:

"OPEN JOINT COMMITTEE MEETINGS

"SEC. 133E. Each meeting of a joint committee of the Senate and House of Representatives, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disagrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This section shall not apply to meetings to conduct hearings.".

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133D, as added by section 103(b) of this Act, the following:

"133E. Open joint committee meetings.".

SEC. 105. EXERCISE OF RULEMAKING POWERS.—The provisions of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

TITLE II—AGENCY PROCEDURES

SEC. 201. (a) This section applies, according to the provisions thereof, to the Federal Election Commission and to any agency, as defined in section 551(1) of title 5, United States Code, where the collegial body comprising the agency consists of two or more individual members, at least a majority of whom are appointed to such position by the President with the advice and consent of the Senate. Except as provided in subsection (b), all meetings of such collegial body, or of a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business.

(b) Except where the agency finds that the public interest requires otherwise, (1) subsection (a) shall not apply to any agency meeting, or any portion of an agency meeting, or to any meeting, or any portion of a meeting, of a subdivision thereof authorized to take action on behalf of the agency, and, (2) the requirements of subsections (c) and (d) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency, or the subdivision thereof conducting the meeting, properly determines that such portion or portions of its meeting, or such information, can be reasonably expected to—

(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) relate solely to the agency's own internal personnel rules and practices;

(3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information contained in investigatory records compiled for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, disclose confidential information furnished only by the confidential source, (F) disclose investigative techniques and procedures, or (G) endanger the life or physical safety of law enforcement personnel;

(6) disclose trade secrets, or financial or commercial information obtained from any person, where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality, or where such information must be withheld from the public in order to prevent substantial injury to the competitive position of the person to whom such information relates;

(7) disclose information which must be withheld from the public in order to avoid premature disclosure of an action or a proposed action by—

(A) an agency which relates currencies, securities, commodities, or financial institutions where such disclosure would (i) lead to serious financial speculation in currencies, securities, or commodities, or (ii) seriously endanger the stability of any financial institution;

(B) any agency where such disclosure would seriously frustrate implementation of the proposed agency action, or private action contingent thereon; or

(C) any agency relating to the purchase by such agency of real property.

This paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) specifically concern the agency's participation in a civil action in Federal or State court, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing; or

(10) disclose information required to be withheld from the public by any other statute establishing particular criteria or referring to particular types of information.

(c)(1) Action under subsection (b) shall be taken only when a majority of the entire membership of the agency, or of the subdivision thereof authorized to conduct the meeting on behalf of the agency, votes to take such action. A separate vote of the agency members, or the members of a subdivision thereof, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (b), or with respect to any information which is proposed to be withheld under subsection (b). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Whenever any person whose interests may be directly affected by a meeting requests that the agency close a portion or portions of the meeting to the public for any of the reasons referred to in paragraphs (3), (4), or (5) of subsection (b), the agency shall vote whether to close such meeting, upon request of any one of its members. Within one day of any vote taken pursuant to this paragraph, the agency shall make publicly available a written copy of such vote.

(2) If a meeting or portion thereof is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) of this subsection, make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting, and their affiliation.

(3) Any agency, a majority of whose meetings will properly be closed to the public, in whole or in part, pursuant to paragraphs (6), (7)(A), (8), or (9) of subsection (b), or any combinations thereof, may provide by regulation for the closing of such meetings, or portion of such meetings, so long as a majority of the members of the agency, or of the subdivision thereof conducting the meeting, votes at the beginning of such meeting, or portion thereof, to close the meeting, and a copy of such vote is made available to the public. The provisions of this subsection, and subsection (d), shall not apply to any meeting to which such regulations apply: Provided, That the agency shall, except to the extent that the provisions of subsection (b) may apply, provide the public with public

announcement of the date, place, and subject matter of the meeting at the earliest practicable opportunity.

(d) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency, or the members of the subdivision thereof conducting the meeting, determines by a vote that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph if, (1) a majority of the entire membership of the agency, or of the subdivision thereof conducting the meeting, determines by a vote that agency business so requires, and that no earlier announcement of the change was possible, and, (2) the agency publicly announces such change at the earliest practicable opportunity. Immediately following the public announcement required by this paragraph, notice of such announcement shall also be submitted for publication in the Federal Register.

(e) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (9) of subsection (b). The agency shall make promptly available to the public, in a place easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, where no significant portion of such discussion or testimony contains any information specified in paragraphs (1) through (10) of subsection (b). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within one hundred and eighty days after the enactment of this Act, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States have jurisdiction to enforce the requirements of subsections (a) through (e) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Before bringing such action, the plaintiff shall first notify the agency of his intent to do so, and allow the agency a reasonable period of time, not to exceed ten days, to correct any violation of this section, except that such reasonable period of time shall not be held to exceed two working days where notification of such violation is made prior to a meeting which the agency has voted to close. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public the transcript or electronic recording of any portion of a meeting improperly closed to the public. Except to the extent provided in subsection (h) of this section, nothing in this section confers jurisdiction on any district court to set aside or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

(h) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section, and afford any such relief as it deems appropriate.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (f), (g), or (h) of this section. Costs may be assessed against an individual member of an agency only in the case where the court finds such agency member has intentionally and repeatedly violated this section, or against the plaintiff where the court finds that the suit was initiated by the plaintiff for frivolous or dilatory purposes. In the case of apportionment of costs against an agency, the costs may be assessed by the court against the United States.

(j) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 202. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(1) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(2) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to an interested person outside the agency an ex parte communication relevant to the merits of the proceedings;

"(3) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes, a communication in violation of this subsection, shall place on the public record of the proceeding:

"(A) written communications transmitted in violation of this subsection;

"(B) memorandums stating the substance of all oral communications occurring in violation of this subsection; and

"(C) responses to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon receipt of a communication knowingly made by a party, or which was knowingly caused to be made by a party in violation of this subsection; the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy, of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation;

"(5) the prohibitions of this subsection shall apply at such time as the agency may designate, but in no case shall they apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of his acquisition of such knowledge.".

(b) The second sentence of section 554(d) of title 5, United States Code, is amended to read as follows: "Such employee may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.".

(c) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(d) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying stat-

utes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.".

SEC. 203. (a) Except as specifically provided by section 201, nothing in section 201 confers any additional rights on any person, or limits the present rights of any such person, to inspect or copy, under section 552 of title 5, United States Code, any documents or other written material within the possession of any agency. In the case of any request made pursuant to section 552 of title 5, United States Code, to copy or inspect the transcripts or electronic recordings described in section 201(e), the provisions of this Act shall govern whether such transcripts or electronic recordings shall be made available in accordance with such request. The requirements of chapter 33, of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in section 201(e). This title does not authorize any information to be withheld from Congress.

(b) Nothing in section 201 authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to that individual under section 552a of title 5, United States Code.

SEC. 204. The provisions of this title shall become effective one hundred and eighty days after the date on which this Act is enacted, except that the provisions of section 201 requiring the issuance of regulations to implement such section shall become effective upon enactment.

The amendment of the Committee on Rules and Administration is on page 37, beginning with line 8, strike the following:

TITLE I—CONGRESSIONAL PROCEDURES

SEC. 101. SENATE COMMITTEE MEETINGS.—(a) The Legislative Reorganization Act of 1946 is amended—

(1) by striking out the first sentence of section 133(b);

(2) by adding after section 133B the following:

"OPEN SENATE COMMITTEE MEETINGS

"SEC. 133C. Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This section shall not apply to meetings to conduct hearings.".

(b) Paragraph 7(b) of Rule XXV of the Standing Rules of the Senate is repealed.

(c) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:

"133C. Open Senate committee meetings.".

SEC. 102. HOUSE OF REPRESENTATIVES COMMITTEE MEETINGS.—Clause 2(g)(1) of Rule XI of the Rules of the House of Representatives is amended to read as follows:

"(g)(1) Each meeting of a standing, select, or special committee or subcommittee, shall be open to the public, except that a portion or portions of any such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions—

"(A) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(B) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(i) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(ii) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This clause shall not apply to meetings to conduct hearings.".

SEC. 103. (a) CONFERENCE COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(a) of this Act, the following new section:

"OPEN CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate or the House of Representatives in open session determine, by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.".

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"133D. Open conference committee meetings.".

SEC. 104. (a) JOINT COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133D, as added by section 102(a) of this Act, the following new section:

"OPEN JOINT COMMITTEE MEETINGS

"SEC. 133E. Each meeting of a joint committee of the Senate and House of Representatives, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

"(1) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;

"(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

"(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

"(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or

"(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

"(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

"(B) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

This section shall not apply to meetings to conduct hearings.".

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133D, as added by section 103(b) of this Act, the following:

"133E. Open joint committee meetings.".

SEC. 105. EXERCISE OF RULEMAKING POWERS.—The provisions of this title are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representa-

tives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

So as to make the bill read:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government. It is the purpose of this Act to provide the public with such information, while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

SEC. 3. DEFINITIONS.—For purposes of this Act the term, "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency.

TITLE II—AGENCY PROCEDURES

SEC. 201. (a) This section applies, according to the provisions thereof, to the Federal Election Commission and to any agency, as defined in section 551(1) of title 5, United States Code, where the collegial body comprising the agency consists of two or more individual members, at least a majority of whom are appointed to such position by the President with the advice and consent of the Senate. Except as provided in subsection (b), all meetings of such collegial body, or of a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business.

(b) Except where the agency finds that the public interest requires otherwise, (1) subsection (a) shall not apply to any agency meeting, or any portion of an agency meeting or to any meeting, or any portion of a meeting, of a subdivision thereof authorized to take action on behalf of the agency, and, (2) the requirements of subsections (c) and (d) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency, or the subdivision thereof conducting the meeting, properly determines that such portion or portions of its meeting, or such information, can be reasonably expected to—

(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) relate solely to the agency's own internal personnel rules and practices;

(3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information contained in investigatory records compiled for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) in the case of a record compiled by a criminal law enforcement authority in the course of a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, disclose confidential information furnished only by the confidential source, (F) disclose investigative techniques and procedures, or (G) endanger the life or physical safety of law enforcement personnel;

(6) disclose trade secrets, or financial or commercial information obtained from any person, where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality, or where such information must be withheld from the public in order to prevent substantial injury to the competitive position of the persont o whom such information relates;

(7) disclose information which must be withheld from the public in order to avoid premature disclosure of an action or a proposed action by—

(A) an agency which regulates currencies, securities, commodities, or financial institutions where such disclosure would (i) lead to serious financial speculation in currencies, securities, or commodities, or (ii) seriously endanger the stability of any financial institution;

(B) any agency where such disclosure would seriously frustrate implementation of the proposed agency action, or private action contingent thereon; or

(C) any agency relating to the purchase by such agency of real property.

This paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency by such agency of real property.

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) specifically concern the agency's participation in a civil action in Federal or State court, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing; or

(10) disclose information required to be withheld from the public by any other statute establishing particular criteria or referring to particular types of information.

(c)(1) Action under subsection (b) shall be taken only when a majority of the entire membership of the agency, or of the subdivision thereof authorized to conduct the meeting on behalf of the agency, votes to take such action. A separate vote of the agency members, or the members of a subdivision thereof, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (b), or with respect to any information which is proposed to be withheld under subsection (b). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Whenever any person whose interests may be directly affected by a meeting requests that the agency close a portion or portions of the meeting to the public for any of the reasons referred to in paragraphs (3), (4), or (5) of subsection (b), the agency shall vote whether to close such meeting, upon request of any one of its members. Within one day of any vote taken pursuant to this paragraph, the agency shall make publicly available a written copy of such vote.

(2) If a meeting or portion thereof is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) of this subsection, make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting, and their affiliation.

(3) Any agency, a majority of whose meetings will properly be closed to the public, in whole or in part, pursuant to paragraphs (6), (7)(A), (8), or (9) of subsection (b), or any combination thereof, may provide by regulation for the closing of such meetings, or portion of such meetings, so long as a majority of the members of the agency, or of the subdivision thereof conducting the meeting, votes at the beginning of such meeting, or portion thereof, to close the meeting, and a copy of such vote is made available to the public. The provisions of this subsection, and subsection (d), shall not apply to any meeting to which such regulations apply: Provided, That the agency shall, except to the extent that the provisions of subsection (b) may apply, provide the public with public announcement of the date, place, and subject matter of the meeting at the earliest practicable opportunity.

(d) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency, or the members of the subdivision thereof conducting the meeting, determines by a vote that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity. The subject matter of a meeting, or the determination of the agency to open or close a meeting or portion of a meeting, to the public, may be changed following the public announcement required by this par-

agraph if, (1) a majority of the entire membership of the agency, or of the subdivision thereof conducting the meeting, determines by a vote that agency business so requires, and that no earlier announcement of the change was possible, and, (2) the agency publicly announces such change at the earliest practicable opportunity. Immediately following the public announcement required by this paragraph, notice of such announcement shall also be submitted for publication in the Federal Register.

(e) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (9) of subsection (b). The agency shall make promptly available to the public, in a place easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, where no significant portion of such discussion or testimony contains any information specified in paragraphs (1) through (10) of subsection (b). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within one hundred and eighty days after the enactment of this Act, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) of this sectino. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States have jurisdiction to enforce the requirements of subsections (a) through (e) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Before bringing such action, the plaintiff shall first notify the agency of his intent to do so, and allow the agency a reasonable period of time, not to exceed ten days, to correct any violation of this section, except that such reasonable period of time shall not be held to exceed two working days where notification of such violation is made prior to a meeting which the agency has voted to close. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future relations of this section, or ordering the agency to make available to the public the transcript or electric recording of any portion of a meeting improperly closed to the public. Except to the extent provided in subsection (h) of this section, nothing in this section confers jurisdiction on any district court to set aside or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

(h) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section, and afford any such relief as it deems appropriate.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (f), (g), or (h) of this section. Costs may be assessed against an individual member of an agency only in the case where the court finds such agency member has intentionally and repeatedly violated this section, or against the plaintiff where the court finds that the suit was initiated by the plaintiff for frivolous or dilatory purposes. In the case of apportionment of costs against an agency, the costs may be assessed by the court against the United States.

(j) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 202. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(1) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(2) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to an interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

"(3) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes, a communication in violation of this subsection, shall place on the public record of the proceeding:

"(A) written communications transmitted in violation of this subsection;

"(B) memorandums stating the substance of all oral communications occurring in violation of this subsection; and

"(C) responses to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon receipt of a communication knowingly made by a party, or which was knowingly caused to be made by a party in violation of this subsection; the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation;

"(5) the prohibitions of this subsection shall apply at such time as the agency may designate, but in no case shall they apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of his acquisition of such knowledge.".

(b) The second sentence of section 554(d) of title 5, United States Code, is amended to read as follows: "Such employee may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.".

(c) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(d) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of

justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.".

SEC. 203. (a) Except as specifically provided by section 201, nothing in section 201 confers any additional rights on any person, or limits the present rights of any such person, to inspect or copy, under section 552 of title 5, United States Code, any documents or other written material within the possession of any agency. In the case of any request made pursuant to section 552 of title 5, United States Code, to copy or inspect the transcripts or electronic recordings described in section 201(e), the provisions of this Act shall govern whether such transcripts or electronic recordings shall be made available in accordance with such request. The requirements of chapter 33, of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in section 201(e). This title does not authorize any information to be withheld from Congress.

(b) Nothing in section 201 authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to that individual under section 552a of title 5, United States Code.

SEC. 204. The provisions of this title shall become effective one hundred and eighty days after the date on which this Act is enacted, except that the provisions of section 201 requiring the issuance of regulations to implement such section shall become effective upon enactment.

Mr. ROBERT C. BYRD. Mr. President, in view of the fact that the Senate today has acted on that portion of S. 5 which dealt with congressional procedures, I ask unanimous consent that the Government Operations Committee substitute, and the Rules Committee amendment thereto, both be agreed to, and as agreed to and amended, the substitute be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, S. 5 as it now appears on the floor refers only to the executive branch. Provisions dealing with Congress were included in Senate Resolution 9, which has just been adopted by the Senate. S. 5 sets rules concerning the openness of agency meetings. S. 5 requires meetings between heads of multiheaded agencies to be open to the public. Meetings are defined as agency deliberations where at least a quorum of the agency's members meet to conduct or dispose of official agency business.

Meetings can be closed by the agency only by majority vote of all agency members and then only on 1 of 10 specified grounds.

Advance notice to the public of agency meetings is required as to time, place, and subject matter. If an agency closes any meeting, it must announce its meeting ahead of time, along with an explanation of its action, and make a verbatim record of the meeting. After the meeting, it must release to the public every major portion of the meeting which did not involve sensitive matters.

There are provisions in the bill to expedite procedures for closing meetings when an agency, using one of the exemptions in the bill, must close a majority of its meetings.

U.S. district courts are given the jurisdiction to enforce the requirements of the bill. Any person may bring an action prior to or within 60 days after the meeting to which the violation relates.

If the court finds against the agency the court may grant appropriate relief. Suit can be brought against an individual member of the agency as well as against the agency itself. The court is allowed to assess against any party the reasonable attorney fees and other litigation costs incurred by any party who substantially prevails in an action. Costs may be assessed against an individual agency member when the agency member has intentionally and repeatedly violated provisions of the bill.

The Justice Department has provided me an analysis of S. 5. The Justice Department believes that the public should have access to information regarding the decisionmaking process of the Federal Government and that a statute requiring agencies to open certain of their meetings to the public would be a legitimate and useful means of effectuating this policy. However, the Department does raise a number of concerns about the bill, many of them definitional and technical in nature. Given the lateness of the Justice Department's comments and the extensive nature of them, there has not been time for the committee to fully act upon them.

There is one provision of the bill which the Justice Department feels very strongly about. As the Department states:

> Perhaps the most objectionable subsection in S. 5 is 201(1) which permits costs to be assessed against individual agency members, rather than against the agency itself or the United States, when the plaintiff has "substantially prevailed," and the court finds that any agency member has "intentionally and repeatedly violated 201."

Justice argues that:

> These provisions are a breach of the doctrine that action taken by United States employees as part of their official duties does not subject them to personal responsibility.

I agree with the Justice Department arguments and would support an amendment to S. 5 to delete individual agency member liability.

The remaining part of S. 5 amends the provisions of the Administrative Procedure Act governing adjudication and formal, rulemaking by establishing a broad prohibition against ex-parte communications in such formal trial-type proceedings. The prohibition only applies to formal agency adjudication and forbids ex parte communications between interested persons outside the agency and agency decisionmakers.

Mr. President, S. 5 is an attempt to get public awareness of agency proceedings, as Senate Resolution 9 attempts to do for Congress. I hope that the Senate will see the merits of this bill and swiftly approve it.

ORDER FOR JOINT REFERRAL OF S. 2532

Mr. PASTORE. Mr. President, I ask unanimous consent that the energy independence authority legislation, S. 2532, dated October 20, 1975, which has been referred to the Banking and Currency Committee, be also referred to the Joint Committee on Atomic Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BARTLETT TOMORROW, FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS, FOR CONSIDERATION OF S. 5, AND FOR CONSIDERATION OF H.R. 10029

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on tomorow, the distinguished Senator from Oklahoma (Mr. BARTLETT) be recognized for not to exceed 15 minutes; that at the conclusion of Mr. BARTLETT's remarks there be a period for the transaction of routine morning business of not to exceed 15 minutes, with remarks limited therein to 5 minutes each; at the conclusion of which period the Senate resume consideration of S. 5; and that upon the disposition of S. 5 the Senate proceed to the consideration of the military construction appropriation bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESOLUTION COMMEMORATING THE 90TH ANNIVERSARY OF THE BIRTH OF WILL DURANT AND HONORING HIS CONTRIBUTIONS TO THE INTERPRETATION AND UNDERSTANDING OF HISTORY

Mr. HUMPHREY. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

paralleled epic of centuries of resistance to force and bondage.

And Abba Eban has stated the case most clearly, when he says:

> There is, of course, no difference whatever between anti-Semitism and the denial of Israel's statehood. Classic anti-Semitism denies the equal rights of Jews as citizens within society. Anti-Zionism denies the equal rights of the Jewish people to its lawful sovereignty within the community of nations.

The cynical use of U.N. humanitarian and social programs—like UNESCO—to launch political attacks on the right of Israel to exist as a sovereign state is part of a clearly conceived policy to which the United States is not blind. The substitution of rhetorical violence for physical force does not render the violence—or its goal—more respectable.

There are serious and difficult economic, social, and political questions at stake for all participants in the Middle East dispute. Blatant racist appeals and blanket condemnation of the legitimate national aspirations of the Jewish people are not the way in which those disputes will be resolved. Rather, passage of such a resolution inevitably raises the most serious questions about the motives of its supporters.

Our Ambassador to the U.N., Daniel Patrick Moynihan, has called the adoption of this resolution an "obscene act". The wording is harsh, but its accuracy is indisputable. Aside from the immediate political motivations of the resolution's sponsors, its passage is obscene because it jeopardizes the global struggle against racism. It seems to utilize the historic and present sufferings of oppressed national groups in the creation of another political epithet.

At its inception, the United Nations represented a reaction against the blatant racism of the Nazi regime. The combatting of racism around the world has been one of the major goals of the organization, and has earned it—justly—universal respect and moral authority as a world body. That authority and respect will be irretrievably lost if the General Assembly encourages the vicious politicizing of this humanitarian issue by support for the resolution.

Racial repression and warfare are still unfortunately common on our globe today, as many member nations of the U.N. are well aware.

Those nations are also aware of the substantive and distinct differences that exist between racism as a practice and the legitimate national aspirations of a people. Those differences have been nullified and those aspirations have been dishonored by the adoption of this resolution.

The U.S. delegation to the United Nations has expressed the sentiments of the American Congress and the American people in repudiating, in the strongest possible terms, the aims and intent of this resolution as an expression by the world body. Introduction of two congressional resolutions underscores our national sentiments, and I know that Congress will continue to stand firm on this issue. I hope the General Assembly will take note, and will take into account also the statement by the European Economic Community nations, which have had the most recent historic experience with massive and barbaric anti-Semitism.

If the coming together of the community of nations in the U.N. is to have any relevance to the long and bitter fight to rid the world of savagery between ethnic groups, we must now vigorously assert that this effort to politicize racism is a moral outrage against all humanity.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

GOVERNMENT IN THE SUNSHINE ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of the unfinished business, S. 5, which the clerk will state.

The legislative clerk read as follows:

> A bill (S. 5) to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

The Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. Time for debate on the bill is limited to 1 hour, to be equally divided and controlled by the majority and minority leaders or their designees, with 30 minutes on any amendment, debatable motion, appeal or point of order.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time be charged against both sides on the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEAHY). Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I assign to the Senator from Florida (Mr. CHILES) the time that has been assigned to the majority leader.

I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. MANSFIELD. On the bill, equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Mr. President, today, we will take up S. 5, as amended by the Committee on Rules and Administration, which deleted the provisions of S. 5 that dealt with the Senate or with Congress.

S. 5, the Federal Government in the Sunshine Act, is based on the premise that the Government should conduct the people's business in public. Since I first introduced this legislation in August of 1972, a great deal of progress has been made toward opening up government on all levels.

Forty-eight States have enacted some type of open meeting provision. Now that Congress has taken the lead by opening its own doors, I feel that we are in an excellent position to request that executive agencies follow suit.

S. 5 would open specific multimember Federal agency meetings to the public. This measure as it now appears is a very refined version—a product of many, many hours of study and hearings on State sunshine laws, Federal agency comments and input from the administrative conference, the American Bar Association and other interested groups. Two sets of hearings were held on S. 5.

A wide variety of witnesses testified about the very practical aspects of operating in the open, including representatives from the Federal Communications Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board. The Government Operations Committee solicited and received comments and opinions on S. 5 from every Federal agency that would be affected by this legislation. These comments were most helpful in the final drafting on this legislation.

We also received a substantial amount of input from the American Bar Association, which after having set up a special committee to consider this legislation endorsed the concept of open Government along the lines defined by S. 5.

I believe that the timing of this legislation is particularly opportune amid the general clamor for regulatory reform. I think we all know of the increasing feeling in the United States among all citizens from the affluent businessman to the welfare recipient that Government has become too big, too bureaucratic, too unresponsive, and too unwieldy for the public to understand. A major step in the area of regulatory reform would be to let all of us watch the agency decisionmaking process in action to know what the considerations are and to see what these agencies actually do.

To quote David Cohen:

> Opponents of open Government talk constantly of the innumerable problems that would result from public meetings and full citizen access.

But these objections simply do not stand up against the overwhelmingly positive experience of legislative committees in Congress and around the country which have shown that openness works and rather than impeding business it promotes better discussion.

In Florida we found that everyone agrees with the basic concept of openness but they always find reasons to be against a specific provision of a specific bill or say this is a great idea that should apply to everyone else but not to us. I think that once you start exempting anyone everyone says "me too." The provisions of S. 5 are the product of very

careful study of existing laws to see what works and what does not. We have taken into account the need for certain types of meetings to be closed and these exemptions are well outlined in the explanation of S. 5. But I think that to go further would be a mistake. Therefore, I hope that we will proceed to consider this measure as it is without special interest exemptions.

Mr. RIBICOFF. Mr. President, I fully support S. 5, "The Government In The Sunshine Act."

The Government Operations Committee unanimously reported this legislation after over 3 years of study. Senator CHILES deserves great credit for the active role he played in the committee's development of a sound and responsible bill.

The purpose of this bill, now cosponsored by 54 Senators, is to give the public a full opportunity to observe the way the Government conducts the public's business without infringing upon the rights of individual citizens, and the ability of the Government, to function efficiently.

Since the Senate is considering separately title I of the bill, governing open committee meetings, I will address my remarks at this moment to the part of the legislation opening agency meetings to the public.

Section 201 applies to 47 agencies in the executive branch headed by 2 or more commissioners. It establishes the basic principle that meetings between the heads of these agencies should, except for certain specified reasons, be open to the public.

Section 202 establishes for the first time an across-the-board statutory prohibition against secret ex parte conversations between members of the public and the agency formally adjudicating a matter of interest to that person.

This legislation will do much to increase the public's faith in the integrity of Government. It will enable the public to better understand the decisions reached by Government agencies. It will better acquaint the public with the process by which agency decisions are reached.

Recent studies underscore the urgent need for enactment of S. 5. In September, 1973, a Harris Survey conducted by the Subcommittee on Intergovernment Relations of the Government Operations Committee showed that confidence in the executive branch of the Federal Government had fallen from 41 percent in 1966 to 27 percent in 1972, and had sunk to a new low of 19 percent in 1973. According to testimony Mr. Harris provided the Government Operations Committee last year, only 36 percent of the people think that "most public officials today are dedicated to helping the country rather than being out for themselves".

Opening up the process to observation by the public should reassure the public about the honesty and integrity of most Government officials. It will remove any distrust the public has of the Government simply because agency actions are taken behind closed doors. In other cases, openness may help promote the quality of commission work for it will further encourage commissioners to prepare for meetings and to attend the meetings with regularity.

Open meetings will also mean the public debate cannot help but improve the problems administrators face, and the reasons for the decisions they take. This knowledge should in turn promote greater cooperation and compliance with public debate on the issues. Greater public debate cannot help but improve the decision-making process.

Finally, open meetings will give every member of the public equal access to information. No longer will some people have an inside track because they possess some special knowledge about an agency's action which other interested parties, or the public generally, lack.

As chairman of a committee which conducts all its markup sessions in public, I know from first hand experience that the fears some agency officials may have of this type of legislation are unjustified. Experience in the 49 States that have adopted open meeting laws confirm this also. Openness does not in fact hurt the quality of discussions or inhibit free and frank discussions. Discussion need not be less free or frank because the public is there to observe the discussion. The bill provides that where a closed session is necessary because of the sensitive nature of the information discussed, an agency will in fact be able to close the meeting.

A few agencies, such as the Federal Election Commission and the Commodity Futures Trading Commission, have adopted on their own a similar policy of openness. There is no reason why other agencies cannot do so also.

Section 202 of the bill extends the principle of openness to cases of formal agency adjudication. While agency decisions in formal cases of adjudication are only supposed to be made on the basis of the facts and arguments in the public record, there is always the danger that one side or the other will attempt secretly to influence the decision maker's actions without the other parties to the case, or the public, knowing. Such fears that agency decisions have been influenced behind closed doors by secret political pressures can only undermine public confidence.

Section 202 states for the first time in clear and unequivocal statutory language that such practices are prohibited.

For the first time it establishes a clear procedure for agencies to follow when ex parte communications do occur so that other parties and the public may know about such communication and have a chance to respond to them.

For the first time it declares that if a person knowingly engages in such illegal practices the agency may rule against him on the merits of the case.

In preparing this legislation the committee has consulted with a number of experts both in and outside the Government.

The American Bar Association has, among other groups, been very interested in this legislation. In August the house of delegates of the ABA supported the policy of opening Federal agency meetings to the public along the lines provided in section 201 of S. 5. Previously the House of Delegates endorsed wording very similar to the prohibition against ex parte communications contained in section 202.

This legislation will help bring together the people of this country and their Government. It will help reduce the public's feeling that their Government at present is all too remote and mysterious.

The legislation will be good for the agencies and good for the public.

I urge every Member of the Senate to fully support this important legislation.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. CHILES. The time to be equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. First, Mr. President, I call attention to the fact that, through an oversight, the name of the junior Senator from Florida was inadvertently omitted from a list of cosponsors of amendment 968 to open conference committees to the public, which I had inserted in the RECORD yesterday. I want the RECORD clearly to reflect that the junior Senator from Florida has been a persuasive, dedicated, and outspoken advocate of open meetings of conference committees during his tenure in the Senate. It was through his efforts that the Conference Committee on the Standby Energy Authorities bill was thrown open to the public even before the passage of amendment 968. The RECORD should show that the junior Senator from Florida (Mr. STONE) was a cosponsor of the move to establish a general rule to open conference committees to the public.

Mr. President, I am happy to associate myself closely with the remarks made today by the senior Senator from Florida (Mr. CHILES) on S. 5, the Government in the Sunshine Act. As an original principal sponsor of this legislation with Senator CHILES, I congratulate the senior Senator from Florida on the persistence and dedication with which he has pursued this matter. This is a part of an effort, which took a major step forward yesterday, in vindicating the public's right to know about the public business.

Mr. CHILES. Will the Senator yield?

Mr. ROTH. I am happy to yield.

Mr. CHILES. I say to the distinguished Senator from Delaware that I appreciate very much his kind remarks.

I also want to say that I appreciate his support. I think that our victory yesterday could not have happened without the support of the senior Senator from Delaware. I think the fact that the movement of reform, as certainly the movement toward openness, always was a bipartisan movement and cut across not only party lines, but cut across ideological lines, was one of the reasons that it did pass. Certainly, the Senator

from Delaware was persuasive and added greatly to the support that we received. I thank him for his support on that and also for his support in being the principal cosponsor on S. 5.

Mr. ROTH. I thank the senior Senator from Florida for those kind remarks. I agree very strongly that the question of openness in Government is neither a partisan nor a philosophical matter. It is just a question of good form for democratic government.

As I was saying, this is not a gift from us to the public; it is, in my judgment, a public right. I first became concerned about excessive secrecy in Government as a freshman Member of the House in 1967, when I began to identify basic information on Federal domestic assistance programs. At that time, I was very shocked to learn that nowhere in the Government could we really even identify the number and kind of Federal assistance programs that were available, presumably, to help the State and local governments, as well as schools and other authorities.

We made, at that time, a determined effort in my office—it took us something like 14 months—to identify roughly 1,100 different programs. It took us over 2 years to finally get the Federal Government to publish in one study each year the programs that are established to help the people back home.

I might relate just one story. The Assistant Secretary of HEW came over to my office to ask me why I wanted to know what all these programs were. I made the comment that it seemed to me that this is a right of the public back home. He told me the programs were changing so fast that they could not publish them.

I asked,

How could the school authorities, for example, plan under those circumstances?

He said,

Mr. Congressman, are you having any problems under any particular program?

I said:

Well, I am sure we are, but that is not what I am seeking. hat I want is basic information.

That is when I first became dedicated to the idea of opening up government and I can think of no area where the public has a greater right to know than to have detailed information as to the programs that, presumably, were to help our local governmental authorities.

S. 5 will open to the public most meetings of multiheaded Government agencies, except where there are clearly compelling reasons for confidentiality. I think, in this respect, what we are trying to do today is comparable to what we did yesterday in adopting an open rule for Senate committees and conference committees. Now that we have reformed our own procedures, I think we are in a very strong position to press this legislation.

I was particularly pleased that the reform offered yesterday was finally unanimously adopted. For that reason, I think it bodes well for this legislation today.

S. 5 also prohibits ex parte contacts between agency employees and outside interests, which I think has great merit.

Mr. President, I believe that the Government in the Sunshine Act will increase contact between the citizen and the bureaucracy in Washington, increase the credibility and accountability of agency employees, and give the public the fullest possible access to the meetings of many Government agencies. I hope it will receive speedy contribution in the House as well.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. CHILES. The time to be equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I apologize to my colleagues for the delay, but I had a necessary phone call. It has been made now and I will not intrude any further.

AMENDMENT NO. 1043

Mr. JAVITS. Mr. President, I call up my amendment No. 1043 and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an amendment numbered 1043.

The amendment is as follows:

On page 44, line 4, insert the following after the word, "Senate": *Provided*, That this section shall not apply to any agency that has as one of its principal functions the formulation and implementation of national monetary policy except to the extent that such agency meets to consider or dispose of matters relating to consumer protection legislation such as the Truth in Lending Act (15 U.S.C. 1601), the Fair Credit Reporting Act (15 U.S.C. 1681), the Fair Credit Billing Act (15 U.S.C. 1666), the Equal Credit Oportunity Act (15 U.S.C. 1691), and the Federal Trade Commission's Improvement Act".

Mr. JAVITS. Mr. President, the time limit is 15 minutes on a side?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Mr. President, may I ask if there is any time alllocated to the bill and whether that could be yielded, if necessary?

The PRESIDING OFFICER. There is time on the bill. There is time remaining, the managers can yield time if they desire.

Mr. JAVITS. I thank the Chair.

Mr. President, this amendment would take the Federal Reserve Board out of this bill, leaving only—subject to the bill—its responsibilities to consumer activities, and they are specified in the amendment, the Truth in Lending Act, the Fair Credit Reporting Act, the Fair Credit Billing Act, the Equal Credit Opportunity Act and the Federal Trade Commission's Improvement Act.

In those cases, the Federal Reserve Board exercises the kind of functions which are thought to be reached by this bill and, therefore, there is no reason for taking them out.

Mr. President, will the Chair inform me when I have used 8 minutes of my time?

The PRESIDING OFFICER. The Chair will inform the Senator.

Mr. JAVITS. Mr. President, I am a strong supporter of the bill and have been highly approving of the fine activities of Senator CHILES and Senator ROTH, both of whom are members of our committee. I am very proud of the bill coming out of the Committee on Government Operations, but the reason I have raised this subject, Mr. President, is because I have considerable doubt myself as to the desirability of doing what the bill would do, vis-a-vis the Federal Reserve.

Second, I have great respect for the Board itself and its chairman and they have felt so very strongly, as reflected by Arthur Burns himself—whom we all respect, as probably as fine a public servant who has served this country in this field—that we were making a grave mistake to bring the Fed into the purview of this act, aside from the consumer-related activities which are accepted by the amendment, that I felt in all fairness we ought to submit the case to the Senate. The only way it could be done effectively is by this amendment.

I disclosed my intention and my reasons both to Senator CHILES and to Senator ROTH, who will argue against the amendment with their customary vigor, undiminished by my purpose, but I think also they have a sense of respect for the fact that when the chairman of so important an agency as this one feels as strongly as he does we really have a duty to submit the matter to the Senate.

I shall do my utmost to show the arguments in favor of Chairman Burns' position. I shall vote with that position or I would not be submitting the amendment, but I understand the objectivity with which the Senate should address this particular question.

The second point that is important by way of preliminary is that a great effort has been made, Mr. President, in all fairness, to accommodate the Fed's views in this bill.

There are a number of special provisions which the managers will point out to the Senate, quite properly, that have been inserted in the bill in order to try to satisfy some of these problems which Chairman Burns raises. But it still leaves, in his judgment, so much that is a hazard that he feels that we should simply exclude the Fed, and that the Sunshine Act, as it is called based upon a very fine Florida example, should not extend to the Federal Reserve. Not that it is some sacrosanct agency, above and beyond all others, but simply because it is counterproductive to the U.S. interest that there should be anything, of any

kind or character, which might—and that is a very important word to emphasize—disclose the internal operations of the Federal Reserve Board insofar as its critical responsibilities relating to money management and the oversight of the banking system, insofar as it comes within its purview are concerned.

The scheme of the legislation is such as to exclude single-headed agencies, and they would include the Federal Aviation Agency, the Federal Energy Administrator, as well as all the major cabinet departments which are headed by single heads; and also to exclude those which are not under the Administrative Procedure Act but make policy, essentially, where that is their function. These would include, for example, the National Security Council and the President's Council of Economic Advisers.

The Fed, as we popularly call the Federal Reserve Board, might easily come under that category of having solely policymaking functions were it not for precisely the kind of agency administrative functions relating to consumers which I expressly excluded from the amendment.

The heart of the proposition put before us by Chairman Arthur Burns is the following, and I would like to quote from a memorandum to me on this subject, speaking of the board.

It is inconceivable to us that congressional requests, for example, for agency comments on proposed legislation, requests for experienced assistance in stated congressional efforts, or requests for responses to congressional inquiries, are intended to be known by the public before transmission to the Congress.

At another point in his memorandum to me, he really gives the essence of the Federal Reserve's position. He says:

With few exceptions each of the Board's regularly scheduled meetings—

And there are about 150 a year as this is, a board that meets very, very frequently, an average of three times a week, winter, summer, spring and fall—

is involved with matters, the sensitivity and intricacy of which if exposed to public discussion would lead to misunderstanding, misinterpretation and disruptive and harmful speculation. Examples include deliberative processes in monetary policy formulation; receipt, transmission and evaluation of national and international market information; and incident to the formulation of bank regulatory policy, discussion of confidential appraisals and sensitive judgments relating to member bank and/or bank holding company operations,

Remembering that the Federal Reserve is organized with 12 member banks in the great financial centers of the country.

The major areas in which it is felt by the chairman that these dangers are exposed are as follows:

One, the definition of the word "meeting." That is found at page 44 of the bill. It is page 44, lines 7 to 11. It defines a meeting as being the following:

For purposes of this section, a meeting means the deliberations of at least a number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business.

The PRESIDING OFFICER. The Senator's 8 minutes have expired.

Mr. JAVITS. I yield myself 2 additional minutes.

That means that a quorum of the Commission would, even if it meant informally under this very, very broad definition, qualify as a meeting.

He considers that much too broad for the frequency and the closeness of deliberations of these seven members of the Board.

Then the point of a verbatim transcript which is required, using that very broad definition of a meeting, even for such a meeting, what the Fed might call a consultation, et cetera, the danger of leakage of that transcript and the inhibitions of what the chairman claims is the very frank exchange of members' tentative views and impressions and those of the contributory staff. If they came out, he feels it would be extremely dangerous and irresponsible to the situation of the country.

I have already referred to the point about legislative proposals, presentations, testimony and positions respecting the attitude to be taken toward given legislation in the Congress.

Finally, the oversight responsibility of the Federal Reserve Board for the Federal Reserve System, involving as it does, the economy of our whole country.

The last point is that all of the matters which are exempted—as I said, the committee tried to meet many of the views of Chairman Burns—may have to be justified in court because there is a very complete court review. There the difficulty, which is pointed out by Chairman Burns, and which I think is a very important point, is when he goes into court, and I quote from page 53, lines 3 and 4. "The burden is on the defendant to sustain his action" of maintaining secrecy.

Chairman Burns points out that in such a situation the burden to go forward, as the lawyers says, the burden of proof, is on the defendant to defend his action rather than on the plaintiff to prove his case. Chairman Burns feels that notwithstanding the fact that documents may be examined in camera, it will be impossible in the give and take, and the tensions, of a court trial to avoid revelations affecting the Fed which are highly inimical to the Fed and could be inimical to the banking system of the country and of the world because the Fed is our central banker.

Chairman Burns points out that it is unique in the world that a central bank should be subject to this kind of regulation which was never intended for it. Of course, the basis of it is that there are millions of decisions in business and in finance. Countless speculators are constantly seeking to find out what the Fed has in mind about increasing or reducing the money supply, interest rates, regulation of banks in terms of their regulations of credit and their emissions of credit, rediscount rates and so on, of such critical importance to our country and to its economy, and to that of the world, that we have to, in this case, give preference to the confidentiality of these operations rather than preference, as I prefer and as the sponsors of the bill preferred, to openness in every humanly possible way. In this specific case, for these specific reasons, that should not be the rule, and the Fed should therefore be exempt.

One-half minute more.

The Fed should therefore be exempt insofar as its operations other than the consumer operations, which could be carried on by any agency or concern.

Mr. President, I think it is my respect for the unbelievably vindicated judgment over so many years of the chairman of the Federal Reserve Board which brings me here with this amendment. I believe it fair to say, and they will contradict me if I am wrong, that it is the respect for the same qualities which have induced Senator CHILES, who is the principal author, and Senator ROTH to try to adjust the bill to meet many of these points. Chairman Burns feels we still have not met them. In this rather delicate balance, I must say that the reasons Chairman Burns gives for deciding a very close issue in favor of the board's view seem to me to be persuasive.

For that reason, Mr. President, I hope the Senate will vote this exemption subject to the conditions incorporated in the amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, we reluctantly oppose the amendment as set forth by the distinguished senior Senator from New York. The senior Senator from New York is correct that he has been an advocate and a key sponsor of the provisions for opening up the meetings not only of the Congress but also of the executive agencies.

His counsel and his work in this regard in the Committee on Government Operations certainly were positive. I think he has presented the argument very fairly on the proposition for the amendment of the Federal Reserve System. I also have the greatest respect for the institution of the Federal Reserve System, and for its chairman, Arthur Burns. I think he has done an outstanding job, and I think he is an outstanding American; and I am sure that the distinguished senior Senator from Delaware (Mr. ROTH) has the same opinion.

Because of our high esteem and our high regard for Dr. Burns, we attempted to make sure that we would listen long and hard to any comments that the Federal Reserve had about any possible problems in regard to the sensitive nature of their work that the banks would have in regard to the act. In trying to do that, I feel that we have adequately taken care of all of the reasonable and legitimate problems that they have raised.

The amendment now before us would exempt all the activities of the Federal Reserve Board except its consumer protection activities, and we think that would be a step backward for the bill. A number of the provisions already in the bill assure that the Federal Reserve Board and other agencies covered by the amendment would be able to continue to

operate with efficiency and discretion. A complete exemption, however, in my judgment would be unjustified.

S. 5 now contains the following provisions to meet the objections raised by the Federal Reserve Board:

FINANCIAL SPECULATION

First. Exemption 7 in section 201(b) provides that an agency such as the Federal Reserve Board may close meetings in order to avoid premature disclosure of information which could either lead to serious financial speculation, or seriously endanger the stability of a financial institution.

BANK EXAMINATION REPORTS

Second. Exemption 8 allows an agency to close meetings dealing with bank examinations, operating, or condition reports.

SENSITIVE FINANCIAL INFORMATION

Third. Exemption 6 allows an agency to close a meeting where necessary to protect sensitive trade secrets, or commercial or financial information.

SENSITIVE INFORMATION ABOUT A MEETING

Fourth. A provision was added to 201 (b) so that information about a closed meeting can be withheld for the same reasons that the meeting itself could be closed. For example, any information about the subject matter of a scheduled meeting need not be announced if it falls within the exemption in section 201(b).

SERIES OF MEETINGS

Fifth. If the agency meets for more than 1 day on the same particular matter, it can vote once to close all the meetings for the next 30 days on that particular subject. Thus, several Federal Reserve Board meetings stretching over a number of days on a particular problem would in effect be treated as a single meeting.

A number of provisions applicable to the Federal Reserve Board were added to the bill at the committee markup on June 18.

PROCEDURES

Sixth. Paragraph 201(c) (3) gives such agencies as the Federal Reserve Board added flexibility in complying with the procedural requirements of the act's provisions.

Under this provision the Federal Reserve Board could simply adopt general regulations prescribing which types of meetings must be closed. In the case of any meeting which falls within these provisions, the agency need only provide notice of the date, place, and subject matter at the earliest practicable opportunity. Notice need not be given any fixed number of days in advance of the meeting.

The second, and only other step, the agency need take would be to confirm by vote at the start of the meeting itself that the meeting should be in fact closed and release a copy of such vote to the public.

None of the other procedural provisions in subsections (c) and (d) relating to notice or the like would apply. A transcript or electronic recording of the meeting would be kept so that a record of the meeting could eventually be made available to the public if public access would no longer lead to financial speculation, or otherwise disclose confidential information.

TRANSCRIPTS

Seventh. An amendment to section 201(e) prevents an agency from having to edit every word of a transcript or of a tape of a closed meeting. The discussion of an item on the agenda could be withheld from the public if any substantial part of it involved confidential matters. Word-by-word editing would not be necessary. A formal vote of the agency whether to disclose a record of the meeting would not be necessary.

The effect of these provisions will be to let the Board close any meeting it really has to close. Furthermore, the Board will be able to follow special expedited procedures to close its meetings. As a result it need only announce its meetings at the earliest practical opportunity, but not necessarily a week in advance, and then confirm at the start of the meeting that the meeting must be closed.

The bill, however, would still require the Board to keep a transcript or electronic recording of its meetings, and to release such a record when the matter is no longer sensitive. The proposed amendment would chiefly have the result of exempting the Federal Reserve Board from this additional provision. There is no justification for so doing.

Many of the meetings the Board may close will consider matters that can subsequently be made public. For example, after a Board takes a decision on interest rates and announces it to the public, there may be no longer any need for secrecy. If the Board is exempted from the entire section, it will not have to keep a record of the meeting and the public will be unnecessarily denied access to much information about the Board and its thinking. Or a meeting which the Board thought would involve sensitive matters may turn out not to be the case. Without a transcript of the record the public would be denied access to a meeting which need not be closed for any reason.

The experience of the Federal Reserve Board's Open Market Committee indicates that the Board will often be able to release transcripts of its meetings. That committee meets in secret to make decisions about the Nation's money supply. Seven of its 12 members are the 7 Governors of the Federal Reserve Board. The committee decided in March that it could release minutes of its meetings 45 days after the meeting instead of 90 days after the meeting as had previous been the case. The committee concluded that such disclosure after 45 days would not lead to dangerous speculation or interfere with the committee's functions. The Board might similarly find it was possible to release transcripts of its closed meetings after a certain length of time.

The issue here is not whether the Federal Reserve Board will be forced to release to the public sensitive matters which if known could cause financial speculation or the like. The bill provides that as long as there is such a possibility, the Board may keep the record of its meetings confidential.

Those supporting this amendment may argue, however, that the transcript requirement may inhibit free and frank discussion. This is the same argument many other agencies opposing the open-meetings requirements of S. 5 have made. If the Senate were to provide an exemption on these grounds to the Federal Reserve Board, many other agencies would ask why an exemption could not be made for them on exactly the same grounds.

The history of open meeting legislation in the States and in Congress is that such legislation does not in fact inhibit free and frank discussion.

Mr. President, in citing these comments, I think we have tried to set forth for the RECORD every step that we have taken to try to accommodate every reasonable problem that the Board has been able to raise as to how this legislation might hinder them in regard to any sensitive matters they have to deal with. In spite of that, and in spite of the many amendments we have adopted, we find that Dr. Burns is still not satisfied.

I have to think that it boils down to the general feeling that Dr. Burns has that because of the very nature of the Federal Reserve System, to be included in such a bill as this somehow casts a reflection on the Federal Reserve System. In fact, in a letter which Dr. Burns sent to the chairman of the Committee on Government Operations, the Senator from Connecticut (Mr. RIBICOFF) on June 17, I think we find the real reason that he now wants to be exempted. He says in that letter:

> The mere thought that an anti-corruption bill need apply to the Federal Reserve would cast doubt on the integrity of our Nation's central bank and would undermine confidence in the dollar and the future of our economy.

I ask unanimous consent that the full text of the letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1).

Mr. CHILES. Mr. President, this is my feeling as to the real reason why we find the continued request for exemption, and I do disagree with this. I do take issue with it. I do not take issue with any of the other valid reasons that have been raised, but I think the time has come when no agency of the people should be exempted, just written out, because of the fact that it is supposed to be sacrosanct or someone believes that there is historical significance or some reason that it should be exempted, regardless of the way that the work of the agency has been carried out; and I have nothing but praise for the way the work of the Federal Reserve System has been carried out. But it would be a mistake to make an overall exemption for the Federal Reserve System. It would greatly weaken S. 5. For that reason I must oppose the amendment.

EXHIBIT 1

CHAIRMAN OF THE BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM,

Washington, D.C. June 17, 1975.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On May 12 the Subcommittee on Federal Spending Practices, Efficiency and Open Government voted to report to the full Government Operations Com-

mittee S. 5, the "Government in the Sunshine Act." Title II of this bill, designated Committee Print No. 2, generally requires that meetings of Federal agencies headed by more than one person be open to the public. After a careful consideration of the provisions of Title II, I have come to the conclusion that its enactment would seriously interfere with, perhaps even frustrate, achievement of the Federal Reserve's statutory functions. The Board's principal responsibilities, I am convinced, could not be met if this bill were enacted.

The problems that would be created for the Board by S. 5 stem from the Federal Reserve's role as the Nation's central bank and monetary authority. Effective exercise of the responsibilities assigned to the Federal Reserve by the Congress is essential to the strength and vitality of the U.S. economy. These responsibilities include: (1) maintaining the soundness of the national currency; (2) providing for the expansion of money and credit supplies that are needed to promote economic growth, full use of human and capital resources, a stable general price level, and equilibrium in the balance of payments; and (3) assuring the soundness of the commercial banking system, preserving order in domestic and international financial markets, and promoting developments in financial markets that contribute to an efficient use of resources.

In discharging these heavy responsibilities the Board meets regularly to discuss conditions in the domestic economy and in international markets, and to consider the effects of monetary policy actions in these areas. These discussions inevitably involve highly sensitive materials relating to businesses, financial institutions, and foreign central banks and governments.

For example, the Board must at all times be informed of financial difficulties faced by individual banks or other institutions. This requires access to information which, if it became public, might injure the reputation or financial position of some businesses. Again, actions by the Board in the conduct of monetary policy often require coordination with the Executive Branch and with foreign central banks on matters of great sensitivity. Public disclosure of such information could be a source of needless embarrassment to other governments as well as our own.

The functions of monetary policy cannot be performed effectively in an open forum, as is evidenced by the fact that there is no precedent among the world's central banks for operation under constraints such as would be imposed by S. 5.

The bill appears to have two aims, neither of which has any relevance to a central bank. One aim, growing out of the evolution of this legislation at the local and State level is to provide access for the press and public to meetings where decisions are to be made on contracting for expenditure of public funds. In this regard, it is an anti-corruption proposal. The mere thought that an anti-corruption bill need apply to the Federal Reserve would cast doubt on the integrity of our Nation's central bank and would undermine confidence in the dollar and the future of our economy.

The second aim of the legislation appears to be to improve decision-making by exposing the deliberative process in agencies headed by more than one individual. Open meetings may be healthy for the business of a county board of supervisors, a local board of education, or even for certain Federal regulatory agencies. But such governmental functions are not analogous to the workings of a central banking agency such as the Board of Governors whose deliberations frequently involve highly sensitive financial and economic information. It would be just as logical to require open meetings of the President's Cabinet, or meetings of the Secretary of State with his top aides, or of the Secretary of the Treasury with foreign finance ministers. Fortunately, the bill does not reach this absurd result. By including the Federal Reserve within the definition of an agency, however, the bill seems to assume that the functions of the Board are similar to the administrative tasks of regulatory agencies charged with, say, setting interstate freight rates or work safety standards. This ignores the unique role of a central bank in a nation's economy and could do serious, perhaps irreparable, damage to our financial system.

The Subcommittee's bill, it is true, does allow for exemptions which would permit many Board meetings to be closed. But it seems totally inconsistent first to include the Nation's central bank within the scope of the bill's coverage and then to proceed by narrow, individual exemptions to permit various meetings—but far from all—to be closed. I would submit that no public interest is served by such an exercise; in fact, the closing of many meetings under a public access statute could well create questions in the minds of some members of the public as to the motives of the Board of Governors, even though we were proceeding meticulously within the bounds of the law.

Moreover, the closed meeting procedures, themselves present an almost insuperable administrative hurdle. Briefly, these procedures (described more fully in the enclosed memorandum) require that a separate vote be taken each time a meeting or portion of a meeting is to be closed. Even preliminary meetings require an official vote for closure. A record of such votes must be made public within one day. The subject matter of all meetings with limited exceptions, whether open or closed, must be announced at least one week in advance. A full written explanation, with certain exceptions, must be issued as to why any meeting is to be closed. Prospective attendees must be identified and listed, together with their affiliations. A transcript or recording must be made of every closed meeting and retained by the agency for at least two years. Such transcripts or recordings must also be furnished to any person requesting them. Any portion of such recordings or transcripts that is determined by an agency to be exempt from public disclosure apparently requires a recorded vote evidencing such determination.

In my judgment, the complexity of these procedural requirements is totally incompatible with the effective accomplishment of the Board's responsibilities which often require quick and decisive action. In sum, I see no alternative to a complete exclusion from the bill's provisions for the Federal Reserve's central banking and bank regulatory functions. These include the formulation and implementation of monetary policy, discussions and decisions relating to its role as lender of last resort, bank and bank holding company supervision, internal administrative and budgetary decisions necessary to carry out these functions (including the Board's oversight responsibilities with respect to the operations of the Federal Reserve Banks), and related legislative matters.

It may, of course, be claimed that certain of the Board's responsibilities in the area of consumer protection—Truth in Lending, Fair Credit Billing, Equal Credit Opportunity, unfair trade practices, and the like—could come under the ambit of this legislation without invoking the kind of adverse consequences I have outlined for the central banking functions. My mind is open on this question, and the Committee may wish to consider whether the consumer functions might be appropriately included.

I hope that these comments will be helpful to you and the Committee in the further consideration of this legislation.

Sincerely yours,

ARTHUR F. BURNS.

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

Mr. CHILES. I yield.

Mr. ROTH. I join him in expressing appreciation for the fine work of the Chairman of the Federal Reserve. We all have great respect for the splendid job this public servant does for our Nation.

There is one area in the present language that perhaps could be clarified without significantly changing the intent.

I refer to page 46, exempting opening meeting if it would lead to serious financial speculation. The word "serious" somewhat bothers me. It might be little clearer. I think I understand what the intent of the draftsman is. But I would propose to the Senator from Florida that we might substitute "significant" as a better word for the word "serious". In paragraph (A) in line 16, I would say "significantly endanger", and in paragraph (B) in line 19 I would say again "significantly frustrate". It seems to me this is a little clearer than the word "serious."

Mr. CHILES. I have no objection to that change. It might be that we should wait until we have disposed of this amendment before we seek that modification. But I certainly have no objection.

Mr. ROTH. I will raise it later then.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, what do I have? Do I have 4 minutes?

The PRESIDING OFFICER. Three minutes.

Mr. JAVITS. I yield myself 2 minutes.

Mr. President, the major point which is made by the Senator from Florida respecting what has been discussed, significant or serious financial speculation, as we may ultimately put it, misses the major point that is raised by Chairman Burns, because it is clear that the part of the section which was not referred to by the Senator, not wittingly or because he is trying to mislead us in any way, but simply because it is not part of his argument but of mine, comes in the latter part of that particular section which says:

> This paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, . . .

I point out there that the Fed claims that it does. It will say it is considering possible change in the money market situation, to buy or sell, Federal securities. Therefore, the exemption which is granted is not nearly as tight as advertised, because this is their practice.

The second thing is about keeping an exact record. In the first place, that is pretty murky in the way it is set forth in the bill, but I am sure we can clarify that, as I will with the colloquy after we have disposed of the amendment.

But the important point on that is that the Fed now does keep minutes and at a later date, 45 days, actually discloses to the public all the considerations which have gone into the matter.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CHILES. If the Senator needs additional time, I yield additional time.

Mr. JAVITS. The Senator is very kind.

Mr. CHILES. I say to the first point he has made—if we can clear this up in colloquy, I wish to do so—certainly it would not be the intent in any way that the provision that said unless they had otherwise made known that that would not be the general thing that they were thinking about raising interest, it would have to be the substance of something that they had generally made known, and it would not be the general thing that would open them up to that.

I think it would clearly be and if we wish to make that any clearer, we can certainly make that clearer, if the colloquy does not suffice, but I think it would, that we are not talking about a general thing in this regard. We are talking about that they make the substance of something.

Mr. JAVITS. Using the remainder of my time, Mr. President, I yield myself the remaining minute. I am confident that we can, after this amendment is disposed of, work out whatever we need to work out that is agreed upon between the Senators managing the bill and myself in colloquy, et cetera. That still does not go to the main point of the loopholes that are presented by the record in litigation in which the burden of proof is on the defendant, to wit, the Federal Reserve Board. As to this issue of a disclosure of content or intent—the word intent especially— of its proposed action, the feelings of the Board are such that the element involved here puts the United States and its economy and that of the world at such hazard that it is not necessary to risk in an agency which has stood as far as honesty is concerned impeccable in the eyes of Americans for many years.

That is the summation of the argument.

Mr. President, if our time has expired, I suggest the absence of a quorum.

Mr. TOWER. Mr. President, has all time expired?

Mr. JAVITS. I think Senator CHILES will yield the Senator some time.

The PRESIDING OFFICER. One minute remains to the Senator from Florida.

Mr. TOWER. Mr. President, will he yield to me?

Mr. CHILES. I am delighted.

Mr. TOWER. Mr. President, I wish to read into the RECORD some pertinent testimony by Dr. Burns before the Committee on Banking, Housing and Urban Affairs last Tuesday in response to the question that I asked him:

Dr. BURNS. Well, I must say to you that there's no piece of legislation that the Congress is considering that has caused me greater concern than the Sunshine Act. I wish I had had the opportunity to testify on that bill. I was never accorded the opportunity. There is no central bank in the world that functions under the kinds of restrictions that that act specifies. I think that the authors of that act had in mind probably an agency such as the Interstate Commerce Commission dealing with freight rates and there's a case for raising them or lowering them, and offhand I see no difficulty at all in discussing a problem of that sort in open hearing. But we at the Federal Reserve Board deal with the most sensitive issues of financial policy. We regulate banks. We have dealings with central banks around the country and to discuss difficulties that individual banks face, to discuss our dealings with other central banks, some of which are in difficulty and come to us for assistance, I think would cause endless embarrassment to our government, to our country.

I think the fact that the Federal Reserve is being put under an umbrella of this type would suggest to people abroad that the Congress lacks confidence in its central bank and I don't think that would help our country at this juncture of history.

Now it's perfectly true that there are certain exemptions that the act specifies so we could have closed meetings and yet a transcript would have to be kept and under the Public Information Act what was dismissed might have to be made available very shortly to the general public. Now I think, as you know, we at the Federal Reserve, while we're accused of being a secretive organization, make all of our decisions known to the public but after a certain lapse of time.

The PRESIDING OFFICER (Mr. TUNNEY). All time on the amendment has expired.

Mr. TOWER. Mr. President, I ask unanimous consent that I may proceed for an additional 3 minutes.

Mr. CHILES. I yield the Senator 3 minutes on time on the bill.

Mr. TOWER. I thank my friend.

The PRESIDING OFFICER. The Senator is recognized for 3 additional minutes.

Mr. TOWER. I thank my friend from Florida—

Some decisions, most of them in fact, are made available promptly, but some are postponed. I think it's a very dangerous piece of legislation and I hope that Congress will deliberate hard before subjecting the Federal Reserve or, for that matter, I'm not here to argue anyone else's case, but I'm a citizen of this country as well as chairman of the Federal Reserve, and I don't see how you can subject the Securities and Exchange Commission to the Government Sunshine Act. It could cause endless financial trouble.

Now, the Congress obviously is seeking to improve the welfare of the country, but how legislation of this sort, if financial agencies dealing with highly sensitive matters are brought under the act—how that could improve the welfare of the country I don't begin to see.

In all honesty, I don't see how we in the Federal Reserve could function under this legislation. We'd have a choice really between living under the law and taking great chances with this country's problems and future, or going underground and making our decisions outside of the board room and thereby breaking the law, circumventing the law.

Now I'm not going to do—I'm certainly not going to do the latter and I hope that you will not put me and my colleagues on the Federal Reserve in the position where we have to injure this country, and that is what the Government Sunshine Act will do. Now my language is plain but I'm answering your question, Senator.

Mr. President, I think that the testimony of Chairman Burns speaks for itself. Here is a man, who is a dedicated public servant, an honest man, and one whom I think has always been candid with Congress when asked to appear before us before our committees. Therefore, his views on this matter should be given very great weight.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. CHILES. I yield myself 3 minutes on the bill.

Mr. President, I want to answer briefly the comments of the distinguished senior Senator from Texas, or the comments, as read, by Dr. Arthur Burns.

First, I am concerned that Dr. Burns would say that he has not been allowed the right to testify. We solicited agency comments many times. We sought and had several hearings on the bill. At no time has Dr. Burns evidenced to the committee or to this Senator that he wanted the right to testify. He certainly would have been accorded that right at any time, had he indicated that he desired the right to testify.

As to the comments that have been raised, the distinguished Senator from Texas was not here when we read into the RECORD all the steps we had taken to take care of any problem, any legitimate problem, that the Federal Reserve Board raised and how they would operate. In dealing with banks, they are completely exempted from the act. In dealing with international monetary policy, they are completely exempted from the act.

We have allowed them to set up a general exemption so that they will not have to close every meeting, to adopt general rules to do it. We allow them to close in one meeting up to 30 days. We have taken, step by step, everything that has been raised by the Federal Reserve Board or its counsel.

In regard to the letter to the Banking Committee, Senator PROXMIRE has said that he cannot be in the Chamber at this time, but he has given me the right to say that he would oppose the amendment that would exempt the Federal Reserve Board.

Mr. President, I yield 3 minutes on the bill to the distinguished Senator from Connecticut.

The PRESIDING OFFICER (Mr. TALMADGE). The Senator from Connecticut is recognized for 3 minutes.

Mr. WEICKER. Mr. President, I rise to oppose this amendment.

The arguments presented are no different from those that could be presented on behalf of any of the hundreds of Federal agencies. Either we are going to have a bill that brings all Government out into the open or we are not.

I have been through this exemption exercise once before, in the consumer protection bill, when we exempted labor and the electronic broadcast media, and so on down the line.

That is the reason why we have no credibility as a Congress. We enunciate these great, sweeping, broad principles to the American people and then start to nibble at them and carve out our own exemption, whether it is for an executive agency or for our political party or our State or ourselves. All of a sudden, the people get the feeling that we are legislating for everybody else but not for ourselves.

I completely oppose this amendment. I think the doings of the Federal Reserve Board are as much a part of the people's business as anything else.

For a long time, I have felt that too much has been going on behind closed doors, too much going on in Arthur Burns' mind. This business of making Arthur Burns and the Federal Reserve Board looking sacrosanct is great, until we get into difficulty, and then we start to yell for scalps. Even though we are focusing on the economy and give added impetus to the Federal Reserve Board, that is fine, but I will not go along, because of these times, with an exemption for that Board. I think the economy of this country is very much the business of the American people.

Insofar as encouraging free and open discussion is concerned, openness in our Government has not inhibited free and frank discussion. In fact, I believe that if we had had freer and franker discussion by a variety of economists, we would not have gotten into the difficulties we are in now. So that argument does not hold.

So far as sensitive material and the rest are concerned, that is provided for in the bill. This happens to be one man who does not like to share his powers with the American people, just as, for a long time, Senators did not want to share their powers with the American people. It is not our Government; it is not Arthur Burns' Government. It is the people's Government. We serve them. Can you imagine having somebody serve you and your not knowing what they are doing? We serve; Arthur Burns serves. We are not the ones telling other people what to do.

Mr. JAVITS. Mr. President, will the Senator yield me a few minutes?

Mr. CHILES. I yield the Senator 3 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 3 minutes.

Mr. JAVITS. Mr. President, I speak again only because of the argument made by Senator WEICKER, whom I respect tremendously; but, unhappily, I must say that the elements of inconsistency in his argument are very glaring to me.

He speaks of an action that brings all of government out into the open. I think those are his exact words.

I am for the sunshine bill. I have said many times. I am strongly for it. It is not because what the National Security Council does or what the Joint Chiefs of Staff do about the security of the United States, or what Government departments do, headed by a Secretary, often with as much power as the Federal Reserve Board. Why? Because we do not want to run our democracy down the drain by any kind of principle which is unbending and has no recognition of the factors which are influential and important in respect of the operation of a country.

I will yield to no one in terms of my own liberalism for disclosure, and so forth, so far as the American people are concerned. Perhaps that is why I am proposing this amendment, because I recognize that there are circumstances under which that general rule, with which I agree thoroughly, would be self-defeating and would break down the very things we are trying to assert.

So, without in any way differing with my colleagues as to the principles which are basically involved, I have tried to deal with the specific exception which represents the operations of the Federal Reserve Board.

Finally, I do not think this Board is suffering from any lack of criticism or scrutiny. It is constantly being raked over the coals by our beloved friend WRIGHT PATMAN. For a long time, he was the chairman of the committee that could do it. It is done constantly in banking committees of the House and the Senate and in the country.

Arthur Burns is a popular witness before many committees, and it is precisely because of his frankness and openness in terms of the situation in the country.

So I beg my colleagues, for whom I have enormous regard, to think of that particular aspect of the matter and what I am attempting to do in respect to this amendment; that it does not represent just a tribute to a great public servant—to wit, Arthur Burns—but that there really are substantive issues of great delicacy and great jeopardy involved so far as the economy of the country and of the world is concerned, to bring the Central Bank under a reform piece of legislation eminently justified by the broad bulk of everything that is done in Government, but which in my judgment, and certainly in that of Arthur Burns, could be counterproductive and regressive in respect of the particular agency involved.

For all those reasons, Mr. President, I hope very much the Senate will decide to exempt partially—and that is what this amendment would do—the Federal Reserve Board.

Mr. WEICKER. Mr. President, will the Senator yield me 2 minutes on the bill?

Mr. CHILES. I yield.

Mr. WEICKER. I thank the distinguished Senator from Florida.

I respond in this way: The Senator from Connecticut has many faults, but inconsistency is not one of them.

Insofar as the National Security Agency and the various intelligence and law enforcement agencies are concerned, I have long called for oversight and for bringing them into the act, if you will, under the direction of the American people. If I had my "druthers," I would view this legislation as rather conservative, as only one step. I would sweep everything under it.

I might add that we create the sacred cows. There is nothing in the Constitution that gives sacred cow status to NSA, the Federal Reserve Board, or anyone else, and they should not have it.

I do not want to rake Arthur Burns over the coals. I would like to know what is going on so we never get to the point where he has to be raked over the coals, any more than anybody enjoys raking the CIA or the NSA over the coals. If we all have input at the outset, there will not be need for any raking over the coals. We could all share the glories and the failures of any particular agency or any action of Government.

I can understand the arguments of the distinguished Senator from New York, and I respect his point of view; but one thing that the Senator from Connecticut wants to say is that he is not inconsistent. I would apply this standard to all the agencies of Government.

The PRESIDING OFFICER (Mr. NUNN). The time of the Senator has expired.

The question is on agreeing to the amendment.

Mr. CHILES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. NUNN). Is there a sufficient second? There is not a sufficient second.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I demand the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE) is absent on official business.

I also announce that the Senator from Michigan (Mr. HART) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. GARN) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Utah (Mr. GARN) would vote "nay."

The result was announced—yeas 36, nays 57, as follows:

[Rollcall Vote No. 471 Leg.]

YEAS—36

Baker	Glenn	Scott, Hugh
Bellmon	Griffin	Sparkman
Bentsen	Hansen	Stennis
Brock	Helms	Stevens
Brooke	Javits	Stevenson
Buckley	Johnston	Taft
Byrd, Harry F., Jr.	Long	Talmadge
Case	Mathias	Thurmond
Curtis	McGee	Tower
Dole	McIntyre	Williams
Eastland	Morgan	Young
Fong	Pearson	
	Pell	

NAYS—57

Abourezk	Durkin	Inouye
Allen	Eagleton	Jackson
Bartlett	Fannin	Kennedy
Beall	Ford	Laxalt
Biden	Goldwater	Leahy
Bumpers	Gravel	Magnuson
Burdick	Hart, Gary	Mansfield
Byrd, Robert C.	Haskell	McClellan
Cannon	Hatfield	McClure
Chiles	Hathaway	McGovern
Clark	Hollings	Metcalf
Cranston	Hruska	Mondale
Culver	Huddleston	Montoya
Domenici	Humphrey	Moss

Muskie	Randolph	Stafford
Nelson	Ribicoff	Stone
Nunn	Roth	Tunney
Packwood	Schweiker	Weicker
Pastore	Scott, William L.	
Proxmire		

NOT VOTING—7

Bayh	Hart, Philip A.	Symington
Church	Hartke	
Garn	Percy	

So Mr. JAVITS' amendment was rejected.

Mr. JAVITS. Mr. President, there is one thing in the bill which needs straightening out and it will take us just a minute or two to do it. That relates, Mr. President, to the provision for keeping an exact transcript which appears at page 50, line 20, to page 51, line 2, of the bill, which relates to the fact that it is left unclear as to whether, notwithstanding the fact that a significant portion of the transcript may relate to matters which ought to be kept confidential, the transcript has nonetheless to be complete.

I would like, therefore, to have this colloquy with the manager of the bill.

The PRESIDING OFFICER. Who is yielding time on this?

Mr. CHILES. Mr. President, I yield such time as we might need.

Mr. JAVITS. One minute.

The PRESIDING OFFICER. The Senate will be in order. Senators will suspend until the Senate is in order.

Mr. CHILES. Mr. President, I think perhaps the Senate might like to know that at the conclusion of this colloquy, and an amendment that we will adopt by the Senator from Massachusetts, and a corrective amendment by the Senator from Delaware, I think we will be going to final passage in the next few minutes.

The PRESIDING OFFICER. The Senator will proceed.

Mr. JAVITS. Mr. President, subsection 201(e) of S. 5 deals with agency preparation, maintenance, and release of verbatim transcripts of closed meetings. My reading of subsection 201(e) indicates that an agency that closes a meeting because of the anticipated discussion of matters covered by the exemptions of subsection 201(b)(1)-(10) must prepare a complete transcript or recording of such closed meetings (except a meeting closed pursuant to 201(b)(9)); thereafter, agencies are required to make promptly available to the public the complete transcript of discussion where no significant portion of that discussion contains exempt subject matter.

I want to make it clear that the bill does not require an agency to release the complete transcript of a properly closed hearing merely because a less than significant portion of the closed discussion was of an exempt nature. Yet, this may be required by the ambiguous language contained in the text of the bill. Rather than nullify the apparent congressional intent in allowing an agency to close a meeting so as to protect sensitive material against public disclosure, I urge that it be made clear that subsection 201(e) requires only that the nonsensitive portion of a closed meeting be released in its entirety, allowing the agency to withhold from public disclosure the admittedly less than significant portion of a transcript relating to sensitive subject matter protected by the act.

Mr. CHILES. Mr. President, I concur with my colleague, the distinguished senior Senator from New York (Mr. JAVITS) that the public benefit results obviously intended by the transcript requirements of subsection 201(e) do not logically call for release by an agency of the complete recording of a closed meeting, but should be limited to disclosure of the total portion of such discussion not covered by one of the bill's exemptions.

I might further add that an agency will not have to review continually the sensitivity of the transcripts of its board meeting. A periodic review at reasonable intervals is all that is needed.

Mr. JAVITS. I thank my colleague very much.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I call up my amendment No. 1027.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 56, strike out line 20 through line 25.

On page 57, line 1, strike out "(c)" and insert in lieu thereof "(b)".

On page 57, line 13, strike out "(d)" and insert in lieu thereof "(c)".

The PRESIDING OFFICER. The Senate will please come to order. The Senator will suspend. The Senate is not in order.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have had an opportunity to talk this over with the manager and the ranking minority member.

The purpose of this amendment is to conform the pending legislation with the Administrative Procedure Act. It conforms in an area where a contract can be made by a hearing administrator in a Federal regulatory agency.

Essentially this amendment would conform the pending legislation with the Administrative Procedure Act.

I think it would be a worthwhile amendment facilitating further oversight in terms of the drafting of this bill, since the facts that have been included conform very closely with the APA. I believe it to be consistent with the thrust and the purpose of the legislation.

Mr. President, the Administrative Procedure Act establishes the general principles and requirements which govern procedures in almost all Federal agencies. The APA, enacted in 1946, has stood substantially unchanged since then except for the enactment and subsequent amendment of the Freedom of Information Act.

The APA took little interest and notice of the substantive issues involving ex parte communications. The legislative reports accompanying the original bill show that the Congress was interested in achieving an internal separation of functions for agencies serving both prosecutorial and judicial functions. Section 5(c)'s limited prohibition against ex parte communications in formal adjudications reflected one approach by Congress to achieving that objective of internal separation.

The issue of improper and detrimental ex parte communications gained public attention in the 1950s when several notorious cases came to light, including one involving an attempt by Presidential assistant Sherman Adams to influence a decision of the Federal Trade Commission.

Fulfilling a campaign promise to remedy these kinds of incidents and to free agency and regulatory proceedings from the improper pressure of special interests, President John Kennedy proposed legislation in 1961 which would have required each agency to adopt regulations governing ex parte communications along certain statutory guidelines. The statutory requirements would assure, among other things, that ex parte communications in all formal proceedings be prohibited.

Public interest spurred several congressional investigations of ex parte influences on administrative agencies, and a handful of bills were introduced to deal with various facets of the problem.

Although there was considerable discussion of various administrative reforms during the 1960s, no legislation in this area was enacted. In the meantime, in response to President Kennedy's initiative, the 1962 temporary Administrative Conference proposed a set of general principles to guide the formulation of agency rules in this area. The conference supported the concept of individual agency rulemaking to deal with the ex parte problem, and various agencies adopted rules reflecting those proposals.

In 1963 the American Bar Association's Administrative Law Section began a review of the Administrative Procedure Act, including its ex parte provisions. The Senate Subcommittee on Administrative Practice and Procedure conducted a number of hearings in the mid-1960s on proposals to revise and reform the APA, but the only change made in the act involved enactment of the Freedom of Information Act in 1966 and subsequently its codification.

After several years of study by a special ABA committee, the American Bar Association adopted 12 resolutions in 1970. Those resolutions proposed a number of specific changes in the APA. One of those resolutions, No. 4, related to ex parte communications. The various recommendations were translated into legislative proposals and considered by the Administrative Conference of the United States.

Earlier this session I introduced a series of bills, S. 796 through S. 800, reflecting the efforts of the ABA and the administrative conference. One of these bills, S. 799, contains a provision to implement the ABA recommendation on ex parte communications. Section 202 of title II of S. 5 is based on section 3 of my bill.

Last summer, when the Government Operations Committee favorably re-

ported S. 5, unanimous consent was obtained to provide the Judiciary Committee an opportunity to examine section 202 of the bill. Although the Judiciary Committee did not have the chance to report formally on this matter before the bill was returned to the floor September 15, the Subcommittee on Administrative Practice and Procedure requested agency reports and had an opportunity to study this section in some detail.

My amendment, Mr. President, was developed out of the Administrative Practice Subcommittee's consideration of section 202, although the amendment has not formally been considered by the subcommittee. The amendment is intended to restore to the Administrative Procedure Act a provision which would be deleted by section 202(b) of S. 5. The amendment was proposed initially by Mr. Richard Berg, Executive Secretary of the Administrative Conference and, I, understand, it is acceptable to the managers of the bill.

My amendment deletes section 202 (b), thereby leaving intact in the APA section 554(d)'s present prohibition against a presiding employee's consulting "a person or party on a fact in issue unless on notice and opportunity for all parties to participate." As I understand, section 202(b) was intended as simply a conforming change in the APA, in view of the more comprehensive prohibition against ex parte contacts added by section 202(a). However, the deleted material in section 554(d) of the APA covers certain communications not prohibited by section 202(a)—that is, the new provision added to the APA by section 202(a) does not wholly overlap the deleted APA provision, leaving a gap in the two areas: These involving ex parte consultations, first, between the presiding officer and noninterested persons outside the agency, and second, between the presiding officer and persons within the agency.

The Attorney General's manual on the Administrative Procedure Act, issued in 1947, clearly explained the purpose of section 554(d) (then section 5(c)) of the APA as being intended——

> to assure that hearings be conducted by hearing officers who have not received or obtained factual information outside the record and who are neither supervised nor directed in the conduct of the hearings by agency officials engaged in the performance of investigative or prosecuting functions.

On the language proposed to be deleted by S. 5 as reported, the Attorney General's manual states:

> the officer is prohibited from obtaining or receiving evidentiary or factual information bearing on the issues unless, after notice, all parties are permitted to participate. This would apply as well to expert testimony; the officer may not informally obtain evidentiary material from such experts either during or after the hearings, any more than he may from other witnesses.

As to agency insiders, "permitting the hearing officer to engage with appropriate agency personnel in an analytical discussion of the record is thoroughly consistent with the purposes of the act." But the officer is not—and should not be—able to obtain material facts or evidence from other employees without notice to the parties.

My amendment would thus leave present section 554(d) of the APA without change, carrying forward the useful objectives reflected in the initial enactment of this section.

I should observe, Mr. President, that section 202 of S. 5 deals only with a very narrow area of improper communications received by Government decision-makers. The efforts of ITT to achieve a favorable settlement of its antitrust case illustrate the pervasive problem of influence directed towards discretionary prosecutorial activities. The classic Sangamon Valley case, involving the FCC, illustrates that informal rulemaking proceedings are also susceptible to ex parte influence. These areas are, however, left untouched by the provisions of S. 5.

Most of the instances of improper ex parte communications not covered by the Administrative Procedure Act—presently or as proposed to be amended by S. 5—would be subject to the logging and disclosure requirements of S. 1289, the Open Communications Act which I introduced earlier this year. That bill would require high-level agency officials to make publicly available summaries of communications with persons outside the agency relating to proceedings or other substantive policy matters considered by the agency. The Administrative Practice and Procedure Subcommittee has begun hearings on this bill, and will conclude its hearings next week. This legislation would serve as an important corollary to the present ex parte prohibitions contained in the APA and S. 5.

Mr. President, I hope that my amendment to S. 5 will be adopted by the Senate.

It is actually a technical amendment, and I hope the Members will be willing to accept it.

Mr. CHILES. We certainly are willing to accept it.

I thank the distinguished Senator from Massachusetts for calling our attention to this. This is the reason that the bill was referred to his Committee on Judiciary and the administrative conference has told us this needs to be done and we are delighted the Senator called it to our attention.

We will accept it.

Mr. KENNEDY. Mr. President, I am prepared to vote on the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I yield back the remainder of my time.

Mr. CHILES. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

Mr. ROTH. Mr. President, I send an amendment to the desk and ask its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ROTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 46, line 14, strike the word "serious" and insert in lieu thereof the word "significant." At line 16, strike the word "seriously" and insert in lieu thereof the word "significantly."
>
> On line 19, strike the word "seriously" and insert in lieu thereof the word "significantly."

Mr. ROTH. Mr. President, I made reference to this proposed change in language earlier. What I am proposing is that on page 46, with respect to the exemptions for the Federal Reserve, that we change the word "serious" to significant."

I think the word "significant" says more precisely what we are trying to cover, that the Federal Reserve should not be required to have open meetings when there is danger of significant financial speculation.

I think that is clearer than "serious financial speculation."

There are three different places in this paragraph where I propose this change of wording from seriously to significantly.

I have discussed this with the manager of the bill and I think it is satisfactory.

Mr. CHILES. If the Senator will yield, I think that "significantly" expresses the intent of the committee when we were trying to use "serious." I think maybe "significant" is a better word of art.

We will certainly accept it.

Mr. JAVITS. Will the Senator yield?

Mr. ROTH. Yes.

Mr. JAVITS. I think that we should appreciate the precisional language of the Senator.

Mr. ROTH. I yield back the remainder of my time.

Mr. CHILES. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Delaware.

The amendment was agreed to.

Mr. CHILES. Third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. CHILES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. RIBICOFF. Mr. President, I want to take this opportunity to commend the Senator from Florida and the Senator from Delaware for their outstanding efforts on behalf of this legislation, S. 5 and S. 9. They have been leaders and have worked very hard in the Government Operations Committee to make this possible.

This legislation has great significance

for the people of this Nation to understand what we are doing in Congress and what the executive branch is also trying to do.

The staffs of the entire committees also deserve praise for their hard work on behalf of this legislation.

Mr. JAVITS. Will the Senator yield?

Mr. RIBICOFF. I am pleased to yield to the Senator.

Mr. JAVITS. Mr. President, having proposed the most controversial of the amendments in respect to the bill, I join the chairman in complimenting them for their very fine work, both managing Senators.

Mr. CHILES. Mr. President, I thank the distinguished chairman, also the distinguished Senator from New York, for their kind remarks. The chairman at all times gave us his support, in support of the committee, and that was very helpful to us.

I join with the chairman in thanking the staff who worked so long and so hard on the bill.

Mr. ROTH. Mr. President, I would just like to add my special thanks to the chairman of the Government Operations Committee. I know of no chariman who is fairer and more cooperative with all members of the staff than the chairman of the Government Operations Committee.

I would like to add my word of thanks to the Government Operations staff and the members of the staff of the senior Senator from Florida as well as my own. They have worked hard to get this legislation through and, again, I believe we are taking a step forward. I also want to express appreciation for the significant work on this bill done by the junior senator from Connecticut and his staff.

Mr. PERCY. Mr. President, S. 5 provides a specific exemption from openness provisions for meetings that relate to the agency's own internal personnel rules and practices. It also provides specific exemption for meetings relating to the purchase of real property by an agency.

The Federal Reserve has raised the question as to whether these exemptions also apply to the 12 Federal Reserve banks around the country over which the Board of Governors of the Federal Reserve here in Washington exercises oversight. The Board here in Washington discusses personnel at the Federal Reserve Banks around the country, sets salaries, decides on site acquisition and building plans, and discusses other internal practices of the Banks.

I want to make sure that these discussions by the Federal Reserve here in Washington about the personnel of the Federal Reserve banks around the country would also be exempt as would other agencies with a similar structure. Senator CHILES, is that your understanding?

Mr. CHILES. The Senator is correct. The regional Federal Reserve Banks would be treated as part of the one overall organization headed by the Federal Reserve Board bank in Washington. The same is true for other agencies with a similar regional structure.

Mr. PERCY. The Federal Reserve is concerned that the bill contains no provision that would enable the Board to deliberate and formulate legislative proposals, presentations, testimony and positions without exposing them to the public prior to their deliverance to Congress.

Under the Board's present procedures, any statement of Board position relating to legislative matters is subjected to Board meeting discussion. The Board questions whether congressional requests for agency comments on proposed legislation, requests for experienced assistance in stated congressional efforts, or requests for responses to congressional inquiries are intended to be known by the public before transmission to the Congress.

Senator CHILES, would such discussions be exempt from the openness provisions of the bill?

Mr. CHILES. If a Congressman or a committee requests in confidence for the views of any agency on any legislative matter, or if it refers to testimony any agency could close a meeting discussing the matter. The whole content of the agency to provide information to a Congressman or committee in confidence could be frustrated if the discussion was public. Section 2017(B) would permit an agency to close its meeting in this instance where it must respond in confidence to an inquiry from Congress or prepare in confidence testimony to be given later before a committee.

Mr. WEICKER. Mr. President, after a 3-year period of hearings, discussion, and careful scrutiny, the Senate finally has a Government in the Sunshine Act, on the floor for its consideration. S. 5 provides that meetings of Government agencies be open in order to allow the public to have the highest degree of knowledge regarding governmental decisionmaking processes.

The first sunshine legislation was introduced in August, 1972. Unhappily, that date also closely coincides with the first reports of the Watergate abuses. Those abuses clearly illustrate the need for an open airing of governmental activities related to decisionmaking. S. 5, if enacted earlier might not have provided a remedy to the litany of abuses uncovered during this period, but it could have encouraged an open atmosphere for the conduct of the Government's business in public.

When governmental activities are held in secret behind closed doors, we have seen where the affairs of the Federal Government have suffered. But, even more important, when the public is kept in the dark as to agency activities and the essential decisions that affect their daily lives, the effects could have serious consequences.

We have heard all the arguments against the bill from the commissions and agencies whose operations this bill would bring to light. The points they raise run the gamut from; the bill would unnecessarily inhibit the efficient conduct of agency business to beliefs that this bill would not allow a free and open exchange of ideas and candid opinions. What they seem to forget is the overriding responsibility to allow the public, in order for them to participate in the decisionmaking process, to have an unfettered access to information on how their Government operates.

Many of these agency heads do not give the public enough credit to be able to view their proceedings and make competent judgments as to how they perform their duties. The bill's expressed intent to implement open meetings, not only will foster increased public awareness of how their Government functions, but it also has a dual purpose of increasing the public's confidence in governmental affairs.

S. 5 provides an opportunity to begin mending some of our systemic ills by opening the doors of Federal agencies and removing the cloak of secrecy which has too long been a part of the decisionmaking process.

We only have to look to the States for examples of how open meeting laws have been accepted and regarded as successful steps to opening agency meetings. It must be viewed as a sad commentary when State laws on open government date back as far as 1950 and open meetings legislation are now on the statute books of 49 States. Yet, the Congress has not acted until now to consider open Government legislation that would apply to itself and the executive agencies. The Congress should have taken the States' example long ago and enacted legislation of its own.

My own State of Connecticut has had an open meeting law relating to State agencies since 1971. A recent act passed by the State legislature and effective October 1, 1975, would extend the open meeting provisions to the legislative and judicial branches.

The risks are too great to allow the closed door practices of Federal agencies to continue as they have in the past. Recent revelations of abuses have only served to increase the public's distrust of Government activities. To let the trend continue unabated will destroy any relationship between the public and Government agencies that is necessary for a democratic nation to survive. S. 5 provides a mechanism to restore that trust and rebuild the confidence that is necessary for any Government to function properly.

Mr. CLARK. Mr. President, surely nothing is more important today than the restoration of public confidence in Government. In recent years that confidence has sunk to an alltime low. As pollster Lou Harris testified in hearings held last year:

> At this point in our history, the people are roundly fed up with what they feel is incompetence, inefficiency, corruption, lack of real public interest, and just plain lack of decency in the governing circle of this country.

The legislation before us today, S. 5, The Government in the Sunshine Act, would go far to help restore public confidence in Government. It is a logical extension of legislation passed by Congress over the past decade to open the Government's decisionmaking process to public scrutiny. It will help increase the public's faith in the integrity of Government, enable the people to better understand the decisions reached by the Government and better acquaint the citizenry with the process by which agency decisions are reached.

The basic principle underlying this bill

is that the Government should conduct the public's business in public. As John Gardner, chairman of Common Cause, has said:

Secrecy is fatal to accountability. Citizens cannot hold government officials accountable if they do not know what government officials are doing. All of the great instruments of accountability that the citizen must depend on—Congress, the courts, the electoral process, the press—may be rendered impotent if the information crucial to their functions is withheld.

It is natural that the public should be more distrustful of Government conducted in secret: Secrecy necessarily breeds suspicion. And this suspicion arises in large part simply because meetings are closed, rather than from any specific evidence that improper or illegal activities are taking place behind the locked doors. Regardless of what the public actually learns about the Government, the fact that this bill would open meetings formerly closed should in itself remove an important source of public distrust of Government.

Second, the bill before us today would greatly enhance the public's understanding of the decisions reached by the Government. The Freedom of Information Act enables the public to review many of the documents on which Government decisions are based. These constitute a record of what has already transpired. Yet, up to now the public has not had full opportunity to observe how or why Government officials make the important policy decisions which they do. All too often the meetings at which such decisions are made are closed to the public. Interested persons must content themselves with elementary minutes, or background papers only tangentially related to the official agenda. Formal statements in support of agency actions are frequently too brief, or too general, to fully explain an agency's reasoning, or the compromises that were made. As a result, the public may not understand the reasons an agency has acted in a certain way, or even what exactly it has decided to do. By requiring important decisions to be made openly, this bill will create better public understanding of agency decisions.

Third, openness will significantly increase cooperation between the public and Government agencies, and promote compliance with agency decisions. It will enhance the public's comprehension of the difficult choices agencies must often make, and improve appreciation of the problems they face. Moreover, openness will better demonstrate what facts and policy considerations an agency finds important in reaching its decision, and what alternatives were considered and rejected.

Finally, as all elements of the public gain an equal opportunity to learn about the issues and problems confronting agencies, wider and more informed public debate of the agency's policies becomes possible. Increased public interest and discussion cannot help but improve the decisionmaking process.

One of the leading scholars on administrative law, Prof. Kenneth Culp Davis of the University of Chicago Law School, is a strong supporter of the Government in the Sunshine bill. According to Professor Davis:

Open meetings would at first cause consternation and opposition. But gradually open meetings would be accepted. Making more of the realities known to the public would facilitate criticism, and the principal result would be to improve the quality of what is done. Furthermore, the democratic influence would be stronger. The relation between agencies on the one side and media and pressure groups on the other side would be improved, because misunderstanding resulting from partial information, as distinguished from full information, would be reduced.

Open meeting laws have been widely accepted and implemented by the States. Forty-nine States now have open meeting laws, and 35 States have constitutional provisions relating to open Government. In 1950, only one State had such a law. Many of these laws have been enacted just within the past few years. Nine new laws were passed during 1972–73. In 1974, 10 States strengthened existing legislation. Moreover, no open meeting law has been repealed, though a number have been strengthened. Several States have recently amended their constitutions to make their open government provisions more comprehensive.

Forty-nine States require an open-meeting policy for State-level agencies. Forty-four States provide for open meetings of county and city level nonlegislative agencies, as well as city councils and county boards. Currently, State legislatures in 35 States open committee deliberations to the public. In contrast, only 17 States opened committee meetings to the public as a matter of course in 1972.

Thanks, in large part, to the work of LAWTON CHILES, the State of Florida has the most comprehensive open meetings law in the country. The Florida law opens to the public all discussions and deliberations of government where "official acts are to be taken." Since its passage in 1967, Florida's "Sunshine Law" has been well received by the judiciary. The courts have neither significantly limited the broad scope of the law, nor riddled it with exceptions. Indeed, the judicial acceptance of this strong open government law has fostered the development of similar laws in other States.

Just as the open meetings provision will expose the conduct and disposition of official government business to public scrutiny, so a second provision of S. 5 prohibiting ex parte contracts will insure openness in the way the Government decides formal adjudication and rulemaking proceedings.

Ex parte contacts made secretly between one party to a proceeding and an agency official prevent other interested parties from countering the arguments presented. They may also make it impossible for the public to understand why an agency decided the case as it did. Such contacts make it difficult for Congress to exercise effective oversight of the practices and policies of regulatory agencies. In short, ex parte contacts are totally inconsistent with the democratic principle of open government. Section 202 of the bill provides clear notice to all concerned that such contacts are not only illegal, but may actually result in the agency finding on the merits against a party who knowingly violates the provision.

Mr. President, I was one of the original sponsors of the predecessor to this bill, S. 260 in the 93d Congress. The legislation now before this body is a carefully drafted measure, reflecting the advice of many legal experts both from within and without the Government, the comments of 43 Federal agencies, and suggestions by members of Federal agencies, Congress, and the public. It is specially designed to insure that the Government will be able to open its activities to the public without imposing unnecessary procedural burdens or interfering with the Government's efficiency or effectiveness. The exemptions and exceptions provided in the bill are reasonable and sufficiently flexible that none of the agencies covered should find compliance unduly burdensome.

I strongly urge my colleagues to support this bill. Open government is essential to accountability, and accountability is the very essence of democracy. The public has every right to know how the Government is conducting its business.

Woodrow Wilson put it best in 1884—and it is just as true today:

Light is the only thing that can sweeten our political atmosphere—light thrown upon every detail of administration in the departments—light blazed full upon every feature of legislation—light that can penetrate every recess or corner in which any intrigue might hide; light that will open to view the innermost chambers of Government.

Mr. CHILES. Mr. President, I ask unanimous consent that a summary of this bill be printed at the conclusion of my remarks and prior to passage of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

TITLE II—AGENCY PROCEDURES

SECTION 201—OPEN AGENCY MEETINGS

Section 201. (a) Provides that all meetings between the heads of multi-headed Federal agencies shall be open to the public. An agency is defined as in the Administrative Procedure Act, but only those agencies are covered which are headed by two or more individual members. A majority of such members must also be appointed by the President, with the advice and consent of the Senate. The Justice Department has tentatively estimated that 47 agencies would be covered by this meeting. Because of the unique nominating and confirmation process governing appointments to the Federal Elections Commission, this agency is included by specific reference.

A meeting is defined as the deliberations of the number of agency members needed to take action on behalf of the agency where such deliberations concerns the joint conduct or disposition of official agency business.

SEC. 201. (b) Establishes the 10 grounds under which an agency may vote to close meetings or a portion of a meeting despite the requirements of subsection (a). Closing meetings on these grounds is permissive, not mandatory. In addition to closing a meeting, an agency may, on the same grounds, withhold information about the meeting otherwise required by the section to be disclosed.

The exemptions are as follows:

(1) Allows a meeting to be closed if information to be presented has been lawfully required to be kept secret by an Executive order in the interests of national defense or foreign policy. Where such is the case, other law would make the closing of such a meeting mandatory rather than permissive. The wording follows exactly one of the amendments to the Freedom of Information Act enacted last year.

(2) Provides that portions of a meeting may be closed if the meeting is concerned with the agency's own internal personnel rules and practices.

(3) Allow a portion of a meeting to be closed if the nature of information presented at the meeting constitutes an unwarranted invasion of personal privacy. For instance, a meeting might be closed if the committee was concerned with discussing the competence of the president of a company regulated by that agency.

(4) Exempts meetings which might involve accusing any individual or corporation of a crime or formally censuring such a person. An agency might close under this exemption a meeting discussing whether to investigate the possibility that a person had submitted fraudulent documents to the agency.

(5) Allows a meeting to be closed if it would disclose information from investigatory records compiled for either civil or criminal law enforcement purposes. However, the meeting could be closed only to the extent that such disclosure of records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of an informer, disclose confidential information furnished only by a confidential source in the course of a criminal investigation, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel. This exemption is the same as one of the amendments to the Freedom of Information Act enacted last year.

(6) Exempts meetings disclosing trade secrets of financial or commercial information where the agency has no legal right to get such information or where disclosure would substantially injure a person's competitive position. This covers not only trade secrets, but such additional information as a company's financial status.

(7) Exempts certain specified types of discussions where premature disclosure of the agency's thinking could destroy the ability of the agency to carry out its responsibilities. The exemption only applies to instances where the agency has not already announced it is considering taking the action under discussion. For example, if an agency has issued a proposed rule, further discussion of the proposed rule could not be closed under this provision. Furthermore, to be applicable, the discussion must also meet one of two additional specified conditions.

Subparagraph (1) makes the provision applicable to the SEC, the FDIC, the Federal Reserve Board, and similar agencies that regulate currencies, securities, commodities or financial institutions. Where premature discussion of issues by these agencies would lead to serious financial speculation, or endanger the stability of any institution, the meeting may be closed. A Federal Reserve Board discussion of the precarious financial state of a member bank could be closed under this provision. An SEC discussion whether to order trading of a certain stock suspended would also be included.

Subparagraph (2) applies to actions by any agency where premature disclosure of the agency's plans would seriously frustrate the agency's implementation of the agency's action. An example would include disclosure that the agency is considering an embargo on the import of certain goods where public disclosure of the agency's actions would lead to a rush of imports and defeat the purpose of the proposed regulation.

Subparagraph (3) applies to agency purchase of real estate. Public disclosure of the agency's interest in certain property would drive up the price of land.

(8) Applies to bank examination reports and other similar audits prepared by such banking agencies as the FDIC, the Federal Reserve Board, and the Federal Home Loan Bank Board. This provision is identical to one in the Freedom of Information Act.

(9) Relates to discussions concerning the initiation, conduct, or disposition of an adjudication governed by Section 554 of Title 5, U.S.C. or another similar statue. This provision exempts discussion of any particular case being litigated before the agency pursuant to the rules of the Administrative Procedure Act governing adjudication. For example, review by the FTC of the hearing record in a case accusing a particular company of false and misleading advertising would be exempted. Such discussions are more quasi-judicial than quasi-legislative in nature and hence are less conducive to a discussion in the open. Decisions in such cases must be based solely on the record of the case. Section 202 of the Act, on ex parte discussion, will assure that the Commissioners do not have any unannounced meetings with other persons about the merits of such adjudication. The exemption also applies to agency consideration of litigation in federal or state court. This would, for example, cover agency discussion of appropriate legal strategy in such a case.

(10) Allows the closing of a meeting if information presented at the meeting would disclose matters which must be kept confidential because of another statute specifically applying to particular types of information. For example, an individual's income tax returns would be covered by this exemption. This paragraph applies only to statutes which mandate that particular information be kept confidential, and not to such laws as the Freedom of Information Act, where the matter is left to the discretion of the agency.

Section 201(c). Establishes the procedures an agency must follow if it wishes to close a meeting.

Paragraph (1) provides that a meeting may be closed, or information withheld, only by a majority vote of the entire membership of the agency. Generally a separate vote must be taken on each meeting the agency wishes to close. A single vote can be taken, however, to close a series of meetings, where all the meetings will be held within a 30 day period, and involve the same issues.

Each vote must be recorded, and must be made public by the agency one day after the vote. No proxies are allowed.

A person whose interests may be directly affected by the meeting may request that the agency close portions of a meeting on the grounds of personal privacy that the meeting will involve him in criminal charges, or that it involves information derived from an investigating life. The agency must then vote on whether to close the meeting if one or more commissioners requests such a vote.

Paragraph (2) requires an agency to make public a full written explanation of its decision to close any meeting. A list of persons expected to attend the closed meeting and their affiliation must also be made public.

Paragraph (3) establishes special procedures for agencies that may have to close a majority of their meetings for the reasons outlined in Paragraphs 6, 7A, 8, or 9. These paragraphs will be especially relevant to those agencies which have special need for confidentiality because they deal extensively in sensitive financial matters or formal adjudication. Where an agency must close a majority of its meetings for such reasons, as will perhaps be so in the case of the SEC, the NLRB, or the Federal Reserve Board, the agency will be able to adopt a general regulation spelling out the meetings that will have to be closed. The agency will then be allowed to follow an expedited procedure to close each particular meeting and to announce such meeting to the public.

Section 201(d). Requires advance public notice of all agency meetings.

Paragraph (1) requires the agency in most cases to publicly announce the date, place, subject matter of a meeting and whether the meeting is open or closed, at least one week prior to the meeting. If the members vote that agency business requires a meeting at an earlier date, the required public notice must be provided at the earliest practicable date. If the subject matter of a meeting, or open status of a meeting, must be changed after the initial announcement, the agency may vote to do this also.

Section 201(e). Requires that a complete transcript or electronic recording be made of each meeting the agency votes to close, unless it is a meeting concerned solely with cases under adjudication. The agency must promptly provide to the public the portions of each transcript or electronic recording which does not disclose information that would justify closing a meeting pursuant to subsection (b). Copies of such transcripts, or transcriptions of the tapes, must be provided any person at the actual cost of duplication or transcription. The transcripts or tapes must be maintained by the agency for two years, or for one year after the conclusion of the proceeding to which they relate, whichever is later.

Section 201(f). Requires each agency to promulgate regulations implementing the requirements of subsections (a) through (e) within 180 days after enactment of the Act. If an agency does not promulgate regulations within 180 days, any person may bring a proceeding in the U.S. District Court for the District of Columbia to compel issuance of the regulations. Any person is given the right to challenge in the D.C. Court of Appeals the adequacy of the regulations issued under this subsection.

Section 201(g). Gives the U.S. district courts jurisdiction to enforce the requirements of subsections (a) through (e) by declaratory judgment, injunctive relief, or other appropriate relief. Any person may bring an action in the district where he resides or has his business, or where the agency is headquartered, within 60 days after the holding of the meeting in question. If there was no public announcement of a meeting until after it was held, the suit must then be brought within 60 days after such public announcement of the meeting. Before instituting a suit, the plaintiff is required to notify the agency and give the agency a reasonable period of time, not to exceed 10 days, to correct the asserted violation. If the plaintiff is seeking to force the agency to open a meeting which has not yet been held, it need give the agency a maximum of only 2 days to act. The burden is on the agency to sustain its action. The district courts may grant appropriate equitable relief, such as ordering release of the transcript of an illegally closed meeting. The section does not confer any new jurisdiction on district courts, however, to invalidate an agency action taken at an illegally closed meeting.

Section 201(h). Allows any Federal court, otherwise authorized by law to review any agency action, to review an agency's compliance with this section. Such review may be conducted at the request of any person having standing. The reviewing court can afford any relief it deems appropriate, including reversing the action taken at an illegal meeting.

Section 201(i). Allows a court to award reasonable costs of litigation brought under this section to either of the parties. The

costs may be awarded against an individual commissioner only if the court finds his violation of the statute was intentional and repeated. Costs may be awarded against the plaintiff only if the court finds the suit was brought for frivolous or dilatory reasons.

SECTION 203—MISCELLANEOUS

Subsection (a) provides that with the exception of such specific provisions as 201(e) governing the public's access to transcripts of closed meetings, nothing in Title II is intended to increase or decrease the public's right to obtain actual copies of documents under the Freedom of Information Act. Access to such written documents will continue to be governed as before by the Freedom of Information Act. The subsection also specifies that nothing in Title II authorizes the withholding of any information from Congress. The requirements of the Federal Records Act to retain documents for specified lengths of time are held inapplicable.

Subsection (b) provides specifically that nothing in the bill is intended to affect the applicability of the Privacy Act.

PROCEDURAL SHORTCUTS

The following is a list of the provisions which have been included in the bill in order to give agencies the procedural flexibility they need, and in order to protect the agencies from unnecessarily burdensome requirements:

(1) Section 201 (a), (c) (2)

An agency may vote to close a meeting, to change the subject of a meeting, schedule a meeting less than seven days in advance by polling all its members. Thus, no time consuming meeting between the agency heads themselves will be necessary.

(2) Section 201(c) (1)

If the agency meets for more than 1 day on the same issue it can vote once to close all the meetings for the next 30 days on the same subject. Repeated votes will not be necessary.

(3) Section 201 (d)

Where agency business requires, the agency may give less than seven days notice of a meeting. An agency may change the subject matter of a meeting it has already announced where agency business requires. Finally, if the agency business requires, the agency may vote to close at any time a meeting which previously it had announced would be open. In all these cases, the only requirement is that the agency vote that the meeting or the change is necessary and announce the information to the public at the earliest practicable opportunity. Thus an agency will retain necessary administrative flexibility at all times.

(4) Section 201(c) (3)

Any agency that must close a majority of its meetings because of the reasons specified in paragraphs 6, 7A, 8 or 9 of 201(b) may utilize special, expedited procedures. Such an agency may adopt a general regulation specifying the types of meetings that will be closed. It then need only confirm by vote at the beginning of the meeting that the meeting does in fact involve sensitive matters covered by these exemptions. Notice of the date, place, and subject matter of the meeting must be made as soon as practicable, but not necessarily as much as seven days in advance of the meeting. In such case, no explanation need be given of why each such meeting must be closed to the public.

(5) Setcion 201(e)

If an agency opens a meeting to the public it need not keep any verbatim record of the proceedings. Verbatim records of most closed meetings are required, but an agency need not keep a transcript of every such meeting. Instead, it may just make an electronic recording of the closed meeting.

(6) Section 201(e)

The requirement that an agency keep a record of any meeting that it closes does not apply to meetings discussing adjudication, and thus closed pursuant to 201(b) (9).

7) Section 201(e)

An agency is only required to release the tape or the transcript of a closed meeting to the public if the agency determines that it does not disclose information which should be kept confidential pursuant to subsection (b). An agency does not have to edit the record of a closed meeting word for word to remove confidential matter. An agency would have to disclose the record of a meeting only if no significant portion of the discussion of the agenda item contained confidential material. Any individual who wants a transcript of a tape that is disclosed to the public would have to pay for it himself.

Mr. CHILES. Mr. President, I pay particular thanks and appreciation to the following members of my staff who have worked very hard on this bill, George Patten, Margaret Maruschak, Vicki Smith of my staff, Pam Weller of Senator STONE's staff, and Paul Hoff, Marilyn Harris, and Jim Davidson of the staff of the Government Operations Committee. In addition, Prof. Dick Stewart gave valuable assistance in the early drafting stages.

Also, to the members and staff of Common Cause—David Cohen, Fred Wertheimer, and Ann McBride—whose efforts were invaluable both in developing this resolution and working for its passage. Without the valuable assistance from Common Cause, the progress of this legislation would have been much slower.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), and the Senator from Missouri (Mr. SYMINGTON), are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE), is absent on official business.

Mr. HUGH SCOTT. I announce that the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Utah (Mr. GARN) and the Senator from Illinois (Mr. PERCY), would each vote "yea."

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 472 Leg.]

YEAS—94

Abourezk	Church	Haskell
Allen	Clark	Hatfield
Baker	Cranston	Hathaway
Bartlett	Culver	Helms
Beall	Curtis	Hollings
Bellmon	Dole	Hruska
Bentsen	Domenici	Huddleston
Biden	Durkin	Humphrey
Brock	Eagleton	Inouye
Brooke	Eastland	Jackson
Buckley	Fannin	Javits
Bumpers	Fong	Johnston
Burdick	Ford	Kennedy
Byrd, Harry F., Jr.	Glenn	Laxalt
Byrd, Robert C.	Goldwater	Leahy
Cannon	Gravel	Long
Case	Hansen	Magnuson
Chiles	Hart, Gary	Mansfield
McClellan	Hart, Philip A.	Mathias
McClure	Packwood	Stafford
McGee	Pastore	Stennis
McGovern	Pearson	Stevens
McIntyre	Pell	Stevenson
Metcalf	Proxmire	Stone
Mondale	Randolph	Taft
Montoya	Ribicoff	Talmadge
Morgan	Roth	Thurmond
Moss	Schweiker	Tower
Muskie	Scott, Hugh	Tunney
Nelson	Scott, William L.	Weicker
Nunn	Sparkman	Williams
		Young

NAYS—0

NOT VOTING—6

Bayh	Griffin	Percy
Garn	Hartke	Symington

The bill (S. 5), as amended, was passed, as follows:

S. 5

An act to procvide that meetings of Government agencies shall be open to the public, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking process of the Federal Government. It is the purpose of this Act to provide the public with such information, while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

SEC. 3. DEFINITIONS.—For purposes of this Act the term, "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency.

SEC. 4. (a) This section applies, according to the provisions thereof, to the Federal Election Commission and to any agency, as defined in section 551(1) of title 5, United States Code, where the collegial body comprising the agency consists of two or more individual members, at least a majority of whom are appointed to such position by the President with the advice and consent of the Senate. Except as provided in subsection (b), all meetings of such collegial body, or of a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business.

(b) Except where the agency finds that the public interest requires otherwise, (1) subsection (a) shall not apply to any agency meeting, or any portion of an agency meeting, or to any meeting, or any portion of a meeting, of a subdivision thereof authorized to take action on behalf of the agency, and, (2) the requirements of subsections (c) and (d) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency, or the subdivision thereof conducting the meeting, properly determines that such portion or portions of its meeting, or such information, can be reasonably expected to—

(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) relate solely to the agency's own internal personnel rules and practices;

(3) disclose information of a personal na-

ture where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information contained in investigatory records compiled for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, disclose confidential information furnished only by the confidential source, (F) disclose investigative techniques and procedures, or (G) endanger the life or physicial safety of law enforcement personnel;

(6) disclose trade secrets, or financial or commercial information obtained from any person, where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality, or where such information must be withheld, from the public in order to prevent substantial injury to the competitive position of the person to whom such information relates;

(7) disclose information which must be withheld from the public in order to avoid premature disclosure of an action or a proposed action by—

(A) an agency which regulates currencies, securities, commodities, or financial institutions where such disclosure would (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution;

(B) any agency where such disclosure would significantly frustrate implementation of the proposed agency action, or private action contingent thereon; or

(C) any agency relating to the purchase by such agency of real property.

This paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) specifically concern the agency's participation in a civil action in Federal or State court, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing; or

(10) disclose information required to be withheld from the public by any other statute establishing particular criteria or referring to particular types of information.

(c)(1) Action under subsection (b) shall be taken only when a majority of the entire membership of the agency, or of the subdivision thereof authorized to conduct the meeting on behalf of the agency, votes to take such action. A separate vote of the agency members, or the members of a subdivision thereof, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (b), or with respect to any information which is proposed to be withheld under subsection (b). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Whenever any person whose interests may be directly affected by a meeting requests that the agency close a portion or portions of the meeting to the public for any of the reasons referred to in paragraphs (3), (4), or (5) of subsection (b), the agency shall vote whether to close such meeting, upon request of any one of its members. Within one day of any vote taken pursuant to this paragraph, the agency shall make publicly available a written copy of such vote.

(2) If a meeting or portion thereof is close to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) of this subsection, make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting, and their affiliation.

(3) Any agency, a majority of whose meetings will properly be closed to the public, in whole or in part, pursuant to paragraphs (6), (7)(A), (8), or (9) of subsection (b), or any combination thereof, may provide by regulation for the closing of such meetings, or portion of such meetings, so long as a majority of the members of the agency, or of the subdivision thereof conducting the meeting, votes at the beginning of such meeting, or portion thereof, to close the meeting, and a copy of such vote is made available to the public. The provisions of this subsection, and subsection (d), shall not apply to any meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that the provisions of subsection (b) may apply, provide the public with public announcement of the date, place, and subject matter of the meeting at the earliest practicable opportunity.

(d) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency, or of the members of the subdivision thereof conducting the meeting, determines by a vote that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph if, (1) a majority of the entire membership of the agency, or of the subdivision thereof conducting the meeting, determines by a vote that agency business so requires, and that no earlier announcement of the change was possible, and, (2) the agency publicly announces such change at the earliest practicable opportunity. Immediately following the public announcement required by this paragraph, notice of such announcement shall also be submitted for publication in the Federal Register.

(e) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (9) of subsection (b). The agency shall make promptly available to the public, in a place easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, where no significant portion of such discussion or testimony contains any information specified in paragraphs (1) through (10) of subsection (b). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within one hundred and eighty days after the enactment of this Act, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States have jurisdiction to enforce the requirements of subsections (a) through (e) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Before bringing such action, the plaintiff shall first notify the agency of his intent to do so, and allow the agency a reasonable period of time, not to exceed ten days, to correct any violation of this section, except that such reasonable period of time shall not be held to exceed two working days where notification of such violation is made prior to a meeting which the agency has voted to close. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions as defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of

the party, may grant such equitable relief as it deems appropriate, including granting an injunction aaginst future violations of this section, or ordering the agency to make available to the public the transcript or electronic recording of any portion of a meeting imporperly closed to the public. Except to the extent provided in subsection (h) of this section, nothing in this section confers jurisdiction on any district court to set aside or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

(h) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section, and afford any such relief as it deems appropriate.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (f), (g), or (h) of this section. Costs may be assessed against an individual member of an agency only in the case where the court finds such agency member has intentionally and repeatedly violated this section, or against the plaintiff where the court finds that the suit was initiated by the plaintiff for frivolous or dilatory purposes. In the case of apportionment of costs against an agency, the costs may be assessed by the court against the United States.

(j) The agencies subject to the requirements of this section shall annually report to Congress regarding their compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 5. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(1) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(2) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to an interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

"(3) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes, a communication in violation of this subsection, shall place on the public record of the proceeding:

"(A) written communications transmitted in violation of this subsection;

"(B) memorandums stating the substance of all oral communications occurring in violation of this subsection; and

"(C) responses to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon receipt of a communication knowingly made by a party, or which was knowingly caused to be made by a party in violation of this subsection; the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation;

"(5) the prohibitions of this subsection shall apply at such time as the agency may designate, but in no case shall they apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of his acquisition of such knowledge.".

(b) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"

(3) by adding at the end thereof the following new paragraph:

"(14' 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.".

SEC. 6. (a) Except as specifically provided by section 4, nothing in section 4 confers any additional rights on any person, or limits the present rights of any such person, to inspect or copy, under section 552 of title 5, United States Code, any documents or other written material within the possession of any agency. In the case of any request made pursuant to section 552 of title 5, United States Code, to copy or inspect the transcripts or electronic recordings described in section 4(e), the provisions of this Act shall govern whether such transcripts or electronic recordings shall be made available in accordance with such request. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in section 4(e). This Act does not authorize any information to be withheld from Congress.

(b) Nothing in section 4 authorizes any agency to withhold from any individual any record including transcripts or electronic recordings required by tihs Act, which is otherwise accessible to that individual under section 552a of title 5, United States Code.

SEC. 7. The provisions of this Act shall become effective one hundred and eighty days after the date on which this Act is enacted, except that the provisions of section 4 requiring the issuance of regulations to implement such section shall become effective upon enactment.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make any necessary technical and clerical corrections in the engrossment of S. 5.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

Mr. CHILES. Mr. President, I call up my amendment amending the title to S. 5 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Amend the titile to read as follows: An act to provide that meeting of Government agencies shall be open to the public and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the title amendment.

The amendment was agreed to.

So the title to S.5 was thus amended.

MILITARY CONSTRUCTION APPROPRIATIONS, 1976

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 428, H.R. 10029.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 10029) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (H.R. 10029) which had been reported from the Committee on Appropriations with amendments.

The PRESIDING OFFICER. The time for debate on this bill, H.R. 10029, is limited to 1 hour to be equally divided and controlled by the majority and minority leaders, or their designees, with 1 hour on any amendment in the first degree and 30 minutes on any amendment in the second degree, debatable motion, appeal, or point of order.

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

Mr. MANSFIELD. I yield.

Mr. STEVENS. Mr. President, I ask unanimous consent that my staff member, Barry Pinnolis be permitted privilege of the floor during consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee counsel, Mr. Rexroad, be allowed the privilege of the floor during consideration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I suggest the absence of a quorum, without the time being taken out of either side.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

Mr. McCLOSKEY changed his vote from "nay" to "yea."

Mr. DON H. CLAUSEN changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DOMINICK V. DANIELS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 13555) just passed.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 13555

Mr. DOMINICK V. DANIELS. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill (H.R. 13555) just passed, the clerk be authorized to make the necessary technical corrections, including corrections of section numbers.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Roddy, one of his secretaries.

REQUEST FOR PERMISSION FOR SUBCOMMITTEE ON MILITARY COMPENSATION OF COMMITTEE ON ARMED SERVICES TO SIT THIS AFTERNOON AND TOMORROW MORNING DURING 5-MINUTE RULE

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Military Compensation of the Committee on Armed Services be permitted to meet during the time the House is proceeding under the 5-minute rule this afternoon, July 28, 1976, and tomorrow morning, July 29, 1976.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, I would like to inquire of the gentleman if this is to mark up a bill.

Mr. NICHOLS. If the gentleman will yield, the purpose is for considering the bill in the subcommittee of the gentleman from New York (Mr. STRATTON), dealing with military doctors. It is not a markup session.

Mr. ROUSSELOT. Further reserving the right to object, can the gentleman tell us if the minority individual is aware of this?

Part of the problem, as the gentleman knows, is that we are going into session at 10 o'clock and we have important legislation. It is difficult for Members to go to three or four subcommittees and still do their job. We just do not have as many Members on our side of the aisle as on the gentleman's side of the aisle.

Mr. NICHOLS. If the gentleman will yield further, we feel that the bill is very much needed. It deals with military doctors. There is very much of a shortage. I hope the gentleman will not object.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I am not arguing that question.

Has the minority been informed?

Mr. NICHOLS. Mr. Speaker, the gentleman from Illinois (Mr. O'BRIEN) is the minority member. He is not on the floor now. He is aware of our request.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I wonder if the gentleman will withdraw his request until the gentleman arrives.

Mr. NICHOLS. If the gentleman will insist.

Mr. ROUSSELOT. Mr. Speaker, I do.

Mr. NICHOLS. Mr. Speaker, I withdraw the unanimous-consent request.

PERMISSION FOR SUBCOMMITTEE ON SCIENCE, RESEARCH AND TECHNOLOGY OF COMMITTEE ON SCIENCE AND TECHNOLOGY TO SIT TOMORROW AFTERNOON WHILE THE HOUSE IS IN SESSION

Mr. MOSHER. Mr. Speaker, I ask unanimous consent that the Subcommittee on Science, Research and Technology of the Committee on Science and Technology be permitted to meet Thursday afternoon, July 29, 1976, while the House is in session.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, does the gentleman plan to mark up legislation?

Mr. MOSHER. If the gentleman will yield, yes.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, can the gentleman tell us what bills?

Mr. MOSHER. If the gentleman will yield, it has to do with earthquake legislation, which is of interest to the gentleman's State of California.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PROPOSAL OF FOUR RESCISSIONS AND FOUR NEW DEFERRALS IN ACCORDANCE WITH IMPOUNDMENT CONTROL ACT OF 1974—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 94-567)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith propose four rescissions totalling $126.4 million in budget authority provided in the Second Supplemental Appropriations Act, 1976. In addition, I am reporting four new deferrals totalling $334 million in budget authority.

Three of the proposed rescissions are for education programs of the Department of Health, Education, and Welfare. The other rescission proposal affects the child nutrition program of the Department of Agriculture. These funds are either not needed to accomplish program objectives or, in the case of $3 million which would fund State school financing programs, would be used inappropriately to fulfill a State responsibility rather than a Federal responsibility.

Approval of these rescission proposals would (1) reduce Federal spending by $126.4 million over the transition quarter, 1977, and 1978, and (2) provide the Congress with an opportunity to demonstrate its willingness to prevent unnecessary Federal spending even if this involves reconsidering earlier funding decisions.

One of the deferrals consists of $4 million in construction funds for the Rogers Memorial Hospital in the District of Columbia. This deferral is reported to give Congress time to consider a request to reprogram the funds. The reprogramming that I will propose would allow all eligible medical facilities construction projects in the country an equal opportunity to compete for the funds. The other three deferrals are reported because there will be delays in the use of available funds.

GERALD R. FORD.

THE WHITE HOUSE, *July 28, 1976.*

PROVIDING FOR CONSIDERATION OF H.R. 11656, GOVERNMENT IN THE SUNSHINE ACT

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1207 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1207

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11656) to provide that meetings of Government agencies shall be open to the public, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as orderd on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or with-

out instructions. After the passage of H.R. 11656, the Committee on Government Operations shall be discharged from the further consideration of the bill S. 5, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the text of the bill H.R. 11656 as passed by the House.

The SPEAKER. The gentleman from Florida (Mr. PEPPER) is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, I yield 30 minutes to the able gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1207 provides for consideration of H.R. 11656, Government in the Sunshine Act, which would require that meetings of Federal regulatory and other agencies be open to the public, that transcripts be made of closed meetings and released, minus deletion of subjects exempt from disclosure under the provisions of the bill, and which would provide judicial review for challenges of improper closing of meetings, among other provisions.

This is an open rule, providing 2 hours of general debate; 1 hour controlled by the chairman and ranking minority member of the Government Operations Committee and 1 hour controlled by the chairman and ranking minority member of the Judiciary Committee. The bill is to be read for amendment under the 5-minute rule.

The rule further provides that upon passage of H.R. 11656, the Committee on Government Operations shall be discharged from further consideration of S. 5. It then shall be in order to strike all after the enacting clause of S. 5 and to insert in lieu thereof the provisions contained in H.R. 11656 as passed by the House.

The legislation requires that most meetings of independent Federal agencies be open to the public. It applies to agencies covered by the Freedom of Information Act, as well as to the Federal Election Commission, Postal Service, and to organizations headed by two or more members, a majority of whom are appointed by the President with Senate confirmation. Ten specific exemptions, which generally parallel those in the Freedom of Information Act, are provided. The exemptions secure a balance against the right to know and competing values such as the national security or foreign policy, individual privacy rights, and economic stability.

Ex parte communications between agency officials and outsiders affected by pending agency business are prohibited. The bill's ex parte provision stems from a 2-year effort to limit secret contacts with officials by lawyers, lobbyists, and others interested in agency proceedings, and it is similar to a draft proposed by the American Bar Association in 1974.

Forty-eight States have enacted some type of open meeting provisions, including my State of Florida. Mr. Speaker, I believe Florida is one of the pioneers in this needed reform. The experience of States has dispelled concerns that open meetings inhibit free discussion or cast a distorted image on agency proceedings. Instead, open meetings have produced better debate, better reasoned decisions, increased public understanding of agency procedures, and less distrust of government.

Mr. Speaker, this legislation was considered 3 years in the Senate prior to its passage in that body last November by a vote of 94 to 0. Since 1973, most House committee meetings have been open to the public, and recently most Senate committees meetings and House-Senate conferences have been opened. The bill extends this Federal policy into independent Federal agencies. The public has a right to full disclosure of Government decisionmaking processes insofar as the extension of sunshine is consistent with the privacy and the protection of other rights provided for in the bill.

Mr. Speaker, I shall support one amendment to this bill to be offered by the gentleman from New York (Mr. HORTON).

Mr. Speaker, I believe this is a meaningful milestone in the protection of our democracy, and I hope that this bill will be enacted with, as I said, the amendment that I hope will be adopted by this House. Mr. Speaker, I therefore urge the adoption of House Resolution 1207 so that we may proceed to the consideration of H.R. 11656.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, I would like to point out something in this bill to the Members of the House which I think should be clarified—and I have heard no mention that this matter will be clarified—as it affects every Member of this House and his constituency.

We do some foolish things around here in the interest of reform and sunshine and true happiness without ever thinking about what the end result might be.

Mr. Speaker, let me give the Members an example. Some time back we passed a piece of legislation—and I am not going to name it—and we found out later that before we could contact an agency in behalf of one of our constituents, we had to have a written authorization.

Remember that? I will venture to say that not one-tenth of the membership of this House knew that that requirement was in that legislation when it passed this body.

Mr. Speaker, when a Member has an emergency situation in his district and a constituent contacts him about that emergency situation, when the Member has to have a written authorization to contact that agency about that emergency, I think that is absolutely wrong.

Mr. Speaker, we never intended to require such a thing, but it is in the law; and we now have to follow it. As a result, a Member cannot serve his constituency in an expeditious manner in all cases.

Mr. Speaker, Members are sent here to serve not only the United States of America but their constituency.

Let me refer to something in this legislation which I pointed out when the matter was before the Committee on Rules, and I have reference to ex parte communications. Each one of us, as Members of Congress, will be affected by this legislation if it passes in its present form. How will we be affected?

Let us turn to page 17, at the top of the page, and I am not going to read the entire section because I do not want to burden you with this, but unless something is done about it, our malfeasance is going to come home to roost real fast if this legislation is enacted as written:

> . . . a communication prohibited by this subsection shall place on the public record of the proceeding:
>
> "(i) all such written communications;
>
> "(ii) memoranda stating the substance of all such oral communications; and
>
> "(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

Et cetera, et cetera.

What are they talking about? You call up an agency of the Government, to make an inquiry, as you will be doing, assuming this legislation goes on the books as written, that communication will be ex parte and will be a part of the public record for the world to see. That call will concern your constituent's business, not the world's.

Now is that what we want? Is that what our constituents want when he or she contacts us about a personal problem they have with an agency of this Government? I do not think so. I repeat, I do not think so. But there is no privilege, no privilege, written into this legislation to cover that situation.

I say to my colleagues I believe such matters should be privileged communications. When a constitutent contacts you about a tax problem, it is his problem with the Government, and vice versa. Should that communication go on the public record and be open for the world to see? I think not. I think not.

But the way this legislation is before us today, and I have heard of no effort being made to change it, it will go on the public record.

My friends, this is our unwanted provision in this legislation and it affects your constituency and mine.

I talked to some of the leadership about this when the matter was before the Committee on Rules and they did not know our activities in behalf of constituents would be covered. So I think it should be corrected. We are all for sunshine, let the sun come in, let these agencies open up their hearings. But when you contact them about a constituent's personal matter, I do not think it ought to go on the public record. Hopefully this House will adopt an amendment during the 5-minute rule which will provide the privilege that the constituent is entitled in these matters.

Mr. PEPPER. Does the gentleman from Ohio have further requests for time?

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I understood the gentleman from Ohio to say that his concern about the bill was that any communications between an agency of the Government and an individual that are on pri-

vate matters would be open to public exposure?

Mr. LATTA. That is a possibility under the language as written.

Mr. GOLDWATER. In talking to the leadership and the committee when this came before the Committee on Rules, did they indicate a concern about this and that they are going to make an effort to change that provision?

Mr. LATTA. Mr. Speaker, because I believe that this is a very, very important matter, one that affects every Member of this House and his constituency, and because the gentleman from California (Mr. GOLDWATER) has asked a very important question, I would ask the gentleman to again repeat his question.

Mr. GOLDWATER. I was surprised, and I was wondering if in questioning the individuals, the chairmen of the committees that wrote this law indicated a concern for this apparent violation of privacy. Then they indicate that they are going to examine this and perhaps offer amendments on the floor; is that correct?

Mr. LATTA. In answer to the gentleman, I have, as I indicated, no knowledge at this very moment that an amendment will be offered to correct the language to which I object. I am hopeful than an amendment will be offered. There has been a very feeble effort made in this direction in this legislation, but it does not reach the point that I raise. It says this section does not constitute authority to withhold information from the Congress, and that does not cover the point of my objection.

We have had two committees studying this. Hopefully one of these committees will come forward during the 5-minute rule with an amendment to protect your right to make an inquiry for a constituent.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentleman for yielding.

Of course, the bill does not apply to personal matters at all but to ex parte communications regarding quasi-judicial proceedings. One would not go to a judge and try to twist his arm in the middle of a lawsuit. It is unethical; it is improper. The bill says that we are talking about persons outside of the agency who are contacting people in a "proceeding." We are talking about something in the nature of an adversary proceeding or a quasi-judicial proceeding. We are talking about contacting a person who would be involved in a decisionmaking process. We are not talking about agency staff or personal matters. We are talking about going to somebody who is in the process of making a decision on a pending case. All we are saying there is, "If you want to do that, fine, just spread it on the record." That is all. This is so that all the other parties will know from where they are getting hit with political influence. That is all we are saying.

Let me add that this is the section which practically codifies existing regulations in almost all of the agencies, and it is also the law which the American Bar Association has advocated for many years. It does not set a new precedent. It does nothing frightening. It does not interfere with the constitutional process, or personal privilege. It does not unduly hamper a Member of Congress from doing what he is supposed to do. If one wants to take a position on an adversary proceeding, just go down and put his letter on record and say what his position is. That is all it says.

Mr. GOLDWATER. What the gentleman is saying is that if I as a Representative intervene on behalf of my constituent, as the gentleman from Ohio (Mr. LATTA) pointed out, in a tax matter between him and the agency, would that communication be spread upon the record?

Mr. FASCELL. No; not unless the agency decides to do it. That situation is not even covered under this bill.

Ms. ABZUG. Mr. Speaker, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentelwoman from New York.

Ms. ABZUG. I thank the gentleman for yielding.

I think there is a certain amount of confusion injected here. The situation that the gentleman from California described is not involved here. What we are talking about in this section of the law concerning ex parte communications involves adjudicatory proceedings and rulemaking proceedings, not the normal inquiry that the office of a Congressman would make with respect to information.

Mr. LATTA. Mr. Speaker, if the gentleman will yield, I just wish I could be as sure as the gentleman from New York or the gentleman from Florida. I have read this bill and I am not convinced. We have to look at the language of the bill and read what it says. The language says:

> . . . "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.

I say if the sponsors of this legislation fully intended that it exempt Members of Congress in their proper communications with the agencies of Government, then let them prepare an amendment, have it submitted and agreed to by this House, to protect the right of the Members to contact the agencies and departments of the Government in the interests of their constituents without having it spread on the public record.

Mr. PEPPER. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BROWN of Michigan. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 391, nays 0, not voting 41, as follows:

[Roll No. 558]

YEAS—391

Abdnor
Abzug
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Bevill
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, Phillip
Butler
Byron
Carr
Carter
Cederberg
Chappell
Chisholm
Clancy
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Ill.
Collins, Tex.
Conable
Conlan
Conte
Conyers
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dellums
Derrick
Derwinski
Devine
Dickinson
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Eshleman
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fraser
Frenzel
Frey
Fuqua
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Green
Gude
Guyer
Hagedorn
Haley
Hall, Ill.
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Hannaford
Harkin
Harrington
Harris
Harsha
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heckler, Mass.
Hefner
Heinz
Hicks
Hightower
Hillis
Holland
Holt
Holtzman
Horton
Howard
Howe
Hubbard
Hughes
Hungate
Hutchinson
Hyde
Ichord
Jacobs
Jarman
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kasten
Kastenmeier
Kazen
Kemp
Ketchum
Keys
Kindness
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Latta
Leggett
Lehman
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madden
Madigan
Maguire
Mahon
Mann
Martin
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
Ottinger
Passman
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Paul
Pepper
Perkins

Pettis	Satterfield	Thompson
Pickle	Scheuer	Thone
Pike	Schneebeli	Thornton
Poage	Schroeder	Traxler
Pressler	Schulze	Treen
Preyer	Sebelius	Tsongas
Price	Seiberling	Udall
Pritchard	Sharp	Ullman
Quie	Shipley	Van Deerlin
Quillen	Shriver	Vander Jagt
Railsback	Shuster	Vander Veen
Randall	Sikes	Vanik
Rangel	Simon	Vigorito
Reuss	Slack	Waggonner
Richmond	Smith, Iowa	Walsh
Rinaldo	Smith, Nebr.	Waxman
Risenhoover	Snyder	Weaver
Roberts	Solarz	Whalen
Robinson	Spellman	White
Rodino	Spence	Whitehurst
Rogers	Staggers	Whitten
Roncalio	Stanton, J. William	Wilson, Bob
Rooney	Stanton, James V.	Wilson, C. H.
Rose	Stark	Winn
Rosenthal	Steed	Wirth
Roush	Steelman	Wolff
Rousselot	Steiger, Wis.	Wright
Roybal	Stokes	Wydler
Runnels	Studds	Wylie
Ruppe	Symms	Yates
Russo	Talcott	Yatron
Ryan	Taylor, Mo.	Young, Alaska
St Germain	Taylor, N.C.	Young, Fla.
Santini	Teague	Young, Tex.
Sarasin		Zablocki
Sarbanes		Zeferetti

NAYS—0

NOT VOTING—41

Biaggi	Jones, Tenn.	Rostenkowski
Burton, John	Kelly	Sisk
Carney	Landrum	Skubitz
Clay	Litton	Steiger, Ariz.
Dent	Lundine	Stephens
Esch	Mathis	Stratton
Fenwick	O'Hara	Stuckey
Fountain	O'Neill	Sullivan
Gaydos	Peyser	Symington
Hansen	Rees	Wampler
Hébert	Regula	Wiggins
Helstoski	Rhodes	Wilson, Tex.
Henderson	Riegle	Young, Ga.
Hinshaw	Roe	

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Landrum.
Mr. Dent with Mr. Stuckey.
Mr. Lundine with Mr. Clay.
Mr. Rostenkowski with Mr. O'Hara.
Mr. Sisk with Mr. Riegle.
Mr. Fountain with Mr. Esch.
Mr. Stratton with Mrs. Fenwick.
Mr. Helstoski with Mr. Hansen.
Mr. Jones of Tennessee with Mr. Hébert.
Mr. Symington with Mr. Kelly.
Mr. Biaggi with Mr. Rees.
Mr. John Burton with Mr. Henderson.
Mr. Carney with Mr. Regula.
Mr. Gaydos with Mr. Mathis.
Mr. Roe with Mr. Peyser.
Mr. Stephens with Mr. Steiger of Arizona.
Mrs. Sullivan with Mr. Skubitz.
Mr. Young of Georgia with Mr. Wampler.
Mr. Charles Wilson of Texas with Mr. Wiggins.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON MILITARY COMPENSATION OF COMMITTEE ON ARMED SERVICES TO MEET THIS AFTERNOON AND TOMORROW MORNING, JULY 29, 1976, DURING 5-MINUTE RULE

Mr. O'BRIEN. Mr. Speaker, I ask unanimous consent that the Subcommittee on Military Compensation of the Committee on Armed Services be permitted to meet during the time the House is proceeding under the 5-minute rule this afternoon, July 28, and tomorrow morning, July 29, 1976.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

RESIGNATION AS MANAGER AND APPOINTMENT OF MANAGER ON H.R. 8410, PACKERS AND STOCKYARDS ACT OF 1921 AMENDMENTS

Mr. WEAVER. Mr. Speaker, I ask unanimous consent to be excused from further service as manager on the part of the House on the committee of conference on the bill (H.R. 8410), Packers and Stockyards Act of 1921 Amendments.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

The SPEAKER. The Chair appoints as a manager of the committee of conference on H.R. 8410, Packers and Stockyards Act of 1921 Amendments, the gentleman from Oklahoma (Mr. ENGLISH), to fill the vacancy just created.

The Clerk will notify the Senate of the change in managers.

GOVERNMENT IN THE SUNSHINE ACT

Ms. ABZUG. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11656) to provide that meetings of Government agencies shall be open to the public, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentlewoman from New York (Ms. ABZUG).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11656, with Mrs. BURKE of California in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Pursuant to the rule, general debate will continue not to exceed 2 hours, 1 hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, and 1 hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

Under the rule, the gentlewoman from New York (Ms. ABZUG), the gentleman from New York (Mr. HORTON), the gentleman from Alabama (Mr. FLOWERS), and the gentleman from California (Mr. MOORHEAD), will each be recognized for 30 minutes.

The Chair recognizes the gentlewoman from New York (Ms. ABZUG).

Ms. ABZUG. Madam Chairman, I yield myself such time as I may consume.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, the general purpose of H.R. 11656 is to provide that meetings of multimember Federal agencies shall be open to the public, with the exception of discussions of several specific areas. The bill also prohibits ex parte communications to and from agency decisionmaking personnel with respect to the merits of pending proceedings.

This bill is sponsored by 26 members of the Committee on Government Operations and was voted out of the committee by a vote of 32 to 7.

The Judiciary Committee, which also considered this bill, ordered it reported by voice vote; 86 Members of the House are sponsors of either this bill or a very similar version of it, and S. 5, which is also quite like H.R. 11656, passed the other body by a vote of 94 to 0 last November 6. In its present form, this measure represents a great deal of hard work on the part of the members and staff of both committees and an effort to meet all reasonable objections raised by agencies in the executive branch.

Absent special circumstances, there is no reason why the public should not have the right to observe the agency decisionmaking process firsthand. In the words of FCC Commissioner Glen O. Robinson, who testified before the Government Information and Individual Rights Subcommittee on this legislation:

> Chief among the benefits (of the legislation) is increasing public understanding of administrative decisionmaking processes. * * * I do not know whether that understanding will lead to greater confidence in administrative decisionmaking. * * * Quite possibly, it could lead to less confidence. But either of these outcomes * * * can be beneficial: If, in the light of sunshine a Government agency shows itself to be deserving of trust, then by all means it should have it; conversely, if that same sunlight reveals an agency to be inept, inefficient, and not in pursuit of the public interest, then obviously that agency does not deserve, and should not have, public trust. (Hearings on H.R. 10315 and H.R. 9868, p. 98.)

The legislation requires that when an agency closes a meeting under one of the exemptions in the bill, it must make a recording or verbatim transcript of the closed portion and release to the public any part of the recording or transcript that does not contain exempt information. A second purpose of this requirement is to assure that a citizen has a meaningful remedy when a meeting has been illegally closed, namely, the release by the court of the transcript of the illegally closed portion.

The purpose of the provisions of the bill prohibiting ex parte communications is to insure that agency decisions required to be made on a public record are not influenced by private, off-the-record communications from those personally interested in the outcome.

SUMMARY OF MAJOR PROVISIONS OF THE LEGISLATION

I. OPEN MEETINGS

The open meeting provisions would apply to approximately 50 Federal agencies that are presently covered by the Freedom of Information Act and the Privacy Act, and are headed by a body of two or more members, a majority of

whom are chosen by the President with the advice and consent of the Senate.

Meetings covered under the bill include not only sessions at which formal action is taken, but also those at which a quorum of members assembles to discuss the conduct or disposition of agency business. A chance encounter would not be a meeting within the meaning of the bill so long as no agency business is conducted or disposed of.

The bill requires that every meeting be open to the public unless it falls within one of the bill's 10 specific exemptions. In case of doubt as to whether a portion of a meeting is exempt, the presumption is to be in favor of openness. Even if a matter falls within an exemption, the discussion must be open where the public interest so requires.

No meeting may be closed unless a majority of the membership votes to take such action. Such a vote need not itself occur during a meeting and could properly be taken by circulating a written ballot or tally sheet in advance.

A copy of each vote on closing a meeting must be made available to the public whether or not the meeting or portion is closed. This will inform the public as to the full voting record of each agency member on openness questions. When a vote on the issue of closing fulfills the requirements for closing, an explanation of the action and a list of persons expected to attend the meeting must also be made public.

Agencies are required to publicly announce, at least 1 week prior to a meeting, its date, location, and other relevant information.

The keeping of a complete, verbatim transcript or electronic recording of each portion of a meeting closed to the public would be required—except for discussions dealing with adjudications or agency participation in civil actions—and any portion of each transcript or recording whose release would not have the effect set forth in one or more of the exemptions would have to be made available to the public. Under the bill as approved by the Government Operations Committee, deletions would be replaced by a written explanation of the reason and the statutory authority for each. Written minutes of open meetings will also be required to be kept and made publicly available.

Any person could challenge in court the closing of a meeting or any other violation of the openness requirements of the bill, and the burden of sustaining the closing or other action in question would be upon the agency. The court could enjoin future violations of the act or release the transcript of an improperly closed meeting.

II. EX PARTE COMMUNICATIONS

Section 4 of the bill would enact a general prohibition on ex parte communications between agency decisionmaking personnel, including commissioners and administrative law judges, and outside persons having an interest in the outcome of a pending proceeding. These provisions would apply to executive agencies without regard to whether they are headed by a collegial body or a single individual.

The communications prohibited by the ex parte section would include only those relative to the merits of the proceeding. Thus, an inquiry of an agency clerk as to the procedural status of an adjudication or rulemaking matter would not be unlawful under the bill. A violation of the prohibition could result in sanctions up to and including loss of the proceeding on the merits (as under existing case law). See, for example, *Jacksonville Broadcasting Corp.* v. *FCC*, 348 F. 2d 75 (D.C. Cir.) cert. denied, 382 U.S. 893 (1965).

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2 of the bill entitle it the "Government in the Sunshine" Act and set forth a policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government.

Section 3 of the bill, which contains the open meeting provisions, would enact a new section 552b of title 5 of the United States Code. The new section would be composed of subsections (a) through (o), which provide as follows:

Subsection (a) contains definitions. Subsection (a)(1) defines "agency" to include any agency, as defined in the Freedom of Information Act, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President and confirmed by the Senate, as well as any subdivision thereof authorized to act on behalf of the agency.

Subsection (a)(2) defines a "meeting" as an assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency. A "meeting" does not include meetings held solely to take action under this section.

Subsection (a)(3) defines "member" as an individual who belongs to a collegial body heading an agency. If a majority of the members of an agency or subdivision are appointed by the President and confirmed by the Senate, then any member of the body in question is covered by the bill. For example, the Federal Open Market Committee, which sets our monetary policy, has 12 members, seven of whom are appointed by the President and confirmed by the Senate and five of whom are not. Since the FOMC is an "agency" under the legislation, all 12 individuals are "members."

Subsection (b)(1) provides that agency members shall not jointly conduct or dispose of agency business without complying with the provisions of this legislation.

Subsection (b)(2) provides that every portion of every meeting of an agency shall be open to public observation, except as provided in subsection (c). The agency must provide adequate seating space, visibility, and acoustics. The public is intended to be in the same room as the agency members.

Subsection (c) permits an agency to close a meeting and to withhold the transcript thereof where the disclosure of the information to be discussed can be reasonably expected to come within 1 of 10 exemptions. These exemptions, which roughly parallel those in the Freedom of Information Act, include—

First, material concerning the national defense.

Second, information related solely to the internal personnel rules and practices of an agency.

Third, information required or permitted to be withheld by any other statute containing particular criteria. I have been asked whether section 222(f) of the Immigration Act, 8 U.S.C. 1202(f), comes within this provision. I have reviewed that statute and I believe that it does qualify. The same is true as to 13 U.S.C. section 9, a part of the Census Title.

Fourth, information that would disclose trade secrets and commercial or financial material obtained from a person and privileged or confidential, as interpreted in cases such as *National Parks & Conservation Assn.* v. *Morton*, 498 F. 2d 765, 770 (D.C. Cir. 1974).

Fifth, a discussion that would involve accusing any person of a crime, or formally censuring any person.

Sixth, information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Seventh, investigatory information compiled for law enforcement purposes, if it falls into one of six specific categories listed in this paragraph.

Eighth, information contained in or relating to bank condition reports.

Ninth, information the premature disclosure of which would be likely to lead to significant financial speculation, significantly endanger the stability of any financial institution, or significantly frustrate implementation of a proposed agency action. The last part of this exemption will not apply where the content or nature of the proposed agency action has been disclosed to the public by the agency, or where the agency will be required to make such disclosure prior to taking final action on the proposal.

Tenth, discussions that specifically concern the agency's issuance of a subpena, or the agency's participation in a adjudication by the agency.

Subsection (d) provides methods and procedures for closing a meeting. A majority of the agency membership must vote to close and all votes on the issue of closing must be made public. If a meeting is closed, an explanation of the closing and a list of those expected to attend must be made public. A special short-cut procedure is provided in subsection (d)(4) for agencies who have a large volume of certain types of meetings and expect to close most or all of them.

Subsection (e) requires a week's notice of a meeting, unless agency business requires a lesser time period.

Subsection (f) requires a transcript or electronic recording to be made of a closed meeting, unless closed under exemption (10), relating to civil and adjudicatory proceedings. The transcript or recording shall promptly be made available to the public, except for such portions as the agency determines contain information falling within 1 of the 10 exemptions. The bill as reported by the Government Operations Committee

requires that in place of each deletion, the agency must explain the reason and the statutory authority therefor. The Judiciary Committee has recommended that this provision be deleted, but we are opposed to their amendment and will request a separate vote on it when the bill is read for amendment under the 5-minute rule. For meetings that are open to the public—and the idea of the bill is that most agency meetings will be open—only minutes of the meeting need be kept.

Subsection (g) requires agencies to promulgate regulations implementing the legislation.

Subsection (h) provides for judicial review of alleged violations of the open meeting provisions. A plaintiff may sue where the meeting is held, where the agency has its headquarters, or in Washington, D.C. If the court finds that a meeting has been closed unlawfully, it may enjoin future violations or order the release of such portions of the transcript as do not contain exempt information. A court acting solely under this section may not invalidate the substantive agency action taken at the meeting in question, even if it was unlawfully closed. In a judicial proceeding for review of a substantive agency action, the reviewing court may consider, under 5 U.S.C. 706, whether the provisions of this bill have been complied with.

Subsection (i) authorizes an award of attorney fees to a party suing under this section who substantially prevails. Costs may be assessed against a plaintiff only where he has initiated the action primarily for frivolous and dilatory purposes.

Subsection (j) requires annual agency reports to Congress on compliance with this section.

Subsection (k) provides that this act does not affect rights under the Freedom of Information Act, except that the transcripts made under this act are to be governed by this act.

Subsection (l) provides that this section does not constitute authority to withhold information from Congress and does not authorize the closing of any meeting otherwise required to be open.

Subsection (m) provides that nothing herein allows an agency to withhold from an individual a record otherwise available to him under the Privacy Act.

Subsection (n) provides that if any meeting is subject to both this act and the Federal Advisory Committee Act, the provisions of this act shall govern.

EX PARTE COMMUNICATIONS

Section 4 contains the provisions of the bill regarding ex parte communications. It prohibits anyone having an interest in a proceeding to make an ex parte communication to an agency decisionmaking official relative to the merits of a proceeding once the proceeding has been noticed for a hearing. Communications made in violation of this prohibition are to be placed upon the public record.

For a violation of the prohibition, an agency would have discretion to impose sanctions. In an extraordinary instance, these could even include loss of the proceeding on the merits by the violator, but where the violator can demonstrate that the violation was inadvertent, the imposition of so drastic a sanction would be arbitrary and not proper.

GENERAL PROVISIONS

Section 5 makes two amendments of a conforming nature, and section 6 provides that the bill shall take effect 180 days after its enactment and that implementing regulations shall be promulgated prior to the effective date.

Mr. Chairman, I include the following letters in support of the pending legislation for the further information of the Members:

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., July 28, 1976.

HON. BELLA S. ABZUG,
HON. DANTE B. FASCELL,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVES ABZUG AND FASCELL: Consumer Federation of America, the nation's largest consumer organization representing more than 30 million consumers, enthusiastically supports the Government in the Sunshine Act (HR 11656).

It is no secret that public confidence in government is at an all time low. A major source of citizen cynicism is the growing conviction that government decisions are often made behind closed doors with access and input being too frequently the exclusive privilege of well-financed special interest groups. The public recognizes the transparence of the standard government position that it can only conduct business effectively if its proceedings are closed to the public.

The legislation which will be considered today is a sensible and drastically needed step in the direction of providing citizens with the opportunity to better scrutinize the vast number of meetings conducted daily at multi-member agencies. It also recognizes the importance of establishing procedures for ex-parte communications.

We are actively opposed to a series of amendments whose architect is Arthur Burns and whose sponsor will undoubtedy be Rep. Frank Horton.

1. DEFINITION OF MEETING

The first amendment would restructure the definition of meeting in such a way that if the announced purpose of the agency meeting was not to "conduct business" the meeting would not be classified as an "open meeting" which the public could automatically attend. Clearly this amendment could and would be used by agency officials intent on thwarting the goal of this legislation. How easy it will be to camouflage a business meeting behind some non-business sounding announced topic. With no objective standard to determine what is a meeting "to conduct business" the ability for judicial review of agency abuse will, practically speaking, be non-existent.

MINUTES VS. VERBATIM TRANSCRIPTS

The second amendment would permit the taking of minutes as opposed to the requirement of a verbatim transcript at "closed" meetings. Minutes taken by the most competent of people are no substitute for the comprehensive verbatim transcript. For example, a particular monologue, dialogue or phraseology may at the time of the actual meeting seem inconsequential and consequently either be omitted from the minutes or paraphrased. Yet later that very issue may be extremely important to affected persons. The participants and the public should never have to rely on minutes of the proceedings. If the issue is serious enough to warrant being discussed at a meeting, any discussion at that meeting should be transcribed. In closed meetings even more than open meetings there must be a check against inaccurate or incomplete minutes.

TRANSCRIPT EXEMPTION

The third amendment would exempt SEC and the Federal Reserve Board from the transcript requirement.

SEC/BANKING AGENCY EXEMPTION

The fourth amendment would be generic description have the practical effect of excluding the SEC and banking agencies.

There is no logical or equitable reason for either amendment and the amendments are particularly offensive because they are new examples of the FED'S consistent attempts to arrogantly transcend accountability.

Finally, we would like to emphasize our active support of an amendment which we understand will be introduced by you, Rep. Fascell. That amendment would require that at anytime there is a "deletion" from the transcript, there must be submitted a written statutory citation to that section of the law which would allow such a deletion. This amendment will ensure an additional measure of accountability into the bill.

Sincerely,

CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

JULY 27, 1976.

DEAR REPRESENTATIVE: This week the House will vote on the Government in the Sunshine legislation, H.R. 11656, which has been reported by both the Government Operations and Judiciary Committees following thorough hearings and committee debate. We urge you to support this legislation which provides for open meetings in multi-member executive branch agencies and sets uniform standards for ex parte contacts. We also urge you to oppose the four Arthur Burns amendments to be offered by Representative Horton and to support the Fascell amendment.

In testimony more than ten years ago, prior to enactment of the Freedom of Information Act, the Federal Reserve testified that an information act would impair the Board's effectiveness both as an instrument of national economic policy and as a regulatory body. In the 94th Congress Arthur Burns made similar predictions of doom about the Sunshine bill, although he admitted in public testimony that the Federal Reserve Board has had no problem under the Freedom of Information Act, a statute of similar purpose and design. In spite of this admission, Burns has lobbied strenuously to remove the Board from the bill. He failed in the Senate and he failed in both House Committees. He should not succeed on the House floor.

The following four weakening amendments which will be proposed on the floor are overlapping because they are all designed to accomplish the same goal: complete or partial exemption of the banking agencies.

1. *Definition of Meetings:* The bill as reported defines a meeting which must be open in terms of what actually occurs—whether agency business is conducted or disposed of. This is an objective standard about which there can be little dispute—either business was conducted or it was not. The agenda for the meeting will state what is intended to be accomplished, but any determination of whether the provisions of the bill apply will be governed by what actually took place. If during a meeting a subject comes up which is covered by one of the 10 exemptions in the bill, the agency can move into executive session, a routine procedure.

The Burns amendment, in contrast, would allow a determination of whether the bill applied on the basis of the intended pur-

pose of the meeting. Thus, if the intended purpose of the meeting is not to conduct business, but it gets conducted anyway, the open meeting provisions would not apply. Passage of this amendment would encourage agencies desiring to avoid open meetings to initiate "gatherings" for one purpose and use them for another. The public has had enough deceptions in government without this subterfuge.

If members are seriously worried that the bill might be interpreted as applying to informal conversations between commission members at social events or on the golf course, they can easily have a colloquy to clarify the legislative history.

2. *Verbatim Transcripts or Recordings:* The bill as reported requires a verbatim recording or transcript be made of any meeting which is closed under the exemptions in the bill, and the subsequent public release of any portions which it turns out are not subject to the exemptions.

The Burns amendment would delete any requirement for recordings or transcripts and substitute instead a requirement for minutes. Anyone who has ever attended a board of directors meeting knows what minutes are. They bear little resemblance to the content of the meeting and contain only what the attendees want to reveal.

In addition to the obvious deficiencies of summary minutes, there are strong reasons for taking transcripts or recordings at closed meetings. Any discussions covering non-exempt material which the public is entitled to know can subsequently be released verbatim. If the closing of the meeting is challenged, the court *in camera* can tell exactly whether the meeting should or should not have been closed and make a definitive ruling to guide future actions. And, disclosure of the transcript is the only remedy in the bill for improper closing of a meeting. Many state laws have far harsher remedies. Twenty-four of the 49 state sunshine laws have criminal penalties for improper closing of meetings, and 19 can render the actions taken at an improperly closed meeting void or voidable. H.R. 11656 has no similar provisions. The only remedy is release of the transcript or recording. Deletion of this provision will be an incentive for avoidance of the law. And there is no evidence that an agency which has transcripts or recordings of closed meetings will allow their improper release any more than they now allow improper release of documents (such improper release also subjects a person to criminal penalties under Title 18 of the U.S. Code).

3. *Transcripts or Recordings for the Fed and SEC:* This amendment is a variation on number 2. It would prohibit transcripts or recordings at meetings closed because of exemption 9(A), that is an agency which regulates currencies, securities, commodities, or financial institutions and the information would be likely to lead to significant financial speculation or significantly endanger the stability of any financial institution. The deficiencies in the amendment are the same as for number 2. It just applies to fewer agencies.

4. *Exemption of Banking Agencies:* The final Burns amendment would exempt from the bill any agency responsible for national monetary policy or regulation of financial institutions except for certain programs such as truth-in-lending, fair credit reporting, fair housing, equal credit, and home mortgage disclosure. There is no rational basis for exemption of these agencies which have for so long tried to hide from public view while at the same time impacting the lives of citizens.

Finally, one important corrective amendment which we urge you to support will be offered by Representative Dante Fascell to require a reason and statutory authority for deletions from the transcripts or recordings of closed meetings. This is an important regulatory reform amendment to permit accurate oversight of agency decisions. Without such minimal information, citizens will have no knowledge of why the meeting was closed and will be put in the position of challenging the agency willy-nilly or not at all. The Freedom of Information Act requires an agency to give a citizen an explicit reason and citation for denial of information. This has not only not been a burden; it has streamlined the operation of the Act. There has been no showing it would not similarly apply here, and without such a requirement in the Sunshine Act there will be no ability by the public or the Congress to oversee the discretionary actions of the federal agencies.

Sincerely,

JOAN CLAYBROOK.

Mr. MARTIN. Madam Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from North Carolina.

(Mr. MARTIN asked and was given permission to revise and extend his remarks.)

Mr. MARTIN. Madam Chairman, let me thank the gentlelady from New York, the distinguished chairman of the subcommittee, for yielding to me.

In order to clarify subsection 3(c) of this bill, H.R. 11656, in this subsection are set forth some 10 standards that would qualify an agency to close its meeting to the public and not disclose its deliberations.

When I served as county commissioner in Mecklenburg, N.C., we adopted a similar policy requiring open meetings—subject to certain reasonable exceptions. One exception which we found to be essential to our duties was the consideration of prospective real estate transactions. We knew that if we publicly discussed proposals to purchase or lease land or facilities and disclosed any details about it, the price of that land or facility would rise. That would especially be true if the owner/seller could see how much we might be willing to pay, or that our alternative opportunities were limited or that we were especially anxious to buy. So we closed our meetings until we could get an option on one or more properties.

In examining subparagraph 3(c)(9)(B) of this bill, I find language which may or may not allow this principle. Subparagraph (9b) protects "information the premature disclosure of which would * * * significantly frustrate implementation of a proposed agency action." I would ask my colleague whether it is intended to include under this exception the preliminary discussion of proposed real estate transactions.

Ms. ABZUG. To answer the gentleman from North Carolina (Mr. MARTIN), Madam Chairman, I think there is no question that subsection (9)(B), which reads: "(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action . . . ," would cover very well the circumstance which the gentleman from North Carolina (Mr. MARTIN) describes.

Mr. MARTIN. Madam Chairman, I thank the gentlewoman from New York for that answer, and I appreciate the gentlewoman's yielding.

Mr. HORTON. Madam Chairman, I yield myself such time as I may consume.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Madam Chairman, I subscribe wholeheartedly to the objectives of this legislation. The public's faith in the integrity of Government rests on public understanding of the reasons for governmental decisions, and on the accountability of Government officials for those decisions which set legislative or administrative policies which impact on the Nation as a whole. However, as recognized in the declaration of policy of H.R. 11656, the public is not necessarily served by complete and unfettered disclosure of all Government decisionmaking processes. The words "fullest practicable information" as used in the bill indicate the need for certain sensible limitations.

My principal concern is that the Congress which has enacted the two basic planks for Federal information policies, the Freedom of Information Act and the Privacy Act, should adopt a sunshine bill which is consistent with the principles laid down in the two landmark bills we have already enacted. The bill before you does not fully meet this standard since it erodes the clarity and firmness of the FOI Act exemptions, and threatens to erode the privacy protections we have erected for those involved in adjudications before collegial agencies.

I believe that a number of provisions of H.R. 11656 are inconsistent with the declaration of policy contained in the bill itself, and that these provisions would permit or mandate disclosures which would injure the rights of individuals and injure the ability of the Government to carry out its responsibilities.

I addressed my concerns with several specific provisions of H.R. 11656 in the Committee on Government Operations, and in a statement filed with the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary.

At that time, I took issue with the following features of H.R. 11656: First, the verbatim transcripts requirement for closed meetings, second, the definition of "agency," third, the definition of "meeting," fourth, the identification of persons expected to attend a closed meeting, fifth, the prescribed venue for actions brought under this legislation, sixth, the personal liability of individual agency officials, and seventh, the unfettered disclosure of all ex parte communications.

Since then certain improvements have been made by the Judiciary Committee, but serious problems still exist. But I feel it is possible to amend the bill in a way that would let every bit as much sunshine behind the doors of Government agency deliberations and provide a brand of sunshine which is less clouded by procedural redtape and confusion than that created by H.R. 11656.

If the Judiciary Committee amendments are adopted my remaining differences with the bill concern primarily the verbatim transcript requirement and the definition of meeting and at an appropriate time I shall offer an amendment to each of these provisions.

The verbatim transcript requirement

of H.R. 11656 as reported by the Government Operations Committee could effectively destroy the provisions of the bill which permit certain meetings to be closed. While the provisions of the bill enable an agency to delete, by recorded vote at a subsequent meeting, sensitive portions of a transcript, they also require the agency to furnish the public what, in effect, are summaries of the deleted portions. In the case of agencies involved in the regulation of financial institutions, for example, harmful inferences drawn from the deletions could result in market speculation or damage to the stability of our financial markets and institutions.

The possibility of later disclosure of a verbatim transcript will inhibit free discussion about sensitive matters and thus impair the decisionmaking process in instances where candor is essential.

Moreover, the effect of the transcript requirement of the bill when coupled with relevant procedural requirements would lead to a situation bordering on the ridiculous.

The bill provides that votes to close meetings must be cast in person, no proxies being permitted. Thus a meeting must be held to vote on closing a subsequent meeting or meetings, and another meeting must be held to vote on any change in the time, place, or subject matter of a meeting already announced.

When these procedural requirements are coupled with the verbatim transcript or electronic recording requirements, the prospect is one of mind-boggling infinity. Thus, when a meeting is properly closed, the complete transcript or electronic recording of the proceedings must be made available to the public except for such portions determined by a recorded vote to fall within the exemptive provisions. In order to avoid the disclosure of such portions of the transcript, the meeting called to discuss, consider and vote on the proposed deletions must also be closed pursuant to the procedural requirements cited above. Since this meeting would be closed to consider information coming within the exemptive provisions of the bill, the complete transcript or electronic recording of such meeting must also be made available to the public except for those portions determined by a recorded vote to fall within the exemptive provisions. Again, in order to avoid the disclosure of such portions of the transcript of the second closed meeting, a third meeting called to consider and vote on the proposed deletions stemming from the second meeting must be closed, and the transcript of that meeting must be examined at a fourth closed meeting and so on and on ad infinitum. Obviously, some rule of reason must prevail in the implementation of such a provision, but the letter of the law, if observed, would be paralytic in its effect.

The Judiciary Committee amendments eliminate the requirement for agency members to vote upon deletions from transcripts and the requirement that agencies provide explanations of the reasons for deletions and the exemption relied upon. However, harmful inferences can still be drawn from the deletions and the possibility of later disclosure will inhibit full exchange of views on sensitive issues.

I do not subscribe to the position that the transcript requirement is essential to the enforceability of the act and I feel that a reasonable compromise can be worked out in this area along the lines of an amendment that I plan to introduce at an appropriate time. The amendment would substitute minutes for verbatim transcripts or electronic recordings. The discovery procedures available to U.S. district courts do not depend upon the availability of verbatim transcripts or electronic recordings of agency meetings. While the concepts embodied in H.R. 11656 stem from "sunshine" or "open meeting" statutes of the States, none of the 49 State statutes, so far as I can determine, has a verbatim transcript requirement for either open or closed meetings.

Meetings covered by the bill should be those gatherings for the purpose of conducting official agency business of at least the number of individual agency members required to take final action on behalf of the agency. The meeting definition in both versions of H.R. 11656 would apply even to casual or social encounters which were not gatherings for the purpose of acting in behalf of the agency. The Judiciary Committee version is the more burdensome and refers to any "assembly or simultaneous communication." Accordingly, I shall offer an amendment to narrow the definition to cover meetings for the purpose of conducting agency business.

I feel that venue for actions brought under this legislation should be limited in accordance with language in the Judiciary Committee amendments, that is to the district in which the agency in question has its headquarters or where the meeting in question occurred or in the District Court for the District of Columbia. The bill as reported by the Committee on Government Operations permits such actions to be brought also where the plaintiff resides or has his principal place of business. This could lead to duplicative lawsuits spread across the country covering the same agency meeting or meetings

I oppose the provisions of H.R. 11656 as reported by Government Operations imposing personal liability on individual agency members for attorney's fees and court costs. Th assessment of attorney fees and other litigation costs personally against individual members of an agency can only lead to a further diminution of the rewards of public service. This provision would not only discourage qualified persons from accepting agency appointments, but would inhibit performance of official duties by those in office. The Judiciary Committee amendment prudently deletes this requirement.

It is not possible to estimate the costs of complying with the provisions of H.R. 11656. Certainly the time of a majority of the entire membership of an agency spent in the repeated voting sessions attendant upon closed meetings; the time spent by lawyers and other staff members examining documents; litigation costs arising from actions created by the bill; the administrative burden of preparing a verbatim transcript of each closed meeting, of deleting exempt portions and of providing a copy of the remainder to the public will be significant.

Let me not be misunderstood. My amendments are not intended to weaken the disclosure requirements of the bill but rather to improve it by achieving a balance between the disclosure requirements and the need for government to operate effectively. Neither complete confidentiality nor complete disclosure is desirable and we need to guard against the temptation to overcompensate for past secrecy in today's morbid climate of distrust and suspicion.

Mr. FLOWERS. Madam Chairman, I yield myself such time as I may consume.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, I shall be very brief here. Our committee, the Committee on the Judiciary, and the subcommittee which I chair, the Subcommittee on Administrative Law and Governmental Relations, was referred this bill on a sequential basis.

The gentleman from Texas, the distinguished chairman of the Committee on Government Operations, and I, as well as other Members have been somewhat concerned in the last year and a half over what we have gotten ourselves into with dual reference and sequential reference. I am afraid that unless we straighten out our proceedings in this regard before the organization of the next Congress, we are going to find a whole lot of redundant work being done in the 95th Congress like it has been done in the 94th Congress. I hope that someone with more wisdom than I can figure out the solution while maintaining the jurisdictional integrity of the various committees. But I think were it not for the fact that the gentleman from Texas is in the peculiar situation of being the ranking Democrat on the Committee on the Judiciary and the chairman of the distinguished Committee on Government Operations as well, thereby having a position of leadership on both committees having jurisdiction not only of this legislation but of some previous legislation, we could have had some problems in the handling of the bill. Of course, I always welcome the opportunity of working with my distinguished friend from Texas, but we both agree that there is too much ground to be plowed for us to be going over each other's work.

Mr. BROOKS. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Texas.

Mr. BROOKS. I thank the gentleman for yielding.

I want to commend the gentleman from Alabama for doing a splendid job on the Committee on the Judiciary in handling this legislation, and I want to say that I share with him a feeling that this is a duplicating effort on the part of Congress.

Mr. BROOKS. We refer a bill to the "A Committee," it works up a bill, the subcommittee has hearings, the legislation is reported by the full committee,

and then the bill goes to the Rules Committee to come to the House, and then we have to make up our mind here in Congress to vote for it or not. It is a duplication of effort; confusing bothersome, troublesome, generally a pain, inefficient, and often ineffective when we have to send legislation to another committee and start over through the whole series.

I would say I hope when this new Congress starts we can change this sequential reference because the time has come when we have bills referred to four or five committees. If we want to get anything done in Congress that is not the way to do it. I want to say I share the feelings of my friend, the gentleman from Alabama (Mr. FLOWERS) on this particular subject.

Mr. FLOWERS. We have now before our subcommittee a bill that is referred to four committees for the purposes of those matters under the jurisdiction of the several committees. As the gentleman knows this generally means that when one has a bite at the apple he just takes a look at the apple and takes the bite from the place where it looks best.

We are not always going to be on the receiving end of this matter, because the last time we had an issue between two committees it was our committee that had primary jurisdiction and the Government Operations Committee had the second bite, so this is just an evening out process and in working with the leadership on both sides we hope to circumvent this problem of redundancy in the future.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, would the gentleman explain to the House and to the committee what he intends to do with regard to the action taken by the Judiciary Committee? What is his intention?

Mr. FLOWERS. If the gentleman will allow me to proceed, I will speak very briefly to the merits and what I intend to do here this afternoon.

We had sequential reference in our committee and we then went over the entire bill with a view to making whatever amendments we deemed to be appropriate. We did make about 10 or 11 amendments, some of them more or less technical in nature and some 3 or 4 rather substantive in nature. I intend at the appropriate time to offer an amendment in the nature of a substitute which will embody all of the amendments that were approved by the Judiciary Committee as well as those amendments that were approved by the Government Operations Committee. There would then be no committee amendments to the bill coming from either committee.

Then the parliamentary situation, as this Member would understand it, is at that point the substitute would be subject to amendment. The gentleman has some amendments, I know the gentleman from California (Mr. MOORHEAD), the ranking minority member on the subcommittee has some amendments, as well as the gentleman from Ohio (Mr. KINDNESS), and we will proceed on those amendments.

I understand that there will be objection on the part of the Government Operations on this side of the aisle to one of the amendments that is in the package of the substitute. The gentleman from Florida (Mr. FASCELL) will offer an amendment to the substitute at one point dealing with the transcript, and then we will proceed as quickly as possible on each one of these things and finish the matter in a very short time.

Mr. HORTON. Madam Chairman, if the gentleman will yield again, I feel that is a very expeditious way to handle this matter because it would be very complicated if we have to handle it by amendment, but with the substitute we would have the entire bill as passed by the Government Operations Committee as amended by the Judiciary Committee, and we can exercise our will on that basis.

Mr. FLOWERS. Madam Chairman, meetings of agencies subject to the provisions of this bill are to be open to public observation unless information being discussed at the meeting falls within an express exception. Public awareness and interest in Government are important in our democratic procedures. This bill, by promoting increased openness in Government, should lead to improved decision-making and greater accountability on the part of the Government.

The Committee on the Judiciary was referred this bill on a sequential basis and prior to the Committee on the Judiciary reporting the bill, the bill had been the subject of a report by the Committee on Government Operations. Since the two committees are in essential agreement on the bill, I will confine my remarks to the amendments proposed by the Committee on the Judiciary.

First, the committee recommended a change in the definition of "meeting" as provided in new section 552b added to title 5 by the bill. As so amended, the term "meeting" would mean an assembly or simultaneous communication concerning the join conduct or disposition of agency business by two or more, but at least a number of individual agency members required to take action on behalf of the agency. There would be an exception for meetings required to decide matters covered by subsection (d), the subsection concerning the closing of meetings. The meetings covered by the exception would concern matters which are procedural in nature and involve decisions in voting on closed meetings and on announcement of meetings. Such meetings could not include the conduct or disposition of any other agency business. The committee also recommended an amendment to subsection (b) to add language providing that agency members cannot jointly conduct or dispose of agency business other than as provided in new section 552b. The amended subsection would not preclude agencies from disposing of noncontroversial matters by written circulations.

The subcommittee added the words "or permitted" to exception (3) of subsection (c), which is the exception permitting closing of meetings involving information authorized to be withheld by statute. Prior to the amendment, only those statutes which "required" the withholding of information would authorize the closing. By the insertion of the words "or permitted", many statutes which now permit the withholding of information but allow judgment or discretion will be given force and effect. This amendment is consistent with the language and purpose of those statutes which provide the basic authority for such withholding.

Exception (7) of subsection (c) concerns the closing of meetings in order to avoid disclosure of investigatory records compiled for law enforcement purposes. The exceptions in this bill were patterned after the Freedom of Information Act as set forth in the Administrative Procedure Act provisions of title 5 of the United States Code in section 552. That section concerns written records. This bill has a slightly different orientation and concerns the right of the public to observe agency meetings at which information will be given in oral discussions. This amendment makes a necessary clarification as to the exception so that it applies to information which, if written, would be contained in such investigatory records.

Exception (9) permits the closing of meetings when the premature disclosure of certain information could lead to financial speculation, endanger the stability of a financial institution, or frustrate the implementation of a proposed agency action. In the latter case, the exception would not be available after the content or nature of the agency action had already been disclosed to the public. Amendments were added by the committee to clarify the exception by express language as to the time when the exception would no longer be available. This was done by providing it would not be available after the disclosure or after public notice of rulemaking as provided in the Administrative Procedure Act.

Paragraph (f) of subsection (d) permits the closing of meetings pursuant to agency rules in certain instances where a majority of the business would justify closing, in other words, meetings that fit certain categories. The committee added a clarificaion to better identify the meetings subject to the exception and this was done by deleting the words "of the portions" where the original language would have required that a majority of the portions of agency meetings would have to be closed in order to permit closing by rules, and substituting therefor, the majority of meetings for the same purpose, it being very difficult to determine a majority of "portions" of meetings.

TRANSCRIPT REQUIREMENT

Subsection (f) of the new section concerning transcripts of closed meetings and requires that a complete transcript or an electronic recording which is adequate to record the proceeding shall be made of each agency meeting or portion of a meeting closed to the public with the single exception of meetings closed to the public pursuant to paragraph 10 of subsection (c). The committee considered the difficulties incident to the review of the transcript of closed meetings

required by the original provisions of the bill. The bill would have required that each deletion authorized by an exception in the section would be made by recorded vote of the agency taken subsequent to the meeting. It was pointed out this would require a considerable expenditure of the time of the senior officials of the agency and that this would be cumbersome and time consuming. It was determined that the intent of the bill could be adequately carried out by deleting this provision and similarly deleting the provision requiring a written explanation of the reason and statutory basis for each deletion.

These amendments would not change the requirements of the section making revised copies of the transcript or transcription of the electronic recordings available to any person upon payment of the cost of duplication or its transcription. Further, it is provided that if the agency determines it to be in the public interest, the material can be made available to the public without cost. The complete verbatim copy of the transcription or the complete electronic recording of each meeting closed to the public would be maintained by the agency for at least 2 years after the meeting or until 1 year after the conclusion of the agency proceeding with respect to which the meeting was held, whichever occurs later.

COURT JURISDICTION UNDER SECTION 552b(h)

Subsection (h) provides jurisdiction in the district courts of the United States to enforce the requirements of sections (b) through (f) of the new section. Such actions may be brought by any person against the agency prior to or within 60 days after the meeting at which the alleged violation of the section occurred. The time limit would be varied in the event that a public announcement of the meeting had not been made in accordance with the requirements of the section. The original version of the bill would have provided jurisdiction in the courts to bring such actions against the agency or its members. The committee recommended the deletion of the provision for joinder of members for since the subsection authorizes an action against the agency, there would be no necessity to join individual members to gain court jurisdiction.

Further, the committee also amended the bill to delete the provision authorizing the assessment of court costs against individual agency members. These amendments remove the objection that individual agency members would be subjected to suit for official acts and possibly being assessed costs and attorneys fees in these circumstances. In line with these principles, the committee recommends the deletion of the provision in original subsection (j) which would have permitted the assessment of costs against individual members of an agency.

Objections were raised at the hearings on the bill concerning the breadth of the provisions concerning venue for actions authorized by the bill. The committee concluded that there should be no limitation upon the jurisdiction provided in the bill nor persons who could bring the actions contemplated by the bill. However, the bill concerns meetings and matters relating to meetings that have a definite relation to certain locations, and the practical aspects concerning Government action and court consideration of these matters make it logical to provide venue in the district where the agency is held, where the agency has its headquarters, or in the District Court for the District of Columbia.

SCOPE OF JUDICIAL REVIEW

Subsection (i) of subsection 552b as contained in the bill referred to the committee would have provided that any Federal court otherwise authorized by law to review agency action could on application of any person properly participating in the judicial review proceedings inquire into the violations of the requirements of the section and afford any relief deemed appropriate. The committee recommends deletion of this language. It was concluded that the provisions of section 706 of title 5 of the Administrative Procedure Act provides adequate authority to inquire into the matters apparently referred to in original subsection (i).

Section 706 concerns judicial review and details the basis for invalidating agency action. Item 2(d) as contained in that section authorizes a court to set aside agency action which was taken "without observance of proceedings required by law." In consideration of matters covered by this section, the courts, in reviewing actions, would then therefore be prepared to proceed in accordance with their normal procedures under section 706. The weight to be given violations of the provisions of section 552b would be considered as are other matters covered by this provision in the Administrative Procedure Act. The reviewing court would then be in a position to determine whether the violation was of material prejudice to the party involved.

EX PARTE PROCEEDINGS

Section 4(a) of the bill adds a new subsection (d)(1) to section 557 of title 5, United States Code, concerning ex parte communications in relation to adjudication and formal rulemaking under the Administrative Procedure Act. Section 557 concerns decisions based on the record of hearings conducted in accordance with section 556. The new subsection (d) added by this bill would provide express limitations and procedures relating to ex parte communications relative to the merits of agency proceedings. The bar would apply to ex parte communications relative to the merits of such proceeding by interested persons outside the agency made to agency personnel involved or expected to be involved in the decisional process.

Similarly, no such agency official could make an ex parte communication to an interested party outside the agency. The incorporation of the new subsection in section 557 results in the provisions being made applicable to adjudications and to formal rulemaking. The language of the bill provides for communications or memorandum of oral communications to be made a part of the public record of the proceedings along with written responses and memorandums of oral responses. In the event there is such an ex parte communication, the agency, administrative law judge, or presiding employee may require a party to show cause why his claim or interest in the proceeding should not be denied, dismissed, or disregarded, or otherwise be acted upon adversely.

As introduced, the bill would have also amended the Freedom of Information Act provisions of section 552(b)(3) to limit the exception for information covered by statutes to only information covered by statutes which require that information of a particular type or criteria be withheld. This would not provide an exception for statutes which permit the agency to determine whether such information should be released or not. The amendment was made because the language is unduly restrictive. For example, the section concerning release of atomic energy information permits a continuous review of restricted data to permit declassification where information may be declassified "without undue risk to the common defense and security" 42 U.S.C. 2162.

Mr. Chairman, I urge the approval of the bill with the amendments recommended by the Committee on the Judiciary.

Madam Chairman, I reserve the balance of my time.

Mr. HORTON. Madam Chairman, I yield 10 minutes to the gentleman from California (Mr. McCLOSKEY).

The CHAIRMAN. If there is no objection, the Chair would like to recognize the gentleman from California (Mr. MOORHEAD) for 30 minutes and then come back to the gentleman from New York (Mr. HORTON).

The Chair now recognizes the gentleman from California (Mr. MOORHEAD) for 30 minutes.

Mr. MOORHEAD of California. Madam Chairman, I yield myself such time as I may consume.

Mr. MORTON. Madam Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from New York.

PARLIAMENTARY INQUIRY

Mr. HORTON. Madam Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state the parliamentary inquiry.

Mr. HORTON. Madam Chairman, is it the intention of the Chair to rotate?

The CHAIRMAN. Yes, that is the intention of the Chair.

Mr. HORTON. Would the gentleman from California (Mr. MOORHEAD) then have 30 minutes before I come back to my time?

The CHAIRMAN. The gentleman will probably use a portion of that 30 minutes himself. We will then come back to the gentlewoman from New York (Ms. ABZUG) and to the gentleman from New York (Mr. HORTON).

Mr. HORTON. Madam Chairman, I thank the Chair.

(Mr. MOORHEAD of California asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of California. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this piece of legisla-

tion that is before us has a very commendable goal, that is, to give the people of America an insight and information as to the operation of our Government. However, this right also must be balanced against a very delicate scale as to the damage and mischief that can be done in any given instance in holding back the effective operation of Government. It must be balanced if we are going to do the job that is required of us. Government in the sunshine is not logical if our Nation's security is compromised by such disclosures. Sunshine is blatantly unfair, perhaps unconstitutional, if it impinges upon individual privacy rights. Sunshine is irrational if it interferes with or threatens our Nation's economic stability or the value of our currency.

My point is that the idea behind Government in the sunshine legislation is attractive and valid only with respect to certain governmental actiivties. Everyone in this House knows that there are certain activities of Government that cannot and should not be in the public realm or released for general distribution. So, in drafting this type of legislation, we must be very careful about every detail of its impact. Sunshine legislation should not be used as a vehicle to interfere with Government agencies in the valid performance of the functions for which they were created.

H.R. 11656, as amended by the Committee on the Judiciary, goes a long way towards recognizing the important balance of which I am speaking. Both the judicial review and venue provisions in the bill have been improved. An irrational and unnecessary punitive provision imposing liability for court costs and attorneys' fees on individual agency officials has been removed. Importantly, the Judiciary version of this legislation has made the controversial verbatim transcript requirement more reasonable by allowing the deletion of exempt material from meeting transcripts. If this onerous and contradictory requirement is retained in the final bill, it is my hope that the Judiciary modification will also be retained.

Finally, an unwise attempt to reverse the Supreme Court's decision in *Administrator FAA* v. *Robertson*, 422 U.S. 255 (1975), has been altered.

It is my hope that all of the improving amendments added to H.R. 11656 by the Committee on the Judiciary will receive favorable action in this House. These amendments would make this legislation less ambiguous, less likely to produce extensive litigation, and far less likely to impose unrealistic and unfair burdens on Government agencies and officials.

I also strongly urge that the House favorably consider additional improving amendments that will be offered by my good friend and colleague, the gentleman from New York (Mr. HORTON). As it comes to the floor, H.R. 11656 defines "meeting" in a confusing and ambiguous manner. This definition is pivotal in the understanding of the scope of the Government in the sunshine legislation. More specificity is requirea and the amendment of the gentleman from New York (Mr. HORTON) would accomplish that.

The gentleman from Ohio (Mr. KINDNESS), a member of our Judiciary Subcommittee, also has a very important amendment to offer to this legislation, specifying which agencies are to be subject to this act.

I will offer an amendment later on in the debate which would provide that persons bringing an action under this legislation must meet normal Federal court standing requirements.

The legislation, as it is presently written, changes the present court rules to allow any individual, whether he has an interest or not, to bring litigation. This only causes a disruption of our entire court system. It allows professional litigators to get involved for whatever purposes they might want to, many times to make a case for themselves or to make a financial benefit of some kind through encouraging groups to finance their actions. I will offer an amendment which will do away with this particular provision.

I believe that we have made some substantial steps toward improvement in the action of the Judiciary Committee, and for that reason my comments on the sequential referral would not be the same as some of my colleagues have been earlier. I think in this particular case we have made substantial improvements in the case of sequential referrals. I realize, however, that many times it does cause a delay in getting legislation before the House.

My purpose here today is not to be obstructive to this legislation. I strongly agree with the ideals and principles underlying Government in the sunshine legislation. I do not want to hurt the operation of our Government, and for that reason I am supporting the amendments I have already referred to.

Ms. ABZUG. Madam Chairman, I yield such time as he may consume to the gentleman from Florida (Mr. FASCELL).

(Mr. FASCELL asked and was given permission to revise and extend his remarks).

Mr. FASCELL. Madam Chairman, I rise in support of H.R. 11656, the Government in the Sunshine Act.

As the principal sponsor of this legislation in the House, I urge that it be adopted. The bill would make a long overdue reform in our governmental operations so as to help restore confidence among the public.

The bill has been carefully considered for many years. It has been introduced in the 92d, 93d, and 94th Congresses. There have been many hearings by various committees in the House and Senate, and there have been extensive contacts and consultations with the executive branch agencies affected.

The Sunshine measure builds on long experience with the Freedom of Information Act, the Administrative Procedures Act, and the Privacy Act. It is coordinated with those Acts so as to form a balanced and comprehensive information policy in the Federal Government.

The basic justification for this legislation is that citizens have a right to know what is being done by Federal agencies. They need to know not only the final decisions, but the discussions which go into those decisions.

Very few people would argue with the principle of Government in the sunshine. Actually, this is the cornerstone of our democracy. Without public access to information on governmental actions, there can be no adequate basis on which individual citizens can form judgments and cast their votes for those who exercise the functions of Government.

To the extent that secrecy exists in Government, I believe that by and large it is the product of inertia and the following of what seems at first glance to be the easiest expedient—that of withholding information from the public. After all, if the public does not know what happened or what has been done it cannot fault the officials who are responsible for such actions. Thus, the officials involved may feel that by excluding the public they can be safely immune from criticism if the results are not favorable.

Yet, in the long run, such secrecy causes more problems than it solves. Eventually, the truth usually leaks out, and when this happens after-the-fact, it breeds public distrust and condemnation which may be directed against officials other than those responsible for any misdeeds. The whole Government suffers when our people perceive that it is working secretly against them.

What we need is a means to shatter the complacency of officials who needlessly follow practices of secrecy and make it so difficult to operate in such a manner that a policy of open government becomes the easy way out. Then we will have true "government in the sunshine" as officials learn that opening the decisionmaking process to the public is not only harmless, but beneficial.

In seeking to open the conduct of public business by Federal agencies, we in the Congress are asking no more than we have already imposed on ourselves. In 1973, the House adopted legislation which I cosponsored amending the rules to strengthen the requirement for open hearings and open committee meetings including meetings for the markup of legislation. Prior to that action, 56 percent of House hearings and meetings were open to the public in 1972. In contrast, under the stronger open meetings rule adopted in the 93d Congress, 92 percent of all House committee hearings and markup sessions were open to the public in 1974.

I have seen no drastic adverse consequences as a result of the new congressional open meetings policy. Instead, the legislative output has been stepped up, and we can point with pride to the fact that any member of the public can find out virtually all he wants to know about congressional actions, if not more than he wants to know.

The legislation before you would take similar action with respect to Federal agency meetings. Some 50 agencies headed by more than one governing member, appointed by the President and

subject to Senate confirmation, come under its provisions. These include such agencies as the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Securities and Exchange Commission, and others.

H.R. 11656 sets forth the policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of the act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

Under the bill, agencies may close meetings if the matters to be discussed fall within 10 exempted areas. These areas include national defense and foreign policy, internal personnel practices, information required or permitted to be withheld by another statute, trade information, law enforcement records, and information used by agencies that regulate the supervision of financial institutions.

These exemptions give ample leeway to any agency to protect information where there is a legitimate public interest in secrecy. The exemptions generally parallel the Freedom of Information Act and are consistent with the sound criteria developed through legislative study, administrative experience, and judicial interpretation.

We have included provisions under which a member of the public can go to court to challenge an agency's action closing a meeting or portion thereof. Reasonable attorney's fees may be awarded to a successful plaintiff at the discretion of the judge.

In cases where meetings are closed to the public, the agency is required to keep an electronic recording or transcript. In such cases, or where portions of meetings are closed, the original bill required that the agency explain the reason and statutory authority and provide a summary or paraphrase of the deleted material. The Government Operations Committee, after hearing objections to this from the Federal Reserve Board and others, approved a compromise which merely required a statement of the reason and statutory basis. Unfortunately, the Judiciary Committee amendments would strike even this requirement, so that only a blank space would be left in a transcript without even a hint of what had been removed, or by what authority. I hope that this proposed change is rejected by the House.

One of the reasons for requiring some reference to deleted material is to enable citizens to have some indication of the subject matter. This would enable them to exercise their rights to judicial review. Under the bill, a judge may examine a transcript in camera to determine whether deletions fit within the stated exemptions. Unless a person knows in general the type of subject affected, however, he would be unable to challenge a deletion.

I know that many Members have been contacted by the Federal Reserve Board or by other agencies with respect to provisions of the legislation. Each of their objections was considered in both the subcommitte and full Government Operations Committee, and further in the Judiciary Committee in many instances. We took votes on each objection. Some amendments were approved in line with agency recommendations. The others were found to lack merit, after extensive debate. There have been one or two subsequent matters raised, but on close examination, there also lack merit.

The bill sets forth a workable and practical system for opening up the operations of the agencies to public scrutiny. It make no monumental changes, since to a large extent the bill will codify what agencies are already doing by regulation. In general, the agencies have no great problem with it. Even the burden on agency heads for complying with the requirement of votes on deletions has been exaggerated. This could easily be done by circulating a tally sheet. No second meeting is required.

It is true that the Federal Reserve Board will probably never be satisfied with any legislation which seeks to open its operations even partially. The agency would like to be excluded completely from the bill. Lacking that, it would like to avoid keeping a transcript. This is absurd. Even in the Congress, we keep transcripts on all our meetings. We deal with national security and other information at least as sensitive as anything done by the Federal Reserve Board.

We have listened to everything the Board has said and have more than compromised by approving a specific exemption for financial regulatory agencies which will enable them to close up anything with significant information discussed. To allow them to operate in total secrecy without even keeping a transcript would be a serious mistake.

The agencies' reasonable concerns have been accommodated. We have included a section on ex-parte contacts which is not controversial. In short, the bill takes a fair and balanced approach toward the goal of increased public involvement in the governmental process.

I urge that the Government in the sunshine bill be approved.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., July 28, 1976.

Hon. BELLA S. ABZUG,
Hon. DANTE B. FASCELL,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVES ABZUG AND FASCELL: Consumer Federation of America, the nation's largest consumer organization representing more than 30 million consumers, enthusiastically supports the Government in the Sunshine Act (HR 11656).

It is no secret that public confidence in government is at an all time low. A major source of citizen cynicism is the growing conviction that government decisions are often made behind closed doors with access and input being too frequently the exclusive privilege of well-financed special interest groups. The public recognizes the transparence of the standard government position that it can only conduct business effectively if its proceedings are closed to the public.

The legislation which will be considered today is a sensible and drastically needed step in the direction of providing citizens with the opportunity to better scrutinize the vast number of meetings conducted daily at multi-member agencies. It also recognizes the importance of establishing procedures for *ex-parte* communications.

We are actively opposed to a series of amendments whose architect is Arthur Burns and whose sponsor will undoubtedly be Rep. Frank Horton.

1. Definition of Meeting

The first amendment would restructure the definition of meeting in such a way that if the announced purpose of the agency meeting was not to "conduct business" the meeting would not be classified as an "open meeting" which the public could automatically attend. Clearly this amendment could and would be used by agency officials intent on thwarting the goal of this legislation. How easy it will be to camouflage a business meeting behind some non-business sounding announced topic. With no objective standard to determine what is a meeting "to conduct business" the ability for judicial review of agency abuse will, practically speaking, be non-existent.

2. Minutes vs. Verbatim Transcripts

The second amendment would permit the taking of minutes as opposed to the requirement of a verbatim transcript at "closed" meetings. Minutes taken by the most competent of people are no substitute for the comprehensive verbatim transcript. For example, a particular monologue, dialogue or phraseology may at the time of the actual meeting seem inconsequential and consequently either be omitted from the minutes or paraphrased. Yet later that very issue may be extremely important to affected persons. The participants and the public should never have to rely on minutes of the proceedings. If the issue is serious enough to warrant being discussed at a meeting, any discussion at that meeting should be transcribed. In closed meetings even more than open meetings there must be a check against inaccurate or incomplete minutes.

3. Transcript exemption

The third amendment would exempt SEC and the Federal Reserve Board from the transcript requirement.

4. SEC/Banking Agency Exemption

The fourth amendment would by generic description have the practical effect of excluding the SEC and banking agencies.

There is no logical or equitable reason for either amendment and the amendments are particularly offensive because they are new examples of the FED's consistent attempts to arrogantly transcend accountability.

Finally, we would like to emphasize our active support of an amendment which we understand will be introduced by you, Rep. Fascell. That amendment would require that at anytime there is a "deletion" from the transcript, there must be submitted a written statutory citation to that section of the law which would allow such a deletion. This amendment will ensure an additional measure of accountability into the bill.

Sincerely,

CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

Mr. HORTON. Madam Chairman, I yield 10 minutes to the gentleman from California (Mr. McCLOSKEY).

(Mr. McCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Madam Chairman, I do not want to belabor the time of the Committee in general debate on this matter on the specific amendments which

will be debated more thoroughly later, but I would like to call the attention of the House to the fact that when we enact this legislation, as we will today, there is a particular duty on the House of Representatives to be careful in our craftsmanship, because this is another one of those instances where the Senate passed the bill unanimously by a vote of 94 to 0, without substantial debate on the floor. When the bill was sent to us, however, praiseworthy and laudable its purposes, there were problems of craftsmanship which can plague our Government dearly in the years ahead if they are not recognized.

Consequently, unless several of these amendments are adopted, in my judgment, the bill may provide more problems than it seeks to solve. Let me try to set this in a historical context.

It was only 2 years ago that we enacted the freedom of information amendments, because of what we felt were the excesses in several administrations, culminating in the Nixon administration where the Attorney General at the time stated that if Congress wanted any information from the executive branch, they had an absolute right to withhold it and our sole remedy was impeachment, which we ultimately undertook. With regard to those excesses and abuses of secrecy by the executive branch, in the heat of anger and passion we passed amendments to the Freedom of Information Act in 1974, and then in 1975 we enacted the Privacy Act to try to protect individuals against excessive intrusion by the executive branch.

In both of those acts, we imposed civil or criminal penalties, or both, against Government employees who might violate either the privacy of the individuals or who might excessively claim secrecy for Government documents. We have not held oversight hearings by the subcommittee which presents this bill on the actual operations of either the Privacy Act or the Freedom of Information Act.

I think, frankly, I would feel better about this legislation had we held oversight hearings on the problems for the executive branch which have been created by the Freedom of Information Act amendments and the Privacy Act amendments.

We know, for example, that both the Freedom of Information Act amendments and the privacy bill have imposed incredible new burdens of paperwork and complexity and additional personnel. We have a Paperwork Committee created by this Congress which is studying how to try to cut back on the paperwork and the complexity and the cost to Government to which we have added so substantially with the Freedom of Information Act amendments and the privacy bill.

Madam Chairman, briefly stated, this bill is founded on the proposition that the Government should, to the fullest extent possible, conduct the public's business in public. To that end, the bill requires all Federal agencies headed by more than one person to conduct their business in meetings that are open to all.

I want to make it clear that I have no disagreement with these principles. But, in my opinion, certain of the bill's provisions will, if enacted, needlessly, and even foolishly, interfere with the proper and effective functioning with the Federal agencies. I believe that the enactment of these provisions will end up hurting the people this bill is designed to benefit, by imposing on the Government costly redtape requirements which lower productivity while providing no benefits for anyone.

My differences with this bill are few but important. This bill can be significantly improved in the following ways.

VERBATIM TRANSCRIPTS

The bill in its present form requires a verbatim recording or transcript to be made of every meeting which is legally closed under the narrow exemptions contained in the bill. This is simultaneously the bill's most onerous and its most useless provision. It is onerous because of the tremendous expense involved in meeting this requirement—not only the costs of the recording equipment or stenographer, but the costs of transcribing the verbatim record, reviewing it to see if any portions of it can be made public, and, if so, making the necessary deletions in the transcript. It is uesless because, under the act, these transcripts, made at considerable expenses, will never be made publicly available if the meeting was legally closed. Their only function is to serve as a policing aid to enable the courts to determine if the closing was proper. I think there must be a simpler, more efficient way to accomplish this goal.

This provision will undermine the goals of the two principal planks of Federal information policy, the Freedom of Information Act and the Privacy Act. If these transcripts are in existence, their disclosure will undoubtedly be the object of a significant amount of Federal court litigation. One way or another, some of the information in those transcripts will become public—and the protections provided for individuals contained in the Privacy Act, and for various types of exempt matters in the Freedom of Information Act, will be eroded. Thus, sensitive agency discussions—which the bill recognizes should not be held in public—would be subject to being recorded in full, and to the publication of an edited transcript. Those who will benefit most from this, I am afraid, are the special interests who can well afford to pay their agents or lobbyists to attend every open meeting and pore over every transcript of closed discussions made available.

I believe that the unnecessary transcript requirement should be deleted. Instead, agencies should be required to maintain minutes of closed meetings. These meetings will set forth the matters discussed at a closed meeting, and will enable a court to determine if a meeting was improperly closed. If it was, the court will have every power in equity at its command to remedy the situation in the manner it believes is required.

DEFINITION OF MEETINGS

This bill is directed not only at formal meetings of agencies convened to conduct agency business—which I believe are the legitimate subject of this legislation. Rather, the bill broadly extends its coverage to any "assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more" members of the agency.

This language, together with the verbatim transcript provision, would mean that any assembly or simultaneous communication concerning agency matters, whether or not its purpose is to conduct business, would be subject to prior public notice, the open meeting requirement, and the requirement that a recording of the meeting or conversation be made.

In other words, all telephone conversations and meetings of agency members at barbecues, on the golf course, or anywhere would be covered by the act if the conversation included the mere mention of any matter pending before the agency.

A more important objection to this provision than the fact that it may interfere with some agency members' social lives, however, is the fact that this provision vitiates one of the most important exemptive provisions of the Freedom of Information Act, the exemption for intragency discussions. Congress and the courts have long recognized the need for agency personnel to discuss, in private, regulatory matters and to freely explore all options that may be open—without the fear that those discussions will one day be publicly revealed. The heads of multimember agencies have this need as well as the members of their staffs.

I believe that the bill should apply whenever agency members convene in a formal meeting for the purpose of passing upon matters before the agency. It should not apply if the agency members meet informally, not for the purpose of voting or deciding matters, but only for a preliminary discussion among themselves of the important issues they will ultimately have to make an informed judgment upon.

ENCOURAGEMENT OF UNDUE LITIGATION

As I noted, the "sunshine" bill has a laudable purpose. But I think we all also perceive a need to try to cut the cost of Government and, in particular, to cut the need for mountains of paperwork. In addition, we are beginning to perceive a need to discourage undue litigation in the Federal court system. The benefits of open Government which the bill achieves are sharply offset by the costly, and unnecessary, burdens it places on the Government and on the Federal court system.

This act provides that any person—not merely one interested in the matter before the agency—can bring an action to challenge the closing of a meeting. That suit can be brought in the plaintiff's home district, regardless of the place the agency is located or the meeting was held. Obviously, one closed meeting could be the subject of challenge in any number of districts, necessitating extensive travel by Government lawyers to litigate these challenges. The burden of proof is always on the agency, and as agencies have discovered in Freedom of Information Act litigation, that burden is a difficult one to meet. Finally, if in the opinion of the court the plaintiff merely

"substantially prevails," he is entitled to an award of attorney's fees and costs.

This act will be a drain on the manpower and monetary resources of the Department of Justice and the legal staffs of the agencies that will have to resist these suits. These provisions will be a bonanza for the legal profession and—more importantly—for the special interests who can afford to hire them to delay, impede, and obstruct the processes of the regulatory agencies.

I am aware that the object of this bill is to make Government open to the people, and there may well be some action taken by public interest groups to force open an improperly closed meeting. But, by and large, the ones who will be taking advantage of this bill's provisions will be corporate and other special interests attempting to stave off what they deem to be unfavorable Government action. We have seen too many cases where agency action was unnecessarily protracted due to long, drawn-out court battles. This bill gives the special interests just one more forum in which to fight the agency.

The right to file suit under this bill should be limited to actions brought by a person aggrieved by agency action taken at a closed meeting—the standard which has governed access to the courts for review of agency action since the enactment of the Administrative Procedure Act in 1946. It is unwise to throw the courts open to anyone, anywhere, who is of a mind to throw a wrench into the workings of the Government.

CONCLUSION

We must remember that the Federal agencies have been created by the Congress, and given the job of promoting goals deemed by the Congress to be of utmost importance. Thus, when we impede the agencies, we only harm our own legislative objectives.

I am aware that criticism may on occasion be justifiably leveled at some agency action. But the answer to that problem is for Congress to address and correct the agencies when they go astray, not to obstruct, indiscriminately, all agency action of every kind.

I think we make a mistake when we try to saddle the agencies with onerous and unnecessary burdens such as the verbatim transcript provision of this legislation, when we erode the protections previously afforded for closed discussions of important policy matters by agency heads and staff, and when we subject them to harassment by burdensome litigation. Who will benefit? Will we protect the man for whose benefit an agency is attempting to devise a protective rule in accord with congressional direction, or will we merely provide a means for the interests that would be affected by that rule to impede the effectuation of the will of Congress?

I would like at this time to ask a question of the gentlewoman from New York. If we pass the sunshine bill today, which in effect adds section 552(b) to the code, the Freedom of Information Act being 552 and the Privacy Act being 552(a), may we not soon have an oversight hearing, within the next year, on the workings of the Privacy Act and the Freedom of Information Act?

Ms. ABZUG. If the gentleman will yield, I think there is no question about it.

While I have the opportunity to answer the gentleman on the Sunshine Act, I would remind him that most of the hearings we have had, or a good number of them, have dealt with oversight of the Freedom of Information Act and the Privacy Act.

On the question of information that is being provided or not being provided under the Freedom of Information Act, questions have come up concerning the application of the Privacy Act and what was required of the Members of Congress in order to get information for their constituents.

We held significant meetings with relevant agencies concerning some of the paper work and the bureaucratic interpretations of this act, and we continued to hold hearings regularly to deal with the implementation and interpretation of the act.

The gentleman can be assured that this committee and its successor, because it is charged with the responsibility, will have oversight, and I know it will conduct oversight hearings on sunshine.

Mr. McCLOSKEY. If I may respond to the gentlewoman, I do not want to be misinterpreted. I have commended the gentlewoman on the vigor with which she has approached the Freedom of Information Act amendments and the abuses of it, the oversight of the Privacy Act and the abuses of it. But my concern is oversight on the complexity and the cost to Government. It was not appropriate until now that we do this on the Privacy Act because the Privacy Act would have been in effect only a year in September. But we hear rumblings from many agencies. They have all indicated that the cost to the Government has become extremely burdensome, and that the complexity of government operations has increased tremendously.

Ms. ABZUG. If the gentleman will yield further, I think the gentleman makes a valid point. I think an act such as this, which involves privacy, the Freedom of Information Act, and now this Sunshine Act, which involves agencies of Government and the operation of very important functions, should at a certain point, when we have collected the information, be the subject of intensive oversight. I would certainly recommend that and see that it takes place.

Mr. McCLOSKEY. I thank the gentlewoman.

Madam Chairman, I would like to speak briefly on the amendments which will be offered, because I think these amendments are crucial to producing a craftsmanlike bill.

On the first amendment, on the question of meetings, I would ask my colleagues to consider whether we in the Congress could operate with the definition of "meetings," as it presently exists in this bill. The definition of "meetings" in the bill, as it exists now, means if another Member and myself were to meet on, say, committee business, if we were to meet in the well of the House, if we were to meet at the lunch counter or if we were to meet in our offices and discuss the subject of a pending bill, we would have to have a transcript of that meeting and it would have to be promptly produced for the public unless it came within one of the specific exemptions, and we would have to vote on the specific exemptions. This prevents discussion of matters in casual contacts amongst each other.

I think this should be amended. If we look at congressional procedures in the same context, we would preclude the executive branch from doing something we would never consider precluding for ourselves.

Ms. ABZUG. If the gentleman will yield, I want to point out that the gentleman's fear in this connection is not completely carried out. Unless there is a quroum of this agency, there would be no requirement such as the gentleman describes. It would not constitute a meeting under the statute or under the legislation as we now propose it.

Mr. LONG of Maryland. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Maryland.

Mr. LONG of Maryland. Madam Chairman, I might point out that under the practices of the Committee on Appropriations, ordinarily two members constitute a quorum.

Mr. McCLOSKEY. This is my problem, Madam Chairman. Let us take my own subcommittee, which has seven members. Assuming that four members constitute a quorum and that four of us should meet in the well of the House to discuss problems we have on a bill, that might well constitute a meeting which would then require a recorded transcript.

Ms. ABZUG. Madam Chairman, if the gentleman will yield further, I would rather not interrupt the gentleman's presentation, except that I do want to clarify this point. The quorum that the gentleman referred to is for the purpose of conducting a hearing and not for the purpose of doing business. I think there is a distinction there, and I do not agree with the gentleman.

I do not want to interrupt the gentleman on this point any further except to make the record clear from a legislative point of view. I think we ought to be clear as to what that means.

Mr. McCLOSKEY. Madam Chairman, we have a disagreement, and it is worth stating and worth debating and worth resolving today. I would point out that much of the argument for this sunshine bill has been on the basis that in many cases enlightened States have adopted sunshine bills.

However, as to this meeting requirement, in my State of California there is no requirement for a casual meeting between a number of people who ultimately can conduct business for a city council or board of supervisors that they have to supply a recorded transcript or have a vote, and there is no requirement. I think we are searching here for balances so we can assure good operations in Gov-

ernment after we have had several decades of abuse of power by Government. We ought to recognize, however, that in the future members of a commission will not be of the same attitude of past members whose abuses we cure here.

We seek for a balance. We are going to have to get good people to serve on the commissions and to govern this country ably.

Frankly, if I were asked to serve as a commissioner under these rules that exist in the bill today, I would ask myself twice whether in the ordinary course of conducting Government business I could comply with these provisions of meetings and furnishing verbatim transcripts and still do my job honestly.

Madam Chairman, I will reserve the balance of my time now and save it for argument on the specific amendments.

Mr. FLOWERS. Madam Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. MOORHEAD of California. Madam Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. KINDNESS).

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Madam Chairman, like many other Members of the House, I find that I am in a somewhat anomalous situation with respect to this bill. Here we are again, a small, closely knit group, sitting here in an interested manner debating in a stimulated way a rather important bill. Only a few of us are here, and this is going to affect all of us in some degree.

However, we have here a proposal before us that all of us, I think, can readily agree will aim in the right direction, toward providing openness in the conduct of public affairs. Naturally, we have some disagreements concerning some aspects of the bill. They have all been pointed out at this time, I believe, and I would like to express my support for the concept of this bill.

However, there is a problem, as the bill is now written, because it is my feeling that there are certain governmental functions that by their very nature have to be kept privileged or not published. In fact, the very functions carried out by certain Government agencies, the Federal Reserve Board being one of the prime examples, require a sequestered or restrictive setting for the conduct of their deliberations.

Following the conclusion of general debate, this House will have an opportunity to vote on the amendments that have already been discussed, and yet I would like to emphasize one amendment, and that is the one which would change the definition of "agency."

Most notable among the agencies that might be covered and will be covered by this bill for the Members' special consideration, I think, is the Federal Reserve Board. Similarly, however, the Securities and Exchange Commission has some peculiar considerations for the Members to look at.

The Federal Reserve Board's deliberations on monetary policies often involve sensitive subject matter. If such deliberations become totally open to the public, financial markets may react in some cases dramatically; and the stability of our economy is likely to be affected in some degree.

Madam Chairman, I would just like to point out something by way of quoting from a May 6 letter from Arthur Burns, the Chairman of the Board of Governors of the Federal Reserve System. He states:

> It is our belief that the Federal Reserve Board is unique among Government agencies insofar as the subject matter of its decisional process is concerned. With few exceptions, each of the Board's regularly scheduled meetings is involved with matters the sensitivity and intricacy of which, if exposed to public discussion, could lead to misunderstanding, misinterpretation, and disruptive and harmful speculations. Examples include deliberative processes in monetary policy formulation; receipt, transmission and evaluation of national and international market information; and, incident to the formulation of bank regulatory policy, discussion of confidential appraisals, and sensitive judgments relating to member bank and/or bank holding company operations, individuals, etc.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. KINDNESS. I yield to the gentlewoman from New York.

Ms. ABZUG. Madam Chairman, I wonder whether the gentleman from Ohio (Mr. KINDNESS) is aware of the fact that all of the subjects that he has mentioned come within the exemptions in the bill. We had in the Government Operations Committee and in the Judiciary Committee extended discussion on this issue, and what we did in the way of exemptions more than covers the gentleman's concerns.

Mr. KINDNESS. I do not choose to yield further on the point because I have the bill, I have read the bill, and I understand what is contained in the bill. I think we could carry this dialog on into several other sections of the bill so as to modify the effect of what the gentlewoman from New York points out.

Ms. ABZUG. If the gentleman will yield further, I just wish to point out that we share his concern and the concern of Chairman Burns on this issue.

This legislation provides adequate protection for those concerns, particularly in exemptions 8 and 9 of the bill.

I might also point out that when we passed the Freedom of Information Act back in 1966, the Federal Reserve expressed similar concerns:

> Could leave exposed to indiscriminate public demand certain critical records and materials related to the Board's credit and monetary policy functions ars well as other statutory directed functions. Such a result could impair the Board's effectiveness both as an instrument of national economic policy and as a regulatory body.

This was said by the Chairman of the Board in 1966. This has never happened, and Mr. Burns admitted that when he testified before my subcommittee.

I merely quote it to the gentleman to allay his fears.

Mr. KINDNESS. Madam Chairman, I thank the gentlewoman from New York for seeking to allay my fears, but the attempt fails.

The Federal Reserve Board furthermore, in addition to what has already been read, often has before it detailed financial and managerial information.

The Securities and Exchange Commission often has similar information before it; and those two comprise, I think, probably the most serious questions before us, as to what should be the coverage of this bill.

Mainly, Madam Chairman, I think our concern should be: Just what is it that we are doing?

I think oftentimes we have measures before us that have wonderful titles, that sound good, and gain all kinds of support; but contained within those bills are provisions that make it very difficult to support the entire content of the bill.

Madam Chairman, when we go about providing for Government in sunshine, I might state that there was no answer given in the subcommittee on in the Committee on the Judiciary itself, in considering this matter, to the question: Why not include all of the executive branch, the departments of the executive branch of the Government, in this Government in the sunshine bill instead of the collegial-headed agencies?

Obviously, the answer has to be that this was a simple formula approach. Collegial agencies only being included, gives us a starting point, but we do not really know how many are really included within the scope of this bill and thus list exactly the agencies we want to cover. As a starting point I think that this is far better than the broad approach that can give us so much trouble as to the question of which agencies and commissions are actually covered.

A further example, which will be brought out during the debate on the amendment is the Commodity Credit Corporation in the Department of Agriculture. Anyone who was to think about it and looks up the law and statutory provisions concerning the Commodity Credit Corporation, will soon discover that the Secretary of Agriculture actually directs the operations of that board. So it is an open question right off the bat as to whether the Commodity Credit Corporation is covered by this bill. Yet it is listed in the Senate report as typical of those agencies that would be covered by the bill.

I assure the Members that the interests of the American people are not best served by having Government in the sunshine litigated but rather by having Government in the sunshine.

Ms. ABZUG. Madam Chairman, I yield such time as he may consume to the chairman of the Committee on Government Operations, the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Madam Chairman, I want to thank the gentlewoman from New York for yielding me this time.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, this bill is hardly new or surprising. Here in Congress we have become used to operating in the sunshine. Nearly every State has opened its governmental processes to some degree. What is surprising is that

we have taken so long to extend this worthwhile practice to the executive branch, and that some of the people there still resist it.

I would like to commend the chairwoman and members of the Subcommittee on Government Information and Individual Rights for the excellent job they did on this bill. It has been carefully considered by two subcommittees and two full committees. All interested parties have had a chance to express their views. As a result, the bill strikes a careful balance between the right of the public to know what its Government is doing, and the need to protect the rights of individual citizens and to assure that the Government's ability to function is not impaired.

When Government actions are taken in secret behind closed door, we not only undermine public confidence in Government, but we can wind up pretty far off target and without the public support our Government needs if it is going to stay in business.

H.R. 11656 should help avoid those possibilities. By opening up the meetings of some 50 Federal agencies, it will assure there is public understanding of the actions of those agencies.

If the public understands and sees what goes on, it is more likely to accept and have confidence in our actions. Opening up those meetings will also assure that the officials of those agencies are accountable for their actions. That is what government of the people, by the people, and for the people is all about.

Certainly there are occasions when meetings should not be open. H.R. 11656 recognizes this and provides for closing them in those situations. It affords protection for trade secrets and information that could be damaging to financial institutions or to stock exchanges. It prevents invasions of personal privacy and guards against disclosure of crime investigation records. National security is also protected. Those safeguards that are needed are provided.

But what H.R. 11656 really safeguards is the public interest. It reinforces the basic constitutional premise that this is a government of the people, and that those who serve it should be fully accountable to the people for their actions.

Former President Harry Truman is justly noted for saying, "If you can't stand the heat, get out of the kitchen." I would add that if you cannot stand the light, get out of the Government.

Mr. HORTON. Madam Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. COLLINS).

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Madam Chairman, the most capable individual in Washington is the person who gives the names to our congressional bills. There is a warm and friendly spirit in the name "Government in the sunshine." But before we rush into this legislation, we should carefully evaluate all that it entails.

There are very few individuals in the administrative groups of Government who have the courage to say things in open meetings that they would say behind closed doors. This applies especially to funding. The pressure group with its key members sitting in the front row will always get more money than will an unrepresented group who might have a more worthy cause.

Last October a bill was passed here in Congress which is hard to understand. It provided for double pensions for a group of 40,000 National Guard technicians. They will get both military and civil service pensions. This bill was opposed by the Defense Department, the Civil Service Commission, the National Taxpayers Union, and the administration. Yet, in spite of a strong fight, the bill passed Congress by 261 to 117.

This bill should have been killed in committee. We created a $1 billion deficiency against an already deficient civil service pension plan. National Guard technicians will now be getting a double pension check whereas a four star general is only entitled to enter one pension plan.

Just as in Congress, where much of this wasteful spending should be eliminated at the committee level behind closed doors, we find the same thing in these agencies. When they talk frankly among themselves, they use more common sense. When they talk in front of the press, the television, and the pressure lobby groups the administrators have ears sticking out in both directions, and human nature will have them reacting to the pressures of whatever outsiders are present. From the days of Rome, history has shown that a republic which becomes overresponsive to every voter handout request is a republic that is sure to fall.

This bill invites aggressive lawsuits from every lawyer who has time on his hands. I recall a case here in the District of Columbia 2 months ago in which Judge Joyce Green ordered the District of Columbia government to pay an attorney, Gilbert Hawn, Jr., the amount of $168,487 for his work in suing the city to overturn its system or real estate tax assessments. This good attorney managed to find yet another way to confuse an already bankrupt city, and for this service he was paid this exorbitant fee.

I can well understand the enthusiasm of the gentlewoman from New York (Ms. ABZUG), in leading the fight for this "sunshine" bill. However, I would compare the problems developed here with her own New York City which has too much sunshine in its legislation and not enough closed door sessions to work out the fiscal restraints needed in the governmental functions.

We are already too overcommitted with overspending in this country. When President Kennedy came into office, the budget was $97.7 billion. We are now talking about $415 billion. But even more than the fact that we are spending four times as much, we are running a $100 billion deficit.

I do not see how these agency officials of our Federal Government could effectively and conscientiously administer the executive decisions with the hubbub and hassle of press and pressure groups on hand. Sometimes administrators like to ask questions for information to broaden their viewpoints, but even a question can be misinterpreted on a public print basis.

I am always amazed at how we in Congress establish one set of rules for everyone else, and yet think we should live according to a different set of rules ourselves. I serve on the Commerce Oversight and Investigations Committee where I am the ranking Republican. Recently, the chairman and the majority insisted that confidential records taken from the Securities and Exchange Commission files be made public. These records consisted of investigations which were being reviewed and were pending a decision. This information had been brought to the SEC on a voluntary basis and my own personal opinion is that the matter did not warrant any public statement from the SEC. While the SEC was keeping the matter under advisement and reviewing all of the facts, we subpenaed the information and our chairman released it to the press. One immediate effect of this is going to be that it will be very difficult in the future to obtain voluntary disclosures. These companies came forward asking whether they had done anything wrong, and brought in all of the facts and information for an opinion and judgment. But public disclosure is often interpreted by the public in the same manner as an indictment might be interpreted.

Let us look at our own Oversight Committee in Commerce, to which I referred. This committee has 35 members on its staff. They are not appointed by Civil Service, but are appointed entirely and exclusively, subject to hiring and firing, by the chairman of our committee. They are his private staff. We have a rule written by the committee majority that limits any staff member representing the minority from ever seeing the raw material in investigation files. The attorney that represents the Republican side in this committee is not entitled to see any of the raw material as it is being developed and studied by the staff. Furthermore, a Congressman who himself might go in to review the records is not allowed to photostat any of this material to take back for our staff to analyze and study further.

Here is an Oversight and Review Committee that is responsible only to the Majority, and will provide no information to the minority staff. Here is a committee of Congress which is assigned the responsibility of oversight and investigation which works behind closed doors. The chairman of our committee is the author of the Freedom of Information Act.

I feel this way about all of this "sunshine in the Government." There are many in Congress who believe that all the facts should be made public except those that they are personally handling in their own committee. This sunshine bill is one of the most unnecesssary bills to come before Congress this session.

Mr. HORTON. Madam Chairman, I yield such time as he may consume to the gentleman from Connecticut (Mr. SARASIN).

(Mr. SARASIN asked and was given permission to revise and extend his remarks.)

Mr. SARASIN. Madam Chairman, to enumerate the myriad problems confronting us as a nation today would merely be repetitive of everything we are seeing and hearing from our constituents and from the newspapers and television. We have gone from an agrarian, family based society to one that has become highly urbanized and mechanized, with different sectors of the society dependent on the other to meet their various needs. We realize that none of us can any longer operate independently. Problems have become too large to be solved on the individual, local, or State level and the Federal Government has become the intercessor to provide needed assistance to resolve these problems.

Government, in large part, has grown as a response to these problems and to act as an arbiter, regulator, and administrator of the problems which people face but cannot solve on their own. Governmental resources are vast, just as the manpower involved in allocating and using these resources has created a large Federal bureaucracy. The problems we face today are inherently more complex than those faced by our ancestors 200 years ago.

Our problems have evolved from the technology and innovation which we have created to make our lives more comfortable. Therefore, we have entrusted to Government agencies the decisionmaking authority to identify and approach these problems—be they environmental, energy, social, or economic. Yet most of these day-to-day agency activities and decisions are removed from public view. Just as our problems have a continually changing face, so must our approaches to finding solutions. Our national goals, our programs and governmental policies must be reshaped and made responsive to these variable conditions.

The Federal Government continues to control many aspects of our daily lives. We are never totally free from the purview of Government. But just as our American Government was created as a Government of the people, so must it remain. The growth of the bureaucracy has led to a protectiveness and secrecy about certain governmental actions. Those in control often forget that their mandates come from the people and it is to the people that they must remain responsive.

The need for open Government has become increasingly apparent through revelations of misuse of Government power, abuse of authority, and infringement of individual rights. This bill would be a major step toward avoiding these kinds of improper activity in the future by opening up these activities to the cleansing light of public visibility.

Open Government would have multifaceted benefits. Citizens would be educated into how Government operates. More importantly, individuals would have the opportunity to review the governmental decisionmaking processes which related directly to their everyday lives. Public policy should be open to public scrutiny. The particular bill which we are debating today, H.R. 11656, would go far in increasing an intelligent understanding of American institutions and how they operate. Although I have difficulty with some portions of the bill, I believe that one of the essential principles of a free government is the right of the people to know how their Government makes decisions.

Although Congress has a reputation for excluding itself from the requirements which it imposes on other government agencies, especially those of the executive branch, we, too, have acted to open our meetings and hearings to public oversight. It is just this sort of public scrutiny which makes Federal Administrators more responsive to the demands of the American public.

In addition, I favor the safeguards written into the bill, providing protection relating to matters of individual privacy, national security, and financial disclosure. The bill would protect the rights of individuals and the ability of the Government to carry out its responsibilities.

I agree with Thomas Jefferson that effective self-government requires that the people participate in every feature of the political process. The American public has a right to participate in the execution of the laws passed by Congress. Government in the sunshine is a further step in the direction of opening our political processes to public participation.

Mr. STEELMAN. Madam Chairman, it is a pleasure for me to speak today in support of H.R. 11656, the Government in the Sunshine Act. This legislation is the logical result of our realization that we must open up the doors of our Government to public scrutiny. We must allow the people to view the process of decisionmaking to increase understanding, dispel cynicism, and provide access to information vital for an informed citizenry. To deny the public the right to know not only breeds distrust, but, in fact, threatens the basic ideas inherent in and crucial to our democratic form of government.

The "sunshine" bill represents a logical extension of legislation passed by Congress over the last decade designed to give the people the right to know.

We first concerned ourselves with the problem of secrecy in government in 1955 by creating a special Subcommittee on Government Information. The investigative and legislative hearings of this subcommittee contributed significantly to the enactment of the Freedom of Information Act. In March 1973, we adopted House Resolution 259 which required us to open up House committee deliberations to the public. Furthermore, on November 5, 1975, the Senate adopted a resolution which allows public observation of the markup sessions of Senate committees. Despite these efforts, though, too many doors remain closed.

The bill we have before us today will establish a policy of openness for approximately 50 multimember agencies. It requires a majority vote in open session to close a meeting, and then only if certain exemptions apply.

It is significant that the definition of a "meeting" in this bill not only covers sessions where formal action is taken, but also those at which a quorum of members deliberate informally regarding the conduct or disposition of agency business.

It is significant that there is a presumption of openness and that a majority vote by the entire membership is needed to close a meeting or any portion of it.

It is significant that any citizen can challenge in court the closing of a meeting or any violation of the openness requirements of the bill, and that the burden of proof of the propriety in closing a meeting rests with the agency in question.

Another important provision of this bill establishes for the first time statutory prohibitions on ex parte communications with agency members.

In considering "sunshine" legislation, we must remember that public awareness of the processes of its government is essential to maintain an effective democratic form of Government. James Madison wrote:

> A popular government without popular information or the means of acquiring it is but a prologue to a farce or both. Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives.

It is a contradiction in terms to think we can have a democratic Government without an informed public. Particularly with the increasing size of government, we must allow the people to review not only the decision, but the decisionmaking process.

H.R. 11656 is one way to handle the crisis of distrust of government that is rampant in our country today. It may not be a panacea for the problem, but it can aid the restoration of confidence so vital to our Nation's health. The time for "sunshine" is here, and I urge all my colleagues to join me in supporting H.R. 11656.

Mr. ASHLEY. Madam Chairman, I am thoroughly in accord with the principles embodied in the legislation before us today, H.R. 11656, the Government in the Sunshine Act. Passage of this measure will go a long way toward assuring accountability on the part of Federal agencies and increasing public knowledge of and participation in the official proceedings of their Government.

In brief, the bill requires all meetings of Government bodies headed by more than one person to be open to the public, with certain exemptions where such matters as national security and informative trade secrets are involved. The measure thus closely parallels and supplements the Freedom of Information Act in giving the people of this country greater access to the records of official Federal proceedings than has ever been allowed by any government in history.

There are however two provisions in the bill which could prove to be patently unworkable, possibly even mischievous, and I will support amendments to these sections in the interest of passage of a reasonable and practical piece of legislation.

First, H.R. 11656 requires that not only formal meetings be open to the public, but also that any assembly or simultaneous communication concerning agency

business by a specified number of agency officials would be subject to prior public announcement, to the open meeting requirement, and to the requirement for a formal vote for closing of the meeting. The broad sweep of this language would make the bill applicable to social gatherings, conference telephone calls, and even the most casual conversations of agency officials bearing on their duties regardless of whether or not their communication was arranged for the specific purpose of conducting public business. This provision appears to me to go far beyond what a desirable and practicable sunshine law should include, and I support the proposed amendment to limit the bill's coverage to only those meetings called for the explicit purpose of discussing agency business.

My second objection is to the requirement that a verbatim record be kept of every meeting which is legally closed under the exemptions outlined in the act. The further requirement that these transcripts be made available to the public threatens to open up to public scrutiny information relating to trade secrets, medical and criminal records, national security, and other topics which the Congress has already seen fit to exempt from the provisions of the Freedom of Information Act. No State sunshine law contains such a requirement, and I believe that its retention in the bill will open us up to serious charges of invasion of privacy and failure to protect a wide range of privileged information. It appears to me that the keeping of minutes of the closed meetings in these areas will be sufficient, in the event that those records are ever needed for any court action or congressional oversight. Consequently, I support the amendment to delete the requirement for verbatim transcripts and believe that we will have a stronger bill thereby.

Mr. LEHMAN. Madam Chairman, recent public opinion surveys indicate that the confidence of the American people in our government is at its lowest point in years.

Today, the House is considering legislation which if enacted will open up the operations of government to the public and be of great assistance in restoring the trust of the people in government. I am referring to H.R. 11656, the "government in the sunshine" bill.

For too long, the Federal agencies which have come to govern and determine so many aspects of our lives, have been conducting business without being required to operate in full view of the people for whom they exist. In my view, this tendency toward secrecy has produced an unresponsive bureaucracy and caused the alienation of the American people from their government.

The "government in the sunshine" bill would require for the first time in history, that this practice by governmental agencies cease. With the adoption of this legislation, meetings and actions of these agencies would be subject to the scrutiny of the American people. Of course, certain exemptions have been made; aspects dealing with national security, matters under the privacy acts, the judicial areas and some regulations dealing with financial institutions.

This legislation has been carefully considered. It was approved by a vote of 94–0 in the Senate. I believe this House should pass this bill and in so doing, take a necessary step in the restoration of a responsible and effective government, as well as the restoration of confidence by our citizens in our Government.

Mrs. COLLINS of Illinois. Madam Chairman, I rise in support of H.R. 11656, the government in the sunshine bill which is before the House today.

As my colleagues know this bill, which is the product of many months of diligent work by members of several committees of the Congress, simply seeks to create greater public access to business meetings conducted by the Federal agencies.

It is no secret that Federal agencies do much to affect the lives of the citizens of this land and it is also no secret that the citizens have little opportuity to observe firsthand the workings of those agencies which so often influence their lives. I believe that this bill will provide a very good opportunity to change this present circumstance. In my view H.R. 11656 by providing greater public access, will provide greater government accountability.

However since we sometimes hear of instances of a good and simple idea when it is reduced to legislative form turns into a problematic restriction on government and its people, it is wise to point out that the Government in the Sunshine bill has been developed with careful consideration and, consequently does not fall in that potentially problematic category. On the contrary, H.R.11656 represents a balanced approach to a legislative issue that encompasses both the public interest and the business bureaucratic interest.

Evidence of the balanced approach taken by this bill is seen in its provision that permits agencies to close their gatherings to the public if the content of a meeting would contain information that it is not best to widely publicize. Such areas of information are accounted for in specific "exemptions" contained in the bill. These exemptions include diverse matters affecting national security, financial institutions, trade secrets, agency personnel proceedings, and other sensitive areas. The bill consequently guards against the indiscrete discussion of private or highly critical issues. This is a reasonable approach. Yet in requiring that portions of a closed meeting, in which nonexempted material is discussed, must be recorded for public review after the session is concluded the bill shows ample concern for the government process and the public interest.

A further illustration of the balance in this bill is displayed by the nature of meetings that are to be covered under this measure. A meeting for the purposes of this bill will, broadly speaking, be an assembly or simultaneous communication between two or more people concerning the conditions or deposition of agency business. The openness, as a result, applies to business sessions as well as formal decisionmaking meetings and does not cover "chance encounters" or "social events". This is again a realistic balance of the public interest in Government affairs.

Incidentally, in making notification of the time, place and agenda of meetings available to the public, as H.R. 11656 does, the agencies would be complying, to a large extent, with the action the House of Representatives took several years ago to open its committee business and markup sessions to the public.

Madam Chairman, this bill amply protects the privacy of individuals without being disruptive of the process of Government, and still advances the public's interest in knowing what its Government is doing. It has sensible limits and achieves more openness in our Government. The cost estimates surrounding the bill are modest. It is estimated that over a 5-year period approximately 800,000 would have to be expended to make this bill operational. There are few in this Chamber that would argue this is too high a price to pay for opening the government process to citizens' review and observation.

I am urging support of H.R. 11656 as reported by the committee. I wish to remind my colleagues of the words of James Madison:

> Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both.

A vote in support of the Government in the sunshine will, in my opinion, be a responsible vote to advance public knowledge without jeopardizing the government process.

Mrs. COLLINS of Illinois. Madam Chairman, I have read a news report in the New York Times of July 25, 1976 which I find very disturbing. I wish to share it with my colleagues in the House for I think they also will be alarmed at what is told Mr. George Goodman Jr., a Times reporter.

The article indicates quite clearly that as a result of an appearance before a House subcommittee, the International Relations Subcommittee on International Organizations, Mr. Wilson Ferreira Aldunate, a respected conservative figure in Uruguayan politics, has been indicated by the Uruguayan military government and his property confiscated.

Mr. Ferreira testified in a restrained and dignified manner on June 17, 1976 before a House subcommittee investigating questions of human rights violations in Uruguay. A former presidential candidate of reputed good character, Mr. Ferreira presentated information about the present government of his native land and the unfortunate abuse of human rights in that country. His testimony was among the most moving I have witnessed in any number of hearings on the often emotional matters of human rights.

I find it, as I am sure my friends and colleagues in this Chamber will, simply deplorable that a foreign government should move against one of its citizens

because that citizen has appeared before a committee or subcommittee of this body.

For this reason, I strongly commend to all Members of the House this account as reported in the New York Times:

URUGUAYAN EXILE FACES INDICTMENT—EX-MINISTER ALSO SAYS HIS PROPERTY IS CONFICATED

(By George Goodman Jr.)

An exiled Uruguayan who told a House subcommittee last month that United States policies helped maintain dictatorships in Uruguay and other Latin American countries says that as a result an indictment has been issued by a military court and his holdings have been conficated.

In an interview last week, Wilson Ferreira Aldunate, a 57-year-old former senator who was defeated for the presidency of Uruguay in a disputed election in 1972, said: "After my testimony in Washington, I learned of an indictment against me and an embargo on my property."

The Uruguayan who testified before a House subcommittee on international organizations on June 17, said he learned that the indictment without detailed charges, had been handed down against him on July 8. He said that his conficated holdings in Uruguay included a 5,000-acre ranch with cattle, a home, an apartment in Montevideo.

FIGHT MORE THAN EVER

"The idea is to silience me, but I will work to fight more than ever," Mr. Ferreira said. "If necessary I would wash dishes."

He added that he is an expert in agriculture. In 1965, as minister of agriculture, he traveled here to renegotiate a $50 million Uruguayan debt with United States banking interests.

In 1973, after the military persuaded President Juan Maria Bordaberry to dissolve Congress, Mr. Ferreira and other legislators fled to asylum in Buenos Aires.

After the Argentine military overthrew President Isabel Martinez de Peron last March, he was forced to flee again along with his wife and son, first to Europe and then to the United States.

At a news conference held here last month by Amnesty International to protest widespread jailings and reported torture in Uruguay, the former senator appealed to the United States to refrain from interfering in his country's affairs as he also did before the subcommittee.

ASKS END TO AID

"We do not come to ask for your help or the intervention of the Government of the United States to overthrow the dictatorship oppressing our people," he said.

He did ask for an end to "open, public sustaining of those sectors responsible for repression." As soon as military regimes come to power, Mr. Ferreira said, the United States rushes in with a wide variety of assistance programs.

"But there is no uniform policy in Latin America because the State Department does not consider Latin America important enough," he added.

In such cases, he continued, policy is created by embassy officials. "The smaller the country the lower the level of bureaucrats setting policy."

During the week that Mr. Ferreira appeared in Washington, the House of Representatives voted to stop military aid for Uruguay.

Mr. BENNETT. Madam Chairman, I rise in support of H.R. 11656, the Government in the Sunshine Act. I am cosponsoring this sunshine legislation and I am glad that the House is on the threshold of approving the opening of meetings of agencies in the executive branch.

In a democracy, the people are the source of power for the government. The people have a right to know about the deliberations of their leaders on matters that can affect them either directly or indirectly.

My own State of Florida has had a sunshire law since 1967 and the much-publicized effectiveness of this law deflates the arguments that government functions best behind closed doors. Our Governor has remarked on many occasions that Florida's sunshine law has improved the working of government by providing for an open discussion of important issues.

The dawning of sunshine in the executive branch is simply a natural progression of openness on the Federal level. In recent years, both the House and the Senate have adopted new rules opening the great majority of committee meetings, including markup sessions, to the public. It is certainly time to extend this openness to the nonelected executive agencies.

Our Government was founded on the principle that ultimate power is vested in the people and that only an informed citizenry can properly exercise this power. In this, our Bicentennial Year, it is all the more fitting that the people have the opportunity to view the deliberations of their executive agencies.

Mr. HANNAFORD. Madam Chairman, I urge support of H.R. 11656, the Government in the Sunshine Act. One of the worst problems with the growth of the Federal bureaucracy has been the insulation of Federal agencies from public scrutiny. If successful in finding his way through the labyrinth of bureaucratic detours and referrals, the citizen's quest for information relating to Federal agency regulations too often ends with the discovery that the information he seeks is either legally protected from public examination or conveniently not recorded. Nor does the citizen alone suffer from this lack of accessibility: Our own everyday experiences remind us of the impenetrability of administrative agencies and their ability to frustrate congressional inquiries with a lack of documentation of administrative rulemaking.

The Government in the Sunshine Act restores public accessibility to agency proceedings, and this accessibility will hopefully check the departmentalization of Federal power into feudal executive directorates. The public examination of Federal decisionmaking will improve the national debates on Government policies and keep the public informed of decisions affecting them.

But most importantly, events of the recent past have given the public adequate reason to be distrustful of Government, and such distrust is destructive to a free society. Anything that we can do to restore faith in Government must be done. If the public wants to know what is going on behind closed doors, we must open the doors. If this on occasion diminishes our efficiency of operation, that is a sacrifice we must make.

Mr. MATSUNAGA. Madam Chairman, I rise to express my full support for H.R. 11656, the proposed Federal Government in the Sunshine Act. As a cosponsor of this legislation, I commend the chairmen of the House Judiciary and Government Operations Committees, Hon. PETER RODINO and JACK BROOKS, respectively, for their substantial efforts to assure a fair bill and to bring it before the full membership of the House.

Madam Chairman, an excerpt from the Judiciary Committee's report on H.R. 11656 succinctly states the basic principle of our system of government which this bill seeks to insure. I quote:

> . . . (it) assumes that citizens have the right to know how their government operates and what the government is doing for them and in their name.

We all know how low public confidence in its government has sunk. We receive mail every day from constituents who suspect the "real motives" of a decision by various Federal agencies or elected public officials. We hear these same complaints voiced in angry, disgusted, or, saddest of all, resigned tones when we return home. I believe that the reason this sentiment is so widespread is that people feel detached from their government. Because of government's increasing tendency to conceal its inner workings and because they are not able to perceive their role in the decisionmaking process, people begin to distrust their own government. They assume that they have no role, and the result of this conclusion is unavoidably a decrease in confidence in government.

As serious as this confidence issue may be, it is not the most dangerous consequence of secrecy in Government. This more serious potentiality was realized all too painfully in recent years in the numerous abuses of government known collectively as Watergate. The Fathers of our system, 200 years ago, knew why these abuses occur. They declared that secrecy breeds a lack of accountability, and nonaccountability breeds the breaching of human rights.

I therefore strongly believe that action by the Congress to reverse the recent trend toward secrecy in government will contribute immeasurably toward an elevation in public confidence and the increased protection of our constitutional rights. The bill before us today is a concrete, responsible step toward this end. While recognizing quite rightly that individual rights must be protected, and government must be assured the ability to carry out its responsibilities, it assumes that all U.S. citizens are entitled to know the reasons for all decisions of the executive branch of Government for which the need to limit access is not clear or totally justifiable.

Madam Chairman, in recent years I have joined several of my colleagues in actively supporting several proposals to open up the decisionmaking process of the legislative branch of Government to public scrutiny. I have initiated or supported wholeheartedly efforts to provide for full lobying disclosure, for full financial disclosure by Members of Congress, for open comittee meetings, for televising the proceedings of Congress, and for re-

quiring record teller votes on key amendments. Congress has become stronger for these reforms, for by preventing the opportunity for minority interests to control the legislative process via concealment, the will of the majority has been assured its role as the crucial decision-making factor. It is time that we extend the same requirements of full public scrutiny to the decisions of the executive branch. I therefore commend the pending Sunshine Act to the House, and urge that it be given the overwhelming support which it so clearly deserves.

Mr. ANDERSON of Illinois. Madam Chairman, when the chairman of the Government Operations Committee (Mr. BROOKS) testified before our Rules Committee on May 19, 1976, he explained that the purpose of this Government in the Sunshine Act was "to bring to the executive branch some of the sunshine we have been enjoying here in Congress for the past few years."

As the author of nine "Open House Amendments" which would truly bring more sunshine into the House and its committees, I was extremely interested in the chairman's statement and set about to determine just how parallel this "sunshine bill" is to our own House rules. Much to my amazement, though I guess I should not have been surprised given the fact that we tend to be tougher on the executive branch than ourselves, I found that this "sunshine" bill far exceeds any sunshine requirements which now apply to House committees. In effect, this bill establishes a double standard for sunshine between the two branches, and we come out as being the shadier of the two branches of Government.

Madam Chairman, this conclusion is based on an examination of the House Rules, the published rules of each of its standing committees, and a followup phone survey which my staff conducted. The results of this three-part sunshine inquiry and comparative analysis are shocking, to say the least. Let us go down the list of what this bill requires as compared to what is now required or practiced by our House committees.

OPEN MEETINGS

Section 3 of H.R. 11656, the sunshine bill, states that all portions of all meetings of Federal agencies headed by two or more individuals appointed by the President shall be open to public observation, and then goes on to list 10 narrow exceptions to that rule.

Clause 2(g)(1) of House Rule XI states that a committee meeting may be closed by majority vote for any reason.

On January 29, 1975, I introduced House Resolution 114 to amend clause 2(g)(1) of House Rule XI to require that all committee meetings be open to the public unless matters to be discussed would endanger national security, violate any law or rule of the House, or involves internal budgetary or personnel matters—roughly the same rule which now applies to committee hearings. My resolution now has 87 cosponsors and it is still languishing in the House Rules Committee.

VOTE TO CLOSE MEETINGS

Section 3(d)(1) of the sunshine bill requires a rollcall majority vote of the agency to close a meeting and "no proxies shall be allowed."

While clause 2(g)(1) of House Rules XI also requires a majority rollcall vote of a committee to close a meeting, clause 2(f) permits general proxies "for motions to recess, adjourn or other procedural matters." In other words, proxies may be used in House committees for the purpose of closing a meeting.

On January 29, 1975, I introduced Resolution 113 to ban all proxy voting in House committees. That resolution now has 91 cosponsors. It is still stuck in the House Rules Committee.

TRANSCRIPTS AND MINUTES OF MEETINGS

Section 3(f) of the sunshine bill requires that a veritable transcript be kept of all closed agency meetings and that all but protected portions be made promptly available to the public and that copies be furnished to the public at no greater than the cost of duplication or transcription. Likewise, agencies are required to keep minutes of all open meetings and make these promptly available to the public, again providing copies at no greater than cost of duplication.

Clause 2(e) of House Rule XI requires each committee to "keep a complete record of all committee action" but only the "result of each . . . rollcall vote need be made available by the committee for inspection by the public at reasonable times in the offices of the committee." All other information "shall be the property of the House and all Members of the House shall have access thereto." In other words, unlike the sunshine bill, there is no requirement in the House rules that a verbatim transcript be kept of all closed committee meetings, let alone that it be made available to the public. And while, like the sunshine bill, our rules require that a complete record be kept of all committee action, only the rollcall vote portions of the minutes need be open to public inspection.

On January 29, 1975, I introduced House Resolution 112 to require that all committee records, except for information whose disclosure would endanger national security or violate any law or rule of the House, should be open to public inspection. That resolution now has 82 cosponsors and it is still gathering dust in the House Rules Committee.

Madam Chairman, our followup check of committee rules reveals that most are in conformity with the minimal requirements of the House rules, and not many have broader sunshine provisions. It should be noted, though, that most committee markup sessions are now open to the public. Moreover, many committees do permit persons to inspect committee minutes and copy them, though few committes provide a duplication service. Thus, actual committee practices are often somewhat more lenient than House or committee rules would suggest. Nevertheless, these practices vary greatly from committee to committee and presumably are subject to the dictates and whims of the committee chairman. Some committees will not even permit Members' individual staff to make Xerox copies of meeting transcripts which are open to public inspection, thus forcing time-consuming copying by hand.

Finally, it should be noted that all committees retain the sole discretion under clause 2(k)(7) of rule XI over the release of information received or discussed in executive session. Unlike the sunshine bill, they are under no obligation to make public the sanitized portions of such transcripts. And unlike the sunshine bill committees cannot be challenged in a court of law over their compliance with the various sunshine requirements.

Madam Chairman, as one who has long advocated more sunshine in the House, I think it is a bit duplicitous and hypocritical for us to impose more sunshine requirements on Federal agencies than we are willing to abide in our own rules and committees. If we are going to spread this sunshine around, let us do it in such a way that both branches are exposed to an equal amount of light and heat. I hardly think the argument can be made that the Congress is any less a public body than are the Federal agencies which are covered under this sunshine bill.

Mr. ANDERSON of California. Madam Chairman, I rise in strong support of H.R. 11656, the Government in the Sunshine Act.

In effect, this legislation ends secret deliberations by Federal agencies, except in the most sensitive cases. The provisions apply to 47 regulatory agencies that are covered by the Freedom of Information Act, and those headed by a body of two or more members, a majority of whom are nominated by the President and confirmed by the Senate.

I believe the words of Thomas Jefferson best summarize why I was pleased to add my name in cosponsorship of this legislation. Jefferson said:

> The will of the people is the only legitimate foundation of any government. I know of no safe depository of the ultimate powers of the society but the people themselves. Whenever the people are well-informed, they can be trusted with their own government; whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights. Nothing then is unchangeable but the inherent and inalienable rights of man. I have great confidence in the common sense of mankind.

I urge your support for this legislation.

Mr. VANIK. Madam Chairman, I am pleased to speak in support of H.R. 11656, the Government in the Sunshine Act, a bill to insure that the public will have the open and responsive Federal agencies to which they are fully entitled. I particularly support section 552b(f)(1), requiring a complete transcript or full recording of each meeting, or portion of a meeting, which is closed to the public; and section 552b(f)(2), requiring that minutes be kept of open meetings and made available to the public.

I believe that H.R. 11656 will greatly improve the accountability of Federal regulatory agencies, whose decisions have the effect of law. However, I believe that Congress should demand the same openness of our own committees that we would require Federal agencies to have. As many Members of Congress are aware, I have been involved in a dramatic example of the need for open-

ness in our own legislative conference committees.

The conference committees effectively act as a third legislative body, disassembling and redrafting the original bills of the House and the Senate. The final product can resemble a legislative Frankenstein for which no one wants credit or blame. The original intent of the bill can be perverted without a clue as to the source of the changes.

I specifically refer to the Tax Reduction Act of 1975, which became Public Law 94–12 with new language grafted onto section 907—language which had not been part of either the House or the Senate version of the bill. The result was the creation of an enormous tax loophole, primarily benefiting the four corporate owners of the ARAMCO oil consortium, to the detriment of the American public who lost $35 million in annual tax revenues.

I have previously described my efforts to determine the source of section 907 (c) (3). My efforts were thwarted by the lack of meaningful records, as is often the case where closed meetings are held. The committee conference members, with only their personal recollections to go by, could not recall how the language responsible for the loophole became part of the law. No one could even recall if it had ever been discussed. Given the extreme pressure under which conference committees normally work—in a race against time to complete legislation before the close of Congress—it is only surprising that this sort of mutation of legislation does not happen more often. The more complex a piece of legistion is, the more hopeless it becomes to account for any single change in its wording or intent without the availability of accurate records.

The agruments for requiring Federal regulatory agencies to hold open meetings with reliable records clearly apply with even more force to the conference committees who give our laws their final form. An agency ruling or decision having unanticipated and undesirable effects can be corrected with far greater speed and fewer complications than the product of a conference committee. Presently, a bill can become law before anyone has time to realize the harm that even a seemingly minor change in the wording can cause because only the end product of the committee work is readily available to Members who are expected to vote it into law. As was the case with the tax reform bill there may be efforts by those who benefit from the unplanned loophole to enlarge it. I have introduced a bill, H.R. 13352, to repeal the questionable language of the Tax Reduction Act. However, my efforts to take up this legislation have not been successful thus far.

Open conference committee meetings would result in improved legislation. Furthermore, a record-keeping requirement, as in H.R. 11656, would have the added benefit of providing improved legislative histories so that courts can interpret laws as Congress intends. Legislation has already been introduced to remedy the problem of the closed conference. The House should adopt the provision for open conference meetings already passed by the Senate as part of S. 5, together with recordkeeping requirements similar to those included in H.R. 11656. The public would then be protected from the abuses fostered by the shoud of secrecy beneath which conference committees are now free to operate.

Mr. LEGGETT. Madam Chairman, openness in Government must be a guiding precept of any true democrat. I am heartened that it represents a plank in my party's 1976 platform and a major goal of our Presidential nominee. It is thus particularly timely for the House to take another major step toward fulfillment of that goal by passage of H.R. 11656, the Government in the Sunshine bill.

In considering this bill, we must look back to first principles. Ours is a Government by consent of the governed. If the people are to exercise their right and duty of consent, they must know. It is not enough that the people's representatives know, for the authority conferred on the Executive by the Legislature ultimately flows from the people. And, if Government is to be in reality the servant of the people, rather than the reverse, then Government must be fully accountable to a knowing public for its official acts.

Madam Chairman, the issue posed here is basically simple. The modern leviathan which the executive branch has become in the last 3 decades has become accustomed to doing its business largely insulated from the people. The question is whether we are going to take another needed step in the direction of reversing that trend.

We enacted the original Freedom of Information Act, with the goal of making documents of executive departments and agencies generally available to the public, in 1966. And in 1974, we passed the major strengthening amendments needed to translate that objective into reality.

The purposes of the bill before us are basically twofold. One is to open to the public the meetings of multimember Federal agencies, except for discussions which fall within 10 exempted areas. The other is to prohibit ex parte communications between agency decisionmakers and interested parties, so as to insure that agency decisions which are supposed to be based on a public record are not influenced by private, off-the-record communications.

The open meeting rule would apply to about 50 Federal regulatory agencies, to all others which are covered by the Freedom of Information Act, and to those which are headed by a body of two or more members, a majority of whom is appointed by the President and confirmed by the Senate. It is also explicitly made applicable to the Federal Election Commission and the Postal Service. I might add, as an aside, that the public will doubtless be interested, though hardly inspired, to learn how the moguls of the Postal Service arrive at some of their singularly effective decisions, such as the one to spend a billion or so on machines which speed up parcel post by the rip-and-shred method.

The 10 exempted areas parallel those covered under the Freedom of Information Act. They run the gamut from national security and foreign policy information, to accusations of individual criminal acts, and certain information on the regulation of securities, currency, and financial institutions. The bill requires that when an agency closes a meeting under 1 of the 10 exemptions, it must make a recording or verbatim transcript of the closed portion and release to the public all parts which do not actually contain exempt information. I might add that Dr. Arthur Burns, head of the Federal Reserve Board, who has been so receptive to congressional influence in monetary policy, opposes this bill because of the transcript requirement; but has admitted that all of his meetings on monetary policy and bank regulation could be closed.

I realize that there is much controversy surrounding the definition of those meetings which would be subject to the "sunshine" requirement, as well as the provision for transcripts of closed meetings. I say, however, that if we are to err, let us err for once on the side of openness. We have had a great deal of secrecy in our post-war Government. Why not try a whole lot of openness for a change.

In any event, let us not permit these issues to deflect us from the fundamental principle involved in this bill. We in the Congress have taken the big step of opening our committee and conference meetings to the public, including markup sessions in the House. There is no reason why we should expect any less of decisionmakers in the executive branch.

I urge my colleagues to support H.R. 11656 as another key step toward putting democratic theory into practice.

Mr. SIKES. Madam Chairman, let me begin by saying that I wholeheartedly agree with the objectives of this legislation. Coming from a State that pioneered "Government in the Sunshine," I feel also that I possess a broader view of the pitfalls that can await us if the legislation under consideration is adopted in its present form.

My study of the bill leads me to the conclusion that what we are doing in our zeal to open Government to the people, is creating a legal nightmare that can keep Government bogged down in an endless process of defending itself.

I call attention to four provisions of the bill that greatly disturb me. First. A lawsuit can be brought and the attorney fees and costs are guaranteed merely if the plaintiff "substantially prevails." Second. A plaintiff not only can obtain personal costs against individual members of an agency in certain cases, but costs cannot be assessed against him even if he loses, unless it can be proven that the lawsuit was instigated for purely frivolious and dilatory purposes. Think for a moment of the position of the dedicated public servant. I personally feel it would further hamper our efforts to obtain qualified persons to work for Government. Third. Perhaps the most indefensible provision of the bill is the one that allows a person to bring a lawsuit in his own home district against any agency

covered in this act regardless of where that agency held the meeting.

These points alone will provide you with some idea of the legal nightmare we are creating.

In closing I wish to speak to a fourth provision that troubles me. That provision is the requirement that transcripts be kept of all closed meetings and be made availble with proper regard for national security and other exceptions listed. While the intent is to provide the agency with a tool for defense in the event of lawsuits, it also provides a great temptation to those who would like to become instant heroes with the media. I think the House has proved conclusively that secrets are hard to keep.

Mr. HORTON. Madam Chairman, I have no further requests for time.

Ms. ABZUG. Madam Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. FLOWERS. Madam Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. FLOWERS: Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means an assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, but does not include meetings required or permitted by subsection (d); and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b)(1) Members as described in subsection (a)(2) shall not jointly conduct or dispose of agency business without complying with subsections (b) through (g).

(2) Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsection (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

"(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose information required or permitted to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution: or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed agency action has been disclosed to the public by the agency, unless the agency is required by law to make such disclosure prior to taking final agency action on such proposal, or after the agency publishes or serves a substantive rule pursuant to section 553(d) of this title; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d)(1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

"(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the date, place, and subject matter of the meeting and each portion thereof at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time and in no case later than the commencement of the meeting or portion in question. The time, place, or subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph only if (1) a majority of

the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(f)(1) A complete transcript or electronic recording adequate to record fully the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of subsection (c). The agency shall make promptly available to the public, in a location easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, except for such portion or portions of such discussion or testimony as the agency determines to contain information specified in paragraphs (1) through (10) of subsection (c). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at no greater than the actual cost of duplication or transcription or, if the public interest, at no cost. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

"(2) Written minutes shall be made of any agency meeting, or portion thereof, which is open to the public. The agency shall make such minutes promptly available to the public in a location easily accessible to the public, and shall maintain such minutes for a period of at least two years after such meeting. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time therefor provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section, and to require the promulgation of regulations that are in accord with such subsections.

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held, or in the District Court for the District of Columbia, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it dems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public such portion of the transcript or electronic recording of a meeting as is not authorized to be withheld under subsection (c) of this section. Nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Except as specifically provided in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, except that provisions of this Act shall govern in the case of any request made pursuant to such section to copy or inspect the transcripts or electronic recordings described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in subsection (f) of this section.

"(l) This section does not, constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to such individual under section 552a of this title.

"(n) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

SEC. 4. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and made or caused to be made by a party or interested person, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

"(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

"(2) This section does not constitute authority to withhold information from Congress.".

(b) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the in-

terests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.".

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (opening meetings),".

(b) Section 552(b)(3) of title 5, United States Code, is amended to read as follows:

"(3) required or permitted to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;"

EFFECTIVE DATE

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect one hundred and eighty days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

Mr. FLOWERS (during the reading). Madam Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read, and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, on the amendment in the nature of a substitute, which represents all of the amendments adopted in the Committee on the Judiciary as well as all the committee amendments of the Committee on Government Operations, I do not know that there is a great deal of controversy save in one particular and I would speak to this one which I believe to be in controversy and then will have something to say in reference to what I know will be the allegations of the opponents of this amendment. In one of the amendments that the Committee on the Judiciary recommends in its package, in regard to subsection (f) of the new section concerning transcripts of closed meetings, the Committee on Government Operations' bill requires that a complete transcript or electronic recording which is adequate to record the proceedings shall be made of each meeting or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of subsection (c).

The committee considered the difficulties incident to the review of the transcript of the closed meetings required by the original provisions of the bill. The bill would require that each deletion—this is under the Committee on Government Operations' version—authorized by an exception in the section would be made by recorded vote of the agency taken subsequent to the meeting.

It was pointed out that this would require considerable expenditure of time of officials of the Agency, and this would be cumbersome and time consuming. We determined that the intent of the bill could be adequately carried out by deleting this provision and similarly deleting the provision requiring a written explanation of the reason and statutory basis for each deletion.

This is, Madam Chairman, where we cross swords over the matter of the written explanation and the statutory basis for the deletion. And I hope the Members will oppose the gentleman from Florida's amendment.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentleman for yielding.

If the gentleman will permit me, let me express my appreciation first to him and his subcommittee for the very careful and thorough consideration he gave this bill, and for the prompt manner in which he acted on the bill. I also have no objection to the amendments except the difference on the one the gentleman has pointed out. I intend to offer an amendment here as soon as I can to read that in place of each portion deleted from such transcript, the agency shall supply a written explanation of the reason, et cetera, simply on the theory that if we are going to be faced with pages of deletion, at least we ought to know what the citation of the statute is and some explanation of the deletion.

Mr. FLOWERS. I understand the gentleman fully, and it would only be my concern that we could get too specific here, and that the reason for the deletion might require too much elaboration and could be an onerous task.

Let me say before I stop here that I fully support the legislation. I think it is an excellent piece of work that the gentleman's committee has done, the gentlewoman from New York (Ms. ABZUG), the gentleman from Texas (Mr. BROOKS), and all of the members of the Committee on Government Operations. You have brought us an excellent piece of work, something that has been long coming. And I think that the agencies are going to find that the rays of sunshine do not really bother them all that much.

Mr. FASCELL. If the gentleman will yield further, I agree, of course, that we have sunshine in the Congress. We cannot hurt the executive agencies. We are trying to help them.

I was very much impressed with the thorough consideration given by the gentleman's subcommittee. I know that there were a lot of amendments considered. But the committee went through them all and carefully decided which ones they would support.

Mr. FLOWERS. I thank the gentleman for his comments.

Madam Chairman, I yield back the remainder of my time.

AMENDMENT OFFERED BY MR. FASCELL TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. FASCELL. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. FASCELL to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 10, line 12, after "subsection (c)." add the following: "In place of each portion deleted from such a transcript or transcription the agency shall supply a written explanation of the reason for the deletion, and the portion of subsection (c) and any other statute said to permit the deletion.".

Mr. FASCELL. Madam Chairman, the bill provides that most of the meetings must be open to the public and it requires that transcripts be made of the meetings that are closed under the 10 exemptions. Transcripts are required for two reasons; One is so that any portion of the meeting that turns out not to contain exempt material may be released to the public, and in case a suit is brought by the citizen. Under this bill of course that is a remedy a citizen has when a meeting is wrongfully closed.

The original bill considered by the Government Operations Committee requires when material is deleted the agency must state the reason and the statutory basis therefore and give a summary or paraphrase of the deleted material. Because some agencies objected to the requirement of the summary or paraphrase, that was dropped by the Government Operations Committee, leaving only the requirements for the reason and the statutory basis.

Then the bill went to the Judiciary Committee which recommend even that language be removed, and it is that language which I seek to restore to the bill, so that if there is a deletion we would have at least to give the reason and statutory citation. We maintain that is not unreasonable. It does not put an unnecessary or intolerable burden on the agency. But obviously all of us have had experience in dealing with our own transcripts where we are met with pages and pages of blank spaces which simply say "deletion." We can get nothing out of it. I can understand why we might not want to put a summary in and we have left that out, but I see no reason why we cannot say "security deletion, Public Law 1234, paragraph (a), (b), or (c)." That is not so bad.

It is, as the gentleman from Alabama says, no big deal, but we think it will be helpful in carrying out the spirit and thrust of this act. I hope this simple amendment can be adopted.

Mr. HORTON. Madam Chairman, I rise in opposition to the amendment offered by Mr. FASCELL which will require a reason be given for the deletion of certain exempted information or a summary of the deleted information.

First let me state I am opposed to the unique requirement of a verbatim transcript for reasons which have and will be elaborated on. There are many adverse consequences that will result if this amendment is passed but I request my colleagues to reflect on only two very clear and simple ones.

There are only 10 narrowly defined exemptions which can be asserted to withhold information from the public. These 10 are overwhelmingly supported by Members of both bodies of this Congress. Yet, this amendment says there

are 10 categories of information that should be protected, but not protected completely. Let us delete it from the public record, then let us sanction "official leaks" by giving the reason or a summary of the information. This clearly is contradictory and unacceptable.

The other point I would like to submit for your consideration is the primary purpose of this legislation. That is, to allow every citizen interested in the work of his Government access to proceedings conducted by various agencies. Again, I remind you of the 10 narrowly defined exemptions. However, if this amendment is passed, there will be hints, clues, and even summaries of information which should not be made public by the 10 exemptions. These clues and summaries will not aid or benefit the vast majority of the American public. They will, however, greatly benefit select and sophisticated groups. This amendment will provide information to these groups which, because of their expertise, can utilize in financial and market speculation. This clearly discriminates against the general public. This amendment could be titled "Aid and Benefit to Financial Speculators."

There are many other serious and complex consequences that will result if this amendment is passed but I only ask consideration of these two very simple and clear results as I feel they are more than sufficient to defeat this amendment.

Mr. MOORHEAD of California. Madam Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from California.

Mr. MOORHEAD of California. Madam Chairman, I am also opposed to this amendment. People in the agencies handling delicate matters, such as those connected with the market and many other things, have told us if they have to give an explanation, that people who are wise in the matters concerned will be able to tell from the explanation really what was in the part that was deleted and we fail to serve the purpose if we require that to be included. In many instances, it will work great harm to the country.

Mr. HORTON. Madam Chairman, I thank the gentleman.

I am opposed to the amendment and urge my colleagues to oppose it.

Mr. FASCELL. Madam Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, she will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will not commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 559]

Andrews, N.C.	Hansen	Rees
Ashbrook	Harrington	Riegle
AuCoin	Hébert	Roe
Badillo	Heckler, Mass.	Rostenkowski
Boggs	Heinz	Ruppe
Brown, Mich.	Helstoski	Santini
Cederberg	Hinshaw	Scheuer
Chisholm	Holland	Shuster
Clay	Jarman	Sisk
Cochran	Jones, Ala.	Stanton, James V.
Collins, Ill.	Jones, N.C.	Steed
Conyers	Jones, Tenn.	Steiger, Ariz.
Dellums	Karth	Stephens
Dent	Kemp	Stratton
Derrick	Landrum	Stuckey
Derwinski	Litton	Sullivan
Diggs	McDade	Symington
Dingell	Mathis	Udall
Downing, Va.	Murphy, N.Y.	Vander Veen
Drinan	Nowak	Wampler
Esch	O'Hara	Wiggins
Evans, Colo.	O'Neill	Wilson, C. H.
Evans, Ind.	Patterson, Calif.	Wilson, Tex.
Evins, Tenn.	Peyser	Young, Alaska
Fascell	Pike	Zeferetti
Fountain	Railsback	
Fraser	Randall	
Gaydos		

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mrs. BURKE of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill H.R. 11656, and finding itself without a quorum, she had directed the Members to record their presence by electronic device, whereupon 352 Members recorded their presence, a quorum, and she submitted herewith the names of the absentees to be spread upon the journal.

The Committee resumed its sitting.

The CHAIRMAN. The gentleman from Texas (Mr. BROOKS) is recognized for 5 minutes.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, I rise in support of the amendment offered by the gentleman from Florida (Mr. FASCELL) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS) which amendment would require that the agencies seeking to cut out language or delete it in one form or another, to give a written explanation on why they cut it out and any statutes that are said to give them that authority.

The amendment is simple logic. If material is deleted from a transcript, some indication of the reason and the authority for the deletion should be stated and can be stated without any difficulty.

A blank space is going to be meaningless and confusing. It will cause more problems for the agency than a statement of the authority for the deletion would. The amendment is a compromise from the original language. The original bill provided for a summary or a paraphrase of that material. The Committee on Government Operations reduced that to a simple citation of the reason for the deletion. The citation of the authority for the deletion certainly is not onerous. It will not reveal any confidential information.

Madam Chairman, I support the amendment offered by the gentleman from Florida as a very reasonable and worthwhile compromise.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FLOWERS. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, I do not think that this amendment and the subject matter we are dealing with here are as important as some of the other things we are going to deal with later on, on which there will be amendments to this legislation. However, I am constrained to oppose it.

The Committee on the Judiciary struck this provision, because it was our considered judgment that it did amount to an onerous task to foster off on these agencies, in addition to all of the other things we are putting into this legislation, if we require them to offer an explanation of the reasons for the deletion and the statutory authority. This could in effect amount to about the same thing as a summary, thereby giving rise to placing in the transcript the same information that would be the reason for their deleting the subject matter in the first place.

The full transcript will still be available for the judge, and we do not think there is any real reason for requiring the additional effort, the additional work on the part of rather high level people in these agencies and departments. Therefore, we did not think this provision was necessary.

Madam Chairman, I urge my colleagues to vote "no" on this amendment.

Mrs. FENWICK. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

I would like to ask a question. My trouble with this amendment is the definition of the word "explanation." Perhaps I should address this question to our colleague, the gentleman from Florida.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Florida.

Mr. FASCELL. I thank you for yielding.

I will be delighted to answer the question of the gentlewoman. The explanation that is required would be that whatever the deletion is, it is within the statutory exemption, for example, because the testimony herein deleted might adversely affect the national security, or the national economy, or affect the rights or life of an individual, and it requires a citation of the statute of that authority. It does not require a summary or a paraphrasing of the testimony.

Mrs. FENWICK. If the gentleman will

yield further, am I correct in saying, then, that the explanation could be as brief as, "national security," "the national economy," "the welfare of the masses," or something of that kind, citing subsection (c)?

Mr. FASCELL. If the gentleman will yield further, the gentlewoman from New Jersey is absolutely correct. The only thing one would have to add to it is the statutory citation.

Mrs. FENWICK. Subsection (c)?

Mr. FASCELL. That is right.

Mr. SEIBERLING. Madam Chairman, I move to strike the last word.

If the gentlewoman from New Jersey would look at the supplemental views of six of the members of the Committee on the Judiciary, including this member—and there are four printings of the supplemental views, but they are all basically identical—she would find that we make a very clear distinction between summaries, which is what was deleted by the Committee on Government Operations, and explanations and citations of authority, which is what was deleted by the Committee on the Judiciary—in my view a mistaken deletion.

I strongly support the Fascell amendment and regret that the majority of my colleagues on the Judiciary Committee took the step of deleting it.

Mr. KINDNESS. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise in strong opposition to the amendment and I will yield in a moment to my colleague, the gentleman from New York (Mr. HORTON), who will also fill Members in on the reasons for the opposition.

It is important to learn what we are doing is gutting the exemptions to the bill, in at least some cases. The exemptions to the bill relating to the national security and trade secrets and matters of that sort are in there for a good purpose and they are supported by the overwhelming majority I am sure of the Members of the House and certainly of the other body.

We recognize the need for some materials not being disclosed publicly. This amendment in the case, for example, of the Federal Reserve Board or the Securities and Exchange Commission, if it required disclosure in the way this amendment proposes, would give all the information that is necessary to a highly sophisticated group of people who follow what is going on in the SEC or the FRB. So in effect this amendment would remove part of the effectiveness of those exemptions. I would urge a "no" vote overwhelmingly against this amendment.

I yield now to the gentleman from New York (Mr. HORTON).

Mr. HORTON. Madam Chairman, I thank the gentleman for yielding.

I have already addressed myself to this amendment and expressed my opposition to it, but I would like to point out to the Members that the amendment that has been offered is to restore language that was in the Government Operations Committee bill. Subsequent to the action by the Government Operations Committee the bill was referred sequentially to the Judiciary Committee. We just heard the chairman of the subcommittee that handled this bill for the Judiciary Subcommittee indicate that they had this matter before them and that they decided to remove this language because for all practical purposes it made the Freedom of Information Act deletions or exemptions moot. They are not effective if this amendment goes through.

For all practical purposes, if there is a reason for closing a meeting and one has to explain the reason for those deletions when the report is made or when there is a deletion or when a summary is made available to the public, that is going to mean to those sophisticates who know what is involved in that meeting, exactly what occurred.

I think this is a devastating amendment as far as the ability of these agencies to delete material. On the one hand we say under the Freedom of Information Act they can exempt or delete material before making it public and then on the other hand we turn around and say if they do delete when they make the transcript public then they have to give the reasons for it, so that is tantamount to removing whatever exemptions they might have.

Some of these regulatory agencies have some very sensitive matters that relate to economics and national security and financial matters that ought not be released.

So I hope my colleagues will oppose this amendment and vote it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

RECORDED VOTE

Ms. ABZUG. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 232, noes 168, not voting 32, as follows:

[Roll No. 560]

AYES—232

Abzug
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Andrews, N.C.
Annunzio
Aspin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Bedell
Bennett
Bergland
Biaggi
Bingham
Blanchard
Blouin
Boland
Bolling
Bonker
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, John
Burton, Phillip
Carney
Carr
Chappell
Chisholm
Clancy
Cleveland
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
Crane
D'Amours
Daniels, N.J.
Davis
de la Garza
Delaney
Dellums
Derrick
Derwinski
Diggs
Dingell
Dodd
Downey, N.Y.
Drinan
Duncan, Oreg.
du Pont
Early
Eckhardt
Edgar
Edwards, Calif.
Eilberg
Emery
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fenwick
Fisher
Fithian
Flood
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fraser
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Gonzalez
Grassley
Green
Haley
Hall, Ill.
Hall, Tex.
Hamilton
Hanley
Hannaford
Harkin
Harrington
Harris
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heckler, Mass.
Heinz
Hicks
Holland
Holtzman
Howard
Howe
Hughes
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Jordan
Kastenmeier
Kelly
Keys
Koch
Krebs
Lehman
Lent
Levitas
Lloyd, Calif.
Long, La.
Long, Md.
McHugh
McKay
Madden
Maguire
Mann
Mathis
Matsunaga
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mineta
Minish
Mink
Mitchell, Md.
Moakley
Moffett
Moorhead, Pa.
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Neal
Nedzi
Nix
Nolan
Nowak
Oberstar
Obey
Ottinger
Passman
Patterson, Calif.
Paul
Pepper
Perkins
Pickle
Pike
Pressler
Preyer
Price
Rangel
Reuss
Richmond
Rinaldo
Rodino
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roush
Roybal
Russo
Ryan
St Germain
Santini
Sarbanes
Scheuer
Schroeder
Seiberling
Sharp
Shipley
Simon
Smith, Iowa
Solarz
Spellman
Staggers
Stanton, James V.
Stark
Steelman
Stokes
Studds
Symms
Thompson
Thornton
Traxler
Tsongas
Udall
Ullman
Van Deerlin
Vander Veen
Vanik
Vigorito
Waxman
Weaver
Whalen
White
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Ga.
Young, Tex.

NOES—168

Abdnor
Anderson, Ill.
Andrews, N. Dak.
Archer
Armstrong
Ashley
Beard, Tenn.
Bell
Bevill
Biester
Boggs
Bowen
Breaux
Breckinridge
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Byron
Carter
Cederberg
Clausen, Don H.
Clawson, Del
Cochran
Collins, Tex.
Conable
Conlan
Coughlin
Daniel, Dan
Daniel, R. W.
Danielson
Devine
Dickinson
Downing, Va.
Duncan, Tenn.
Edwards, Ala.
English
Erlenborn
Eshleman
Findley
Fish
Flowers
Flynt
Forsythe
Frenzel
Frey
Ginn
Goldwater
Goodling
Gradison
Gude
Guyer
Hagedorn
Hammer-schmidt
Harsha
Hébert
Hefner
Henderson
Hightower
Hillis
Holt
Horton
Hubbard
Hungate
Hutchinson
Hyde
Ichord
Jarman
Johnson, Pa.
Jones, N.C.
Jones, Okla.
Kasten
Kazen
Kemp
Ketchum
Kindness
Krueger
LaFalce
Lagomarsino
Latta
Lloyd, Tenn.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McCormack
McDade
McDonald
McEwen
McFall
McKinney
Madigan
Mahon
Martin
Mazzoli
Michel
Milford
Miller, Ohio
Mills
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Morgan
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Nichols
O'Brien
Patten, N.J.
Pattison, N.Y.
Pettis
Poage
Pritchard
Quie
Quillen
Railsback
Randall
Rees
Regula
Rhodes
Risenhoover
Roberts
Robinson
Rousselot
Runnels
Ruppe
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shriver
Shuster
Sikes
Skubitz
Slack
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Steed
Steiger, Wis.
Stephens
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thone
Treen
Vander Jagt
Waggonner
Walsh
Whitehurst
Whitten
Wilson, Bob
Winn
Young, Alaska
Zablocki

NOT VOTING—32

Ashbrook
AuCoin
Clay
Dent
Esch
Fountain

Hansen	O'Hara	Stuckey
Helstoski	O'Neill	Sullivan
Hinshaw	Peyser	Symington
Jones, Ala.	Riegle	Wampler
Jones, Tenn.	Roe	Wiggins
Karth	Rostenkowski	Wilson, C. H.
Landrum	Sisk	Wilson, Tex.
Leggett	Steiger, Ariz.	Zeferetti
Litton	Stratton	

The Clerk announced the following pairs:

On this vote:

Mr. O'Neill for, with Mr. Landrum against.

Mr. Dent for, with Mr. Steiger of Arizona against.

Mr. Helstoski for, with Mr. Wampler against.

Mr. Zeferetti for, with Mr. Wiggins against.

Mr. Rostenkowski for, with Mr. Fountain against.

Mr. Symington for, with Mr. Ashbrook against.

Mr. Charles H. Wilson of California for, with Mr. Hansen against.

Messrs. DERWINSKI, BAUMAN, SYMMS, and SHIPLEY changed their vote from "no" to "aye."

Mr. RANDALL changed his vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. HORTON TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. HORTON. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. HORTON to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 3, strike lines 3 through 9 and insert:

"(2) the term 'meeting' means a gathering to jointly conduct or dispose of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, but does not include gatherings required or permitted by subsection (d); and"

Mr. HORTON. Madam Chairman, this amendment would bring the definition of meeting in line with the realities of life.

As now written, the definition would mean that telephone conversations and gatherings of agency members at social events, on a golf course or elsewhere would be covered by the act if any mention of agency business was made in informal conversation. It makes the decision as to whether there will be a meeting dependent on what occurs at the meeting. The impracticability of subjecting such a broadly defined gathering to prior public announcement, to the open meeting requirement, to the requirement for a formal vote for meeting closing and to the verbatim transcript requirement can only have the effect of restricting the right of assembly and free speech of public officials without any corresponding benefit to the public at large. This is a patently ridiculous requirement, because it does not limit the application of the act to meetings or gatherings called for the purpose of agency business.

The Senate-passed bill defines a meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business." The House Government Operations Committee bill omits the word "official" from the definition of meetings. This omission immediately broadens the range of member conversations which must be covered by the procedural requirements of the bill. The report on the bill specifically states that "the conduct of agency business is intended to include not just the formal decisionmaking or voting, but all discussion relating to the business of an agency." Then, the House Judiciary Committee set forth a third definition of meeting which in turn differs from the wording recommended by the Judiciary Subcommittee which considered the bill.

It is not easy to strike a balance between the various public interests to be served, but we have a special responsibility to enact responsible legislation which will promote greater openness in Government at the same time that it is not unnecessarily burdensome and does not unnecessarily hinder public officials from carrying out their responsibilities.

My amendment would restore the language adopted by the Subcommittee on Administrative Law and Governmental Relations by a 5-to-0 vote and would make it clear that a meeting, within the terms of this bill, should be limited to a "gathering" of agency members in a single physical location for the purpose of conducting agency business.

I appeal to my colleagues to consider this amendment on its merits and urge its adoption.

Mr. BROOKS. Madam Chairman, I rise in opposition to the amendment.

The definition in the bill is designed to cover any situation in which the number of agency members required to take action do, in fact, discuss or conduct agency business. The amendment of the gentleman from New York would require that the members physically gather together with the express intention of conducting business.

It is easy to see how an agency could avoid the requirements of the bill if the amendment were adopted. The agency members would simply get on the telephone in a series of calls, or in a conference call, and their discussions or any results from them, would not have to be made public.

The amendment also requires that the gathering be for the express purpose of conducting business. So all they have to do is plan a nice social evening—say a birthday celebration for one of the members—and if they happen to talk business over the drinks and dinner, well, that just would not be covered.

What we want to reach in this bill are the deliberations of agency members relating to agency business. The definition in the bill accomplishes this. The amendment of the gentleman from New York would open a huge loophole and I urge its defeat.

Mr. McCLOSKEY. Madam Chairman, I rise in support of the amendment.

(Mr. McCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Madam Chairman, I would like to direct the attention of the House to the definition of the term "meeting," which we seek to change in this amendment.

The term "meeting" means, and I quote:

An assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, * * *

Madam Chairman, what that precludes is the casual meeting of people at breakfast or at lunch or elsewhere to discuss any action which may later be taken at the formal meeting of the board.

If two members, for example, of the Securities and Exchange Commission, who, by their rules, are impowered to take action, could meet at breakfast to discuss, even in the most casual way, what they might later take up in a formal meeting with the other members, they would be required to be subject to a civil or other penalty by holding that meeting without holding it in abeyance for 1 day to announce that they were going to have a closed meeting. They would be subject to penalty because they have no transcription of that meeting.

Madam Chairman, this bill in front of us today purports to bring to the Federal Government the same kind of sunshine requirements which have been widely adopted by most of the enlightened States of this Union, including California, with California's Brown Act, which requires public meetings.

The California law, however, makes no requirement that two State legislators who sit on the same committee to act on committee business could not discuss that business if they met casually.

Take the subcommittee which presented this bill and whose chairman is the gentlewoman from New York (Ms. ABZUG) and on which we have seven members. If four of us should meet here in the well of the House to discuss how we could get the rest of the subcommittee to go up to a room to get a quorum, as we have done, so as to pass a bill, that meeting would be illegal because we had not held a public meeting in advance voting to meet in private.

All we do in this bill is to seek to retain good balance between good government and open government. We are reacting as we did in the Freedom of Information Act, and others, because of excessive abuses of secrecy by the executive branch. And obviously the attention of the public that has been focused on that problem will not bring people into the Government and these commissions in the future. I would suggest the question to the Members that if any one of us were asked to serve on such a commission in the future, would we want to subject ourselves to that role if we could not casually discuss a matter that we were ultimately going to act upon with one of our colleagues? That is the effect of the bill as presently written.

Madam Chairwoman, I submit that the amendment should be adopted so as to strike a proper balance between open meetings and the conduct of good government.

Ms. ABZUG. Madam Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment offered by the gentleman from New York (Mr. HORTON) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

[Ms. ABZUG addressed the Committee. Her remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HORTON), to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HORTON. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 204, noes 180, not voting 48, as follows:

[Roll No. 561]

AYES—204

Abdnor
Adams
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Bauman
Beard, Tenn.
Bedell
Bell
Bergland
Biester
Boggs
Bowen
Breaux
Brinkley
Broomfield
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Byron
Carter
Cederberg
Chappell
Clausen, Don H.
Clawson, Del
Cochran
Cohen
Collins, Tex.
Conable
Conlan
Coughlin
Crane
Daniel, Dan
Daniel, R. W.
de la Garza
Derrick
Derwinski
Devine
Dickinson
Downing, Va.
Duncan, Tenn.
du Pont
Edwards, Ala.
Erlenborn
Eshleman
Evans, Colo.
Evans, Ind.
Fenwick
Findley
Fish
Flynt
Foley
Forsythe
Frenzel
Frey
Gaydos
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Guyer
Hagedorn
Haley
Hall, Tex.
Hammer-schmidt
Hanley
Harris
Harsha
Hébert
Heckler, Mass.
Hefner
Henderson
Hightower
Hillis
Holland
Holt
Horton
Hubbard
Hutchinson
Hyde
Ichord
Jacobs
Jarman
Jeffords
Johnson, Colo.
Johnson, Pa.
Jones, N.C.
Jones, Okla.
Kasten
Kazen
Kelly
Kemp
Ketchum
Kindness
Krebs
LaFalce
Lagomarsino
Latta
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, Md.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McCormack
McDade
McDonald
McEwen
McKay
McKinney
Madden
Madigan
Mahon
Mann
Martin
Mathis
Melcher
Michel
Milford
Miller, Ohio
Mills
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mosher
Murtha
Myers, Ind.
Myers, Pa.
Natcher
O'Brien
Passman
Patten, N.J.
Paul
Pepper
Pettis
Poage
Quie
Quillen
Railsback
Rees
Regula
Rhodes
Roberts
Robinson
Roush
Rousselot
Runnels
Ruppe
Ryan
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shriver
Shuster
Sikes
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Steed
Steiger, Wis.
Stephens
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thone
Treen
Van Deerlin
Vander Jagt
Waggonner
Walsh
White
Whitehurst
Whitten
Wilson, Bob
Winn
Wright
Wydler
Wylie
Young, Alaska
Young, Tex.

NOES—180

Abzug
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Annunzio
Aspin
Badillo
Bafalis
Baldus
Baucus
Beard, R.I.
Bennett
Bevill
Biaggi
Bingham
Blanchard
Biouin
Boland
Bolling
Bonker
Brademas
Breckinridge
Brooks
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, John
Burton, Phillip
Carney
Carr
Chisholm
Clancy
Cleveland
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
D'Amours
Daniels, N.J.
Danielson
Davis
Delaney
Dellums
Diggs
Dodd
Downey, N.Y.
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Calif.
Eilberg
Emery
English
Fary
Fascell
Fisher
Fithian
Flood
Florio
Flowers
Ford, Mich.
Ford, Tenn.
Fraser
Fuqua
Gibbons
Gilman
Green
Gude
Hall, Ill.
Hamilton
Hannaford
Harkin
Harrington
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heinz
Hicks
Holtzman
Howard
Howe
Hughes
Hungate
Johnson, Calif.
Jordan
Kastenmeier
Keys
Koch
Lehman
Long, La.
McFall
McHugh
Matsunaga
Mazzoli
Meeds
Metcalfe
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mineta
Minish
Mink
Mitchell, Md.
Moakley
Moffett
Morgan
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
Patterson, Calif.
Pattison, N.Y.
Perkins
Pickle
Pike
Pressler
Preyer
Price
Pritchard
Randall
Rangel
Reuss
Richmond
Rinaldo
Risenhoover
Rodino
Rogers
Roncalio
Rooney
Rose
Roybal
Russo
St Germain
Santini
Sarbanes
Scheuer
Schroeder
Seiberling
Shipley
Simon
Solarz
Spellman
Stanton, James V.
Stark
Steelman
Stokes
Studds
Thompson
Thornton
Traxler
Tsongas
Udall
Vander Veen
Vanik
Vigorito
Waxman
Weaver
Whalen
Wilson, Tex.
Wolff
Yates
Yatron
Young, Fla.
Zablocki

NOT VOTING—48

Ashley
AuCoin
Brodhead
Brown, Ohio
Clay
Dent
Dingell
Eckhardt
Esch
Evins, Tenn.
Fountain
Giaimo
Hansen
Helstoski
Hinshaw
Jenrette
Jones, Ala.
Jones, Tenn.
Karth
Krueger
Landrum
Leggett
Litton
Maguire
Moorhead, Pa.
O'Hara
O'Neill
Ottinger
Peyser
Riegle
Roe
Rosenthal
Rostenkowski
Sharp
Sisk
Staggers
Steiger, Ariz.
Stratton
Stuckey
Sullivan
Symington
Ullman
Wampler
Wiggins
Wilson, C. H.
Wirth
Young, Ga.
Zeferetti

The Clerk announced the following pairs:

On this vote:

Mr. Jones of Tennessee for, with Mr. O'Neill against.

Mr. Jenrette for, with Mr. Dent against.

Mr. Landrum for, with Mr. Zeferetti against.

Mr. Evins of Tennessee for, with Mr. Moorhead of Pennsylvania against.

Mr. Stuckey for, with Mr. Rostenkowski against.

Mr. Fountain for, with Mr. Staggers against.

Mr. Hansen for, with Mr. Rosenthal against.

Mr. Steiger of Arizona for, with Mr. Symington against.

Mr. Wampler for, with Mr. Charles H. Wilson of California against.

Mr. Wiggins for, with Mr. Sisk against.

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. HORTON TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. HORTON. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. HORTON to the amendment in the nature of a substitute offered by Mr. FLOWERS: On page 9, line 23 through page 11, line 2, strike subsection (f)(1) and insert the following:

"(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state the relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the date, time and place of the meeting, the persons present, the generic subject matter of the discussion at the meeting, and the actions taken, shall be incorporated into minutes retained by the agency."

On page 13, lines 2 and 3, strike "a transcript or electronic recording" and insert "the minutes".

On page 13, line 10, strike "transcript or electronic recording" and insert "minutes".

On page 15, lines 1 and 2, strike "transcripts or electronic recordings" and insert "minutes".

On page 15, lines 4 and 5, strike "transcripts and electronic recordings" and insert "minutes".

On page 15, line 13, strike "transcripts or electronic recordings" and insert "minutes".

Mr. HORTON. Madam Chairman, this amendment would delete the verbatim transcript requirement of the bill and replace it with a requirement that minutes be kept of each closed meeting and retained by the Agency.

The bill now requires that a verbatim recording or transcript be made of every meeting which is legally closed under the narrow exemptions contained in the act.

As presently written, this is the most onerous and contradictory provision in the bill. The bill seeks on the one hand to guard against the potential havoc of unrestricted public exposure of agency deliberations by providing 10 exemptions from the requirement for open meetings, but on the other hand it effectively destroys the protection provided by closed meetings by requiring a verbatim transcript which could later lead to public disclosure.

The provision defeats the very purpose of the Freedom of Information Act and the Federal Privacy Act, which properly recognize the need to keep certain categories of information from premature or damaging publication.

Thus agency meetings held to hear

preliminary staff reports on SEC stock fraud investigations, Federal Reserve Board bank examination activities, FTC antitrust investigations, Civil Service Commission disciplinary actions, and a host of similarly sensitive situations would be subject to publication of edited verbatim transcripts. No seasoned reporter or counsel for an affected party would have much trouble piecing together what an agency was up to if this procedure is required in the bill.

Proponents of the sunshine legislation repeatedly state that the bill's transcript requirements are essential to provide effective judicial review of agency action in closed meetings. It is my belief, which is shared by others, that this is not the case. The discovery proceedings available to the U.S. district courts do not depend upon the availability of verbatim transcripts or electronic recordings of agency meetings. Deputy Attorney General Harold R. Tyler, Jr., a former Federal judge (D.C., S.D., N.Y.), described the transcript provision in testimony before the House Government Operations Committee as "undoubtedly the most wasteful provision in the bill." He noted that—

> A transcript is not needed to secure judicial review of an improper closure, any more than it is needed to secure judicial review of other improper agency action. Any court can require the agency to supply an affidavit, under oath, as to what was discussed.

The transcript provision will be highly expensive to implement in terms of actual costs and time of agency members. It will result in voluminous paperwork and unnecessary accumulation of highly sensitive documents. It will be a constant source of litigation and an ever-present source of conjecture and speculation.

Moreover, the key sponsors of this bill stated from the outset that the sunshine bill is based on the experience of State sunshine laws. However, not a single State sunshine or open meetings law contains any requirement for verbatim transcripts. This provision is strictly an invention of the bill's sponsors and supporters at the Federal level.

I see no reason for the Federal Government to take such unprecedented action.

I see no reason why this provision should be maintained in the legislation we are considering and urge support for my amendment which would delete the verbatim transcript requirement and replace it with a requirement that minutes be kept of each closed meeting and retained by the agency. Such minutes would obviously be available for subpena and in camera examination in any court action brought to determine whether the open meeting provision of the sunshine law has been violated. Therefore, eliminating the transcript requirement would in no way weaken the enforceability of the open meeting provisions.

I urge the adoption of my amendment.

The CHAIRMAN. The time of the gentleman from New York (Mr. HORTON) has expired.

(By unanimous consent, Mr. HORTON was allowed to proceed for 2 additional minutes.)

Mr. PEPPER. Madam Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Florida.

Mr. PEPPER. I thank the gentleman for yielding.

Does the amendment offered by the able gentleman cover anything other than the Federal Reserve Board?

Mr. HORTON. It covers all agencies. What it does is to remove the restrictions of a verbatim transcript, and it also covers the Federal Reserve Board.

Mr. PEPPER. If the gentleman will yield further, does the able gentleman propose to offer another amendment limiting his amendment only to the Federal Reserve Board?

Mr. HORTON. I would not offer that if this carries, and I would hope that this amendment carries because it would cover the Federal Reserve Board, the SEC, and any other agency as defined in this title.

Ms. ABZUG. Madam Chairman, I move to strike the last word.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, I rise in opposition to the amendment, which has been rejected by both subcommittees and both full committees that have considered this legislation. H.R. 11656 generally requires that a transcript or electronic recording be kept of each closed meeting. In recognition of the fact that some agencies have a high volume of ordinary adjudicatory proceedings, transcripts are not required for closed meetings that discuss such proceedings or civil actions in which the agency is involved.

Under the scheme of this legislation, the existence of a transcript of a closed meeting has two critical functions. First, a meeting closed with the reasonable expectation that exempt material will be discussed will in many instances turn out to have little or no such discussion. The existence of a transcript or electronic recording will permit the agency to make public those portions of the discussion that do not contain exempt information.

Second, the existence of a transcript is the primary potential remedy for a litigant who proves to a court that a meeting was unlawfully closed. Since any court ruling will almost always come long after the meeting is held, and since a plaintiff suing only under this act will not be able to overturn the substantive action taken at an unlawfully closed meeting, what remedy has he other than to have the transcripts made available to him? I note in this connection that although the judicial review provisions of this legislation permit the court to make the transcript public if the meeting was unlawfully closed, the court would not disclose discrete items contained within such a transcript which are themselves of an exempt character. For example, if a meeting were closed because of a purported discussion of trade secrets and a court later ruled that the agency did not have a proper basis for this closing, the court would not release the small portion of the transcript that contained a reference to some irrelevant personal proclivity of an individual who was the subject of the discussion, since that would be protected by the bill's personal privacy exemption.

As for the fact that few, if any States require transcripts, it should be noted that 24 of the 49 State open meeting statutes provide criminal penalties for violations, 2 more impose civil penalties, and 19 render the substantive action taken at an unlawfully closed meeting void or voidable. None of these sanctions is available under this bill, leaving the possible disclosure of the transcript as the only remedy for an improper closing.

On the question of cost, given the fact that most meetings are supposed to be open under this legislation, there should not be all that many transcripts to keep. The Congressional Budget Office, both House committees that have considered the bill, and the Senate Government Operations Committee have all estimated that the average annual cost of this legislation will be less than $3,000 for each covered agency.

This amendment would remove the only enforcement remedy contained in the open meeting provisions of the sunshine bill, and I urge its rejection.

Mr. McCLOSKEY. Madam Chairman, I rise in support of the amendment.

(Mr. McCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Madam Chairman, there are two aspects that the chairman of the subcommittee, the gentlewoman from New York (Ms. ABZUG) pointed out. She spoke of litigation, and it is quite clear that unless this amendment is adopted, this legislation provides a great case for legislation against the Federal Government in nearly every matter in which the Government operates, because of the lure of obtaining and making public information on the private meetings that are held on the subjects we have exempted, including national security matters, personnel matters, patent matters, and matters which may endanger the stability of financial institutions. The very reason why we should hold these matters private is to accomplish competent government in these fields.

When the gentlewoman speaks of litigation, I think we can see basically the reason why this section is in the bill. It is to permit additional litigation against the Government.

We have seen much litigation in both the Privacy Act and the Freedom of Informaiton Act, which are still in a shakedown process to see whether the benefits of those acts do not impose an undue burden on the Government. We have seen immense litigation in these areas.

I suggest that this verbatim transcript requirement, which is not found in any State law in this country—no Sunshine Act requires a verbatim transcript of private meetings—would be a fruitful source of litigation.

Secondly, let me submit this to my colleagues: Would we impose this on ourselves as Members of Congress? Would we require that all of our discussions of congressional business that are conducted privately be held subject to a full verbatim transcript?

There is no right to revise and extend here. There is no privilege in a verbatim transcript of a collegial meeting to go back and take out the words we thought were wrong. This is a verbatim transcript. This would in effect remove from the Members of the House of Representatives, if we imposed this on ourselves, the right to go back and correct our errors of grammar, our errors of syntax, or our errors when perhaps we went too far in our characterization of a colleague.

There is one final matter, and this goes back to ordinary human experience. Many of us were practicing attorneys in small towns.

If a person came to us and said, "Would you give me a recommendation as to a fellow attorney who can handle a will or a divorce or a criminal action," all of us will give a candid and truthful response: "No." We would say, "That man is corrupt" or "That man is incompetent."

However, would we give that same candid response if we knew that the verbatim words that we spoke in advising as to a fellow colleague were going to be in a record that might eventually be subpenaed and made public?

This has an immensely chilling effect on the kind of derogatory but truthful comment that an agency like the SEC must consider when they consider taking the stock of a company off the trading market because the vice president of the company is dishonest.

What person is going to say in an open meeting or in a closed meeting of which a verbatim transcript is being made, "I believe that man is crooked, for these reasons, A, B, and C, and therefore, we ought to take this stock off the market"?

Madam Chairman, in my judgment, this balance we seek between truth and candor on the part of a regulatory agency and the openness of their records is such that in this case the balance, in my judgment, comes down to the point where we should not require a verbatim transcript of the very meeting which we feel should be held privately in order to give people the opportunity to make candid and truthful comments.

Mr. SEIBERLING. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Madam Chairman, I think it is too bad that the author of this amendment has such a good advocate, because I think the merits of the amendment are far less than the gentleman's statement really justifies.

In the first place, we have already adopted an amendment that says that two persons can meet together and discuss anything they want without its being in the bill.

In the second place, if there is a meeting of members of the executive branch of the Government, which is comparable to a court in terms of its importance—many times it is a quasi-judicial body—then it should all be on the record. It is not the same as our deliberation.

Mr. McCLOSKEY. Let us take the case of our own CONGRESSIONAL RECORD. Would the gentleman say that our verbatim transcripts should not be subject to revision?

Mr. SEIBERLING. This is a legislative body, and our function is entirely different.

The CHAIRMAN. The time of the gentleman from California (Mr. McCLOSKEY) has expired.

(On request of Mr. DRINAN and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. DRINAN. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Madam Chairman, I appreciate the gentleman's argument, but how do we respond, again, if we get only minutes of a meeting held in secret? Then how can anyone ever establish the question of whether or not they had the right to go into a secret session and decide the fate of something very important?

Mr. McCLOSKEY. I do not think that the question of whether they have a right to go into secret session has anything to do with what they say in the secret session.

Mr. DRINAN. But if we have only minutes and not the transcript, how could anybody establish whether or not they had the right to do this in secret and come to the decisions which they came to, because there is absolutely no discussion; there is no provision for a transcript; there is nothing but summarized minutes? That could leave the petitioner whose fate is decided in secret without any recourse.

Mr. McCLOSKEY. What the gentleman says is properly so. That has been the law in this country for 200 years.

There is no city, county, State, agency, or any other body in government that is required to keep a verbatim transcript of a private meeting.

Would anyone urge that the Congress of the United States ought to impose upon the Federal Government a requirement that has not been imposed on any agency of government in this country for 200 years?

Mr. DRINAN. If the gentleman would yield further, this is a private meeting conducted in private by people who say they have a right to go into private session, and we have no facts on which we can base a decision on the initial question of whether they have a right to go into a private session.

Mr. McCLOSKEY. I know the gentleman from Massachusetts (Mr. DRINAN) looks forward to a new Democratic administration. However, I submit, is there any other government in the world, except this new administration, on which this requirement will be imposed?

The CHAIRMAN. The time of the gentleman from California (Mr. McCLOSKEY) has again expired.

(On request of Mr. HORTON and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. LEVITAS. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Georgia.

Mr. LEVITAS. Madam Chairman, I thank the gentleman for yielding.

Would the gentleman agree with me, in response to the observations made just now by our distinguished colleague, the gentleman from Massachusetts (Mr. DRINAN), that the sunshine laws, which have been in existence for a number of years in many States, including my own, have worked effectively? There have been opportunities for aggrieved parties to show that meetings were improperly held, without the necessity of the transcript, and that that is a sufficient answer to the need to protect the person who would otherwise be aggrieved.

However, let me explore this a little bit further.

Do I understand that this would require the chiefs of staff meeting in a secret session on national security matters to maintain a transcript?

Mr. McCLOSKEY. That is correct. If they are in a commission or a committee and a committee as defined by law is an agency, it would require a verbatim transcript, a recorded vote to close the meeting, and a transcript of the meeting which might ultimately be made available to the public.

My primary objection to this is that if we are going to test whether a verbatim transcript is helpful or harmful, we should not do so with every agency of a Federal Government which has had absolutely no experience at all in holding such hearings. If we wanted to test this as an experiment as to whether an agency might operate better through such a procedure that we should have the Federal Reserve Board or the Securities and Exchange Commission be required to do this. But this is a blanket requirement on all agencies of the Government, and we have had no experience at all. We have no estimates as to what the costs will be. We will be starting into a whole new profession, that of transcribing and reporting these agencies' procedures.

Also, Madam Chairman, bear in mind that every member of the Commission is going to spend a day deliberating in the Commission and then spend a day reviewing what they said in the meeting. The paperwork involved and the complexity of these transcripts is going to be stupendous.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. HORTON, and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, I think the question that was posed by the gentleman from Massachusetts (Mr. DRINAN) went to the question of what can we do without a transcript in the event we want to go to court to test whether

or not the meeting should have been closed? I think that is a good question. The answer is that that is done all of the time now. The court can, in camera, examine the proceedings, can get the minutes of the meeting, examine them, get the testimony of those who were present by whatever means are available. But the onerous requirement of having a transcript it seems to me is out of order insofar as the type of meetings we are talking about and the publication or making available the transcript.

Mr. McCLOSKEY. I thank the gentleman.

Mr. BROOKS. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment to the amendment in the nature of a substitute.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, the requirement that the Government agencies keep a transcript of their closed meeting follows very closely the procedures of many congressional committees. I see no reason why a Government agency could not keep a transcript through equipment that my 9-year-old boy has and can operate. It does not take any special talent as equipment.

In my opinion it is just the desire to keep permanently secret these Government activities of these agencies. But I say, Madam Chairman, that just because a meeting is closed is no reason that an official record of the business could not be and should not be kept. The decision to close the meeting may well have been made at an earlier meeting and if that is later reversed, then it is imperative that a transcript be available if the aims of any "sunshine" legislation are to be met.

Mr. FASCELL. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment to the amendment in the nature of a substitute.

Mr. FASCELL. Madam Chairman, the one government in the world that deals with transcripts is the Congress of the United States, I will say to my distinguished colleague, the gentleman from California (Mr. McCLOSKEY). We probably have more transcripts around here than any place else in the world and it is a darned good thing that we do, I will tell the Members, because we would not know what was going on if we did not have the transcripts.

I think it would be very helpful for every agency downtown, instead of having somebody keep minutes that simply say that they met and then the meeting was adjourned, that there be a transcript made so that we would know what was going on.

It seems to me it is very sensible for a government agency to have an official record of its actions in the nature of a transcript, even if it is locked up in its safe. Somewhere there ought to be an official record of the transaction of the business of a body of our Government that deals with the lives of millions of people. There ought to be that transcript somewhere. To say that the mere keeping of minutes is a sufficient substitute is to beg the question.

Let us talk about the fear that has been expressed that in some way the agency is going to be dragged into court, or that State agencies do not now require transcript keeping. The difference in the State agencies is that they have substantive penalties. They can undo the action of the agency when they go to court. No such penalty is provided in this bill.

The critical issue is the public's right to know. How does a transcript come to play in that, and is the fear real that in some way some person with derogatory information might get that information out? The answer is, "No." Why is that?

The plaintiff has the burden of proving his lawsuit that the agency meeting was improperly closed to start with. He has that burden. The relief that is granted under this bill, which is that information which should be released will be released. But the protection in the bill that is provided here is ample and adequate to allay the fears that have been expressed, because it says that the judge can only release that information which should be made public. Any information which would be properly withheld under one of the classifications or exemptions in the bill, the judge would have no right to release.

We cannot be held responsible for leaks in the agencies, if there is a fear that the stuff is going to get out. It is getting out now—the individual Members' copies of the minutes, documents, and papers. The transcript, whether it exists or not, is not going to solve the problem downtown. It is not going to give them any more or less protection.

The issue that is involved is that without the transcript the judge cannot really make a determination whether the plaintiff is entitled to his rights under this bill. What does he get when he gets all of it? What does he get out of it? Do the Members know what he gets? He gets the information which the public should have had in the first place. Why deny him that right? The whole purpose of the pending amendment is simply to do away with the transcripts, to make it absolutely almost impossible that any citizen of the United States would have the right ever to say, "I think that meeting was improperly closed. There is some information there which should have been made public." The court might say, "There is something there that ought to be made public." If it was not classified under this bill or some other law, the judge could release it. But if under this law it is properly exempted, or under some other law it is properly withheld, the judge has no discretion to release that information. The only information he can release is that information which should have been made public in the first instance. And the plaintiff, the citizen, had to go to all of the trouble to bring that suit. Now the gentleman wants to deny him with this amendment the right to the transcript. He wants to deny to the Government and to the Congress the official record, which could be kept locked up in the Government's safe, never to be seen by anybody unless in some way they have violated the law.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. EVANS of Colorado, and by unanimous consent, Mr. FASCELL was allowed to proceed for 2 additional minutes.)

Mr. EVANS of Colorado. Madam Chairman, will the gentleman yield?

Mr. FASCELL. I will be glad to yield to the gentleman from Colorado.

Mr. EVANS of Colorado. I thank the gentleman for yielding.

One thing that concerns me is the comment that the gentleman made about some citizen's rights being adversely affected in a private meeting and not being able to prove whether or not the meeting should or should not have been private unless he has got a transcript. It seems to me that correctness of the privacy of the meeting is determined by the action taken, that is, the ultimate action taken. What conversation went into the ultimate action that was taken is something else again, and I am a little concerned about feeling that the conversations behind the action are going to be the things that measure whether or not the action taken, of which he complains, was wrong to be taken in a private meeting.

Mr. FASCELL. Madam Chairman, I can say this to the gentleman: that the only way we can ever make the determination is for the plaintiff to bring a lawsuit and the judge to make a decision. The court is going to have to make that decision. If the transcript is available, the judge sees it "in camera" and then decides whether the transcript or any part of it is properly withholdable. If it is, it is not released. If he decides the information was improperly withheld, he has the discretion to release the information which should have been made public in the first instance or he can issue an injunction against the agency.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HORTON) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HORTON. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 201, noes 193, not voting 38, as follows:

[Roll No. 562]

AYES—201

Abdnor	Broomfield	Collins, Tex.
Adams	Brown, Mich.	Conable
Anderson, Ill.	Brown, Ohio	Conlan
Andrews, N.C.	Broyhill	Coughlin
Andrews, N. Dak.	Buchanan	Daniel, Dan
Archer	Burgener	Daniel, R. W.
Armstrong	Burke, Fla.	Davis
Ashbrook	Burleson, Tex.	de la Garza
Ashley	Butler	Delaney
Beard, Tenn.	Byron	Derrick
Bell	Carter	Derwinski
Biaggi	Cederberg	Devine
Biester	Chappell	Dickinson
Boggs	Clancy	Downing, Va.
Bowen	Clausen, Don H.	Duncan, Oreg.
Breckinridge	Clawson, Del	Duncan, Tenn.
Brinkley	Cochran	du Pont
		Eckhardt

Edwards, Ala.
English
Erlenborn
Eshleman
Evans, Colo.
Fary
Fenwick
Findley
Fish
Flynt
Foley
Forsythe
Frenzel
Frey
Gaydos
Ginn
Goldwater
Goodling
Gradison
Guyer
Haley
Hall, Tex.
Hammer-schmidt
Hanley
Harsha
Hays, Ohio
Heckler, Mass.
Hefner
Henderson
Hillis
Holland
Holt
Horton
Hubbard
Hungate
Hutchinson
Hyde
Ichord
Jarman
Jeffords
Jenrette
Johnson, Pa.
Jones, N.C.
Jones, Okla.
Jordan
Kasten
Kelly
Ketchum
Kindness
Krueger
LaFalce
Lagomarsino
Latta
Lent
Levitas
Lloyd, Tenn.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McCormack
McDade
McEwen
McKay
McKinney
Madigan
Mahon
Mann
Martin
Mathis
Michel
Mikva
Milford
Miller, Ohio
Mills
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mosher
Murphy, Ill.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Nedzi
O'Brien
Passman
Pepper
Pettis
Pickle
Poage
Pritchard
Quie
Quillen
Railsback
Rees
Regula
Rhodes
Risenhoover
Roberts
Robinson
Runnels
Ruppe
Ryan
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shriver
Shuster
Sikes
Skubitz
Slack
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Steed
Steiger, Wis.
Stephens
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thone
Thornton
Treen
Ullman
Van Deerlin
Vander Jagt
Waggonner
Walsh
White
Whitehurst
Whitten
Wilson, Bob
Wilson, Tex.
Winn
Wright
Wydler
Wylie
Young, Alaska
Young, Tex.
Zablocki

NOES—193

Abzug
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Annunzio
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Bedell
Bennett
Bergland
Bevill
Bingham
Blanchard
Blouin
Boland
Bolling
Bonker
Brademas
Breaux
Brodhead
Brooks
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, Phillip
Carney
Carr
Chisholm
Cleveland
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
Crane
D'Amours
Daniels, N.J.
Danielson
Dellums
Dingell
Dodd
Downey, N.Y.
Drinan
Early
Edgar
Edwards, Calif.
Eilberg
Emery
Evans, Ind.
Fascell
Fisher
Fithian
Flood
Florio
Flowers
Ford, Mich.
Ford, Tenn.
Fraser
Fuqua
Gibbons
Gilman
Gonzalez
Grassley
Green
Gude
Hagedorn
Hall, Ill.
Hamilton
Hannaford
Harkin
Harrington
Harris
Hawkins
Hayes, Ind.
Hechler, W. Va.
Heinz
Hicks
Holtzman
Howard
Howe
Hughes
Jacobs
Johnson, Calif.
Johnson, Colo.
Kastenmeier
Kazen
Kemp
Keys
Koch
Krebs
Lehman
Lloyd, Calif.
Long, La.
Long, Md.
McDonald
McFall
McHugh
Madden
Maguire
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Miller, Calif.
Mineta
Minish
Mink
Mitchell, Md.
Moakley
Moffett
Moorhead, Pa.
Morgan
Moss
Mottl
Murphy, N.Y.
Neal
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
Ottinger
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Paul
Perkins
Pike
Pressler
Preyer
Price
Randall
Rangel
Richmond
Rinaldo
Rodino
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roush
Rousselot
Roybal
Russo
St Germain
Santini
Sarbanes
Scheuer
Schroeder
Seiberling
Sharp
Shipley
Simon
Smith, Iowa
Solarz
Spellman
Staggers
Stark
Steelman
Stokes
Studds
Symms
Thompson
Traxler
Tsongas
Udall
Vander Veen
Vanik
Vigorito
Waxman
Weaver
Whalen
Wirth
Wolff
Yates
Yatron
Young, Fla.

NOT VOTING—38

Burton, John
Clay
Dent
Diggs
Esch
Evins, Tenn.
Fountain
Giaimo
Hansen
Hébert
Helstoski
Hightower
Hinshaw
Jones, Ala.
Jones, Tenn.
Karth
Landrum
Leggett
Litton
O'Hara
O'Neill
Peyser
Reuss
Riegle
Roe
Rostenkowski
Sisk
Stanton, James V.
Steiger, Ariz.
Stratton
Stuckey
Sullivan
Symington
Wampler
Wiggins
Wilson, C. H.
Young, Ga.
Zeferetti

The Clerk announced the following pairs:

Mr. Hébert for, with Mr. O'Neill against.

Mr. Landrum for, with Mr. Dent against.

Mr. Steiger of Arizona for, with Mr. Zeferetti against.

Mr. Wampler for, with Mr. John Burton against.

Mr. NEDZI and Mr. MIKVA changed their vote from "no" to "aye."

Mr. McDONALD and Mr. ROUSSELOT changed their vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. MOSS. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Moss to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 19, after line 12, add to section 5 the following new subsection:

"(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code"."

Mr. MOSS. Madam Chairman, the amendment is straightforward. It would cure an oversight in the Federal Advisory Committee Act. That act regulates, among other things, the organization, makeup, and openness of the many advisory committees which provide information and counsel to agencies of our Government. Unfortunately, the Federal Advisory Committee Act regulates public access to meetings of public advisors to agencies pursuant to the Freedom of Information Act, an act designed to regulate the disclosure of documents.

On its face, this is an inappropriate cross-reference in that act. But it was required when the Advisory Committee Act was passed because there did not exist at that time a measure which regulated meetings. With the consideration by the House of H.R. 11656, this is no longer the case. In substance, my amendment merely provides that the carefully crafted standards regulating openness of meetings contained in the Sunshine bill will be made applicable to Federal advisory committees.

I understand that this amendment is acceptable to the committee and I yield the balance of my time to the Honorable BELLA ABZUG for the purpose of receiving the views of the committee on this matter.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, the gentleman has presented the amendment to us, and I have gone over it. The minority will be very happy to accept the amendment. I believe it improves the bill.

Mr. MOSS. Madam Chairman, I thank the gentleman.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentlewoman from New York.

Ms. ABZUG. Madam Chairman, this is essentially a conforming amendment which would reflect in the Federal Advisory Committee Act the enactment of the sunshine bill.

When the Advisory Committee Act was enacted in 1972, we did not have a general open meeting law. As a result, that act provided that meetings of advisory committees were to be governed by the exemptions in the Freedom of Information Act. The FOIA exemptions, though, are designed for documents rather than for meetings, and there have been a number of difficulties arising from that discrepancy. Now that we are enacting this open meeting legislation, which contains exemptions like those in the Freedom of Information Act, but tailored especially for meetings, we should apply these exemptions to the Advisory Committee Act as well. That is exactly what this amendment would do, and I am pleased to support it.

Mr. FLOWERS. Madam Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Alabama.

Mr. FLOWERS. Madam Chairman, the gentleman from California (Mr. Moss) has gone over this amendment with us, and we have absolutely no objection to it. We concur in the amendment and are glad to accept it.

Mr. MOSS. Madam Chairman, I thank the gentleman, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was agreed to.

AMENDMENT OFFERED BY MR. MOORHEAD OF CALIFORNIA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. MOORHEAD of California. Madam Chairman, I offer an amendment

to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of California to the amendment in the nature of a substitute offered by Mr. FLOWERS:

On page 12, line 8, delete "by".

On page 12, line 9, delete "any person".

Mr. MOORHEAD of California. Madam Chairman, the bill as it is presently written permits any person, whether that person has an interest or not, to bring legal action to enforce the provisions of this legislation.

Our courts in this country are already tremendously overcrowded. Under the normal rule and under the present law in this country pertaining to courts, in all actions brought, except for a very few exceptions, the plaintiff must make some showing of specific harm to his interests.

There are certain professional litigators in this country who love to get into court and who try to find any kind of excuse to get into court, whether they have a reason for going to court or not. At the same time we have people who are failing to get their day in court on civil actions and who are delayed from month to month because of overcrowding in the courts. We have recently had a situation where many of the criminal defendants in the country who were indicted had to have their cases dismissed because they could not be brought to court on time.

We do not need this kind of delay built into our system. I think it is most important that under this legislation the same requirements for going to court should prevail as would prevail in any other kind of an action.

This amendment would simply require that a defendant who brought the action make some showing that he has been hurt in some way, even though very slightly, and then he could bring the action. If he would have had the door closed on him or if he wanted to be in the room when a hearing was held and had been kept out because it was a closed meeting, he would have a cause of action, but a person who was nowhere near the hearing and showed no interest in it would not have a cause of action.

Madam Chairman, I ask that the amendment be adopted.

Ms. ABZUG. Madam Chairman, I move to strike the last word, and I rise in opposition to the amendment.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, I rise in opposition to the amendment. The sunshine bill is designed to let any citizen see what agencies are doing by attending their meetings.

This bill is not designed for the benefit of those who are parties to agency proceedings, but for the benefit of all members of the public who want to know what the agencies are doing and how they go about making the decisions that affect all of our lives so pervasively. We cannot very well tell our constituents, "We are giving you the right to attend agency meetings, but you may not seek redress if an agency denies you that right." Unfortunately, that is exactly what this amendment would do.

The bill before you does not allow a citizen plaintiff to nullify the substantive action taken at an unlawfully closed meeting. The most that he can get is access to the transcript of the meeting and a court order prohibiting the agency from closing meetings on the grounds in question.

This concept of citizen standing is not a new one. It is in the Freedom of Information Act, which is now a decade old, and also in the Privacy Act. Those who have suggested that the standing provisions contained in the bill raise constitutional questions are not correct in their interpretation. The fact that the statute gives any person the right to attend an agency meeting confers standing sufficient to satisfy the constitutional requirements of article III.

We are giving any member of the public the right to attend agency meetings. To say the very least, it would be a gross misrepresentation and a cruel hoax on our part to at the same time prevent those to whom this right is given from taking any action to enforce it.

The amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MOORHEAD) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MOORHEAD of California. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 134, noes 258, not voting 40, as follows:

[Roll No. 563]

AYES—134

Abdnor
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Ashley
Bell
Bowen
Brinkley
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Byron
Carter
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Cochran
Collins, Tex.
Conable
Conlan
Daniel, Dan
Daniel, R. W.
Davis
Devine
Dickinson
Downing, Va.
Duncan, Oreg.
Edwards, Ala.
Emery
Erlenborn
Forsythe
Gaydos
Ginn
Goldwater
Goodling
Guyer
Hagedorn
Haley
Hall, Tex.
Hammer-schmidt
Harsha
Hays, Ohio
Hefner
Hillis
Holt
Horton
Hutchinson
Hyde
Ichord
Jarman
Jenrette
Johnson, Pa.
Jones, N.C.
Kazen
Kelly
Kemp
Ketchum
Kindness
Lagomarsino
Latta
Lent
Lott
Lujan
McClory
McCloskey
McCollister
McDonald
McEwen
McKay
Martin
Mathis
Michel
Milford
Miller, Ohio
Mills
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murtha
Myers, Ind.
O'Brien
Passman
Pettis
Pickle
Poage
Quie
Regula
Roberts
Robinson
Rousselot
Runnels
Ruppe
Satterfield
Schneebeli
Schulze
Sebelius
Shipley
Shriver
Shuster
Sikes
Skubitz
Slack
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Treen
Ullman
Vander Jagt
Waggonner
White
Whitehurst
Whitten
Wilson, Bob
Winn
Wydler
Wylie
Young, Alaska
Young, Fla.

NOES—258

Abzug
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Annunzio
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Brademas
Breaux
Breckinridge
Brodhead
Brooks
Brown, Calif.
Buchanan
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, Phillip
Carney
Carr
Chisholm
Cleveland
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniels, N.J.
Danielson
de la Garza
Delaney
Dellums
Derrick
Derwinski
Diggs
Dingell
Dodd
Downey, N.Y.
Drinan
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Calif.
Eilberg
English
Evans, Colo.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Fraser
Frenzel
Frey
Fuqua
Giaimo
Gibbons
Gilman
Gonzalez
Gradison
Grassley
Green
Gude
Hall, Ill.
Hamilton
Hanley
Hannaford
Harkin
Harrington
Harris
Hayes, Ind.
Hechler, W. Va.
Heckler, Mass.
Heinz
Hicks
Holland
Holtzman
Howard
Howe
Hubbard
Hughes
Hungate
Jacobs
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, Okla.
Jordan
Kasten
Kastenmeier
Keys
Koch
Krebs
Krueger
LaFalce
Leggett
Lehman
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lundine
McCormack
McDade
McFall
McHugh
McKinney
Madden
Madigan
Maguire
Mahon
Mann
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
Ottinger
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Paul
Pepper
Perkins
Pike
Pressler
Preyer
Price
Pritchard
Quillen
Railsback
Randall
Rees
Richmond
Rinaldo
Risenhoover
Rodino
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roush
Roybal
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Scheuer
Schroeder
Seiberling
Sharp
Simon
Smith, Iowa
Solarz
Spellman
Staggers
Stark
Steed
Steelman
Steiger, Wis.
Stokes
Studds
Symms
Thompson
Thone
Thornton
Traxler
Tsongas
Udall
Van Deerlin
Vander Veen
Vanik
Vigorito
Walsh
Waxman
Weaver
Whalen
Wilson, C. H.
Wilson, Tex.
Wirth
Wolff
Wright
Yates
Yatron
Young, Tex.
Zablocki

NOT VOTING—40

Burton, John
Clay
Dent
Esch
Eshleman
Evins, Tenn.
Fountain
Hansen
Hawkins
Hébert
Helstoski
Henderson
Hightower
Hinshaw
Jones, Ala.

Jones, Tenn.	Rhodes	Stratton
Karth	Riegle	Stuckey
Landrum	Roe	Sullivan
Litton	Rostenkowski	Symington
O'Hara	Sisk	Wampler
O'Neill	Stanton, James V.	Wiggins
Peyser	Steiger, Ariz.	Young, Ga.
Rangel	Stephens	Zeferetti
Reuss		

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. O'Neill against.

Mr. Henderson for, with Mr. Dent against.

Mr. Fountain for, with Mr. Zeferetti against.

So the amendment to the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. FUQUA. Madam Chairman, I move to strike the last word.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Madam Chairman, as one of the cosponsors of the Government in the Sunshine Act, I want to say what great personal pride I feel in witnessing this debate today.

My home State of Florida originated government in the sunshine more than a decade ago and the results have been spectacular. People feel more confidence in their decisionmakers and, consequently, have more confidence in the decisions that are finally reached.

We need this concept at the national level and we need it now. Watergate and other events of the last few years have shown dramatically the need for openness in government. For far too long important decisions affecting the lives of all Americans have been made behind closed doors. This is not the way to run a democracy.

When administrative and executive agency decisions are reached, the people have a right to know what alternatives were considered and rejected, what pressures were applied by different interest groups and the reasoning behind the decision. Then, and only then, can we truly expect people to believe in these decisions.

In many important ways, our lives are affected by bureaucratic edicts. The people must have confidence in these edicts and in the way they were developed. This cannot occur when no one knows the decisionmaking processes involved.

The bill we are debating today makes ample room for those few exceptions when privacy at a meeting is required. But closed door meetings must be the exception and never the general rule.

We have made great strides in opening up House and Senate committee meetings as well as opening up the Democratic caucuses. The standards we have applied to ourselves have worked well and should be applied throughout the Federal Government.

People all across this Nation have lost confidence in their Government. We can help restore that confidence by our actions today. The Senate acted in a very responsible manner when they unanimously passed sunshine legislation and now it is the turn of the House of Representatives to show the American people our commitment to openness in Government.

Faith of a people in their Government is the cornerstone of a democracy. Public policy determined after public discussion of the issues is one of the precepts upon which that faith is based and we are all accountable today for our actions in maintaining and enlarging openness in Government.

AMENDMENT OFFERED BY MR. LATTA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. LATTA. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. LATTA to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 18, line 18, after "given" strike the period and insert "; but it shall not include requests for information on or status reports relative to any matter or proceeding covered by this subchapter."

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Alabama.

Mr. FLOWERS. Madam Chairman, the gentleman from Ohio has gone over the amendment with this Member. I think it would perhaps help out in the legislation.

I think that the problem might arise from someone's reading of the term in the first two subparagraphs of subsection 557(d)(1). It might be well to revise the definition of ex parte communication, to alleviate the situation.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. LATTA. I am happy to yield to the gentlewoman.

Ms. ABZUG. Madam Chairman, I have some problem with this. The language used here is "request for information."

Now, I feel "information" is a very broad word. I thought the gentleman was addressing himself to perfunctory inquiries, such as for status reports concerning particular proceedings. The word he has used might raise a lot of trouble and beyond where the gentleman really wants to go. I just wondered if the gentleman recognizes that and if the gentleman did, I might be willing to take this language to conference and there confine it to the intent of the gentleman, without allowing it to go all over the lot.

Mr. LATTA. Madam Chairman, may I respond to the gentlewoman. I think the word "information" is most important to this amendment, because we might get some agency or department downtown very narrowly construing the words "status report" and putting their own interpretation on it. If a Member of Congress calls downtown and wants a status report on a particular matter, they might put a very narrow interpretation on it. I might add that I went over the need for this amendment when I discussed the rule on the bill. I am trying to keep a door open so that we can get information from a department or agency without prejudice.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, I can appreciate the gentleman's concern about the narrowness of the phrase "status report"; but on the other hand, the question of the broadness or liberality of the word "information" on the other side, raises a question. I do not think the gentleman means this. This is the reason I ask this question. If an individual wants to contact a member of the Board who is making a decision, in the middle of a proceeding, to get information on that decision, that is not covered under this amendment? The gentleman does not contemplate making legitimate, under the law, the right of an individual to get to the decisionmaker in the middle of a proceeding?

Mr. LATTA. We are talking about ex parte communications.

Mr. FASCELL. If the gentleman will yield further, I might make a call to an agency even though I am not a party to the proceeding.

Let me ask this question. Under the gentleman's language, would it be legal for me to go to the judge and say, "Judge, I want you to vote my way on this decision."

Mr. LATTA. Absolutely not.

Mr. FASCELL. That is what I meant. Would it be legal for any other individual to call that judge?

Mr. LATTA. Absolutely not. I might say to the gentleman, people on this side and on that side working on the bill, drew this amendment with the understanding it would apply to everybody and not just be limited to Members of Congress.

Mr. FASCELL. Madam Chairman, if the gentleman will yield further, what the gentleman from Ohio has in mind is that routine inquiries going to agencies saying, "What is the situation? What is going on? How long is it going to take?"

This amendment makes it clear that kinds of inquiries would not be prevented and would not have to be put on the record, but any inquiry which would or could reasonably be considered as affecting or attempting to affect the decisionmakers' decision would be put on the record?

Mr. LATTA. That is correct.

Mr. FASCELL. Thus any ex parte communications which attempts to influence the decisionmaker would not be exempt under your language: is that the intent?

Mr. LATTA. That is what I intend.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, I have been over the language the gentleman from Ohio has submitted and we feel it would be helpful and we accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. LATTA) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was agreed to.

AMENDMENT OFFERED BY MR. M'CLOSKEY TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. McCLOSKEY. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. McCLOSKEY to the amendment in the nature of a substitute offered by Mr. FLOWERS: On page 4, strike line 10 and everything that follows through line 13 and insert in lieu thereof the following:

"(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title) provided that such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

And on page 19, strike line 10 and everything that follows through line 12 and insert in lieu thereof the following:

"(3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;".

[Mr. McCLOSKEY addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. FASCELL. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I would like to get this matter straight in my mind, so I wish the gentleman from California (Mr. McCLOSKEY) would stay right where he is so he can answer my inquiry, because I am having a little problem also.

The original language in the bill of the Committee on Government Operations read that section 552(b)(3) of title V was amended to read: Subsection (3) "required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information," and the gentleman has offered that as an amendment to the Freedom of Informaion Act to undo the Robertson case decision?

Mr. McCLOSKEY. Madam Chairman, if the gentleman will yield, that is correct.

Mr. FASCELL. Then the Committee on the Judiciary came along and added the words, "or permitted," to take care of those cases where we have a permissive statute having authority residing in the Secretary but not mandated by the Congress?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. Therefore, that covered both questions; that is to say, both types, where the Freedom of Information Act would not require information to be made public where it was required or permitted to be withheld; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. Either by law or by referring to particular types of information; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. I gather that what the gentleman is saying is that the qualifying clauses, to wit, establishing particular criteria or referring to particular types of information so qualify the exemption under the Freedom of Information Act or mandatory statute to the extent that the gentleman or somebody feels that even though we have a statute which authorizes an agency to withhold information, the language would be such that it would be required to release the information. That is the way I understand the gentleman's argument.

Therefore, he changes this around through the present amendment so that the qualifying amendment only applies to permissive statutes, those statutes which provide permission for the administrator; is that correct? It would be required that there be particular criteria or particular types of information, but that it would not apply to mandatory statutes; is that correct?

Mr. McCLOSKEY. That is correct.

What I have not made clear, perhaps, is this: This is my amendment adopted in the committee unanimously, but before the committee heard from HEW or from the Census Bureau.

In other words, we went too far in requiring all mandatory statutes of secrecy to be made subject to the Freedom of Information Act. We are pulling back from that requirement that all information required now to be secret by one law is to be made available under this new law. We are pulling back from the first part of the section.

The second section is the one in which the Committee on the Judiciary added the words "or permitted." They brought into the law the very decision we wanted to overrule in the Robertson case.

What we have done is to prohibit the requirement that when information is required to be made secret, we do not need to apply the Freedom of Information Act or the Sunshine Act to those laws.

Mr. FASCELL. How are we going to be governed under the present language? I do not see how, under the gentleman's amendment, except in the particulars which I have stated.

In other words, the way the amendment reads now, whenever there is a statute which mandates that information can be withheld, that is it, period. When it is withheld, there is no change in that under the bill or under the amendment.

Mr. McCLOSKEY. No, no. Under the bill as it stands, without my amendment now, the statute that requires information to be held secret has to have particular criteria in it or it becomes subject to being made public.

Mr. FASCELL. The gentleman is saying that what happens is that the basic law is being changed by the qualifying language; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. The gentleman is saying that all laws that were passed, that have previously been passed, which required information to be withheld, would be subject to the requirement here so that if they did not say particular classes of information or particular criteria, that would modify the basic law and would make all the information available?

Mr. McCLOSKEY. Yes; in this country there are about 200 of these laws that the Supreme Court referred to, and unless the Court ordered it be be made secret and set particular criteria for it to be made secret, then by this amendment we are, in effect, directing the Director of the Census to make the information available, even though there is a specific law, because right in the statute there is a requirement for specific criteria.

Mr. FASCELL. If we take the gentleman's amendment at face value, I would hope it says what he says it does.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. McCLOSKEY) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman, being in doubt, the Committee divided, and there were—ayes 34, noes 35.

RECORDED VOTE

Mr. McCLOSKEY. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 282, noes 112, not voting, 38, as follows:

[Roll No. 564]

AYES—282

Abdnor	D'Amours	Harsha
Adams	Daniel, Dan	Hayes, Ind.
Alexander	Daniel, R. W.	Hefner
Allen	Daniels, N.J.	Heinz
Anderson, Ill.	Davis	Henderson
Andrews, N.C.	de la Garza	Hillis
Andrews, N. Dak.	Delaney	Holland
Annunzio	Derrick	Holt
Archer	Derwinski	Horton
Armstrong	Devine	Howe
Ashbrook	Dickinson	Hubbard
Ashley	Dingell	Hughes
Aspin	Dodd	Hungate
AuCoin	Downey, N.Y.	Hyde
Bafalis	Downing, Va.	Ichord
Baldus	Duncan, Oreg.	Jacobs
Beard, R.I.	Duncan, Tenn.	Jarman
Beard, Tenn.	du Pont	Jeffords
Bedell	Early	Jenrette
Bell	Edgar	Johnson, Colo.
Bennett	Edwards, Ala.	Johnson, Pa.
Bergland	Emery	Jones, N.C.
Bevill	English	Jones, Okla.
Biester	Erlenborn	Kasten
Blanchard	Eshleman	Kazen
Boggs	Evans, Colo.	Kelly
Boland	Evans, Ind.	Kemp
Bonker	Fary	Ketchum
Bowen	Fenwick	Krebs
Brademas	Findley	Krueger
Breaux	Fish	LaFalce
Brinkley	Fisher	Lagomarsino
Broomfield	Fithian	Latta
Brown, Mich.	Flood	Leggett
Broyhill	Florio	Lent
Buchanan	Flowers	Levitas
Burgener	Flynt	Lloyd, Calif.
Burke, Fla.	Foley	Lloyd, Tenn.
Burke, Mass.	Ford, Tenn.	Long, Md.
Burleson, Tex.	Forsythe	Lott
Burlison, Mo.	Frenzel	Lujan
Byron	Frey	McClory
Carter	Gaydos	McCloskey
Cederberg	Giaimo	McCollister
Chappell	Gilman	McCormack
Clancy	Ginn	McDade
Clausen, Don H.	Goldwater	McDonald
Clawson, Del	Gonzalez	McEwen
Cleveland	Gradison	McFall
Cochran	Grassley	McKay
Cohen	Green	McKinney
Collins, Tex.	Gude	Madden
Conable	Guyer	Madigan
Conlan	Haley	Mahon
Conte	Hall, Ill.	Mann
Cornell	Hall, Tex.	Mathis
Cotter	Hamilton	Mazzoli
Coughlin	Hammer-schmidt	Meeds
Crane	Hanley	Melcher
	Harris	Michel
		Mikva

Milford	Randall	Steiger, Wis.
Mills	Rees	Stephens
Mineta	Regula	Symms
Minish	Risenhoover	Talcott
Mitchell, N.Y.	Roberts	Taylor, Mo.
Moakley	Robinson	Taylor, N.C.
Moffett	Rodino	Teague
Mollohan	Rogers	Thone
Montgomery	Rooney	Thornton
Moore	Roush	Traxler
Moorhead, Calif.	Rousselot	Treen
Morgan	Runnels	Ullman
Mosher	Ruppe	Van Deerlin
Murphy, Ill.	Russo	Vander Jagt
Murphy, N.Y.	Santini	Vander Veen
Murtha	Sarasin	Vanik
Myers, Ind.	Satterfield	Waggonner
Myers, Pa.	Schneebeli	Walsh
Natcher	Schulze	Whalen
Neal	Sebelius	White
Nedzi	Seiberling	Whitehurst
Nichols	Shipley	Whitten
Obey	Shriver	Wilson, Bob
O'Brien	Shuster	Winn
Pattison, N.Y.	Simon	Wirth
Pepper	Skubitz	Wolff
Perkins	Slack	Wright
Pettis	Smith, Iowa	Wydler
Pickle	Smith, Nebr.	Wylie
Pressler	Snyder	Yates
Price	Spellman	Yatron
Pritchard	Spence	Young, Alaska
Quie	Staggers	Young, Fla.
Railsback	Stanton, J. William	Zablocki

NOES—112

Abzug	Goodling	Oberstar
Addabbo	Hagedorn	Ottinger
Ambro	Hannaford	Passman
Anderson, Calif.	Harkin	Patten, N.J.
Badillo	Harrington	Patterson, Calif.
Baucus	Hawkins	Paul
Bauman	Hays, Ohio	Pike
Biaggi	Hechler, W. Va.	Poage
Bingham	Heckler, Mass.	Preyer
Blouin	Hicks	Quillen
Bolling	Holtzman	Rangel
Breckinridge	Howard	Richmond
Brodhead	Hutchinson	Rinaldo
Brooks	Johnson, Calif.	Roncalio
Brown, Calif.	Jordan	Rose
Brown, Ohio	Kastenmeier	Rosenthal
Burke, Calif.	Keys	Roybal
Burton, Phillip	Kindness	Ryan
Butler	Koch	St Germain
Carney	Lehman	Sarbanes
Carr	Long, La.	Scheuer
Chisholm	Lundine	Schroeder
Collins, Ill.	McHugh	Sharp
Conyers	Maguire	Solarz
Corman	Matsunaga	Stark
Danielson	Metcalfe	Steed
Dellums	Meyner	Stokes
Diggs	Mezvinsky	Studds
Drinan	Miller, Calif.	Thompson
Eckhardt	Miller, Ohio	Tsongas
Edwards, Calif.	Mink	Udall
Eilberg	Mitchell, Md.	Vigorito
Fascell	Moorhead, Pa.	Waxman
Ford, Mich.	Moss	Weaver
Fraser	Mottl	Wilson, C. H.
Fuqua	Nix	Wilson, Tex.
Gibbons	Nolan	Young, Tex.
	Nowak	

NOT VOTING—38

Burton, John	Karth	Sisk
Clay	Landrum	Stanton, James V.
Dent	Litton	Steelman
Esch	Martin	Steiger, Ariz.
Evins, Tenn.	O'Hara	Stratton
Fountain	O'Neill	Stuckey
Hansen	Peyser	Sullivan
Hébert	Reuss	Symington
Helstoski	Rhodes	Wampler
Hightower	Riegle	Wiggins
Hinshaw	Roe	Young, Ga.
Jones, Ala.	Rostenkowski	Zeferetti
Jones, Tenn.	Sikes	

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. John Burton against.

Mr. Landrum for, with Mr. Riegle against.

Mr. O'Neill for, with Mr. Clay against.

Mr. SYMMS changed his vote from "no" to "aye."

Mr. BIAGGI and Mr. RINALDO changed their vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. KINDNESS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. KINDNESS. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. KINDNESS to the amendment in the nature of a substitute offered by Mr. FLOWERS: On page 2, strike lines 14–21 and insert the following in lieu thereof: "(1) the term 'agency' means:

Board for International Broadcasting;

Civil Aeronautics Board;

Commodity Futures Trading Commission;

Consumer Product Safety Commission;

Equal Employment Opportunity Commission;

Export-Import Bank of the United States (Board of Directors);

Federal Communications Commission;

Federal Election Commission;

Federal Deposit Insurance Corporation (Board of Directors);

Federal Farm Credit Board within the Farm Credit Administration;

Federal Home Loan Bank Board;

Federal Maritime Commission

Federal Power Commission;

Federal Trade Commission;

Harry S. Truman Scholarship Foundation (Board of Trustees);

Indian Claims Commission;

Inter-American Foundation (Board of Directors);

Interstate Commerce Commission;

Legal Services Corporation (Board of Directors;)

Mississippi River Commission;

National Commission on Libraries and Information Science;

National Council on Educational Research;

National Council on Quality in Education;

National Credit Union Board;

National Homeownership Foundation (Board of Directors);

National Labor Relations Board;

National Library of Medicine (Board of Regents);

National Mediation Board;

National Science Board of the National Science Foundation;

National Transportation Safety Board;

Nuclear Regulatory Commission;

Occupational Safety and Health Review Commission;

Overseas Private Investment Corporation (Board of Directors);

Railroad Retirement Board;

Renegotiation Board;

Tennessee Valley Authority (Board of Directors);

Uniformed Services University of the Health Sciences (Board of Regents);

U.S. Civil Service Commission;

U.S. Commission on Civil Rights;

U.S. Foreign Claims Settlement Commission;

U.S. International Trade Commission;

U.S. Postal Service (Board of Governors); and

U.S. Railway Association;

Mr. KINDNESS (during the reading). Madam Chairman, I ask unanimous consent that the amendment to the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Madam Chairman, I think this process that has been worked on this bill has been a very good example of improving some legislation so that it really reaches the point of being, I think, the best product that we can accomplish in the area, with the exception of the definition of "agency."

On page 2 of the bill, the current language defines an agency in terms of those bodies called "collegial" bodies, including members appointed by the President, with the advice and consent of the Senate; but we do not really know what that includes totally.

Over in the Senate, the report of the commitee included a listing of the Boards and Commissions that would be within the scope of coverage of the bill as it was dealt with in that body.

It is the long list of some 40-some different commissions and boards. I suggest that this is an occasion when we are taking an important step, but we ought to know exactly what we are doing when we do it. This amendment which I have submitted includes the listing that was in the committee report of the other body, with certain exceptions which I will enumerate.

One of the exceptions is the elimination of the Commodity Credit Corporation from the list. The reason for the Commodity Credit Corporation being eliminated is that, in fact, in statutory language, it is quite clear that it is not really a collegial body in the same sense as most of these others. As originally enacted in 1948, section 2 of 15 United States Code, section 714, the Charter Act of the Commodity Credit Corporation provided that the corporation was subject to the general direction and control of its board of directors. Then it went on, and in 1949, by amendment, that was changed so that the Commodity Credit Corporation functioning is subject now to the general supervision and direction of the Secretary of Agriculture.

Section 9 of the act of 1949 provides that the management of the corporation shall be vested in the board of directors, subject to general supervision and direction of the Secretary. I think it is quite clear that there is a case in which we did not intend to include that type of body; at least I would imagine that is the intention. But nonetheless it was in the listing in the Senate.

Also eliminated from the listing in the other body's committee report is the Federal Reserve Board. Because of some of the points that have been brought out here in debate and discussion today, there is so much involved in the functioning of that Board that by its very nature ought not to be disclosed, it would appear that almost a majority of the meetings of the Federal Reserve Board would be in the category where they have to be closed.

I suspect that we ought to see how this law functions before we start applying it

in sensitive areas of that nature. The same is true with the Securities and Exchange Commission, and the same is true with the Parole Board. The Parole Board was on the list in the other body and is not included in the list in this amendment.

I think we really should know exactly what we are doing when we apply this bill, which will become an act, and I am confident that it will. I am sure it has the broadest kind of support, and I suspect that we easily can and will include other bodies if this amendment is adopted. We will include other bodies in the coverage of it as we gain some experience with it.

I suspect that we should do that, and it should be the subject of oversight for the purpose of achieving that goal. We want government in the sunshine just as broadly as we can have it, but I do believe that we are venturing into the area of interminable litigation with the present language of the bill. It invites litigation; it invites uncertainty, and there is nothing better that we can do with the definition of agency than to make it certain and avoid that litigation that, in other references here in the Committee of the Whole today we have heard, would add to the burden of the courts which are already clogged.

Madam Chairman, I would urge support of the amendment.

[Ms. ABZUG addressed the Committee. Her remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. KINDNESS) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN. If there are no further amendments, the question is on the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS), as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MCFALL), having assumed the chair, Mrs. BURKE of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11656) to provide that meetings of Government agencies shall be open to the public, and for other purposes, pursuant to House Resolution 1207, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Ms. ABZUG. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 390, nays 5, not voting 37, as follows:

[Roll No. 565]

YEAS—390

Abdnor
Abzug
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burlison, Mo.
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cederberg
Chappell
Chisholm
Clancy
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Ill.
Conable
Conlan
Conte
Conyers
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dellums
Derrick
Derwinski
Devine
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Eshleman
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fraser
Frenzel
Frey
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Green
Gude
Guyer
Hagedorn
Haley
Hall, Ill.
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Hannaford
Harkin
Harrington
Harris
Harsha
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heckler, Mass.
Hefner
Heinz
Henderson
Hicks
Hillis
Holland
Holt
Holtzman
Horton
Howard
Howe
Hubbard
Hughes
Hungate
Hutchinson
Hyde
Jacobs
Jarman
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, N.C.
Jones, Okla.
Jordan
Kasten
Kastenmeier
Kazen
Kelly
Kemp
Ketchum
Keys
Kindness
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Latta
Leggett
Lehman
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McCormack
McDade
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madden
Madigan
Maguire
Mahon
Mann
Martin
Mathis
Matsunaga
Mazzoli
Meeds
Metcalfe
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
Ottinger
Passman
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Paul
Pepper
Perkins
Pettis
Pickle
Pike
Pressler
Preyer
Price
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rees
Regula
Richmond
Rinaldo
Risenhoover
Roberts
Robinson
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roush
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Satterfield
Scheuer
Schneebeli
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shriver
Shuster
Simon
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
Staggers
Stanton, J. William
Stark
Steed
Steiger, Wis.
Stephens
Stokes
Studds
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thompson
Thone
Thornton
Traxler
Treen
Tsongas
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Vigorito
Waggonner
Walsh
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Tex.
Zablocki

NAYS—5

Burleson, Tex.
Collins, Tex.
Dickinson
Poage
Teague

NOT VOTING—37

Burton, John
Clay
Dent
Esch
Fountain
Hansen
Hébert
Helstoski
Hightower
Hinshaw
Ichord
Jones, Ala.
Jones, Tenn.
Karth
Landrum
Litton
Melcher
O'Hara
O'Neill
Peyser
Reuss
Rhodes
Riegle
Rostenkowski
Sikes
Sisk
Stanton, James V.
Steelman
Steiger, Ariz.
Stratton
Stuckey
Sullivan
Symington
Wampler
Wiggins
Young, Ga.
Zeferetti

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Sikes.
Mr. Dent with Mr. Stuckey.
Mr. Zeferetti with Mr. Clay.
Mr. Rostenkowski with Mr. Karth.
Mr. Helstoski with Mr. O'Hara.
Mr. Fountain with Mr. Steiger of Arizona.
Mr. Jones of Tennessee with Mr. Statton.
Mr. John L. Burton with Mrs. Sullivan.
Mr. Landrum with Mr. Wiggins.
Mr. Melcher with Mr. Wampler.
Mr. Riegle with Mr. Young of Georgia.
Mr. Symington with Mr. Peyser.
Mr. Sisk with Mr. Esch.
Mr. Hébert with Mr. Hansen.
Mr. Ichord with Mr. Hightower.
Mr. Jones of Alabama with Mr. James V. Stanton.
Mr. Reuss with Mr. Steelman.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 1207, the Committee on Government Operations is discharged from the further consideration of the Senate bill (S. 5) to provide that meetings of Government agencies shall be open to the public, and for other purposes.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill S. 5 and to insert in lieu thereof the provisions of H.R. 11656, as passed, as follows:

That this Act may cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means a gathering to jointly conduct or dispose of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, but does not include gatherings required or permitted by subsection (d); and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b)(1) Members as described in subsection (a)(2) shall not jointly conduct or dispose of agency business without complying with subsections (b) through (g).

"(1) Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meetings or the disclosure of such information is likely to—

"(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title): *Provided*, That such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidental source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed agency action already has been disclosed to the public by the agency, or unless the agency is required by law to make such disclosure prior to taking final agency action on such proposal, or after the agency publishes or serves a substantive rule pursuant to section 553(d) of this title; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d)(1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

"(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the date, place, and subject matter of the meeting and each portion thereof at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time and in no case later than the commencement of the meeting or portion in question. The time, place, or subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph only if (1) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state the relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the date, time and place of the meeting, the persons present, the generic subject matter of the discussion at the meeting, and the actions taken, shall be incorporated into minutes retained by the agency.

"(2) Written minutes shall be made of any agency meeting, or portion thereof, which is open to the public. The agency shall make such minutes promptly available to the public in a location easily accessible to the public, and shall maintain such minutes for a period of at least two years after such meet-

ing. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time therefor provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section, and to require the promulgation of regulations that are in accord with such subsections.

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held, or in the District Court for the District of Columbia, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public such portion of the minutes of a meeting as is not authorized to be withheld under subsection (c) of this section. Nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Except as specifically provided in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, except thatt he provisions of this Act shall govern in the case of any request made pursuant to such section to copy or inspect the minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the minutes described in subsection (f) of this section.

"(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including minutes required by this Act, which is otherwise accessible to such individual under section 552a of this title.

"(n) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

SEC. 4. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and made or caused to be made by a party or interested person, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

"(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

"(2) This section does not constitute authority to withhold information from Congress.".

(b) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given; but it shall not include requests for information on or status reports relative to any matter or proceeding covered by this subchapter.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.".

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings),".

(b) Section 552(b)(3) of title 5, United States Code, is amended to read as follows:

"(3) specifically exempted from disclosure by statute (other than Section 552b of this title): *Provided*, That such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;"; and

(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.".

EFFECTIVE DATE

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect one hundred and eighty days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 11656) was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter, on H.R. 11656, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 1558. An act for the relief of Dr. Gernot M. R. Winkler; and

H.R. 1762. An act for the relief of Mrs. Lessie Edwards.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 14233) entitled "An act making appropriations for the Department of Housing and Urban Development, and for sundry independent executive agencies, boards, bureaus, commissions, corporations, and offices for the fiscal year ending September 30, 1977, and for other purposes."

The message also announced that the Senate agreed to the House amendments to the Senate amendments numbered 1, 2, 35, and 37 to the foregoing bill.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2212. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and for other purposes.

CONFERENCE REPORT ON H.R. 11670, COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1977

Mr. BIAGGI (on behalf of Mrs. SULLIVAN) filed the following conference report and statement on the bill (H.R. 11670) to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a yearend strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 94-1374)

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11670), to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a yearend strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 8 and 9.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, and 7, and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 10 and agree to the same with an amendment as follows: Strike out all after the first sentence of the amendment, and the Senate agree to the same.

That the House recede from its disagreement of the Senate amendment numbered 11 and agree to the same with an amendment as follows: Insert the following clarifying language: (1) in lines 4 and 5 of the amendment, after the word "specific", and before the word "vessels", insert the word "cargo-carrying"; (2) in line 15 of the amendment, after the word "permit", insert the words "issued pursuant to subsection (a)"; and (3) in line 17 of the amendment, after the word "Alaska", insert the words "and only", and the Senate agree to the same.

LEONOR K. SULLIVAN,
THOMAS L. ASHLEY,
MARIO BIAGGI,
THOMAS N. DOWNING,
PAUL G. ROGERS,
PHILIP E. RUPPE,
PIERRE S. DU PONT,
Managers on the Part of the House.

WARREN G. MAGNUSON,
RUSSELL B. LONG,
JOHN A. DURKIN,
TED STEVENS,
J. GLENN BEALL, JR.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11670), to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a year-end strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

PROCUREMENT OF VESSELS

Amendment No. 1: authorizes $86,168,000 for the procurement of vessels, as proposed by the Senate, instead of $187,186,000, as proposed by the House. This reduction in authorization was, in large part, replaced by the new authorizations contained in the amendments of the Senate numbered 6 and 7.

Amendment No. 2: authorizes the procurement of two high/medium endurance cutters, as proposed by the Senate, instead of four high/medium endurance cutters, as proposed by the House.

Amendment No. 3: deletes the authorization for the procurement of four small domestic icebreakers, as proposed by the House.

PROCUREMENT OF AIRCRAFT

Amendment No. 4: authorizes $24,300,000 for the procurement of aircraft, as proposed by the Senate, instead of $92,500,000, as proposed by the House. Of the total reduction of $68,200,000, $59,600,000 involved aircraft for the enhancement of Coast Guard law enforcement capability relating to Public Law 94-265. That part of the reduction was replaced by the new authorization provided in the amendment of the Senate numbered 6. The remaining reduction of $8,600,000 involved the procurement of medium-range surveillance aircraft.

Amendment No. 5: deletes the specific procurement of six long-range surveillance aircraft and five short-range recovery helicopters, as proposed by the House.

PROCUREMENT OF VESSELS AND/OR AIRCRAFT

Amendment No. 6: authorizes $100,000,000 for the procurement of vessels and/or aircraft to carry out Coast Guard missions, including fishery law enforcement, as proposed by the Senate. This authorization replaces $49,000,000 of the reduction in Amendment No. 1, and $59,600,000 involved in the reduction in Amendment No. 4, reflecting the procurement costs of the two high/medium endurance cutters deleted by Amendment No. 2, and the six long-range surveillance aircraft and five short-range recovery helicopters, deleted by Amendment No. 5. The conferees note that no final recommendation has been received by the Congress delineating the exact mix of aircraft and vessels needed for the additional duties imposed upon the Coast Guard through its enforcement responsibilities under Public Law 94-265, which extended United States jurisdiction over coastal fisheries to 200 miles from the coastline.

PROCUREMENT OF VESSELS WITH ICEBREAKING CAPABILITY

Amendment No. 7: authorizes $50,000,000 for the procurement of vessels with icebreaking capability, to be used on the Great Lakes, as proposed by the Senate. The conferees note that this is an authorization in general terms for the specific authorization, proposed by the House, of $52,000,000 deleted by Amendment No. 1, for the procurement of four small domestic icebreakers, deleted by Amendment No. 3.

ANNUAL AUTHORIZATION

Amendment No. 8: would have deleted the House provision that, after fiscal year 1977, no funds may be appropriated to or for the use of the Coast Guard for (1) operation and maintenance; (2) acquisition, construction, rebuilding, or improvement of aids to navigation, shore or offshore establishments, vessels or aircraft, or equipment related thereto; (3) alteration of obstructive bridges; or (4) research, development, tests, or evaluation related to any of the above, unless the appropriation of such funds has been authorized by legislation enacted after December 31, 1976.

Amendment No. 9: This technical amendment, renumbering sections in the bill, is relatd to Amendment No. 8.

ENFORCEMENT OF THE FEDERAL BOAT SAFETY ACT OF 1971

Amendment No. 10: adds a new section to the bill, which would prohibit funds, authorized for the operation or maintenance of the Coast Guard, from being used for enforcement of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.), on Lake Winnipesaukee and Lake Winnisquam, their interconnecting waterways, or the Merrimack River in the State of New Hampshire during fiscal year 1977, or while the question of Coast Guard jurisdiction over such Lakes or waterways is before a Federal or State court, and further provides that nothing therein shall (1) prevent or limit the distribution of funds to the State of New Hampshire under the Federal Boat Safety Act, or (2) limit the authority or responsibility of the Coast Guard to assist in search and rescue operations in the State of New Hampshire. As agreed upon by the conference, the amendment strikes the second and third sentences from the amendment of the Senate numbered 10, leaving the first sentence intact. However, the conferees wish to make it clear that the amendment, as agreed upon, is not to be

tween schools and libraries applicable to the rates for books when mailed by a publisher or distributor to a school or library.

The Senate bill contained no provision.

The conference substitute adopts the House language.

PROCEDURES FOR CLOSING OR CONSOLIDATING POST OFFICES

The Senate bill included a provision requiring the Postal Service to give public notice of its intent to close or consolidate a post office 60 days in advance; to give the public an opportunity to express its views on the plan; to comply with specific criteria in making such determinations, and to issue a final decision 60 days before an office could be closed or consolidated. A postal patron of such a post office would be entitled to appeal the decision to a United States Court of Appeals for a judicial determination.

The House bill contained no provision on this issue.

The conference substitute adopts the Senate provision except that the right of appeal to a United States court of appeals is deleted and instead there shall be a right of appeal to the Postal Rate Commission. The managers intended that an appeal to the Commission under this new provision may be made only by a regular patron of a post office which has been ordered to be closed or consolidated. Also, the managers intend that this provision apply to post offices only and not to other postal facilities.

TEMPORARY POSTAL RATE INCREASE

The House bill provided a limitation on the amount of increase which could be made by the Postal Service in establishing temporary rates. This provision was adopted when the bill was reported by the House last year. Since that time, temporary rates have already been established and have subsequently been replaced by permanent rates. There is, therefore, no need for this provision.

The Senate bill contained no provision.

The conference substitute contained no provision.

USE OF LETTERBOXES BY NONPROFIT ORGANIZATIONS

The House bill contained a provision which authorized certain nonprofit organizations to use volunteers to deposit mail matter relating to the activities of the associations in postal patrons letter boxes without payment of postage.

The Senate bill contained no provision.

The conference substitute contains no provision.

APPOINTMENT OF THE POSTMASTER GENERAL AND DEPUTY POSTMASTER GENERAL

The House bill contained a provision which required that the Postmaster General and the Deputy Postmaster General be appointed by the President of the United States with the advice and consent of the Senate.

The Senate bill contained no provision.

The conference substitute contains no provision.

The conferees have taken note that a majority of the House of Representatives is of the opinion that the current method of appointment of the Postmaster General and Deputy Postmaster General should be revised. The conferees, therefore, expect the Commission on Postal Service to study and issue recommendations on the feasibility and desirability of alternative methods of appointment. In partciular, the Commission should give attention to the length of terms of office, if any, and the alternative of appointment by the President with the advice and consent of the Senate.

COMMISSION ON POSTAL SERVICE

The House bill established the Commission on Postal Service consisting of five members appointed as follows: two, (including the chairman) by the President, and one each by the President pro tempore of the Senate, the Speaker of the House, and the Postmaster General. The Commission was to study specific areas—particularly the public service aspects of the Postal Service, and the method of establishing postal rates. In the House version, the Commission would report to the President and Congress within two years.

The Senate bill established the Commission on Postal Service consisting of ten members: four (including the chairman) appointed by the President, and three each appointed by the President pro tempore of the Senate and the Speaker of the House. One appointee of each House was to be a member of the Postal Service work force. The Postmaster General and the Chairman of the Postal Rate Commission were to be ex officio members without a vote.

The Commission in the Senate bill was required simply to study problems facing the Postal Service and issue recommendations to the President and the Congress by February 5, 1977. The only specific charge was that the Commission report on the feasibility and desirability of relaxing the Private Express Statutes.

The Conference concluded that a smaller commission would be more efficient. Therefore, they adopted language establishing a seven member Commission: three appointed by the President and two each by the President pro tempore of the Senate and the Speaker of the House. The language requiring that one appointee of each House be a member of the Postal Service work force was retained. The Postmaster General and the Chairman of the Postal Rate Commission were retained as ex officio members without a vote.

The general responsibility of the Commission to study postal problems was retained. However, the Commission was also required to study and issue recommendations on several specific areas of interest, including public service aspects of the Postal Service.

The conferees agreed that the Commission should not study areas relating to matters covered under chapter 12 of title 39, United States Code.

The conferees also adopted language requiring the Commission to report to the President and Congress by March 15, 1977. The conferees accepted Senate language requiring appointment of the members of the Commission within fifteen days after date of enactment. Thereafter, a quorum of those appointed can conduct business.

SIZE AND WEIGHT LIMITS

The Senate bill contained a provision expanding the size and weight limits for surface-air mail parcels addressed to military installations of the Armed Forces outside the 48 contiguous States. Under existing law, the maximum weight is 15 pounds and the maximum size is 60 inches in length and girth combined. The Senate bill would have increased these dimensions to 70 pounds and 100 inches (the limits which presently apply to incoming SAM mail).

The House bill contained no provision.

The conference substitute contains no provision.

DAVID N. HENDERSON,
MORRIS K. UDALL,
ROBERT N. C. NIX,
JAMES M. HANLEY,
WILLIAM D. FORD,
EDWARD J. DERWINSKI,
ALBERT W. JOHNSON,
Managers on the Part of the House.

GALE W. MCGEE,
JENNINGS RANDOLPH,
QUENTIN N. BURDICK,
TED STEVENS,
HENRY BELLMON,
Managers on the Part of the Senate.

ANNUAL REPORT OF NATIONAL COUNCIL ON THE ARTS AND NATIONAL ENDOWMENT FOR THE ARTS FOR FISCAL YEAR 1975—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Education and Labor:

To the Congress of the United States:

I hereby transmit to the Congress the Annual Report of the National Council on the Arts and the National Endowment for the Arts for Fiscal Year 1975.

Our Bicentennial year marks the beginning of a second decade for the Arts Endowment which, under the guidance of the National Council, has made a substantial contribution to enriching the quality of life in America. This is a time for us to reflect upon our history and to reassess our goals for the future. The arts have always been an expression of the diversity of America's richly varied cultural experience. We are beginning to appreciate how important the arts are as resources—to improve our cities—to bring creativity into our schools—to bring greater perception to all, young and old.

This Annual Report reflects the Federal government's continuing support for the arts and its concern that public funds be instrumental in generating private dollars. The efforts of the Arts Endowment in that regard are very gratifying and I hope that each member of Congress will share my enthusiasm for this agency's achievements.

GERALD R. FORD.

THE WHITE HOUSE, *August 31, 1976.*

CONFERENCE REPORT ON S. 5, GOVERNMENT IN THE SUNSHINE ACT

Mr. BROOKS. Mr. Speaker, I call up the conference report on the Senate bill (S. 5) to provide that meetings of Government agencies shall be open to the public, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of August 26, 1976.)

Mr. BROOKS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The gentleman from Texas (Mr. BROOKS) is recognized for 30 minutes.

Is the gentleman going to take time?

Mr. BROOKS. Mr. Speaker, I will ask permission to revise and extend my remarks.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. Certainly, I am delighted to yield to the ranking Republican member of the committee.

Mr. HORTON. Mr. Speaker, I think it would be in order if the chairman of the committee would explain to the House the action of the conferees on this bill. This is a rather important bill. It did carry by a large margin in the House.

We have concluded the conference, and we have concluded the conference report. There were some difficulties because of amendments that were adopted on the floor, but for practical purposes the conferees have agreed. There were diverse views during the conference, but those were reconciled.

Mr. Speaker, I personally support the conference report and urge its adoption, but I thought perhaps the chairman of the committee could explain briefly what the conference report does.

Mr. BROOKS. Mr. Speaker, the conference report resolves the differences between the House and the Senate. I am delighted that the gentleman has joined with me in supporting the conference report. We worked all day on it, and the conferees have agreed. I was very pleased to have the gentleman's help.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from New York.

Mr. HORTON. Mr. Speaker, if I may explain the bill briefly, what this is is the bill which we had a couple of weeks ago to provide for open meetings of legal bodies which, for all practical purposes, are those bodies headed by two or more individuals of the regulatory agencies.

We did have some difficulties with definitions of "meetings" and the requirement of transcripts.

This matter was referred to the Committee on the Judiciary sequentially from the Committee on Government Operations, and we did have a large vote on the floor after the amendments were adopted. Those amendments had to do with meetings and transcripts. The conferees reconciled those differences between the Senate and the House on those matters; and for all practical purposes, the amendments that were suggested by the Committee on the Judiciary were adopted by the conferees.

Mr. Speaker, as I have indicated, I think it is a good conference report and I urge its adoption.

Mr. BROOKS. Mr. Speaker, I thank my friend, the gentleman from New York (Mr. HORTON), for a splendid explanation.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, the Government in the Sunshine Act passed both the Senate and the House by overwhelming margins.

On August 3, 1976, the House and Senate conferees met to work out the differences in the two versions. After long hours of work, agreement was reached and on August 26 the conference report was filed in the House with the signatures of all House and Senate conferees.

I would like to mention the major aspects of this report. There was a major disagreement between the House and Senate on the definition of "meeting" as use in the bill. The compromise was worked out, the definition of "meetings" now reads "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsections (d) and (e)." The conferees recommend this language as a reasonable compromise.

The second major area of disagreement between the Senate and the House versions was the Senate requirement of a verbatim transcript of each meeting closed to the public under this bill. The House version required that written minutes be kept of closed meetings. The compromise would have an agency make a verbatim transcript or electronic recording of each meeting closed to the public unless the meeting were closed under the following three exemptions: Frst, meetings to discuss regulation of financial institutions; second, meetings in which the information discussed might lead to financial speculation; and third, meetings dealing with adjudicatory proceedings or civil actions. If the meeting falls within one of these three exemptions, the agency may choose to make either a transcript, an electronic recording, or full and complete minutes.

Other issues dealt with by the conference are discussed in the conference report. I feel that the conferees, in this report, have come up with a measure which both the Senate and the House can and should accept. Along with the other 13 House conferees, I recommend this report to the House and urge its immediate passage so that the goal of Government in the sunshine can be reached.

Ms. ABZUG. Mr. Speaker, as the primary sponsor of the House version of the Government in the Sunshine bill (H.R. 11656) I am pleased and proud to rise in support of this conference report.

My subcommittee, the Subcommittee on Government Information and Individual Rights, the subcommittee ably chaired by the gentleman from Alabama (Mr. FLOWERS), and our full committees, headed by Chairman JACK BROOKS and Chairman PETER RODINO, have put an enormous amount of time and effort into this legislation, and I believe that it heralds a new day in relationships between the Federal regulatory agencies and the public.

The Government in the Sunshine Act will, for the first time in our history, require most of the Federal regulatory agencies to open their meetings to the public. Part of the disenchantment with the Federal Government has been the feeling of citizens that it does its work behind closed doors and in concert with special interests. This bill, which limits ex parte communications between regulated industries and agency commissioners in addition to opening agency meetings, will permit citizens to see for themselves whether the agencies are acting in the public interest.

MAJOR POINTS OF THE BILL

Some of the bill's major points are:

First, all meetings of a quorum of an agency's commissioners that determine or result in the conduct or disposition of agency business must be open unless they come within one of the bill's 10 specific exemptions;

Second, even if the subject matter of the discussion comes within one of the exemptions, it must be an open discussion if the public interest so requires, and the agency has the burden of justifying a decision to close a meeting;

Third, the agency must publicly announce, at least one week in advance of a meeting—except in emergencies—the time, place, and subject matter of the meeting, whether it is open or closed, and the name and phone number of an agency official who will respond to the public's questions about the meeting;

Fourth, the agency must keep a transcript or electronic recording of each closed meeting. For meetings discussing bank condition reports, or information whose premature disclosure may lead to financial speculation, or the agency's involvement in an adjudicatory proceeding or civil action, minutes may be kept instead. All portions of the transcript, transcription, or minutes that turn out not to contain exempt material must be released to the public after the meeting;

Fifth, any person may challenge in court the closing of a meeting or the withholding of information under the Sunshine Act. The court may enjoin further violations of the act by the agency, or order the disclosure of any nonexempt material in the transcript, transcription, or minutes, or grant other appropriate relief. Attorneys' fees may be awarded in appropriate instances; and

Sixth, persons interested in the outcome of adjudicatory proceedings—and some rulemaking proceedings—before administrative agencies will be prohibited from communicating with agency commissioners or other agency decision-making personnel unless the communications are placed upon the public record or all other parties to the proceeding have adequate advance notice that they will be made. A party violating this prohibition could be the subject of sanctions up to and including loss of the proceeding on the merits.

CONFERENCE COMPROMISES

Thomas Jefferson wrote that—

At free conferences the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. Jeffer-

son's Manual of Parliamentary Procedure, section 539.

The conference on this bill was no exception, and all 21 conferees worked long and hard to arrive at reasonable compromises of the differences between our version of the bill and the version that passed the other body last November. All 21 of us have signed this conference report.

We adopted the Senate's basic definition of what constitutes a meeting, but clarified the definition as one applying to deliberations that "determine or result in" the conduct or disposition of agency business, rather than deliberations that "concern" agency business.

With respect to the third exemption from the open meeting requirements—the exemption that incorporates other disclosure statutes by reference—we agreed upon the basic House position, clarified to include statutes lacking specific criteria only if their withholding requirement is absolute and without exception. I have been asked whether 50 U.S.C. 403g, a statute relating to CIA exemption from laws such as the Sunshine Act and the Freedom of Information Act, comes within the third exemption as recommended by the conference. I have examined section 403g and believe that it does come within the exemption.

On the issue of transcripts as opposed to minutes of closed meetings, the Senate had opted for the former and the House for the latter. The conference compromise requires transcripts or electronic recordings for closed meetings as a general rule. In the case of meetings dealing with bank condition information, or information whose premature disclosure might lead to financial speculation, or dealing with agency participation in adjudicatory proceedings or civil actions, the agency is afforded the option of keeping minutes instead.

On the question of venue, we have recommended the House provision, which permits actions under the Sunshine Act to be brought where the agency has its headquarters, where the meeting in question is held, or here in the District of Columbia. As provided in 5 U.S.C. 552b(k), as enacted by this bill, venue in actions pursuant to the Freedom of Information Act continues to be the plaintiff's residence or place of business, the location of the records in question, or the District of Columbia.

The conferees have recommended that the House accept what is in essence Senate language regarding judicial review of agency proceedings on the merits. When a court is reviewing substantive agency action on the merits, it is authorized to review Sunshine Act violations as well and to afford such relief as it deems appropriate. While this provision permits a court to overturn substantive agency action because of a violation of the Sunshine Act, such drastic relief should be awarded only where the violation is of a serious nature.

Finally, the conferees have recommended deletion of the Senate provision making agency members liable for attorney's fees where they are found to have intentionally and repeatedly violated the act. This is a provision that I would have preferred to see retained in the bill, and I expect to see it included in future amendments to this act if agency members abuse their trust in the area of open meetings.

Before concluding, I would like to observe that in the past day or so, I have received another of the weighty missives that have arrived regularly from the Federal Trade Commission during the last year. The essence of this letter seems to be a request for congressional approval of an approach to this legislation that has been rejected from the start; namely, the idea of establishing "functional categories" of agency business and permitting blanket closing of any discussion of business said by an agency to fall within one of these general categories.

That is not what this legislation provides. Under this bill, each item of business must be examined individually to ascertain whether it comes within an exemption. Further, even if a piece of information does fall within an exemption, the agency is bound to keep the meeting open if the public interest so requires.

I appreciate what may be an honestly felt need on the part of the FTC to have us explain exactly how each general category of its business should be treated, but under this act, neither we nor they can do that. The mere fact that a discussion falls into one or another general category does not guarantee its classification under this bill. Each item—and not merely each general category—must be considered on its own merits. If it is found that a given item comes within one or more of the exemptions and also that disclosure of the item would not be in the public interest, then the consideration of the item may be closed.

CONCLUSION

I strongly believe that the bill will ably carry out its purpose—to provide the public with the fullest practicable information regarding the decisionmaking processes of our Government, while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. I fully expect that we in the Congress, and the public at large, will be vigorous in insisting upon the strict enforcement of the basic presumption of openness which is the keystone of this bill.

I urge adoption of the conference report.

Mr. HORTON. Mr. Speaker, I rise in support of the conference report on S. 5, the Government in the Sunshine Act. The conference report represents the work of the House and Senate in resolving many of the differences.

Definitions of meetings, minutes, and verbatim transcripts have been developed which should meet the dual requirements of the public's right to know and those legitimate occasions when a meeting must be closed.

The bill applies to all Federal agencies composed of two or more people. It requires all meetings of these boards, commissions, and so forth, to be open to the public except where the subject matter of the meetings falls under one of 20 categories of exemptions. The exemptions essentially parallel the Freedom of Information Act which protects national security, informative trade secrets, and other sensitive categories of Government documents from publication.

It is important, I believe, that this bill receive prompt approval by the President. The public's access to the deliberations of Government agenices which regulate their lives is essential in a free society.

At the same time, I hope the Congress will not hesitate to examine the implementation of this legislation after there has been ample time to test its impact. All too frequently, we have adopted legislative requirements for executive agencies which become overburdened with regulations which destroy the intent and the purpose of the act. Government in the Sunshine deserves a better fate.

I urge adoption of the conference report on S. 5.

Mr. FASCELL. Mr. Speaker, I rise in support of the conference report on S. 5, the Government in the Sunshine bill, and urge that it be adopted.

The bill is in the same form substantially as it passed the House by an overwhelming margin. Two important amendments were made in the House-Senate conference committee—

On the issue of the definition of a "meeting", the conference report accepts the Senate wording except that deliberations would have to "determine or result in" the joint conduct or disposition of agency business, rather than merely "concern" such activities. This language is intended to permit casual discussions between agency members that might invoke the bill's requirements under the less formal "concern" standard. At the same time, the conference report includes telephone conference calls under the definition of a "meeting" if they involve the required number of agency members and otherwise meet the definition.

On the issue of requiring transcripts to be kept of agency meetings, the conference report moves in the direction of an amendment accepted on the House floor by permitting the Federal Reserve Board and other agencies involved in the regulation of financial institutions to exempt sensitive meetings from the transcript requirement. In such cases, only minutes would be required.

The conference report resolves the other minor differences between the House and Senate bills in a manner which I feel is in keeping with the basic purposes of the legislation.

As the principal House sponsor of this important measure, I fully support the conference bill and recommend its adoption. It will provide an effective yet fair mechanism for assuring that the deliberations of our Federal Government agencies are open to public observation.

The bill incorporates adequate safeguards for assuring that matters which must be taken up in closed session in the public interest may receive this protection. Our agencies will be able to carry out their functions and duties in an efficient way, while the public will have greater confidence in the integrity of the decisionmaking process.

It is difficult to legislate ethics in a system as widespread and diverse as our

network of regulatory agencies, boards, and commissions. Basic standards can be written into statutory law, but this could not cover the infinite number of situations which might arise over a period of years among the 50 or so agencies affected by the bill. By permitting the public to attend meetings, however, our people can decide for themselves when questions arise as to the propriety of decisions, or actions by agency members.

Congress has already applied the sunshine principle to its own meetings. We have found that it is a fine prescription for the healthy and proper conduct of public business.

The same will be true of the agencies affected by S. 5, whose adoption of which I strongly recommend.

Mr. MOORHEAD of California. Mr. Speaker, I support the Government in the Sunshine legislation for two reasons. First, I firmly believe that in most instances that the American public has a right to know how its Government decides important policy questions. Second, I also believe that increased public scrutiny of the administrative process can mean that an arbitrary and often unrepresentative bureaucracy will become more sensitive to the people that they are paid to serve.

However, at the same time, my endorsement of S. 5, as it comes from the conference committee, is not without certain reservations. The bill contains an ambiguous and potentially troublesome definition of "meeting." The compromise on the verbatim transcript requirement is, in effect, no compromise at all. And, finally, the bill still recognizes the right of "any person" to sue to enforce the provisions of a Sunshine law, a provision which I have viewed all along as being most ill-advised.

No one wants to be recorded against "Sunshine." I understand that and recognize the political realities. Furthermore, on balance, I think it can be said that this is needed legislation. But in fairness to both my constituents and my colleagues, I could not cast an "aye" vote without expressing some reluctance.

Mr. KINDNESS. Mr. Speaker, since I was, at best, a reluctant signatory to the conference report, I wanted to take this opportunity to share some brief observations with the membership of this House.

When the government in the sunshine legislation was debated on July 28, I expressed an ambivalent attitude about its value. Unfortunately, nothing occurred during the House-Senate conference on S. 5 to relieve me of my fears or misgivings.

It should be recalled when the House considered its version of the government in the sunshine bill (H.R. 11656), it approved two very important amendments offered by the gentleman from New York (Mr. HORTON). The first resulted in a revised definition of "meeting," so as to make it more specific and to make it clear we were not intending to cover mere chance meetings or social gatherings. A second amendment deleted the sweeping and onerous verbatim transcript requirement from the bill. Neither of these key amendments survived the deliberations of the conference.

So, what we are left with is a bill that has some very good provisions and some very bad ones. The government in the sunshine legislation recognizes, and rightly so, that the meetings and deliberations of Federal agencies should be open to public scrutiny. The other side of it is that certain governmental functions owe their very success to something less than total sunshine. S. 5 does not always recognize this distinction. The section on verbatim transcripts purports to exempt from its requirements those agencies, such as the Federal Reserve Board and SEC, that deal with sensitive economic matters. But, as an alternative they are still made subject to such detailed "minute requirements," that one is hard pressed to see any advantage.

For many Government agencies, compliance with this statute will be time consuming and counterproductive. As it comes from the conference committee, S. 5 may well represent the final triumph of procedure over substance. Like its philosophical predecessor, this legislation is based on a valid principle but its implementation might well result in some negative "surprises."

Mr. BROOKS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

Mr. LLOYD of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 384, nays 0, not voting 47, as follows:

[Roll No. 677]

YEAS—384

Abdnor
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Aspin
AuCoin
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Chisholm
Clancy
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Tex.
Conable
Conte
Conyers
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
Delaney
Dellums
Dent
Derrick
Derwinski
Devine
Dickinson
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Esch
Eshleman
Evans, Colo.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Fraser
Frenzel
Frey
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Gude
Guyer
Hagedorn
Haley
Hall, Ill.
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harsha
Hayes, Ind.
Hechler, W. Va.
Hefner
Henderson
Hicks
Hightower
Hillis
Holland
Holt
Holtzman
Horton
Howard
Howe
Hubbard
Hughes
Hungate
Hutchinson
Hyde
Ichord
Jacobs
Jarman
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kasten
Kastenmeier
Kazen
Kelly
Kemp
Ketchum
Keys
Kindness
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Landrum
Latta
Leggett
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Lundine
McClory
McCollister
McCormack
McDade
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madden
Madigan
Maguire
Mahon
Mann
Martin
Mathis
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Neill
Ottinger
Patterson, Calif.
Pattison, N.Y.
Paul
Pepper
Perkins
Pettis
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Quie
Railsback
Randall
Rangel
Regula
Reuss
Rhodes
Richmond
Riegle
Rinaldo
Roberts
Robinson
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rosenthal
Roush
Rousselot
Roybal
Ruppe
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Satterfield
Scheuer
Schneebeli
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shriver
Shuster
Sikes
Simon
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
Staggers
Stanton, J. William
Stark
Steed
Steiger, Wis.
Stephens
Stokes
Stratton
Stuckey
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Teague
Thompson
Thone
Thornton
Traxler
Treen
Tsongas
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Vigorito
Waggonner
Walsh
Wampler
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Yates
Yatron
Young, Fla.
Young, Ga.
Young, Tex.
Zablocki

NAYS—0

NOT VOTING—47

Abzug
Ashley
Badillo
Bergland
Broyhill
Cederberg
Chappell
Clay
Collins, Ill.
Conlan
de la Garza
Evins, Tenn.
Fish
Ford, Tenn.
Forsythe
Fountain
Fuqua
Green
Hawkins
Hays, Ohio
Hébert
Heckler, Mass.
Heinz
Helstoski

Hinshaw	Patten, N.J.	Stanton, James V.
Jones, Ala.	Peyser	Steelman
Karth	Quillen	Steiger, Ariz.
Lehman	Rees	Taylor, N.C.
McCloskey	Risenhoover	Wylie
Matsunaga	Rostenkowski	Young, Alaska
O'Hara	Runnels	Zeferetti
Passman	Sisk	

The Clerk announced the following pairs:

Mr. Lehman with Mr. Sisk.
Ms. Abzug with Mr. Young of Alaska.
Mr. Matsunaga with Mr. Broyhill.
Mr. Zeferetti with Mr. Evins of Tennessee.
Mr. de la Garza with Mr. Forsythe.
Mr. Chappell with Mr. Cederberg.
Mr. Badillo with Mr. Heinz.
Mr. Hébert with Mr. Green.
Mr. Hawkins with Mr. Fish.
Mr. Fuqua with Mr. Jones of Alabama.
Mr. Rostenkowski with Mr. McCloskey.
Mr. Runnels with Mr. Conlan.
Mr. Taylor of North Carolina with Mr. James V. Stanton.
Mr. Passman with Mr. Quillen.
Mr. Fountain with Mr. Steelman.
Mr. Bergland with Mr. Peyser.
Mr. Ashley with Mr. Steiger of Arizona.
Mr. Clay with Mr. Karth.
Ms. Collins of Illinois with Mr. Wylie.
Mr. Ford of Tennessee with Mr. Rees.
Mr. Helstoski with Mr. O'Hara.
Mr. Patten with Mr. Hays of Ohio.
Mr. Risenhoover with Mrs. Heckler of Massachusetts.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

(Mr. MELCHER asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

[Mr. MELCHER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CONFERENCE REPORT ON H.R. 8800, ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTATION ACT OF 1976

Mr. TEAGUE. Mr. Speaker, I call up the conference report on the bill (H.R. 8800) to authorize in the Energy Research and Development Administration a Federal program of research, development, and demonstration designed to promote electric vehicle technologies and to demonstrate the commercial feasibility of electric vehicles, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of July 22, 1976.)

Mr. TEAGUE (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in the RECORD on the bill, H.R. 8800.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. TEAGUE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 8800 will establish a 6-year, $160-million project in the Energy Research and Development Administration—ERDA—for electric and hybrid vehicle research, development, and demonstration activities. The primary goal of the project will be to advance the technologies necessary for improved electric and hybrid vehicles and to demonstrate the commercial feasibility of such vehicles as a practical alternative to gasoline-powered autos for urban and rural use. The project will include an evaluation and demonstration program involving about 7,500 vehicles.

The bill H.R. 8800 was approved by the Committee on Science and Technology in July 1975, and passed the House on September 5, 1975, by a 308 to 60 vote. It passed the Senate on June 14, 1976, by the substantial vote of 72 to 16 and last week the conference report on H.R. 8800 was adopted by a voice vote in the Senate.

Electric and hybrid vehicles can play a significant role in reducing our dependence on imported petroleum for transportation through substitution of other energy sources and through improved energy efficiency. In addition, use of these vehicles will reduce urban air and noise pollution.

The two major components of the project established by H.R. 8800 are research and development on the one hand and demonstration on the other. It is critical that the current state of the art be significantly improved, especially with regard to batteries and other potential energy storage systems. This can only be accomplished by an aggressive research and development effort, utilizing the expertise of our scientific community, university experts, and private industry.

Research and development efforts must emphasize energy storage technologies including advanced storage batteries and flywheels. Other technologies need further R. & D. for hybrid vehicles using a power source utilizing fuels such as a Stirling engine or a fuel cell in conjunction with an electric motor. Some of the efforts on these electric and hybrid vehicle technologies under this act will benefit from and contribute to, efforts associated with other ERDA programs. The objective of the research and development activities on these vehicles will be to maximize the energy efficiency, durability, and recyclability of the component parts. Associated studies will be conducted in urban design and traffic management to learn how to optimize the future transportation system with regard to electric and hybrid vehicles.

The demonstration will involve three phases. After an initial 1-year period for design studies and for setting performance standards based on in-use testing of existing vehicle technologies, ERDA will contract for the purchase or lease of 2,500 vehicles within 21 months for delivery within 39 months after enactment of this act. The ERDA will insure widespread distribution of these vehicles by enabling individuals or businesses to lease or buy them. Within 54 months, another 5,000 advanced vehicles, incorporating technological advances derived from the first phase of the project will be purchased or leased for delivery within 72 months after enactment. Demonstration maintenance programs will also be established. The Administrator can buy a lesser number of vehicles in each case but only if the response to the request for proposals is inadequate or if there is significant likelihood of displaying normal private procurement of these vehicles.

A loan guarantee program totaling $60 million will allow small firms with problems in raising capital to bid competitively for the ERDA contracts and establish manufacturing capability.

ERDA will also conduct studies of tax provisions, regulatory law, and other factors related to the transportation system and electric vehicles. These findings, as well as assessment of the long-range environmental and economic impacts, will be reported to the Congress on a regular basis.

I wish to particularly commend Congressman MIKE MCCORMACK, chairman of the Subcommittee on Energy Research, Development, and Demonstration; and Congressman BARRY GOLDWATER, the ranking minority member of the subcommittee; and Congressmen BROWN and OTTINGER for their hard work and effort in bringing this bill to the floor.

Mr. Speaker, H.R. 8800 is a good bill. It received the unanimous endorsement of the members of the Committee on Science and Technology and the strong support of representatives of industry, universities, and the scientific community. I urge the support of each Member of this body.

I ask unanimous consent that all Members have 5 days to revise and extend their remarks in the RECORD when we have completed action on the conference report.

Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. MCCORMACK), the chairman of the subcommittee which handled the bill.

(Mr. MCCORMACK asked and was given permission to revise and extend his remarks.)

Mr. MCCORMACK. Mr. Speaker, H.R. 8800, the electric and hybrid vehicle research, development, and demonstration bill, as it comes before us today in the conference report, is esssentially the same as it was passed by the House by a five to one majority last September, except that it calls for a change in the schedule of the demonstration program for the purchase of the electric vehicles and it increases the flexibility for the Administrator of ERDA in the purchase

The PRESIDING OFFICER. Who yields time?

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STONE). Without objection, it is so ordered.

TAX TREATMENT OF SECURITIES

Mr. LONG. Mr. President, I ask unanimous consent that, without prejudicing the rights of anyone and without otherwise changing the parliamentary situation, we might temporarily lay aside the pending business and consider H.R. 3052, which is Calendar No. 1105.

The PRESIDING OFFICER. And an amendment thereto.

Mr. LONG. Pardon me, Mr. President, with a limitation of one-half hour to be controlled by the manager of the bill and the minority leader.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3052) to amend section 512 (b)(5) of the Internal Revenue Code of 1954 with respect to the tax treatment of the gain on the lapse of options to buy or sell securities.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 413

Mr. LONG. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment No. 413:

At the end of the bill add the following new section:

SEC. 2. (a) The following provisions of the Internal Revenue Code of 1954 are amended by striking out "September 1, 1976" and inserting in lieu thereof "September 15, 1976":

(1) section 3402(a) (relating to income collected at source);

(2) section 6153(a) (relating to installment payments of estimated income tax by individuals); and

(3) section 6154(h) (relating to installment payments of estimated income tax by corporations).

(b) Section 209(c) of the Tax Reduction Act of 1975 is amended by striking out "September 1, 1976" and inserting in lieu thereof "September 15, 1976".

Mr. LONG. Mr. President, on September 1, which means tomorrow, the withholding tax is scheduled to go up because we have not been able yet to enact the Tax Reform Act which has a provision that would extend it. We have already agreed in the conference that we will extend the tax cut and withholding should not go up. That will be before the Senate as soon as we can complete action on the conference report. Meanwhile we are proposing to extend for only 15 days the current withholding tax rates so that there will be no increase in the withholding tax starting tomorrow on taxpayers until we can act finally on the Tax Reform Act.

Now, the pending bill is a bill that passed the House by unanimous vote and was reported unanimously from the Committee on Finance. It merely says that lapsed option income is not to be taxed to a tax-exempt educational, charitable or religious organization. In other words, investment income is not now taxed to these organizations, and lapsed option income in reality is a form of investment income so it is right to exempt this income as well. So this is a purely technical measure to make the law it is supposed to be and what most of us thought it was already.

The amendment is to continue for an additional 15 days the current withholding tax rate relating to withholding of income collected at the source and relating to installment payments on the estimated income tax by individuals, and relating to the payments of estimated income by corporations, so that we may take our recess and have enough time after we get back to finally act on the conference report of the Tax Reform Act which, if agreed to, would continue the withholding at the same time.

Mr. CURTIS. Mr. President, as the ranking minority member of the Committee on Finance, I support both the basic provisions of this bill (H.R. 3052) and the committee amendment offered by our chairman.

The bill itself deals with the tax treatment of gains on the lapse or termination of options to buy or sell securities written by exempt organizations. Under the bill, these gains generally will not be subject to the tax on unrelated business income. This bill will have a negligible revenue impact and the Treasury Department has no objection to its enactment.

The amendment offered by our chairman on behalf of the committee extends the existing level of Federal income tax withholding for a period of 2 weeks to September 15, 1976. This extension is necessary to permit the Senate and House conferees to complete action on the tax reform bill. The conferees are working diligently to complete action on this mammoth piece of legislation. However, it now appears that we will not be able to complete the conference in time to pass the bill by September 1. Thus, this additional extension of withholding rates is necessary to maintain the status quo while the conferees complete action on the tax bill.

I urge favorable action both on the bill and the committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

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

Mr. LONG. Yes, I yield.

Mr. PROXMIRE. On the bill you say it passed the House unanimously?

Mr. LONG. Yes.

Mr. PROXMIRE. Does it have any revenue effect?

Mr. LONG. None, practically none. It is what they call negligible.

Mr. PROXMIRE. Less than $1 million?

Mr. LONG. Well, yes, less than $500,000—well, less than $1 million.

Tax-exempt organizations are not expected to pay tax on investment income, and the income one receives from the lapse of an option, an option that one is given lapses, that is income, but that is just something that someone did not think about because it is not a usual form of income, and it is just something that should be in the law and does not happen to be there.

Mr. PROXMIRE. Is there a Treasury position on this bill?

Mr. LONG. Yes, they are for it.

Mr. PROXMIRE. They support it?

Mr. LONG. Yes.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered engrossed and the bill to be read a third time. The bill was read the third time and passed.

Mr. LONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida is recognized.

GOVERNMENT IN THE SUNSHINE ACT—CONFERENCE REPORT

Mr. CHILES. Mr. President, I submit a report of the committee of conference on S. 5, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 5) to provide that meetings of Government agencies shall be open to the public, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the RECORD of August 26, 1976, beginning at page H9137.)

Mr. CHILES. I urge the Senate to give final approval today to the conference report on S. 5, the Government in the Sunshine Act.

Final approval of this legislation will mark the beginning of a new era in the way our Government operates.

For the first time a large number of Federal agencies will conduct their most important meetings in public.

This has never been done before at the Federal level.

This act makes more meaningful the important principle that in a democracy, the public has a right to know not only what its Government decides, but why,

and by what process. Today many people view their Government as to remote. They cannot identify with it. This legislation should help reaffirm that our Government is part of the people, not apart from it.

The overwhelming effect of this legislation should be to make our Government stronger and the public's confidence in our Government greater.

The bill will require agencies to make some adjustments in the way they do business. New attitudes may have to be learned, and old ones changed. But I am confident that the agencies can and will implement this act in a way that is fully in accord with the principles of openness on which the legislation is based.

As one Member of the Senate, I intend to do all I can to see that implementation of this bill is both full and reasonable.

The House and Senate passed versions of S. 5 were in most major respects similar. The bill agreed upon by the conferees is substantially similar to the bill passed by the Senate last November by a vote of 94 to 0.

All meetings among the commissioners that head independent regulatory bodies, or similar agencies, must be open as a general rule. Meetings may be closed only if the subject matter to be discussed falls within 10 specified exemptions for sensitive matters and the agency votes to close the meeting. The agency must keep a full record of any meeting that is closed to the public. Other provisions require timely public announcement of all agencies and whether they will be open to the public or not. An additional section of the bill contains for the first time a general statutory prohibition of ex parte communications relevant to the merits of agency adjudication. This section also specifies the remedial measures that must be taken in the event that an ex parte communication does occur.

A full description of the differences between the House and Senate versions, and the resolution of those differences is contained in the joint statement of managers.

The following is a brief summary of the resolution of the most important differences between the two bills:

First. Definition of meeting and related terms.—The Senate defined meeting to mean "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concerned the joint conduct or dispositions of official agency business."

The House defined "meeting" to mean "a gathering to jointly conduct or dispose of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency."

The compromise version defines "meeting" to mean "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsections (d) or (e)."

Second. Exemption for premature disclosure of information.—The Senate provision qualifying the exemption for premature disclosure of certain information applied to the entire exemption, including the portion applicable to any agency which regulates currencies, securities, commodities, or financial institutions, as well as to all other agencies. In the comparable House provision, the qualifications on the exemption did not apply to agencies which regulate currencies, securities, commodities, or financial institutions. The actual wording of the exemption was somewhat different in the two versions as well. The compromise position accepted the Senate language and made it applicable to all agencies other than agencies that regulate currencies, securities, commodities, or financial institutions.

Third. Exemption for limitations on disclosures in other statutes.—

a. SUNSHINE ACT

The Senate permitted an agency to close a meeting to protect "information required to be withheld by any other statute establishing particular criteria or referring to particular types of information." The comparable House clause exempts "matters specifically exempted from disclosure by statute—other than section 552 of this title—provided that such statute (A) requires that the matters be withheld from the public or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;"

The conference substitute applies only to a statute that either "(a) requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of information to be withheld."

b. FREEDOM OF INFORMATION ACT PROVISION

The Senate did not amend the comparable provision now in the Freedom of Information Act exempting from disclosure information specifically exempted by other statutes. The House amended the comparable provision in the Freedom of Information Act to conform to the Sunshine Act exemption. The conference substitute is the House provision.

Fourth. Requirements for transcripts or minutes.—The Senate required an agency to keep a transcript or a electronic recording of closed agency meetings. The transcripts or electronic recordings were to be maintained for at least two years, but disclosure of transcripts containing sensitive matters was protected. The House did not require an agency to keep transcripts of closed meetings. Instead, it required the General Counsel to certify publicly that the meeting may be closed under one of the exemptions and to state the relevant exemption. This information would have been kept as part of the minutes of the closed meeting. The minutes would also have included information on the generic subject matter of the meeting and actions taken on them. The House also required each agency to maintain and disclose minutes of open meetings.

Under the compromise the agency is required to keep a verbatim transcript or electronic recording of each meeting or portion closed to the public unless a meeting has been closed under exemption 8, concerning bank reports, exemption 9(a), concerning information likely to lead to financial speculation, and exemption 10, concerning adjudicatory proceedings or civil actions. In such case, the agency may elect to make either a transcript, an electronic recording, or minutes containing a full and clear description of all matters discussed and all views expressed on any matter discussed, as well as an accurate summary of any actions taken and the reasons expressed therefore.

The compromise substitute also requires that before a meeting may be closed the General Counsel or Chief Legal Office of the agency must certify that in his or her opinion the meeting may properly be closed and the reasons therefore.

Fifth. Venue.—The Senate provided that suit to enforce the act may be brought where the headquarters of the agency are located or where the plaintiff resides. In the House version, suit may be brought in the District of Columbia, where the headquarters of the agency are located, or where the meeting in question is held. The compromise substitute is the same as the House provision.

Sixth. Review by Appellate Court of compliance with act.—The Senate provided that a court that otherwise has jurisdiction to review an agency's action may, as part of that review, "inquire into violations by the agency of the requirements of this section, and afford any such relief as it deems appropriate." The House contained no comparable language. The conference substitute adopted the Senate wording.

Seventh. Personal liability of agency members for litigation costs.—The Senate authorized an individual agency member to be named as a defendant. It permitted a court to assess reasonable attorneys fees and other litigation costs against an agency member if the agency member had intentionally and repeatedly violated the Act. The House bill did not provide that an individual agency member may be held personally liable for such litigation costs. The conference substitute follows the House bill.

Eighth. Ex parte communications.—

A. DEFINITION OF EX PARTE COMMUNICATIONS

The Senate bill prohibited "ex parte communications relevant to the merits." The House bill contained a similar phrase, but in addition specified that an ex parte communication "shall not include requests for information on or status reports relative to any matter or proceeding covered by this subchapter." The conference substitute is the same as the House amendment, with a Senate amendment to strike the words "information on or."

B. APPLICABILITY OF PROHIBITION TO PERSON WHO CAUSES EX PARTE COMMUNICATIONS

The Senate prohibited an interested person from making, or knowingly causing to be made, an ex parte communication. The House provision did not include the word knowingly. The conference sub-

stitute is the same as the Senate language.

C. APPLICABILITY OF AGENCY SANCTIONS TO PARTY WHO MAKES OR CAUSES EX PARTE COMMUNICATION

The Senate provides that upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party, the agency may require the party to show cause why his claim should not be adversely affected. It authorizes the agency to rule against a party who has knowingly committed a violation of the rules against ex parte communications, or knowingly caused such a violation. The House did not require that such communications be made knowingly. The conference substitute is the same as the Senate version.

Ninth. Federal Advisory Committee Act.—The House amended the Federal Advisory Committee Act so that an advisory committee meeting may be closed for the same reasons applicable under the Sunshine Act to the closing of an agency meeting. The Senate contained no comparable amendments of the Federal Advisory Committee Act. The conference substitute is the same as the House language.

Mr. President, I think it is kind of fitting that on the 200th birthday of this country we determine that our people are mature enough after 200 years so that they will be able, be qualified and capable of seeing how their business is conducted by the Federal agencies, and I urge the adoption of the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CLARK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976

The Senate continued with the consideration of the message from the House of Representatives announcing its action on the amendment of the Senate to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

The PRESIDING OFFICER. The question recurs on the Abourezk amendment.

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CLARK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT REFERRAL OF A BILL

Mr. CLARK. Mr. President, I ask unanimous consent that a bill introduced earlier today by the Senator from Vermont (Mr. LEAHY) and others be referred jointly to the Committees on Agriculture and Forestry, Banking, Housing and Urban Affairs, Commerce, and Interior and Insular Affairs.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY—EXECUTIVE O, 94TH CONGRESS, 2D SESSION

Mr. CLARK. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the International Convention for the Safety of Life at Sea, 1974, done at London, November 1, 1974—Executive O, 94th Congress, 2d session—transmitted to the Senate today by the President of the United States, and that the treaty with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message from the President is as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to acceptance, the International Convention for the Safety of Life at Sea, 1974, done at London, November 1, 1974. The report of the Department of State is enclosed for the information of the Senate in connection with its consideration of the Convention.

I also transmit a copy of the Final Act of the International Conference on Safety of Life at Sea, 1974, held at London from October 21 to November 1, 1974.

Numerous technical amendments to the 1960 Safety of Life at Sea Convention have been proposed and accepted by the depository organization since 1966. The United States has accepted all of these amendments. However, none of them have received the necessary explicit acceptance by the required two thirds of the contracting governments to enter into force. The 1974 Convention incorporates all of the amendments and contains an improved procedure which will accelerate acceptance of future amendments to the technical regulations. I recommend that the Senate give prompt consideration to this Convention and consent to its acceptance.

GERALD R. FORD.

THE WHITE HOUSE, *August 31, 1976.*

WILLIAM S. MIDDLETON MEMORIAL VETERANS' HOSPITAL

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1096, H.R. 9811, which has been cleared all the way around.

The PRESIDING OFFICER (Mr. STONE). The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 9811) to designate the Veterans' Administration hospital in Madison Wisconsin, as the "William S. Middleton Memorial Veterans' Hospital," and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

UP AMENDMENT 414

Mr. CRANSTON. Mr. President, I send to the desk an amendment, which is an amendment designed to permit the VA hospital system to join and participate in the swine flu program. It has been cleared on all sides.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment No. 44.

The amendment is as follows:

Add at the end of the bill the following new section:

SEC. 3. (a) In order to assist the Secretary of Health, Education, and Welfare in carrying out the National Swine Flu Immunization Program of 1976 pursuant to subsection (j) of section 317 of the Public Health Service Act (42 U.S.C. 247b), as added by Public Law 94–380, 94th Congress (August 12, 1976), the Administrator of Veterans' Affairs, in accordance with the provisions of such subsection (j), may authorize the administration of vaccine, procured under such Program and provided by the Secretary at no cost to the Veterans' Administration, to eligible veterans (voluntarily requesting such vaccine) in connection with the provision of care for a disability under chapter 17 of title 38, United States Code, in any health care facility under the jurisdiction of the Administrator. In carrying out such Program, the Secretary may provide the Administrator with such vaccine at no cost to the Veterans' Administration.

(b) Notwithstanding the provisions of subsection (k) of such section 317, any claim or suit for damages for personal injury or death, in connection with the administration of vaccine as authorized by subsection (a) of this section, allegedly arising from the malpractice or negligence of personnel granted immunity under section 4116 of such title 38 while in the exercise of their duties in or for the Department of Medicine and Surgery of the Veterans' Administration, shall be considered and processed in accordance with the provisions of such section 4116, and the recovery authority provided the United States under paragraph (7) of such subsection (k) shall not be applicable to such claims or suits.

Mr. CRANSTON. Mr. President, this amendment will permit the Veterans' Administration health care facilities to participate in the national swine flu immunization program. This amendment has been cleared by all members of the Committee on Veterans' Affairs, where I serve as chairman of the Subcommittee on Health and Hospitals, and will, I believe, be acceptable to the other body.

In April we appropriated $135 million in Public Law 94–266 for a national program of immunization against swine flu. August 12, 1976, we enacted the national swine flu immunization program of 1976, Public Law 94–380, establishing a clear legislative basis for that program, imposing certain conditions on the conduct of that program, and dealing with the difficult potential liability problem which had stalled initiation of the program by HEW.