**The original documents are located in Box 24, folder "Sunset Bills" of the Michael Raoul-Duval Papers at the Gerald R. Ford Presidential Library.**

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

THE WHITE HOUSE

WASHINGTON

May 31, 1976

MEMORANDUM FOR: JIM CANNON

FROM: DICK CHENEY

SUBJECT: PROPOSED "SUNSET LAW"

Do we have a position on legislation recently introduced in Congress which would abolish most Federal agencies every five years unless Congress votes to extend them? These "Sunset" bills have great support throughout the country and, while perhaps simplistic, are nevertheless perceived to be part of the answer to the "big government" problem. (See attached editorial.)

The President should not be in the position of having to veto such a bill this summer. Perhaps the President should step out quickly in support of such bills, but try to influence their content.

FORD PROPOSES ACTION

# It's Time To Deregulate

President Ford is asking Congress to commit itself to a four-year program of doing away with needless government regulations. He has sketched out a timetable for tackling

keep them in existence.

Mr. Ford wants Congress to act this year on a measure that would establish deadlines in the 1977-80 period for congressional action on his





San Diego Union (5/18/76)

THE WHITE HOUSE

WASHINGTON

August 5, 1976

Dear Pete:

Thanks very much for the information you sent me on the Sunshine Act which was passed Wednesday. After our dinner conversation last week, I spoke to Jack Marsh and Max Friedersdorf about your concerns that the conferees would not fight to keep the House amendments.

I will see to it that they have copies of the materials you sent me in order that they can follow up on my earlier conversation.

It was great seeing you the other night, and I look forward to seeing you in Kansas City, if not before.

Sincerely,

Michael Raoul-Duval
Special Counsel
to the President

The Honorable Paul N. McCloskey, Jr.
House of Representatives
Washington, D.C. 20515



bcc: Marsh/Friedersdorf

PAUL N. McCLOSKEY, JR.
12TH DISTRICT, CALIFORNIA

COMMITTEE ON
GOVERNMENT OPERATIONS
AND
COMMITTEE ON
MERCHANT MARINE
AND FISHERIES

# Congress of the United States
## House of Representatives
### Washington, D.C. 20515

205 CANNON BUILDING
WASHINGTON, D.C. 20515
(202) 225-5411

DISTRICT OFFICE:
305 GRANT AVENUE
PALO ALTO, CALIFORNIA 94306
(415) 326-7383

August 2, 1976

Mr. Michael Duval
Special Counsel to the President
The White House
Washington, D. C. 20500

Dear Mike:

I am enclosing a copy of the full House debate on the Sunshine Act which was passed Wednesday. It is imperative that the White House take steps with the Senate conferees to insure that the House amendments are retained. The Senate conferees were appointed yesterday and are Senators Ribicoff, Muskie, Metcalf, Chiles, Percy, Javits and Roth. I will be contacting each one of them but I suggest that this matter is of enough importance to the Administration particularly to Arthur Burns and Rod Hills, that a maximum way-out effort is deserved.

Sincerely,

Paul N. McCloskey, Jr.



PNMcC:mm
cc: Chairman Arthur Burns
Chairman Roderick Hills

An amendment which sought to include in the qualifications for mine inspectors at least 5 years of practical mining experience in the same type of mine and region.

The clerk was authorized to make necessary technical corrections in the engrossment of the bill.

Pages H7850–H7863

Subcommittees To Sit: Subcommittee on Military Compensation of the Committee on Armed Services received permission to sit today and Thursday, July 29, during the proceedings of the House under the 5-minute rule; and

Subcommitete on Science, Research and Technology of the Committee on Science and Technology received permission to sit Thursday, July 29, during the proceedings of the House under the 5-minute rule.

Pages H7863–H7866

Presidential Message—Budget Deferrals: Received and read a message from the President proposing four rescissions in budget authority provided in Second Supplemental Appropriations, 1976, and reporting four new deferrals—referred to the Committee on Appropriations and ordered printed. Page H7863

Packers and Stockyards: Speaker appointed Representative English as a conferee on H.R. 8410, Packers and Stockyards Act Amendments, vice Representative Weaver, excused. Page H7866

Government in Sunshine: By a yea-and-nay vote of 390 yeas to 5 nays, the House passed H.R. 11656, Government in the Sunshine Act.

Agreed to an amendment in the nature of a substitute incorporating all the committee amendments as recommended by the committees on Government Operations and the Judiciary as amended by:

An amendment requiring that reason and statutory authority be set forth when an agency deletes material from transcripts (by a recorded vote of 232 ayes to 168 noes);

An amendment which clarifies the definition of meeting to include only those meetings called for the purpose of discussing agency business (agreed to by a recorded vote of 204 ayes to 180 noes);

An amendment which deletes the verbatim transcript requirement and replaces it with a requirement that minutes be recorded and retained by the agency (agreed to by a recorded vote of 201 ayes to 193 noes);

An amendment which applies the exemption provisions of the bill to the Federal Advisory Committee Act;

An amendment excluding requests for information or status reports from the meaning of ex parte communication; and

An amendment which clarifies the provisions of the bill and its effect upon existing statute criteria of the Freedom of Information Act (agreed to by a recorded vote of 282 ayes to 112 noes). Previously, this amendment was rejected by a division vote of 34 ayes to 35 noes.

Rejected:

An amendment which sought to strike the language providing that any person can bring suit against an agency for violation of the requirements of the bill (by a recorded vote of 134 ayes to 258 noes); and

An amendment which sought to redefine the term agency.

Subsequently, this passage was vacated, and S. 5, a similar Senate-passed bill was passed in lieu after being amended to contain the language of the House bill as passed.

H. Res. 1207, the rule under which the bill was considered, was agreed to earlier by a yea-and-nay vote of 391 yeas. Pages H7866–H7902

Amendments Ordered Printed: Amendments ordered printed pursuant to the rule appear on pages H7919–H7920.

Quorum Calls—Votes: Three quorum calls, three yea-and-nay votes, and six recorded votes developed during the proceedings of the House today and appear on pages H7849, H7855, H7862, H7865–H7866, H7887, H7888–H7880, H7890, H7893–H7894, H7895–H7896, H7897–H7898, H7899.

Adjournment: Adjourned at 6:25 p.m.

## *Committee Meetings*

### FOOD STAMP ACT

*Committee on Agriculture:* Continued markup of H.R. 13613, Food Stamp Act of 1976, and will resume tomorrow.

### TIMBER MANAGEMENT PRACTICES

*Committee on Agriculture:* Subcommittee on Forests continued markup of legislation dealing with timber management practices, and will resume tomorrow.

### CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

*Committee on Agriculture:* Subcommittee on Conservation and Credit held a hearing on H.R. 14641, to amend the Consolidated Farm and Rural Development Act. Testimony was heard from Representative Harkin; USDA; and public witnesses.

### COMMERCE APPROPRIATIONS

*Committee on Appropriations:* Subcommittee on State, Justice, Commerce and Judiciary held a hearing on the public works employment appropriation bill—EDA.

### MEDICAL OFFICERS' INCENTIVE PAY

*Committee on Armed Services:* Subcommittee on Military Compensation held a hearing on H.R. 14772, to pay variable incentive pay to medical officers who participated in the Berry Plan. Testimony was heard from Vernon McKenzie, Acting Assistant Secretary for Health Affairs, DOD; Vice Adm. D. L. Custis, Chief,

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

| | | |
|---|---|---|
| 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, | Wilson, Bob |
| Rooney | J. William | Wilson, C. H. |
| Rose | Stanton, | Winn |
| Rosenthal | James V. | Wirth |
| Roush | Stark | Wolff |
| Rousselot | Steed | Wright |
| Roybal | Steelman | Wydler |
| Runnels | Steiger, Wis. | Wylie |
| Ruppe | Stokes | Yates |
| Russo | Studds | Yatron |
| Ryan | Symms | Young, Alaska |
| St Germain | Talcott | Young, Fla. |
| Santini | Taylor, Mo. | Young, Tex. |
| Sarasin | Taylor, N.C. | Zablocki |
| Sarbanes | Teague | 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

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-

purpose 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 designate "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 decisionmaking 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 required 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 shoukl 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 mark-up 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 miiltary 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 confiscated.

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 confiscated 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 silence 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 legislation 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 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 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, |
| Collins, Ill. | Jones, N.C. | James V. |
| Conyers | Jones, Tenn. | Steed |
| Dellums | Karth | Steiger, Ariz. |
| Dent | Kemp | Stephens |
| Derrick | Landrum | Stratton |
| Derwinski | Litton | Stuckey |
| Diggs | McDade | Sullivan |
| Dingell | Mathis | Symington |
| Downing, Va. | Murphy, N.Y. | Udall |
| Drinan | Nowak | Vander Veen |
| Esch | O'Hara | Wampler |
| Evans, Colo. | O'Neill | Wiggins |
| Evans, Ind. | Patterson, | Wilson, C. H. |
| Evins, Tenn. | Calif. | Wilson, Tex. |
| Fascell | Peyser | Young, Alaska |
| Fountain | Pike | Zeferetti |
| Fraser | Railsback | |
| Gaydos | Randall | |

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 | Carney | Evins, Tenn. |
| Adams | Carr | Fary |
| Addabbo | Chappell | Fascell |
| Alexander | Chisholm | Fenwick |
| Allen | Clancy | Fisher |
| Ambro | Cleveland | Fithian |
| Anderson, Calif. | Cohen | Flood |
| | Collins, Ill. | Florio |
| Andrews, N.C. | Conte | Foley |
| Annunzio | Conyers | Ford, Mich. |
| Aspin | Corman | Ford, Tenn. |
| Badillo | Cornell | Fraser |
| Bafalis | Cotter | Fuqua |
| Baldus | Crane | Gaydos |
| Baucus | D'Amours | Giaimo |
| Bauman | Daniels, N.J. | Gibbons |
| Beard, R.I. | Davis | Gilman |
| Bedell | de la Garza | Gonzalez |
| Bennett | Delaney | Grassley |
| Bergland | Dellums | Green |
| Biaggi | Derrick | Haley |
| Bingham | Derwinski | Hall, Ill. |
| Blanchard | Diggs | Hall, Tex. |
| Blouin | Dingell | Hamilton |
| Boland | Dodd | Hanley |
| Boiling | Downey, N.Y. | Hannaford |
| Bonker | Drinan | Harkin |
| Brademas | Duncan, Oreg. | Harrington |
| Brinkley | du Pont | Harris |
| Brodhead | Early | Hawkins |
| Brooks | Eckhardt | Hayes, Ind. |
| Brown, Calif. | Edgar | Hays, Ohio |
| Burke, Calif. | Edwards, Calif. | Hechler, W. Va. |
| Burke, Mass. | Ellberg | Heckler, Mass. |
| Burlison, Mo. | Emery | Heinz |
| Burton, John | Evans, Colo. | Hicks |
| Burton, Phillip | Evans, Ind. | Holland |
| Holtzman | Mosher | Schroeder |
| Howard | Moss | Seiberling |
| Howe | Mottl | Sharp |
| Hughes | Murphy, Ill. | Shipley |
| Jacobs | Murphy, N.Y. | Simon |
| Jeffords | Neal | Smith, Iowa |
| Jenrette | Nedzi | Solarz |
| Johnson, Calif. | Nix | Spellman |
| Johnson, Colo. | Nolan | Staggers |
| Jordan | Nowak | Stanton, |
| Kastenmeier | Oberstar | James V. |
| Kelly | Obey | Stark |
| Keys | Ottinger | Steelman |
| Koch | Passman | Stokes |
| Krebs | Patterson, | Studds |
| Lehman | Calif. | Symms |
| Lent | Paul | Thompson |
| Levitas | Pepper | Thornton |
| Lloyd, Calif. | Perkins | Traxler |
| Long, La. | Pickle | Tsongas |
| Long, Md. | Pike | Udall |
| McHugh | Pressler | Ullman |
| McKay | Preyer | Van Deerlin |
| Madden | Price | Vander Veen |
| Maguire | Rangel | Vanik |
| Mann | Reuss | Vigorito |
| Mathis | Richmond | Waxman |
| Matsunaga | Rinaldo | Weaver |
| Meeds | Rodino | Whalen |
| Melcher | Rogers | White |
| Metcalfe | Roncalio | Wirth |
| Meyner | Rooney | Wolff |
| Mezvinsky | Rose | Wright |
| Mikva | Rosenthal | Wydler |
| Miller, Calif. | Roush | Wylie |
| Mineta | Roybal | Yates |
| Minish | Russo | Yatron |
| Mink | Ryan | Young, Fla. |
| Mitchell, Md. | St Germain | Young, Ga. |
| Moakley | Santini | Young, Tex. |
| Moffett | Sarbanes | |
| Moorhead, Pa. | Scheuer | |

NOES—168

| | | |
|---|---|---|
| Abdnor | Guyer | Murtha |
| Anderson, Ill. | Hagedorn | Myers, Ind. |
| Andrews, N. Dak. | Hammer-schmidt | Myers, Pa. |
| | | Natcher |
| Archer | Harsha | Nichols |
| Armstrong | Hébert | O'Brien |
| Ashley | Hefner | Patten, N.J. |
| Beard, Tenn. | Henderson | Pattison, N.Y. |
| Bell | Hightower | Pettis |
| Bevill | Hillis | Poage |
| Biester | Holt | Pritchard |
| Boggs | Horton | Quie |
| Bowen | Hubbard | Quillen |
| Breaux | Hungate | Railsback |
| Breckinridge | Hutchinson | Randall |
| Broomfield | Hyde | Rees |
| Brown, Mich. | Ichord | Regula |
| Brown, Ohio | Jarman | Rhodes |
| Broyhill | Johnson, Pa. | Risenhoover |
| Buchanan | Jones, N.C. | Roberts |
| Burgener | Jones, Okla. | Robinson |
| Burke, Fla. | Kasten | Rousselot |
| Burleson, Tex. | Kazen | Runnels |
| Butler | Kemp | Ruppe |
| Byron | Ketchum | Sarasin |
| Carter | Kindness | Satterfield |
| Cederberg | Krueger | Schneebeli |
| Clausen, Don H. | LaFalce | Schulze |
| | Lagomarsino | Sebelius |
| Clawson, Del | Latta | Shriver |
| Cochran | Lloyd, Tenn. | Shuster |
| Collins, Tex. | Lott | Sikes |
| Conable | Lujan | Skubitz |
| Conlan | Lundine | Slack |
| Coughlin | McClory | Smith, Nebr. |
| Daniel, Dan | McCloskey | Snyder |
| Daniel, R. W. | McCollister | Spence |
| Danielson | McCormack | Stanton, |
| Devine | McDade | J. William |
| Dickinson | McDonald | Steed |
| Downing, Va. | McEwen | Steiger, Wis. |
| Duncan, Tenn. | McFall | Stephens |
| Edwards, Ala. | McKinney | Talcott |
| English | Madigan | Taylor, Mo. |
| Erlenborn | Mahon | Taylor, N.C. |
| Esbleman | Martin | Teague |
| Findley | Mazzoli | Thone |
| Fish | Michel | Treen |
| Flowers | Milford | Vander Jagt |
| Flynt | Miller, Ohio | Waggonner |
| Forsythe | Mills | Walsh |
| Frenzel | Mitchell, N.Y. | Whitehurst |
| Frey | Mollohan | Whitten |
| Ginn | Montgomery | Wilson, Bob |
| Goldwater | Moore | Winn |
| Goodling | Moorhead, Calif. | Young, Alaska |
| Gradison | | Zablocki |
| Gude | Morgan | |

NOT VOTING—32

| | | |
|---|---|---|
| Ashbrook | Clay | Esch |
| AuCoin | Dent | 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 | Foley | McCollister |
| Adams | Forsythe | McCormack |
| Anderson, Ill. | Frenzel | McDade |
| Andrews, N.C. | Frey | McDonald |
| Andrews, N. Dak. | Gaydos | McEwen |
| Archer | Ginn | McKay |
| Armstrong | Goldwater | McKinney |
| Ashbrook | Gonzalez | Madden |
| Bauman | Goodling | Madigan |
| Beard, Tenn. | Gradison | Mahon |
| Bedell | Grassley | Mann |
| Bell | Guyer | Martin |
| Bergland | Hagedorn | Mathis |
| Biester | Haley | Melcher |
| Boggs | Hall, Tex. | Michel |
| Bowen | Hammer-schmidt | Milford |
| Breaux | Hanley | Miller, Ohio |
| Brinkley | Harris | Mills |
| Broomfield | Harsha | Mitchell, N.Y. |
| Brown, Mich. | Hébert | Mollohan |
| Broyhill | Heckler, Mass. | Montgomery |
| Buchanan | Hefner | Moore |
| Burgener | Henderson | Moorhead, Calif. |
| Burke, Fla. | Hightower | Mosher |
| Burleson, Tex. | Hillis | Murtha |
| Butler | Holland | Myers, Ind. |
| Byron | Holt | Myers, Pa. |
| Carter | Horton | Natcher |
| Cederberg | Hubbard | O'Brien |
| Chappell | Hutchinson | Passman |
| Clausen, Don H. | Hyde | Patten, N.J. |
| Clawson, Del | Ichord | Paul |
| Cochran | Jacobs | Pepper |
| Cohen | Jarman | Pettis |
| Collins, Tex. | Jeffords | Poage |
| Conable | Johnson, Colo. | Quie |
| Conlan | Johnson, Pa. | Quillen |
| Coughlin | Jones, N.C. | Railsback |
| Crane | Jones, Okla. | Rees |
| Daniel, Dan | Kasten | Regula |
| Daniel, R. W. | Kazen | Rhodes |
| de la Garza | Kelly | Roberts |
| Derrick | Kemp | Robinson |
| Derwinski | Ketchum | Roush |
| Devine | Kindness | Rousselot |
| Dickinson | Krebs | Runnels |
| Downing, Va. | LaFalce | Ruppe |
| Duncan, Tenn. | Lagomarsino | Ryan |
| du Pont | Latta | Sarasin |
| Edwards, Ala. | Lent | Satterfield |
| Erlenborn | Levitas | Schneebeli |
| Eshleman | Lloyd, Calif. | Schulze |
| Evans, Colo. | Lloyd, Tenn. | Sebelius |
| Evans, Ind. | Long, Md. | Shriver |
| Fenwick | Lott | Shuster |
| Findley | Lujan | Sikes |
| Fish | Lundine | Skubitz |
| Flynt | McClory | Slack |
| | McCloskey | Smith, Iowa |
| Smith, Nebr. | Taylor, Mo. | Whitehurst |
| Snyder | Taylor, N.C. | Whitten |
| Spence | Teague | Wilson, Bob |
| Stanton, J. William | Thone | Winn |
| Steed | Treen | Wright |
| Steiger, Wis. | Van Deerlin | Wydler |
| Stephens | Vander Jagt | Wylie |
| Symms | Waggonner | Young, Alaska |
| Talcott | Walsh | Young, Tex. |
| | White | |

NOES—180

| | | |
|---|---|---|
| Abzug | Fascell | Nix |
| Addabbo | Fisher | Nolan |
| Alexander | Fithian | Nowak |
| Allen | Flood | Oberstar |
| Ambro | Florio | Obey |
| Anderson, Calif. | Flowers | Patterson, Calif. |
| Annunzio | Ford, Mich. | Pattison, N.Y. |
| Aspin | Ford, Tenn. | Perkins |
| Badillo | Fraser | Pickle |
| Bafalis | Fuqua | Pike |
| Baldus | Gibbons | Pressler |
| Baucus | Gilman | Preyer |
| Beard, R.I. | Green | Price |
| Bennett | Gude | Pritchard |
| Bevill | Hall, Ill. | Randall |
| Biaggi | Hamilton | Rangel |
| Bingham | Hannaford | Reuss |
| Blanchard | Harkin | Richmond |
| Blouin | Harrington | Rinaldo |
| Boland | Hawkins | Risenhoover |
| Bolling | Hayes, Ind. | Rodino |
| Bonker | Hays, Ohio | Rogers |
| Brademas | Hechler, W. Va. | Roncalio |
| Breckinridge | Heinz | Rooney |
| Brooks | Hicks | Rose |
| Brown, Calif. | Holtzman | Roybal |
| Burke, Calif. | Howard | Russo |
| Burke, Mass. | Howe | St Germain |
| Burlison, Mo. | Hughes | Santini |
| Burton, John | Hungate | Sarbanes |
| Burton, Phillip | Johnson, Calif. | Scheuer |
| Carney | Jordan | Schroeder |
| Carr | Kastenmeier | Seiberling |
| Chisholm | Keys | Shipley |
| Clancy | Koch | Simon |
| Cleveland | Lehman | Solarz |
| Collins, Ill. | Long, La. | Spellman |
| Conte | McFall | Stanton, James V. |
| Conyers | McHugh | Stark |
| Corman | Matsunaga | Steelman |
| Cornell | Mazzoli | Stokes |
| Cotter | Meeds | Studds |
| D'Amours | Metcalfe | Thompson |
| Daniels, N.J. | Meyner | Thornton |
| Danielson | Mezvinsky | Traxler |
| Davis | Mikva | Tsongas |
| Delaney | Miller, Calif. | Udall |
| Dellums | Mineta | Vander Veen |
| Diggs | Minish | Vanik |
| Dodd | Mink | Vigorito |
| Downey, N.Y. | Mitchell, Md. | Waxman |
| Drinan | Moakley | Weaver |
| Duncan, Oreg. | Moffett | Whalen |
| Early | Morgan | Wilson, Tex. |
| Edgar | Moss | Wolff |
| Edwards, Calif. | Mottl | Yates |
| Eilberg | Murphy, Ill. | Yatron |
| Emery | Murphy, N.Y. | Young, Fla. |
| English | Neal | Zablocki |
| Fary | Nedzi | |
| | Nichols | |

NOT VOTING—48

| | | |
|---|---|---|
| Ashley | Jones, Ala. | Rostenkowski |
| AuCoin | Jones, Tenn. | Sharp |
| Brodhead | Karth | Sisk |
| Brown, Ohio | Krueger | Staggers |
| Clay | Landrum | Steiger, Ariz. |
| Dent | Leggett | Stratton |
| Dingell | Litton | Stuckey |
| Eckhardt | Maguire | Sullivan |
| Esch | Moorhead, Pa. | Symington |
| Evins, Tenn. | O'Hara | Ullman |
| Fountain | O'Neill | Wampler |
| Giaimo | Ottinger | Wiggins |
| Hansen | Peyser | Wilson, C. H. |
| Helstoski | Riegle | Wirth |
| Hinshaw | Roe | Young, Ga. |
| Jenrette | Rosenthal | 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.

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 2, strike page 11, line 2, strike subsection (f) and insert the following:

"(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 relief 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 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 "minutes".

On page 13, line 10, strike "transcript or electronic recording" and insert "minutes".

On page 15, lines 1 and 2, strike "transcript or electronic recordings" and insert "minutes".

On page 15, lines 4 and 5, strike "transcript and electronic recordings" and insert "minutes".

On page 15, line 13, strike "transcripts or electronic recordings" and insert "minutes".

Mr. HORTON. Madam Chairman, my 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.

This 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.

This 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 tc 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 |
| | Burgener | Daniel, R. W. |
| Archer | Burke, Fla. | Davis |
| Armstrong | Burleson, Tex. | de la Garza |
| Ashbrook | Butler | Delaney |
| Ashley | Byron | Derrick |
| Beard, Tenn. | Carter | Derwinski |
| Bell | Cederberg | Devine |
| Biaggi | Chappell | Dickinson |
| Biester | Clancy | Downing, Va. |
| Boggs | Clausen, Don H. | Duncan, Oreg. |
| Bowen | | Duncan, Tenn. |
| Breckinridge | Clawson, Del | du Pont |
| Brinkley | Cochran | Eckhardt |

| | | |
|---|---|---|
| Edwards, Ala. | LaFalce | Regula |
| English | Lagomarsino | Rhodes |
| Erlenborn | Latta | Risenhoover |
| Eshleman | Lent | Roberts |
| Evans, Colo. | Levitas | Robinson |
| Fary | Lloyd, Tenn. | Runnels |
| Fenwick | Lott | Ruppe |
| Findley | Lujan | Ryan |
| Fish | Lundine | Sarasin |
| Flynt | MpCIory | Satterfield |
| Foley | McCloskey | Schneebeli |
| Forsythe | McCollister | Schulze |
| Frenzel | McCormack | Sebelius |
| Frey | McDade | Shriver |
| Gaydos | McEwen | Shuster |
| Ginn | McKay | Sikes |
| Goldwater | McKinney | Skubitz |
| Goodling | Madigan | Slack |
| Gradison | Mahon | Smith, Nebr. |
| Guyer | Mann | Snyder |
| Haley | Martin | Spence |
| Hall, Tex. | Mathis | Stanton, J. William |
| Hammer-schmidt | Michel | Steed |
| Hanley | Mikva | Steiger, Wis. |
| Harsha | Milford | Stephens |
| Hays, Ohio | Miller, Ohio | Talcott |
| Heckler, Mass. | Mills | Taylor, Mo. |
| Hefner | Mitchell, N.Y. | Taylor, N.C. |
| Henderson | Mollohan | Teague |
| Hillis | Montgomery | Thone |
| Holland | Moore | Thornton |
| Holt | Moorhead, Calif. | Treen |
| Horton | Mosher | Ullman |
| Hubbard | Murphy, Ill. | Van Deerlin |
| Hungate | Murtha | Vander Jagt |
| Hutchinson | Myers, Ind. | Waggonner |
| Hyde | Myers, Pa. | Walsh |
| Ichord | Natcher | White |
| Jarman | Nedzi | Whitehurst |
| Jeffords | O'Brien | Whitten |
| Jenrette | Passman | Wilson, Bob |
| Johnson, Pa. | Pepper | Wilson, Tex. |
| Jones, N.C. | Pettis | Winn |
| Jones, Okla. | Pickle | Wright |
| Jordan | Poage | Wydler |
| Kasten | Pritchard | Wylie |
| Kelly | Quie | Young, Alaska |
| Ketchum | Quillen | Young, Tex. |
| Kindness | Railsback | Zablocki |
| Krueger | Rees | |

NOES—193

| | | |
|---|---|---|
| Abzug | Downey, N.Y. | McDonald |
| Addabbo | Drinan | McFall |
| Alexander | Early | McHugh |
| Allen | Edgar | Madden |
| Ambro | Edwards, Calif. | Maguire |
| Anderson, Calif. | Eilberg | Matsunaga |
| Annunzio | Emery | Mazzoli |
| Aspin | Evans, Ind. | Meeds |
| AuCoin | Fascell | Melcher |
| Badillo | Fisher | Metcalfe |
| Bafalis | Fithian | Meyner |
| Baldus | Flood | Mezvinsky |
| Baucus | Florio | Miller, Calif. |
| Bauman | Flowers | Mineta |
| Beard, R.I. | Ford, Mich. | Minish |
| Bedell | Ford, Tenn. | Mink |
| Bennett | Fraser | Mitchell, Md. |
| Bergland | Fuqua | Moakley |
| Bevill | Gibbons | Moffett |
| Bingham | Gilman | Moorhead, Pa. |
| Blanchard | Gonzalez | Morgan |
| Blouin | Grassley | Moss |
| Boland | Green | Mottl |
| Bolling | Gude | Murphy, N.Y. |
| Bonker | Hagedorn | Neal |
| Brademas | Hall, Ill. | Nichols |
| Breaux | Hamilton | Nix |
| Brodhead | Hannaford | Nolan |
| Brooks | Harkin | Nowak |
| Brown, Calif. | Harrington | Oberstar |
| Burke, Calif. | Harris | Obey |
| Burke, Mass. | Hawkins | Ottinger |
| Burlison, Mo. | Hayes, Ind. | Patten, N.J. |
| Burton, Phillip | Hechler, W. Va. | Patterson, Calif. |
| Carney | Heinz | Pattison, N.Y. |
| Carr | Hicks | Paul |
| Chisholm | Holtzman | Perkins |
| Cleveland | Howard | Pike |
| Cohen | Howe | Pressler |
| Collins, Ill. | Hughes | Preyer |
| Conte | Jacobs | Price |
| Conyers | Johnson, Calif. | Randall |
| Corman | Johnson, Colo. | Rangel |
| Cornell | Kastenmeier | Richmond |
| Cotter | Kazen | Rinaldo |
| Crane | Kemp | Rodino |
| D'Amours | Keys | Rogers |
| Daniels, N.J. | Koch | Roncalio |
| Danielson | Krebs | Rooney |
| Dellums | Lehman | Rose |
| Dingell | Lloyd, Calif. | Rosenthal |
| Dodd | Long, La. | Roush |
| | Long, Md. | |

| | | |
|---|---|---|
| Rousselot | Smith, Iowa | Udall |
| Roybal | Solarz | Vander Veen |
| Russo | Spellman | Vanik |
| St Germain | Staggers | Vigorito |
| Santini | Stark | Waxman |
| Sarbanes | Steelman | Weaver |
| Scheuer | Stokes | Whalen |
| Schroeder | Studds | Wirth |
| Seiberling | Symms | Wolff |
| Sharp | Thompson | Yates |
| Shipley | Traxler | Yatron |
| Simon | Tsongas | Young, Fla. |

NOT VOTING—38

| | | |
|---|---|---|
| Burton, John | Jones, Ala. | Sisk |
| Clay | Jones, Tenn. | Stanton, James V. |
| Dent | Karth | Steiger, Ariz. |
| Diggs | Landrum | Stratton |
| Esch | Leggett | Stuckey |
| Evins, Tenn. | Litton | Sullivan |
| Fountain | O'Hara | Symington |
| Giaimo | O'Neill | Wampler |
| Hansen | Peyser | Wiggins |
| Hébert | Reuss | Wilson, C. H. |
| Helstoski | Riegle | Young, Ga. |
| Hightower | Roe | Zeferetti |
| Hinshaw | Rostenkowski | |

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 | Edwards, Ala. | McCollister |
| Anderson, Ill. | Emery | McDonald |
| Andrews, N.C. | Erlenborn | McEwen |
| Andrews, N. Dak. | Forsythe | McKay |
| Archer | Gaydos | Martin |
| Armstrong | Ginn | Mathis |
| Ashbrook | Goldwater | Michel |
| Ashley | Goodling | Milford |
| Bell | Guyer | Miller, Ohio |
| Bowen | Hagedorn | Mills |
| Brinkley | Haley | Mollohan |
| Broomfield | Hall, Tex. | Montgomery |
| Brown, Mich. | Hammer-schmidt | Moore |
| Brown, Ohio | Harsha | Moorhead, Calif. |
| Broyhill | Hays, Ohio | Murtha |
| Burgener | Hefner | Myers, Ind. |
| Burke, Fla. | Hillis | O'Brien |
| Burleson, Tex. | Holt | Passman |
| Butler | Horton | Pettis |
| Byron | Hutchinson | Pickle |
| Carter | Hyde | Poage |
| Cederberg | Ichord | Quie |
| Chappell | Jarman | Regula |
| Clancy | Jenrette | Roberts |
| Clausen, Don H. | Johnson, Pa. | Robinson |
| Clawson, Del | Jones, N.C. | Rousselot |
| Cochran | Kazen | Runnels |
| Collins, Tex. | Kelly | Ruppe |
| Conable | Kemp | Satterfield |
| Conlan | Ketchum | Schneebeli |
| Daniel, Dan | Kindness | Schulze |
| Daniel, R. W. | Lagomarsino | Sebelius |
| Davis | Latta | Shipley |
| Devine | Lent | Shriver |
| Dickinson | Lott | Shuster |
| Downing, Va. | Lujan | Sikes |
| Duncan, Oreg. | McClory | Skubitz |
| | McCloskey | Slack |
| Smith, Nebr. | Teague | Wilson, Bob |
| Snyder | Treen | Winn |
| Spence | Ullman | Wydler |
| Stanton, J. William | Vander Jagt | Wylie |
| Talcott | Waggonner | Young, Alaska |
| Taylor, Mo. | White | Young, Fla. |
| Taylor, N.C. | Whitehurst | |
| | Whitten | |

NOES—258

| | | |
|---|---|---|
| Abzug | Flowers | Mottl |
| Adams | Flynt | Murphy, Ill. |
| Addabbo | Foley | Murphy, N.Y. |
| Alexander | Ford, Mich. | Myers, Pa. |
| Allen | Ford, Tenn. | Natcher |
| Ambro | Fraser | Neal |
| Anderson, Calif. | Frenzel | Nedzi |
| Annunzio | Frey | Nichols |
| Aspin | Fuqua | Nix |
| AuCoin | Giaimo | Nolan |
| Badillo | Gibbons | Nowak |
| Bafalis | Gilman | Oberstar |
| Baldus | Gonzalez | Obey |
| Baucus | Gradison | Ottinger |
| Bauman | Grassley | Patten, N.J. |
| Beard, R.I. | Green | Patterson, Calif. |
| Beard, Tenn. | Gude | Pattison, N.Y. |
| Bedell | Hall, Ill. | Paul |
| Bennett | Hamilton | Pepper |
| Bergland | Hanley | Perkins |
| Bevill | Hannaford | Pike |
| Biaggi | Harkin | Pressler |
| Biester | Harrington | Preyer |
| Bingham | Harris | Price |
| Blanchard | Hayes, Ind. | Pritchard |
| Blouin | Hechler, W. Va. | Quillen |
| Boggs | Heckler, Mass. | Railsback |
| Boland | Heinz | Randall |
| Bolling | Hicks | Rees |
| Bonker | Holland | Richmond |
| Brademas | Holtzman | Rinaldo |
| Breaux | Howard | Risenhoover |
| Breckinridge | Howe | Rodino |
| Brodhead | Hubbard | Rogers |
| Brooks | Hughes | Roncalio |
| Brown, Calif. | Hungate | Rooney |
| Buchanan | Jacobs | Rose |
| Burke, Calif. | Jeffords | Rosenthal |
| Burke, Mass. | Johnson, Calif. | Roush |
| Burlison, Mo. | Johnson, Colo. | Roybal |
| Burton, Phillip | Jones, Okla. | Russo |
| Carney | Jordan | Ryan |
| Carr | Kasten | St Germain |
| Chisholm | Kastenmeier | Santini |
| Cleveland | Keys | Sarasin |
| Cohen | Koch | Sarbanes |
| Collins, Ill. | Krebs | Scheuer |
| Conte | Krueger | Schroeder |
| Conyers | LaFalce | Seiberling |
| Corman | Leggett | Sharp |
| Cornell | Lehman | Simon |
| Cotter | Levitas | Smith, Iowa |
| Coughlin | Lloyd, Calif. | Solarz |
| Crane | Lloyd, Tenn. | Spellman |
| D'Amours | Long, La. | Staggers |
| Daniels, N.J. | Long, Md. | Stark |
| Danielson | Lundine | Steed |
| de la Garza | McCormack | Steelman |
| Delaney | McDade | Steiger, Wis. |
| Dellums | McFall | Stokes |
| Derrick | McHugh | Studds |
| Derwinski | McKinney | Symms |
| Diggs | Madden | Thompson |
| Dingell | Madigan | Thone |
| Dodd | Maguire | Thornton |
| Downey, N.Y. | Mahon | Traxler |
| Drinan | Mann | Tsongas |
| Duncan, Tenn. | Matsunaga | Udall |
| du Pont | Mazzoli | Van Deerlin |
| Early | Meeds | Vander Veen |
| Eckhardt | Melcher | Vanik |
| Edgar | Metcalfe | Vigorito |
| Edwards, Calif. | Meyner | Walsh |
| Eilberg | Mezvinsky | Waxman |
| English | Mikva | Weaver |
| Evans, Colo. | Miller, Calif. | Whalen |
| Evans, Ind. | Mineta | Wilson, C. H. |
| Fary | Minish | Wilson, Tex. |
| Fascell | Mink | Wirth |
| Fenwick | Mitchell, Md. | Wolff |
| Findley | Mitchell, N.Y. | Wright |
| Fish | Moakley | Yates |
| Fisher | Moffett | Yatron |
| Fithian | Moorhead, Pa. | Young, Tex. |
| Flood | Morgan | Zablocki |
| Florio | Mosher | |
| | Moss | |

NOT VOTING—40

| | | |
|---|---|---|
| Burton, John | Evins, Tenn. | Helstoski |
| Clay | Fountain | Henderson |
| Dent | Hansen | Hightower |
| Esch | Hawkins | Hinshaw |
| Eshleman | Hébert | Jones, Ala. |

| | | |
|---|---|---|
| Jones, Tenn. | Rhodes | Stratton |
| Karth | Riegle | Stuckey |
| Landrum | Roe | Sullivan |
| Litton | Rostenkowski | Symington |
| O'Hara | Sisk | Wampler |
| O'Neill | Stanton, | Wiggins |
| Peyser | James V. | Young, Ga. |
| Rangel | Steiger, Ariz. | Zeferetti |
| Reuss | Stephens | |

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 |
| | Derrick | Holt |
| Annunzio | Derwinski | Horton |
| Archer | Devine | Howe |
| Armstrong | Dickinson | Hubbard |
| Ashbrook | Dingell | Hughes |
| Ashley | Dodd | Hungate |
| Aspin | Downey, N.Y. | Hyde |
| AuCoin | Downing, Va. | Ichord |
| Bafalis | Duncan, Oreg. | Jacobs |
| Baldus | Duncan, Tenn. | Jarman |
| Beard, R.I. | du Pont | Jeffords |
| Beard, Tenn. | Early | Jenrette |
| Bedell | Edgar | Johnson, Colo. |
| Bell | Edwards, Ala. | Johnson, Pa. |
| Bennett | Emery | Jones, N.C. |
| Bergland | English | Jones, Okla. |
| Bevill | Erlenborn | Kasten |
| Biester | Eshleman | Kazen |
| Blanchard | Evans, Colo. | Kelly |
| Boggs | Evans, Ind. | Kemp |
| Boland | Fary | Ketchum |
| Bonker | Fenwick | Krebs |
| Bowen | Findley | Krueger |
| Brademas | Fish | LaFalce |
| Breaux | Fisher | Lagomarsino |
| Brinkley | Fithian | Latta |
| Broomfield | Flood | Leggett |
| Brown, Mich. | Florio | Lent |
| Broyhill | Flowers | Levitas |
| Buchanan | Flynt | Lloyd, Calif. |
| Burgener | Foley | Lloyd, Tenn. |
| Burke, Fla. | Ford, Tenn. | Long, Md. |
| Burke, Mass. | Forsythe | Lott |
| Burleson, Tex. | Frenzel | Lujan |
| Burlison, Mo. | Frey | McClory |
| Byron | Gaydos | McCloskey |
| Carter | Giaimo | McCollister |
| Cederberg | Gilman | McCormack |
| Chappell | Ginn | McDade |
| Clancy | Goldwater | McDonald |
| Clausen, Don H. | Gonzalez | McEwen |
| | Gradison | McFall |
| Clawson, Del | Grassley | McKay |
| Cleveland | Green | McKinney |
| Cochran | Gude | Madden |
| Cohen | Guyer | Madigan |
| Collins, Tex. | Haley | Mahon |
| Conable | Hall, Ill. | Mann |
| Conlan | Hall, Tex. | Mathis |
| Conte | Hamilton | Mazzoli |
| Cornell | Hammer-schmidt | Meeds |
| Cotter | | Melcher |
| Coughlin | Hanley | Michel |
| Crane | Harris | 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 |
| | Runnels | Ullman |
| Morgan | Ruppe | Van Deerlin |
| Mosher | Russo | Vander Jagt |
| Murphy, Ill. | Santini | Vander Veen |
| Murphy, N.Y. | Sarasin | Vanik |
| Murtha | Satterfield | Waggonner |
| Myers, Ind. | Schneebeli | Walsh |
| Myers, Pa. | Schulze | Whalen |
| Natcher | Sebelius | White |
| Neal | Seiberling | Whitehurst |
| Nedzi | Shipley | Whitten |
| Nichols | Shriver | Wilson, Bob |
| Obey | Shuster | Winn |
| O'Brien | Simon | Wirth |
| Pattison, N.Y. | Skubitz | Wolff |
| Pepper | Slack | Wright |
| Perkins | Smith, Iowa | Wydler |
| Pettis | Smith, Nebr. | Wylie |
| Pickle | Snyder | Yates |
| Pressler | Spellman | Yatron |
| Price | Spence | Young, Alaska |
| Pritchard | Staggers | Young, Fla. |
| Quie | Stanton, J. William | Zablocki |
| Railsback | | |

NOES—112

| | | |
|---|---|---|
| Abzug | Goodling | Oberstar |
| Addabbo | Hagedorn | Ottinger |
| Ambro | Hannaford | Passman |
| Anderson, Calif. | Harkin | Patten, N.J. |
| | Harrington | Patterson, Calif. |
| Badillo | Hawkins | |
| Baucus | Hays, Ohio | Paul |
| Bauman | Hechler, W. Va. | Pike |
| Biaggi | Heckler, Mass. | Poage |
| Bingham | Hicks | Preyer |
| Blouin | Holtzman | Quillen |
| Bolling | Howard | Rangel |
| Breckinridge | Hutchinson | Richmond |
| Brodhead | Johnson, Calif. | Rinaldo |
| Brooks | Jordan | Roncalio |
| Brown, Calif. | Kastenmeier | Rose |
| Brown, Ohio | Keys | Rosenthal |
| Burke, Calif. | Kindness | Roybal |
| Burton, Phillip | Koch | Ryan |
| Butler | Lehman | St Germain |
| Carney | Long, La. | Sarbanes |
| Carr | Lundine | Scheuer |
| Chisholm | McHugh | Schroeder |
| Collins, Ill. | Maguire | Sharp |
| Conyers | Matsunaga | Solarz |
| Corman | Metcalfe | Stark |
| Danielson | Meyner | Steed |
| Dellums | Mezvinsky | Stokes |
| Diggs | Miller, Calif. | Studds |
| Drinan | Miller, Ohio | Thompson |
| Eckhardt | Mink | Tsongas |
| Edwards, Calif. | Mitchell, Md. | Udall |
| Eilberg | Moorhead, Pa. | Vigorito |
| Fascell | Moss | Waxman |
| Ford, Mich. | Mottl | Weaver |
| Fraser | Nix | Wilson, C. H. |
| Fuqua | Nolan | Wilson, Tex. |
| Gibbons | Nowak | Young, Tex. |

NOT VOTING—38

| | | |
|---|---|---|
| Burton, John | Karth | Sisk |
| Clay | Landrum | Stanton, James V. |
| Dent | Litton | |
| Esch | Martin | Steelman |
| Evins, Tenn. | O'Hara | Steiger, Ariz. |
| Fountain | O'Neill | Stratton |
| Hansen | Peyser | Stuckey |
| Hébert | Reuss | Sullivan |
| Helstoski | Rhodes | Symington |
| Hightower | Riegle | Wampler |
| Hinshaw | Roe | Wiggins |
| Jones, Ala. | Rostenkowski | Young, Ga. |
| Jones, Tenn. | Sikes | Zeferetti |

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 | de la Garza | Hungate |
| Abzug | Delaney | Hutchinson |
| Adams | Dellums | Hyde |
| Addabbo | Derrick | Jacobs |
| Alexander | Derwinski | Jarman |
| Allen | Devine | Jeffords |
| Ambro | Diggs | Jenrette |
| Anderson, Calif. | Dingell | Johnson, Calif. |
| Anderson, Ill. | Dodd | Johnson, Colo. |
| Andrews, N.C. | Downey, N.Y. | Johnson, Pa. |
| Andrews, N. Dak. | Downing, Va. | Jones, N.C. |
| Annunzio | Drinan | Jones, Okla. |
| Archer | Duncan, Oreg. | Jordan |
| Armstrong | Duncan, Tenn. | Kasten |
| Ashbrook | du Pont | Kastenmeier |
| Ashley | Early | Kazen |
| Aspin | Eckhardt | Kelly |
| AuCoin | Edgar | Kemp |
| Badillo | Edwards, Ala. | Ketchum |
| Bafalis | Edwards, Calif. | Keys |
| Baldus | Ellberg | Kindness |
| Baucus | Emery | Koch |
| Bauman | English | Krebs |
| Beard, R.I. | Erlenborn | Krueger |
| Beard, Tenn. | Eshleman | LaFalce |
| Bedell | Evans, Colo. | Lagomarsino |
| Bell | Evans, Ind. | Latta |
| Bennett | Evins, Tenn. | Leggett |
| Bergland | Fary | Lehman |
| Bevill | Fascell | Lent |
| Biaggi | Fenwick | Levitas |
| Biester | Findley | Lloyd, Calif. |
| Bingham | Fish | Lloyd, Tenn. |
| Blanchard | Fisher | Long, La. |
| Blouin | Fithian | Long, Md. |
| Boggs | Flood | Lott |
| Boland | Florio | Lujan |
| Bolling | Flowers | Lundine |
| Bonker | Flynt | McClory |
| Bowen | Foley | McCloskey |
| Brademas | Ford, Mich. | McCollister |
| Breaux | Ford, Tenn. | McCormack |
| Breckinridge | Forsythe | McDade |
| Brinkley | Fraser | McDonald |
| Brodhead | Frenzel | McEwen |
| Brooks | Frey | McFall |
| Broomfield | Fuqua | McHugh |
| Brown, Calif. | Gaydos | McKay |
| Brown, Mich. | Giaimo | McKinney |
| Brown, Ohio | Gibbons | Madden |
| Broyhill | Gilman | Madigan |
| Buchanan | Ginn | Maguire |
| Burgener | Goldwater | Mahon |
| Burke, Calif. | Gonzalez | Mann |
| Burke, Fla. | Goodling | Martin |
| Burke, Mass. | Gradison | Mathis |
| Burlison, Mo. | Grassley | Matsunaga |
| Burton, Phillip | Green | Mazzoli |
| Butler | Guyer | Meeds |
| Byron | Hagedorn | Metcalfe |
| Carney | Haley | Meyner |
| Carr | Hall, Ill. | Mezvinsky |
| Carter | Hall, Tex. | Michel |
| Cederberg | Hamilton | Mikva |
| Chappell | Hammer-schmidt | Milford |
| Chisholm | Hanley | Miller, Calif. |
| Clancy | Hannaford | Miller, Ohio |
| Clausen, Don H. | Harkin | Mills |
| Clawson, Del | Harrington | Mineta |
| Cleveland | Harris | Minish |
| Cochran | Harsha | Mink |
| Cohen | Hawkins | Mitchell, Md. |
| Collins, Ill. | Hayes, Ind. | Mitchell, N.Y. |
| Conable | Hays, Ohio | Moakley |
| Conlan | Hechler, W. Va. | Moffett |
| Conte | Heckler, Mass. | Mollohan |
| Conyers | Hefner | Montgomery |
| Corman | Heinz | Moore |
| Cornell | Henderson | Moorhead, Calif. |
| Cotter | Hicks | Moorhead, Pa. |
| Coughlin | Hillis | Morgan |
| Crane | Holland | Mosher |
| D'Amours | Holt | Moss |
| Daniel, Dan | Holtzman | Mottl |
| Daniel, R. W. | Horton | Murphy, Ill. |
| Daniels, N.J. | Howard | Murphy, N.Y. |
| Danielson | Howe | Murtha |
| Davis | Hubbard | Myers, Ind. |
| | Hughes | Myers, Pa. |
| | | Natcher |
| Neal | Rose | Symms |
| Nedzi | Rosenthal | Talcott |
| Nichols | Roush | Taylor, Mo. |
| Nix | Rousselot | Taylor, N.C. |
| Nolan | Roybal | Thompson |
| Nowak | Runnels | Thone |
| Oberstar | Ruppe | Thornton |
| Obey | Russo | Traxler |
| O'Brien | Ryan | Treen |
| Ottinger | St Germain | Tsongas |
| Passman | Santini | Udall |
| Patten, N.J. | Sarasin | Ullman |
| Patterson, Calif. | Sarbanes | Van Deerlin |
| Pattison, N.Y. | Satterfield | Vander Jagt |
| Paul | Scheuer | Vander Veen |
| Pepper | Schneebeli | Vanik |
| Perkins | Schroeder | Vigorito |
| Pettis | Schulze | Waggonner |
| Pickle | Sebelius | Walsh |
| Pike | Seiberling | Waxman |
| Pressler | Sharp | Weaver |
| Preyer | Shipley | Whalen |
| Price | Shriver | White |
| Pritchard | Shuster | Whitehurst |
| Quie | Simon | Whitten |
| Quillen | Skubitz | Wilson, Bob |
| Railsback | Slack | Wilson, C. H. |
| Randall | Smith, Iowa | Wilson, Tex. |
| Rangel | Smith, Nebr. | Winn |
| Rees | Snyder | Wirth |
| Regula | Solarz | Wolff |
| Richmond | Spellman | Wright |
| Rinaldo | Spence | Wydler |
| Risenhoover | Staggers | Wylie |
| Roberts | Stanton, J. William | Yates |
| Robinson | Stark | Yatron |
| Rodino | Steed | Young, Alaska |
| Roe | Steiger, Wis. | Young, Fla. |
| Rogers | Stephens | Young, Tex. |
| Roncalio | Stokes | Zablocki |
| Rooney | Studds | |

NAYS—5

| | | |
|---|---|---|
| Burleson, Tex. | Dickinson | Teague |
| Collins, Tex. | Poage | |

NOT VOTING—37

| | | |
|---|---|---|
| Burton, John | Karth | Stanton, James V. |
| Clay | Landrum | Steelman |
| Dent | Litton | Steiger, Ariz. |
| Esch | Melcher | Stratton |
| Fountain | O'Hara | Stuckey |
| Hansen | O'Neill | Sullivan |
| Hébert | Peyser | Symington |
| Helstoski | Reuss | Wampler |
| Hightower | Rhodes | Wiggins |
| Hinshaw | Riegle | Young, Ga. |
| Ichord | Rostenkowski | Zeferetti |
| Jones, Ala. | Sikes | |
| Jones, Tenn. | Sisk | |

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

on I.R.S. collection of delinquent taxes, and on medicare administrative costs. The exact time and place of those hearings will be announced later.

## GOVERNMENT IN THE SUNSHINE ACT

SPEECH OF

### HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 28, 1976*

The House in Committee of the Whole House on the State of the Union 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.

Mr. OTTINGER. Madam Chairman, by passing a Sunshine Act, we have the rare opportunity not only to help relieve public criticism about a removed, secretive government, but also to reaffirm the principles on which this great Nation was founded 200 years ago. One of the main tenets of our Government is that it exists "for the people." By opening up governmental processes to the scrutiny of the American public, we can tear down the wall of bureaucratic secrecy and help insure that the Government does indeed exist "for the people."

The concept behind the Government in the Sunshine Act, that of opening meetings of Federal agencies to the public, represents a large step toward restoring the public's confidence in its Government institutions. The Government Information and Individual Rights Subcommittee hearings provided us with a clear picture of how necessary a sunshine law is. At those hearings, David Cohen, president of Common Cause, said:

> For too long secrecy, mystery, remoteness have dominated government practices at all levels and in all branches. Let's have our leaders level with us, tell us what's going on, enable us to understand government decisions. Let's act on the recognition that government belongs to its citizens and not a variety of special interests or public officials.

As it now stands, the bill could use an improvement. The decision to drop statements of the reasons and statutory authority for transcript deletions furthers government secrecy and represents a regression from the bill's original intentions. People should be able to know why they are prevented from having information about agency proceedings. The Government Operations Committee's original version of this provision properly balanced the need to keep certain matters secret against the people's right to know.

There have been other attempts to weaken the bill. The movement to drop the verbatim transcript requirement must be defeated, as the change would constitute a further diminution of the people's right to know. During the course of legitimately closed meetings, there will occur discussion that would normally be made available to the public, but will not if the transcript requirement is dropped. By purporting to discuss any legitimately closed business, an agency could keep all of its meetings from being made open to the public. The cost of enforcing the transcript requirement is not enough to justify denying the people information that is rightfully theirs.

I believe that if we can resist attempts to weaken the bill, the Sunshine Act that results will be an outstanding legislative accomplishment. Especially since the Watergate crisis, people have withdrawn from and become distrustful of their Government. Government secrecy can only encourage distrust. Effective citizen participation in Government affairs is essential in a democracy, and for people to participate effectively, they must be informed of what goes on within the Government. In this our Bicentennial Year, let us make sure that the people's Government is in fact the people's Government. Let us reestablish the principle of openness in the affairs of the Federal Government.

## GOVERNMENT IN THE SUNSHINE ACT—II

SPEECH OF

### HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 28, 1976*

The House in Committee of the Whole House on the State of the Union 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.

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. Again, I want to point out to this body that all four House committees and subcommittees considered this bill, and we all rejected this particular amendment. I think we should follow suit here. The bill as we have reported it contains a simple and entirely clear definition of a public agency, namely any agency subject to the Freedom of Information Act and "headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such positions by the President with the advice and consent of the Senate."

This is the same approach that the Congress has used in the Administrative Procedure Act, which has been in existence since 1946, the Freedom of Information Act, and the Privacy Act of 1974. It has been the subject of relatively little litigation, and it has the advantage of not having to be amended each time an agency's name is changed or a new agency is established on an agency is disposed of.

It has been demonstrated to be eminently workable, and it should be retained.

I want to point out to the Members that this amendment exempts from the operation of this act the Federal Reserve Board, the Parole Board, the Securities and Exchange Commission, and the Commodity Credit Corporation. It seems to me that if we are going to have open government, government in the sunshine, there is no reason why we should leave these agencies in the darkness.

Mr. FLOWERS. Madam Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from Alabama.

Mr. FLOWERS. I thank the gentlewoman for yielding.

I want to express my complete approval of everything the gentlewoman has said. This bill has been amended to where it is a much more modest proposal than it was in the first instance, and I would think that even the Federal Reserve Board might want to be included under this bill. The general definition is absolutely to be preferred for all of the reasons that the gentlewoman recited, and I wholeheartedly agree with her position.

Mr. FASCELL. Madam Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentlewoman for yielding.

I agree with the gentleman. The general provisions of the bill are workable. We ought to go along with the bill and turn down this amendment.

## "SUNSHINE"

### HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 29, 1976*

Mr. FRENZEL. Mr. Speaker, yesterday I was pleased to vote for the "Government in the sunshine bill," because its worst flaws had been cured by amendment.

The sunshine bill is a logical follow-up to previous actions taken to open up day-to-day Federal operations to public scrutiny. In 1972, we opened up the meetings of executive branch advisory committees. In 1973 House Resolution 259 pried open some of our own processes; 1974 saw significant amendments to the Freedom of Information Act; and 1975 was the year in which Senate committees and conference committees began to open.

The bill passed yesterday was an important reaffirmation of our commitment to the principle of open government.

Three important amendments were adopted to improve the bill yesterday. The amendment deleting the verbatim transcript requirement—a requirement not included in any State's sunshine law, and not included in many of our own committees' rules—was necessary to protect free exchanges of ideas and discussions of national strategies in agencies like the Federal Reserve, the Securities and Exchange Commission, and the Federal Trade Commission.

The amendment redefining a "meeting" will avoid a fuzziness that would invite unnecessary legal action, and make the bill more workable.

In general, the sunshine bill is a useful step forward in opening up the processes of government. There will undoubtedly be some problems which can be resolved by future amendments, but the bill, as it passed the House, is a good one. Hopefully, the Senate will not, in its normally excessive enthusiasm, overdecorate the bill. It is important to bring it into operation as soon as possible, and Senate overexuberance is likely to cause delay.

While we bask in somebody else's sunshine, it is well to remember that the House record for openness is still poor.

We still have no "verbatim record" in the House. Our CONGRESSIONAL RECORD is an exercise in "It might have been." Our committees do not provide public access to verbatim transcripts. Our democrat "King Caucus" has no transcripts at all. A bill to provide TV and radio coverage of House floor proceedings is languishing in the Rules Committee, a victim of leadership pressure. The bill to improve disclosure by lobbyists seems to be making no progress.

While we are patting ourselves on the back for letting sunshine into other folks' business, we ought to try a little of our own.

---

## STATEMENT ON HOUSING

## HON. MAX S. BAUCUS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 29, 1976*

Mr. BAUCUS. Mr. Speaker, I would like today to address a serious problem that has been one of my major concerns since I came to Congress 18 months ago. That is the overwhelming absence of a comprehensive national housing policy for both urban and rural areas. The two Federal agencies responsible for administering national housing programs, the Department of Housing and Urban Affairs—HUD—and the Farmers Home Administration—FmHA—lack an adequate framework to meet our national housing needs.

The housing slump started before the recent recession, went deeper than the economy overall, and is responding more slowly than the recovery. Moreover, inflation in housing and financing costs is such that American families have increasing problems buying—or renting—an adequate house.

Since 1972, total private and public housing starts have declined. Though this trend is reversing itself, housing starts are nowhere near the level they were in late 1972, causing much havoc in the building industry and raising the cost of houses.

Many people, especially young families, find it more and more difficult to purchase a home. In 1972, one-third of the Nation's households could afford to purchase a medium-priced house. In 1975, an income of $20,000 was needed to qualify for a conventional mortgage on a medium-priced house; however, only one-fifth of the families in the country had this much income.

More people, because of their low incomes, must now rent instead of buy. Renting families are finding that the amount of money they spend for rent is constantly increasing. In 1960, according to the Census of Housing, the median portion of income spent on rent was in the 15 to 19 percent range. In 1973, the proportions had risen to 20 to 24 percent.

Spiraling inflation in rental costs is due to increases in the cost of maintenance, construction, and mortgage costs, and most importantly, rising utility charges. The housing prospects of all but the wealthiest Americans have been eroded.

### RURAL HOUSING POLICY

Our Nation needs a comprehensive rural housing program. Rural areas have one-third of the Nation's population but nearly two-thirds of its substandard housing. This higher incidence of poor housing can be attributed to lower incomes, less credit, and fewer institutions to deliver housing. There are fewer large builders in rural areas who can lower costs through constructing a high volume of units. Also, it is difficult for HUD and FmHA to administer their programs over the wide distances that must be traveled thus reducing the effectiveness of their programs.

Ever since the 1949 National Housing Act, the Federal Government presumably has been committed to improving the housing situation in the United States. Both HUD and FmHA were set up to assist people in securing homes. Though each of these agencies has rural housing programs, there remains a marked lack of emphasis toward meeting rural housing needs.

### A SUMMARY OF FEDERAL HOUSING PROGRAMS

FmHA has several programs that are on their way to meeting rural demands. Section 502 provides loans to purchase a new or existing house, or to build, rehabilitate, or relocate homes.

Section 515 provides direct loans to finance rental or cooperative housing and related facilities for occupancy by low to moderate income rural families. Section 504 provides loans to make houses safer and more viable in rural areas, and section 514/515 provides loans at 1 percent interest for a term of up to 33 years to buy, build or repair housing for domestic farm labor. FmHa, however, now operates piecemeal programs, some of which work well. They have no overall rural housing goals as part of their mandate.

HUD was established to assist communities in housing and community development. There are several programs within HUD that could help improve rural housing needs. Section 8 provides housing assistance payments for low income families to either rent or build homes. Section 235 provides assistance in the form of monthly subsidies and is of great importance to rural areas. Section 202 provides housing for the elderly and handicapped. But HUD's orientation is towards the urban areas and it does not have the personnel or background to adequately deal with rural problems.

### NATIONAL HOUSING PRODUCTION

We in Montana have a special interest in sound rural housing programs because of the State's wood products industry. Essential to our economic recovery is a healthy nationwide construction industry which uses our forest products. Yet, the Federal Government's responsibility to accelerate recovery of the housing and construction industry is not yet fulfilled, as many jobless Montanans can attest.

As table I indicates this trend is in part attributable to the fact that the number of total private housing starts in the United States dropped from 2,481,000 units in January of 1973 to 1,415,000 units in May of 1976 causing a lag in the housing construction industry. The number of private one family housing starts also dropped by nearly 400,000 from 1.43 million units in January of 1973 to 1.06 million units in May of 1976.

TABLE I.—TOTAL PRIVATE HOUSING STARTS; HOUSING UNITS, PRIVATE, 1-FAMILY

[In thousands of units]

| Date | Total private housing starts | Private single family units |
|---|---|---|
| January 1973 | 2,431 | 1,431 |
| February 1973 | 2,289 | 1,341 |
| March 1973 | 2,365 | 1,237 |
| April 1973 | 2,084 | 1,216 |
| May 1973 | 2,266 | 1,220 |
| June 1973 | 2,067 | 1,106 |
| July 1973 | 2,123 | 1,178 |
| August 1973 | 2,051 | 1,106 |
| September 1973 | 1,874 | 1,019 |
| October 1973 | 1,677 | 970 |
| November 1973 | 1,724 | 960 |
| December 1973 | 1,526 | 824 |
| January 1974 | 1,453 | 811 |
| February 1974 | 1,784 | 1,032 |
| March 1974 | 1,553 | 967 |
| April 1974 | 1,571 | 983 |
| May 1974 | 1,415 | 900 |
| June 1974 | 1,526 | 984 |
| July 1974 | 1,290 | 903 |
| August 1974 | 1,145 | 813 |
| September 1974 | 1,180 | 872 |
| October 1974 | 1,100 | 793 |
| November 1974 | 1,028 | 812 |
| December 1974 | 940 | 719 |
| January 1975 | 1,005 | 748 |
| February 1975 | 953 | 722 |
| March 1975 | 986 | 763 |
| April 1975 | 982 | 774 |
| May 1975 | 1,085 | 853 |
| June 1975 | 1,080 | 874 |
| July 1975 | 1,207 | 916 |
| August 1975 | 1,264 | 979 |
| September 1975 | 1,304 | 966 |
| October 1975 | 1,431 | 1,093 |
| November 1975 | 1,381 | 1,048 |
| December 1975 | 1,283 | 962 |
| January 1976 | 1,236 | 957 |
| February 1976 | 1,547 | 1,295 |
| March 1976 | 1,417 | 1,110 |
| April 1976 | 1,381 | 1,063 |
| May 1976 | 1,415 | 1,057 |

This problem was exacerbated by a more than 50 percent reduction in federally supported housing production during the 1973 to 1975 period, as evidenced by table II, thus further cutting the chances that the Montana wood products industry would get back on its feet.

redirected in such a way as to reduce the direct incentives for non-production and non-employment.

## LEGISLATIVE HISTORY OF THE SUNSHINE ACT

### HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 28, 1976*

Mr. McCLOSKEY. Mr. Speaker, pursuant to the dialog with the gentleman from Massachusetts (Mr. BURKE), I place this letter in the RECORD as part of the legislative history of the Sunshine Act:

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The purpose of this letter is to inform you of this Department's views with regard to an amendment which we understand will be offered to H.R. 11656, the "Government in the Sunshine Act", when that bill is considered by the House of Representatives. We understand that Congressman McCloskey will offer an amendment to section 5(b) of the bill, which would amend the third exemption of the Freedom of Information Act—5 U.S.C. 552(b)(3).

The amendment which we understand Congressman McCloskey will offer on the Floor would revise subsection (b)(3) of the Freedom of Information Act to read as follows:

(b) This section does not apply to matters that are—

* * * * *

(3) Specifically exempted from disclosure by statute; providde: 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 wi[illegible]eld.

In summary, the Department would support this amendment if legislative history is provided to make clear that there is no intention in revising exemption 3 to invalidate certain statutory provisions administered by this Department designed to protect the privacy of personal information obtained by the Department. As so clarified, the amendment would substantially resolve a number of problems which we have noted in the version of the amendment contained in the bill as reported by the House Judiciary and Government Operations Committees.

Under section 5(b) of H.R. 11656 as reported by the House Judiciary Committee, the third exemtpion in the Freedom of Information Act would have been amended to exempt from disclosure only material required or permitted to be withheld from the public by any statute establishing particular criteria or referring to particular types of information. We have indicated that this provision may threaten the privacy of records relating to individuals maintained by the Social Security Administration and by other components of the Department.

There are a number of statutory provisions which currently authorize the Department to protect the privacy of information about individuals which is maintained by the Department. Principal among these provisions is section 1106 of the Social Security Act which provides that no disclosure may be made of certain Internal Revenue returns or of any other file, record, report, or other paper obtained by the Secretary in discharging his duties under that Act, except as the Secretary may prescribe by regulations. Section 406(d)(2) of the General Education Provisions Act and section 438(c) of that Act authorize the withholding of information on individuals and their families gathered in connection with certain statistical activities of the Education Division of this Department. Likewise, section 308(d) of the Public Health Service Act provides similar authority with regard to the release of information gathered in the course of health statistical activities and health research, evaluations, and demonstrations. We were concerned, however, that none of these provisions establishes "particular criteria" or refers "to particular types of information" so as to fall within the third examption from the Freedom of Information Act as it would be amended by H.R. 11656 as reported.

We believe that the amendment which Congressman McCloskey intends to introduce will help to resolve the problems noted above. In particular, we believe that clause (A) of the amended provision, which refers to any statute that requires matters to be withheld from the public, would include the provisions of the Social Security Act, the General Education Provisions Act, and the Public Health Service Act referred to above which require the Department to withhold certain information from the public in the interest of protecting the privacy of individuals. To the extent that the proposed amendment is intended to accomplish this result, we fully support the amendment and urge that it be adopted. However, we would hope that the debate on this provision and the report of the Conferees on the bill (if a Conference is held and this provision is included in the bill as reported) clearly indicate that the statutory provisions referred to above, which are designed to protect the privacy of personal information, will remain in full force and effect.

The amendment to the Freedom of Information Act contained in this bill will, of course, affect other agencies of the Federal government. The views expressed above relate only to the effect of this amendment on programs of this Department and we defer to other affected agencies as to the desirability of this amendment from their standpoint.

We are advised by the Office of Management and Budget that there is no objection to the presentation of these views from the standpoint of the Administration's program.

Sincerely,

MARJORIE LYNCH,
*Under Secretary.*

## WHAT'S THE HURRY?

### HON. HELEN S. MEYNER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 28, 1976*

Mrs. MEYNER. Mr. Speaker, the dispute in Congress over the value of the B–1 bomber program continues. The debate is especially important because it involves a weapons program of major, long-term strategic importance with a price tag that could reach $100 billion.

The current issue in Congress is whether construction of the plane should wait until the heat of the current political compaign is over and a new President is inaugurated. I insert in the RECORD at this point an editorial from the Easton Express in Easton, Pa., which makes a particularly strong case for a delay in construction:

WHAT'S THE HURRY?

Within the next six months President Ford could either be unemployed—or ensconced in the White House for another four years, the guy at the country's helm could be former Hollywood player-cum-governor of California Ronald Reagan, presently unemployed, but seeking to rectify his jobless state in November.

In either case, the Air Force generals and their spokesmen in Congress and the presidential advisory circle would have no difficulty starting us on the road to an expenditure of up to $90 billion for the B–1 bomber—the most costly outlay for a single weapons system in the world's military history. The only difference might be that Mr. Reagan would want to spend more to build more of the big bombers—he has been complaining for months in his battle for Republican Convention delegates with the President that Mr. Ford is stifling our arms development and moving the U.S. into the realm of Second Class power.

On the other hand, neither of these candidates could survive the election in November. There's a possibility—it's too early to tell how distinct—that a Georgia peanut grower and ex-governor of that state named Jimmy Carter might be the Facto Factotum of the Oval Office come January, 1977. And Mr. Carter, in one of the limited number of campaign questions in which he has taken an unreserved position, is an outspoken opponent of U.S. commitment of taxpayer money for construction of the B–1.

In the manner characteristic to presidential electioneering, however, the issue has been politicized; sound judgments are impossible under the pressures of the campaign. The sensible thing to do now—the time factor is not that critical—is to let the matter rest until after the disorder of the politicking is cleared away and the issue of national leadership is settled in the fall election.

This was the course taken by the Senate in its vote earlier in the present session on President Ford's demand for an immediate beginning on the B–1. The Senate sensibly voted, 44–37, to defer a decision until the man who will take the presidential chair in January could determine whether building the bomber is truly in the national interest.

The House, however, voted for a start on the B–1, and, in the House-Senate conference committee review of the measure, knocked out the Senate provision. About $1 billion was earmarked for a start on the bomber in the $32.5 billion arms authorization bill sent to the White House last week. The only chance to correct this now is when the Congress is asked to approve the actual appropriations for the B–1. And the more reasonable course under the circumstances would be to hold up the money.

The B–1's opponents may be right—it could be the most wasteful military boondoggle ever foisted on the people. Or, as the military advocates insist, it may be an imperative future defense need in our sorely troubled international community. But the issue must be settled on these bases, rather than on the exigencies of political campaign interests.

## THE PREVENTION OF ALCOHOLISM

### HON. ALLEN T. HOWE

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 28, 1976*

Mr. HOWE. Mr. Speaker, I would like to bring to the attention of my colleagues an outstanding alcoholism prevention plan which has been developed in my district. This program, called the Cottage Meeting Program, has been so successful that it merits review by all State health officials who deal with the ever-increasing problem of alcoholism. The