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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

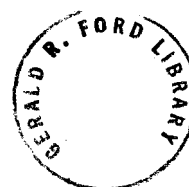
DATE: 3.7.75

TO: *Buchen*

FROM: Robert F. Bonitati  
Assistant to the Director  
for Congressional Relations  
395-3381  
(Code 103)

The attached is provided for your information.

OMB FORM 38  
REV AUG 73





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 4, 1975

To: OMB Senior Staff  
From: Robert F. Bonitati

*RFB*

On February 27, House Majority Leader O'Neill inserted in the Congressional Record the list of bills he expects to come before the House before Easter.

The list of bills submitted by Congressman O'Neill is as follows:

National Science Foundation Authorization  
NASA Authorization  
Standard Reference Data Act  
Non-Nuclear part of Energy Research Development Agency  
Agriculture and Consumer Protection Act Amendments  
Supplemental Appropriations for Jobs bill  
Foreign Aid Appropriations  
Legislative Appropriations  
Deregulation of old oil  
Health Revenue Sharing  
Health Manpower  
Health Service Corps  
Developmental Disabilities  
Nurses Training  
House Interest Rate Subsidies  
Housing Mortgage Assistance  
Arms Control  
Rhodesian Chrome  
Missing in Action Resolution  
State Department Authorization  
USIA Authorization  
Maritime Authorization  
Strip Mining  
School Lunch Amendments  
Older Americans Act  
Youth Camp Safety  
Executive Protective Service  
Voting Rights Extension  
Presidential Protection  
Voting Rights for ex-offenders  
Repeal President's Emergency Powers



*omb*

March 11, 1975

Dear Mr. Chairman:

In your letter of February 19, you inquired concerning the Administration's views of the securities legislation pending before your Committee. As you know, since the date of your letter, the Departments of Treasury and Justice have testified in support of the proposed securities legislation in the Senate.

I wish to assure you that the Administration continues to support early passage of securities reform legislation this session. We believe that H. R. 4111 is a sound proposal for reforming our securities markets and we support its basic provisions. Enactment of this legislation would bolster confidence in the fairness of our capital markets, enhance their efficiency, and strengthen the securities industry.

We are pleased that you have decided to treat Title I of H.R. 10, the former bill, separately. We also enthusiastically support your decision to adopt the recent amendment to the Senate legislation which is designed to clarify the legal authority of money managers to continue to pay for research with commission dollars under competitive rates.

While we support the fundamental provisions of the House bill, there are some that we would like to see modified. We hope to have the opportunity to discuss these provisions with the Committee during its consideration of this legislation in the coming weeks.

We intend to work closely with the Congress in seeking prompt action on this important legislation.

Sincerely yours,

Philip W. Buchen  
Counsel to the President

Honorable Lionel Van Deerlin  
Chairman of the Committee on  
Interstate and Foreign Commerce  
House of Representatives  
Washington, D. C. 20515



*Drafted by Wally Scott, omb*

THE WHITE HOUSE

WASHINGTON

July 11, 1975

MEMORANDUM FOR:

ROD HILLS

FROM:

BILL CASSELMAN

*RC*

Attached is an OMB memorandum on S. 5, as reported by the Senate Government Operations Committee. A meeting of concerned OMB, Domestic Council, Justice Department officials, as well as White House staff, will probably be held next week following completion of a detailed analysis of the bill. As reported, S. 5 would appear to be a likely veto candidate. I doubt if there is much hope for meaningful floor amendments, but we might be able to stall the bill in the Rules Committee.

Enclosure



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 10, 1975

INFORMATION

MEMORANDUM FOR THE DIRECTOR

Subject: Senate Government Operations Reporting  
of S. 5, Government in the Sunshine Act

On Wednesday, July 9, the Senate Government Operations Committee reported S. 5, the "Government in the Sunshine Act." Following adoption of several amendments en bloc (which had been suggested by OMB and Justice representatives) and two amendments by Senator Percy, the bill was hurdled through without further consideration.

This meeting was scheduled when the full committee last met on June 18 at which time the committee unanimously adopted six substantive amendments and several technical amendments and postponed further consideration to afford the committee time to review the comments recently received from OMB, Justice, and the Federal Reserve Board and to afford the agencies who would be affected directly by S. 5 time to submit their comments by the first of July. During the interim there were five meetings at the staff level with representatives from OMB, Justice, Civil Service Commission and from the offices of Senators Ribicoff, Chiles, Percy, Javits, and Muskie.

Prior to the June 18 markup several agencies had submitted comments to the committee in response to a request for their comments by OMB which had been solicited two weeks before by the full committee. During the interim several more of the agencies responded.

The staff discussions were on a technical and conceptual level with the express and unambiguous understanding that whatever might develop from the discussions would not bind the principals on any aspect of the bill.

The bill consists essentially of three parts. The first title requires that most formal congressional committee meetings be open to the public unless closed by a majority vote of the committee for certain reasons specified in the bill. The second title requires that meetings of "collegial" agencies



be open to the public unless closed by a majority vote of the agency for any one or a combination of ten reasons. There is also a requirement for public notice of all meetings and that transcripts be kept for closed meetings. The third part of the bill precludes ex parte communications between any member of an agency and any interested party concerning the merits of any matter which is the subject of a formal hearing before the agency. The ramifications of an ex parte communication in violation of this bill would include possible dismissal of the matter before the agency.

From the definition of agency contained in Title II of the bill (as interpreted by the staff) the Justice representatives have stated that 49 agencies would be subject to the open meeting provisions. These agencies consist primarily of the so-called independent regulatory agencies and several other agencies whose structure and manner of conducting business are similar to the regulatories.

A detailed analysis of the bill as reported, the issues involved and alternatives and recommendations will be forthcoming upon receipt of an amended bill and report.

*William M. Nichols*

William M. Nichols  
Acting General Counsel



THE WHITE HOUSE

WASHINGTON

July 7, 1975

MEMORANDUM FOR: ROD HILLS

FROM: BILL CASSELMAN *BK*

SUBJECT: S. 5, "Government in the Sunshine Act"

Attached is a draft OMB memorandum which will bring you up-to-date on the state of our negotiations with the Senate Government Operations Committee. A full committee mark up is scheduled for Wednesday.

So far, there have been five meetings with the committee staff on both conceptual and technical changes in the bill. It was mutually agreed that any decisions reached would not be binding on either side. However, in anticipation of the Wednesday mark up, the committee staff is now formalizing its recommendations which probably will not be as significant as we would have hoped. In fact, the committee Republicans--Javits and Percy--appear anxious to have us meet with the minority staff in an effort to work out some additional amendments beyond those which the majority staff is proposing. (Unfortunately, neither Javits nor Percy are especially inclined to oppose, no matter what its final form, any type of "open government" legislation. Apparently, to be against "sunshine" is to be for "darkness").

In any event, OMB, domestic council staff, and I are desirous at this stage of resolving the gut issue of whether OMB should take a final position prior to mark up. However, we are still unaware of the exact language of the committee amendments. Moreover, we have not resolved the more basic question of whether to support the policy of this legislation. Finally, public observation and participation in agency deliberations, as virtually every affected regulatory agency has noted, may well be unworkable in any form. (Enactment of the current legislation will probably give rise to clever ruses designed to avoid the requirements of the act, such as regulatory agency actions being informally agreed to prior to formal action in open session. Indeed, this has been the case with the so-called "open mark ups" which the Congress has adopted.)





We will be meeting tomorrow to consider overall policy questions prior to consulting further with the majority and minority staffs. A willingness to work with the staffs, and perhaps attend the committee mark ups, will put something of an imprimatur of the Administration upon the bill, even if the amendments which we propose fail. Accordingly, we must make a determination of whether to turn our backs completely on this legislation as being unworkable in any form--and take the attendant political heat--or join in trying to improve the bill with the realization that we will probably fall considerably short of our mark.

Any suggestions would be appreciated!



July 7, 1975

On Wednesday, July 9, the full <sup>Staff</sup> Government Operations Committee is scheduled ~~to meet~~ to markup S. 5, the "Government in the Sunshine Act." This meeting was scheduled on June 18 when the full committee last met and at which time the committee unanimously adopted six substantive amendments and several technical amendments and postponed further consideration to afford the committee time to review the recently received comments from OMB, Justice, and the Federal Reserve Board and to afford the agencies who would be affected directly by S. 5 <sup>time</sup> to submit~~ing~~ their comments by the first of July. During the interim there have been five meetings at the staff level with representatives from OMB, Justice, Civil Service Commission and from the Offices of Senators Ribicoff, Chiles, Percy, Javits and Muskie. Prior to the June 18 markup several agencies had submitted comments to the committee in response to a request for their comments by OMB which had been solicited two weeks before by the full committee ~~for its views~~. During the interim several more of the agencies have responded including many from the list of forty-nine affected agencies. The staff discussions <sup>have been</sup> were on a technical and conceptual level with the express <sup>understanding</sup> and unambiguous <sup>agreement</sup> that, whatever <sup>might</sup> may develop, out



~~from~~ of the discussions would not bind the principles on any aspect of the bill.

The bill now exists as Committee Print No. <sup>3</sup>~~Three~~, reflecting the <sup>CHANGES</sup>~~comments~~ made at the June 18 markup. The bill itself essentially consists of three parts. The first title of the bill applies to all congressional committee meetings and requires that they generally be open to the public except for certain specified reasons which could be invoked by a majority vote of the committee itself; The second title of the bill concerns multi-headed agencies and requires that their meetings be open to the public unless voted to be close by a majority vote of the agencies ~~made~~ <sup>Circumstances</sup> ~~in a open session~~. There are ten ~~conditions~~ under which a meeting or a portion of a meeting may be closed to the public. There is also a requirement that public notice be given for all such meetings and that for the closed meetings transcribe be kept of the proceedings. The third part of the bill concerns ex parte communications <sup>AND</sup> applies to all agencies ~~and the formal adjudications and formal~~ <sup>IN THEIR</sup> hearings. <sup>ON THE RECORD</sup> ~~It~~ generally precludes ex parte communications <sup>IN THE OPEN</sup> between any member of an agency and any interested party concerning the merits of any matter which is the subject of a formal hearing. The ramifications of any such ex parte



communications include possible dismissal of the substantive matter about which the communication <sup>RETRACTED</sup> ~~occurred~~. With regard to title I of the bill, agency comments have ~~not addressed~~ <sup>INITIALLY STATED</sup> ~~title I stating~~ that ~~this~~ is a matter solely related to the Congress upon which ~~it~~ would be inappropriate ~~for~~ agency comment. In the staff discussions, when we explored the possibility of combining titles I and II so that congressional committees would operate in the same manner and under the same conditions <sup>as</sup> ~~and~~ multi-headed agencies, several objections (including the obvious) were raised to ~~COMBINING TITLES I AND II.~~ ~~such a procedure~~. There is apparently some reluctance in the House to impose upon itself these strict rules in statutory form especially in light of new House rules which basically cover this area. In the Senate there also appears to be difficulty arising out of Senator McClellan's desire (and probably others) to be excluded from statutory coverage despite the ability to exempt committees <sup>RESOLUTIONS</sup>. Also, there is pending in Senate Rules <sup>COMMITTEE</sup> two resolutions which would address that which <sup>IS</sup> was covered in title I of the bill. The Senate staff indicated that it is their understanding that when S. 5 leaves the Senate Government Operations Committee it will go to Senate Rules Committee where title I <sup>S.S. WILL BE</sup> will be deleted and then <sup>REPORTED</sup> out along with the



two senate resolutions. Combining titles I and II to cover both agencies and the Congress could also cause the bill to die if it ~~ever~~ reached the House since joint referral to House Government Operations, House Rules, and House ~~Judiciary would doom the bill to failure.~~ *create a Special Committee* S. 5 without title I, however, would probably be referred to the House Government Operations Committee and the ~~House Subcommittee~~ *(CHAIRMAN BY MS. ABZAG)* on Government Information and Individual Rights, where it is probable that the bill would <sup>NOT</sup> get the same critical and skeptical analysis as ~~the bill~~ <sup>it</sup> would have received ~~if referred~~ in the last session of Congress.

From the definition of agency contained in title II of the bill the Department of Justice has indicated that approximately forty-nine multi-headed agencies would be subject to <sup>its</sup> ~~the~~ provisions, ~~of title II.~~ These agencies consist primarily of the so-called independent regulatory agencies and several other ~~less significant~~ agencies whose structure and manner of conducting business are similar to the regulatory ~~ies~~s. The restriction of the bill to multi-headed agencies is the result of the staff's professed inability to cover in a similar manner the decisional meetings of single headed agencies. At least as likely an explanation is the probable undesirability and unacceptability to the Executive branch *(and many*





segments of Congress) to open the decisional meetings of single headed agencies to the public. Restriction primarily to the independent regulators <sup>Activities</sup> make the prospects of enactment significantly higher and establishes <sup>2</sup> <sup>cedent</sup> president for openness of meetings of <sup>all</sup> agencies in the executive branch. The impetus behind the bill is Senator Chiles of Florida who was present during the development of that which became the Sunshine Law of the State of Florida and for whom this bill and certain <sup>business</sup> procurement activities are <sup>the primary action and action of his new</sup> ~~is only activities~~. His <sup>subcommittee</sup> pressure coupled with the presence of a new Chairman of the Senate Government Operations Committee, the undesirability of being publicly postured against openness reforms in the executive branch, and the Senatorial ~~compete~~ and desire not to antagonize Senator Chiles explain in part the bill's previous movement and may also explain why the bill in some form will probably be enacted in this session. Senators Percy, Javits, Roth, <sup>and</sup> Muskie are apparently bothered by many of the features of the bill but would probably be constrained in a public setting to openly oppose its passage. The proponents of the bill have been willing and probably will be willing to make significant changes in the scope and coverage of the bill in a desire to avoid active



executive branch opposition to the bill. Of the forty-nine agencies which would be covered, an overwhelming majority of ~~them~~ are not in favor of being included within the provisions of the bill as currently written. An Administration posture of open ~~house delay~~ <sup>hostility</sup> toward the enactment of the bill is neither a comfortable nor consistent position. Proposals for reform within the Executive branch of regulatory practices may well include as an aspect thereof the opening of the deliberate process of these agencies to the public.

~~Title III~~ <sup>TITLE EX PARTE COMMUNICATIONS PART</sup> of bill on the other hand has a history of ten years' labor on the part of various committees of the American Bar ~~Administration~~ <sup>Association</sup> and ~~more or less~~ <sup>generally</sup> incorporates ~~its~~ major suggestions. The Administrative Conferences ~~on the other hand~~ of the U.S. has voiced something less than stentorian support for this proposal and an alternative to this method of dealing with ex parte communications could well be a requirement for each agency to publish its own standards and conditions for ex parte communications. In any event agency comments upon ~~title which include~~ <sup>746</sup> ~~ex parte~~ communications material have not with a few exceptions been in opposition, ~~thereto~~.

Neither OMB nor the Administration has <sup>as</sup> yet taken a position on the merits of S. 5. We are reaping some



of the benefits of good feelings engendered by our contacts with the Senate Government Operations Committee in the Freedom of Information Act, the Privacy Act, and the Federal Advisory Committee Act. The Senate Government Operations Committee and the staff is anxious that we be in attendant at the markup and that we take a position on the bill and offer whatever amendments we think might be appropriate. I have indicated that it may well be impossible for OMB to take a position since we do not know what changes will be made in the scope of the bill as a result of the discussions we have had nor have we seen any of the committee amendments which will be proposed.

The fundamental question ~~however~~ is whether to oppose a general policy of opening decisional and pre-decisional meetings of the so-called independent regulatory agencies to the public. To endorse such a policy would in affect require that meetings be open unless the meetings would concern matters which would be exempt under the Freedom of Information Act except for the fifth exemption which would not be available. (The fifth exemption is the intra- and interagency correspondence which would not be available to a party in litigation with the agency). If, as a facet of regulatory reform or as a matter of



an open an accessible government or as a result of the  
 Undesirable posture ~~the~~ opposition would cause, <sup>WEIC</sup> ~~THE POSITION~~ ~~WAS~~  
~~to be~~ infavor of the policy, <sup>THIS POSITION</sup> could result in a bill  
 which would open meetings of a select number of agencies  
 (exempting those such as the Federal Reserve Board) and  
 providing enough congressionally recognized and enacted  
 exemptions to permit the closing of meetings <sup>in appropriate instances.</sup> ~~except when~~  
~~necessary~~. Maximum leverage exists at the committee  
 stage since in these sessions it is easiest for changes  
 to be made. If enough changes were made in the bill  
 it could even be possible to give <sup>SOME</sup> ~~tacit~~ Administration  
 approval of <sup>it</sup> ~~the bill~~.



# [COMMITTEE PRINT NO. 3]

JUNE 18, 1975

Calendar No.

94TH CONGRESS  
1ST SESSION

**S. 5**

[Report No. 94— ]

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## IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

Mr. CHILES (for himself, Mr. ABOUREZK, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LEAHY, Mr. MCGOVERN, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. ROTH, Mr. STAFFORD, Mr. STONE, Mr. SYMINGTON, Mr. TUNNEY, and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Committee on Government Operations

JUNE , 1975

Reported by Mr. -----, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

---

## A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 ~~SECTION 1. SHORT TITLE. This Act may be cited as~~  
4 ~~the "Government in the Sunshine Act".~~



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

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

6 (1) "National defense" means—

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

10 ~~(B) the obtaining of foreign intelligence informa-~~  
 11 ~~tion deemed essential to the military defense of the~~  
 12 ~~United States or its forces;~~

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

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

20 (2) "Person" includes an individual, partnership, cor-  
 21 poration, associated governmental authority, or public or  
 22 private organization.

## 23 ~~TITLE I—CONGRESSIONAL PROCEDURES~~

24 ~~SEC. 101. SENATE COMMITTEE HEARING PRO-~~  
 25 ~~CEDURE. (a) The Legislative Reorganization Act of 1946~~  
 26 ~~is amended—~~

1 ~~(1) by striking out the third sentence of section~~  
 2 ~~133(b);~~

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

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

6 ~~"OPEN SENATE COMMITTEE MEETINGS~~

7 ~~"SEC. 133C. (a) Each meeting of each standing, select,~~  
 8 ~~or special committee of the Senate, or subcommittee thereof,~~  
 9 ~~including meetings to conduct hearings, shall be open to the~~  
 10 ~~public: Provided, That a portion or portions of such meet-~~  
 11 ~~ings may be closed to the public if the committee or subcom-~~  
 12 ~~mittee, as the case may be, determines by a vote of a majority~~  
 13 ~~of a quorum of the committee or subcommittee present that~~  
 14 ~~the matters to be discussed or the testimony to be taken at~~  
 15 ~~such portion or portions—~~

16 ~~"(1) will disclose matters necessary to be kept~~  
 17 ~~secret in the interests of national defense or the neces-~~  
 18 ~~sarily confidential conduct of the foreign policy of the~~  
 19 ~~United States;~~

20 ~~"(2) will relate solely to matters of committee staff~~  
 21 ~~personnel or internal staff management or administra-~~  
 22 ~~tion;~~

23 ~~"(3) will tend to charge with crime or misconduct,~~  
 24 ~~or to disgrace any person, or will represent a clearly~~  
 25 ~~unwarranted invasion of the privacy of any individual:~~  
 26 ~~Provided, That this paragraph shall not apply to any~~

~~Government officer or employee with respect to his official duties or employment: And provided further, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;~~

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

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

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

~~"(B) the information has been obtained by the~~

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

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

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

~~"(c) A complete transcript shall be made of each meet-~~

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

~~“(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of each such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published and no proxies shall be allowed. In~~

~~place of each portion deleted from copies of the transcript made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a). The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.~~

~~“(e) A point of order may be raised in the Senate against any committee or subcommittee vote to close a meeting to the public pursuant to subsection (a) of this section, or against any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section, by committee or subcommittee members comprising one fourth or more of the total number of members of such committee or subcommittee present and voting for or against such action. Any such point of order shall be raised in the Senate within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of~~

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

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

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

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

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

~~"133C. Open Senate committee meetings."~~

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

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

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

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

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

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

~~"(v) will disclose information relating to the trade~~

~~secrets or financial or commercial information pertaining specifically to a given person where~~

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

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

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

~~"(B) Each standing, select, or special committee or subcommittee shall make public announcement of the date, place, and subject matter of each meeting at least one week~~

~~1 before such meeting unless the committee or subcommittee  
2 determines by a vote of a majority of a quorum of the com-  
3 mittee or subcommittee present that committee business re-  
4 quires that such meeting be called at an earlier date, in which  
5 case the committee shall make public announcement of the  
6 date, place, and subject matter of such meeting at the earliest  
7 practicable opportunity.~~

~~8 "(C) A complete transcript shall be made of each meet-  
9 ing of each standing, select, or special committee or subcom-  
10 mittee (whether open or closed to the public). Except as  
11 provided in paragraph (D), a copy of each such transcript  
12 shall be made available for public inspection within seven  
13 days of each such meeting, and additional copies of any tran-  
14 script shall be furnished to any person at the actual cost of  
15 duplication. Notwithstanding the provisions of paragraph  
16 (D), in the case of meetings closed to the public, the portion  
17 of such transcript made available for public inspection shall  
18 include a list of all persons attending and their affiliation,  
19 except for any portion of such list which would disclose  
20 the identity of a confidential source, or endanger the  
21 life or physical safety of law enforcement personnel.~~

~~22 "(D) In the case of meetings closed to the public pur-  
23 suant to subparagraph (A), the committee or subcommittee  
24 may delete from the copies of transcripts that are required  
25 to be made available or furnished to the public pursuant to  
26 subparagraph (C), portions which it determines by vote of~~

~~1 the majority of a quorum of the committee or subcom-  
2 mittee consist of material specified in subsection (i), (ii),  
3 (iii), (iv), or (v) of subparagraph (A). A separate vote  
4 of the committee or subcommittee shall be taken with respect  
5 to the transcript of such meeting. The vote of each committee  
6 or subcommittee member participating in each such vote shall  
7 be recorded and published, and no proxies shall be allowed.  
8 In place of each portion deleted from copies of the transcript  
9 made available to the public, the committee or subcommittee  
10 shall supply a full written explanation of why such por-  
11 tion was deleted and a summary of the substance of the  
12 deleted portion that does not itself disclose information speci-  
13 fied in subsection (i), (ii), (iii), (iv), or (v) of subpara-  
14 graph (A). The committee or subcommittee shall main-  
15 tain a complete copy of the transcript of each meeting (in-  
16 cluding those portions deleted from copies made available to  
17 the public), for a period of at least one year after such  
18 meeting, or until the Congress following the one in which  
19 such meeting was held is assembled, whichever occurs later.~~

~~20 "(E) A point of order may be raised against any com-  
21 mittee or subcommittee vote to close a meeting to the public  
22 pursuant to subparagraph (A), or against any committee or  
23 subcommittee vote to delete from the publicly available copy  
24 a portion of a meeting transcript pursuant to subparagraph  
25 (D), by committee or subcommittee members comprising~~



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

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

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

~~"OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS~~

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

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

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

~~"(3) will tend to charge with crime or misconduct, or to disgrace any person, or will represent a clearly unwarranted invasion of the privacy of any individual:~~

~~*Provided*, That this paragraph shall not apply to any Government officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting, this paragraph shall not apply unless the witness requests in writing that the hearing be closed to the public;~~

~~"(4) will disclose information pertaining to any~~

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

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

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

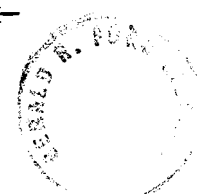
~~"(B) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and the information must be kept secret in order to pre-~~

~~vent grave and irreparable injury to the competitive position of such person.~~

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

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

~~"(c) A complete transcript shall be made of each meeting of each joint committee, subcommittee, and committee of conference (whether open or closed to the public). Ex-~~



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

~~“(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the joint committee, subcommittee, or committee of conference may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (c) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published, and no proxies shall be allowed. In place of each portion deleted from copies of the transcript~~

~~made available to the public, the committee or subcommittee shall supply a full written explanation of why such portion was deleted, and a summary of the substance of the deleted portion that does not itself disclose information specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. The committee or subcommittee shall maintain a complete copy of the transcript of each meeting (including those portions deleted from copies made available to the public), for a period of at least one year after such meeting, or until the Congress following the one in which such meeting was held is assembled, whichever occurs later.~~

~~“(e) A point of order may be raised against any committee vote of a joint committee, subcommittee, or committee of conference to close a meeting to the public pursuant to subsection (a) of this section, or any committee or subcommittee vote to delete from the publicly available copy a portion of a meeting transcript pursuant to subsection (d) of this section by committee or subcommittee members comprising one fourth or more of the total number of the members of such committee or subcommittee present and voting for or against such action. Any such point of order shall be raised in either House within two calendar days after the vote against which the point of order is raised, and such point of order shall be a matter of highest personal privilege. Each such point of~~

~~order shall immediately be referred to a Select Joint Committee on Meetings consisting of the President pro tempore of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders from each House. The select committee shall examine the complete verbatim transcript of the meeting in question and shall rule whether the vote to close the meeting was in accordance with subsection (a) of this section, or whether the vote to delete a portion or portions from publicly available copies of the meeting transcript was in accordance with subsection (d) of this section, as the case may be. The select committee shall report to both Houses a concurrent resolution within five calendar days (excluding days where either House is not in session) containing its findings. If both Houses adopt such a resolution finding that the committee vote in question was not in accordance with the relevant subsection, they shall direct that there be made publicly available the entire transcript of the meeting improperly closed to the public, or the portion or portions of any meeting transcript improperly deleted from the publicly available copy, as the case may be.~~

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

~~(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immedi-~~

~~ately below item 199C, as added by section 101 (c) of this Act, the following:~~

~~"199D. Open joint and conference committee meetings."~~

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

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

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

## ~~TITLE II—AGENCY PROCEDURES~~

~~SEC. 201. (a) This section applies, according to the provisions thereof, to any agency, as defined in section 551 (1) of title 5, United States Code, where the body comprising the agency consists of two or more members. Except as provided in subsection (b), all meetings (including meetings to conduct hearings) of such agencies, or a subdivision thereof authorized to take action on behalf of the agency, shall be~~

~~1 open to the public. For purposes of this section, a meeting~~  
~~2 consists of any procedure by which official agency business is~~  
~~3 considered or discussed by at least the number of agency~~  
~~4 members (or of members of a subdivision of the agency au-~~  
~~5 thorized to take action on behalf of the agency), required to~~  
~~6 take action on behalf of the agency.~~

~~7 (b) Subsection (a) shall not apply to any portion or~~  
~~8 portions of an agency meeting where the agency determines~~  
~~9 by a vote of a majority of its entire membership, or, in the~~  
~~10 case of a subdivision thereof authorized to take action on~~  
~~11 behalf of the agency, a majority of the membership of such~~  
~~12 subdivision, that such portion or portions of the meeting~~

~~13 (1) will disclose matters necessary to be kept secret~~  
~~14 in the interests of national defense or the necessarily con-~~  
~~15 fidential conduct of the foreign policy of the United~~  
~~16 States;~~

~~17 (2) will relate solely to individual agency person-~~  
~~18 nel or to internal agency office management and adminis-~~  
~~19 tration or financial auditing;~~

~~20 (3) will tend to charge with crime or misconduct,~~  
~~21 or to disgrace any person, or will represent a clearly~~  
~~22 unwarranted invasion of the privacy of any individual.~~  
~~23 Provided, That this paragraph shall not apply to any~~  
~~24 Government officer or employee with respect to his offi-~~  
~~25 cial duties or employment: And provided further, That~~

~~1 as applied to a witness at a meeting this paragraph shall~~  
~~2 not apply unless the witness requests in writing that the~~  
~~3 meeting be closed to the public;~~

~~4 (4) will disclose information pertaining to any in-~~  
~~5 vestigation conducted for law enforcement purposes, but~~  
~~6 only to the extent that the disclosure would (A) inter-~~  
~~7 fere with enforcement proceedings, (B) deprive a per-~~  
~~8 son of a right to a fair trial or an impartial adjudication,~~  
~~9 (C) disclose the identity of a confidential source and, in~~  
~~10 the case of a record compiled by a criminal law enforce-~~  
~~11 ment authority in the course of a criminal investigation,~~  
~~12 or by an agency conducting a lawful national security~~  
~~13 intelligence investigation, confidential information fur-~~  
~~14 nished only by the confidential source, (D) disclose~~  
~~15 investigative techniques and procedures, (E) endanger~~  
~~16 the life or physical safety of law enforcement personnel,~~  
~~17 or (F) in the case of an agency authorized to regulate~~  
~~18 the issuance or trading of securities, disclose informa-~~  
~~19 tion concerning such securities, or the markets in which~~  
~~20 they are traded, when such information must be kept~~  
~~21 confidential in order to avoid premature speculation in~~  
~~22 the trading of such securities; or~~

~~23 (5) will disclose information relating to the trade~~  
~~24 secrets or financial or commercial information pertain-~~  
~~25 ing specifically to a given person where~~

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

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

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

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

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

~~(d) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting of each agency (whether open or closed to the public). Except as provided in subsection (e) of this section a copy of the transcript or electronic recording of each such meeting, together with any official minutes of such meeting, shall be made available to the public for inspection, and additional copies of any such transcript, minutes, or recording (or a copy of a transcription of the electronic recording), shall be furnished to any person at the actual cost of duplication or transcription. Notwithstanding the provisions of subsection (c), in the case of meetings closed to the public, the portion of such transcript made available for public inspection or electronic recording shall include a list~~

1 ~~of all persons attending and their affiliation, except for any~~  
 2 ~~portion of such list which would disclose the identity of a~~  
 3 ~~confidential source, or endanger the life or physical safety~~  
 4 ~~of law enforcement personnel.~~

5 ~~(c) In the case of meetings closed to the public pursuant~~  
 6 ~~to subsection (b) of this section, the agency may delete from~~  
 7 ~~the copies of transcripts, electronic recordings, and minutes~~  
 8 ~~made available or furnished to the public pursuant to subsec-~~  
 9 ~~tion (d) of this section, those portions which the agency~~  
 10 ~~determines by vote of a majority of its membership consist~~  
 11 ~~of materials specified in paragraph (1), (2), (3), (4),~~  
 12 ~~(5), or (6) of subsection (b) of this section. A separate~~  
 13 ~~vote of the agency shall be taken with respect to each tran-~~  
 14 ~~script, electronic recording, or minutes. The vote of each~~  
 15 ~~agency member participating in such vote shall be recorded~~  
 16 ~~and published, and no proxies shall be allowed. In place of~~  
 17 ~~each portion deleted from copies of the meeting transcript,~~  
 18 ~~electronic recording, and minutes made available to the pub-~~  
 19 ~~lie, the agency shall supply a full written explanation of why~~  
 20 ~~such portion was deleted and a summary of the substance of~~  
 21 ~~the deleted portion that does not itself disclose information~~  
 22 ~~specified in paragraph (1), (2), (3), (4), (5), or (6) of~~  
 23 ~~subsection (b). The agency shall maintain a complete ver-~~  
 24 ~~batim copy of the transcript, or a complete electronic record-~~  
 25 ~~ing of each meeting (including those portions deleted from~~

1 ~~copies made available to the public), for a period of at least~~  
 2 ~~two years after such meeting, or until one year after the con-~~  
 3 ~~clusion of any proceeding with respect to which the meeting,~~  
 4 ~~or a portion thereof, was held, whichever occurs later.~~

5 ~~(f) Each agency subject to the requirements of this sec-~~  
 6 ~~tion shall, within three hundred and sixty days after the en-~~  
 7 ~~actment of this Act, following consultation with the Ad-~~  
 8 ~~ministrative Conference of the United States and published~~  
 9 ~~notice in the Federal Register of at least thirty days and~~  
 10 ~~opportunity for written comment by any persons, promulgate~~  
 11 ~~regulations to implement the requirements of subsections (a)~~  
 12 ~~through (e) inclusive of this section. Such regulations must,~~  
 13 ~~prior to final promulgation, receive the approval in writing~~  
 14 ~~of the Assistant Attorney General, office of Legal Counsel,~~  
 15 ~~certifying that in his opinion the regulations are in accord~~  
 16 ~~with the requirements of this section. Any citizen or person~~  
 17 ~~resident in the United States may bring a proceeding in the~~  
 18 ~~United States Court of Appeals for the District of Columbia~~  
 19 ~~Circuit—~~

20 ~~(1) to require an agency to promulgate such regu-~~  
 21 ~~lations if such agency has not promulgated such regu-~~  
 22 ~~lations within the time period specified herein; or~~

23 ~~(2) to set aside agency regulations issued pursu-~~  
 24 ~~ant to this subsection that are not in accord with the~~  
 25 ~~requirements of subsections (a) through (e) inclusive~~

1 ~~of this section, and to require the promulgation of~~  
 2 ~~regulations that are in accord with such subsections.~~

3 ~~(g) The district courts of the United States shall have~~  
 4 ~~jurisdiction to enforce the requirements of subsections (a)~~  
 5 ~~through (c) inclusive of this section by declaratory judg-~~  
 6 ~~ment, injunctive relief, or otherwise. Such actions shall~~  
 7 ~~be brought within sixty days after the meeting whose closing~~  
 8 ~~is challenged as a violation of this section. *Provided*, That if~~  
 9 ~~public notice of such meeting was not provided by the agency~~  
 10 ~~in accordance with the requirements of this section, such~~  
 11 ~~action shall be brought within sixty days of such meeting~~  
 12 ~~or such public announcement, whichever is the later. Such~~  
 13 ~~actions shall be brought against an agency and its members~~  
 14 ~~by any citizen or person resident in the United States. Such~~  
 15 ~~actions may be brought in the district wherein the plaintiff~~  
 16 ~~resides, or has his principal place of business, or where the~~  
 17 ~~agency in question has its headquarters. In such actions a~~  
 18 ~~defendant shall serve his answer within twenty days after~~  
 19 ~~the service of the complaint. The burden is on the agency to~~  
 20 ~~sustain its action. Except as to causes the court considers~~  
 21 ~~of greater importance, proceedings before the district court,~~  
 22 ~~as authorized by this paragraph, take precedence on the~~  
 23 ~~docket over all other causes and shall be assigned a hearing~~  
 24 ~~and trial at the earliest practicable date and expedited in~~  
 25 ~~every way. In deciding such cases the court may examine~~

1 ~~any portion of a meeting transcript or electronic recording~~  
 2 ~~that was deleted from the publicly available copy and may~~  
 3 ~~take such additional evidence as it deems necessary. Among~~  
 4 ~~other forms of equitable relief, including the granting of an~~  
 5 ~~injunction against future violations of this section, the court~~  
 6 ~~may require that any portion of a meeting transcript or elec-~~  
 7 ~~tronic recording improperly deleted from the publicly avail-~~  
 8 ~~able copy be made publicly available for inspection and copy-~~  
 9 ~~ing, and, having due regard for orderly administration and~~  
 10 ~~the public interest, may set aside any agency action taken~~  
 11 ~~or discussed at an agency meeting improperly closed to the~~  
 12 ~~public. The jurisdiction of the district courts under this sub-~~  
 13 ~~section shall be concurrent with that of any other court other-~~  
 14 ~~wise authorized by law to review agency action. Any such~~  
 15 ~~court may, at the application of any person otherwise prop-~~  
 16 ~~erly a party to a proceeding before such court to review an~~  
 17 ~~agency action, inquire into asserted violations by the agency~~  
 18 ~~of the requirements of this section and afford the relief au-~~  
 19 ~~thorized by this section in the case of proceedings by district~~  
 20 ~~courts.~~

21 ~~(h) In any action brought pursuant to subsection (f)~~  
 22 ~~or (g) of this section, the reasonable costs of litigation (in-~~  
 23 ~~cluding reasonable fees for attorneys and expert witnesses)~~  
 24 ~~may be apportioned to the original parties or their successors~~  
 25 ~~in interest whenever the court determines such award is ap-~~



1 ~~appropriate. In the case of apportionment of costs against an~~  
 2 ~~agency or its members, the costs may be assessed by the~~  
 3 ~~court against the United States.~~

4 ~~(i) The agencies subject to the requirements of this~~  
 5 ~~section shall annually report to Congress regarding their~~  
 6 ~~compliance with such requirements, including a tabulation~~  
 7 ~~of the total number of agency meetings open to the public,~~  
 8 ~~the total number of meetings closed to the public, the rea-~~  
 9 ~~sons for closing such meetings, and a description of any~~  
 10 ~~litigation brought against the agency under this section.~~

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

13 ~~"EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING~~

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

16 ~~"(1) 'Ex parte communication' means a com-~~  
 17 ~~munication relevant to an on-the-record agency pro-~~  
 18 ~~ceeding where such communication is not made on the~~  
 19 ~~record, or openly at a scheduled hearing session in such~~  
 20 ~~proceeding, and reasonable notice thereof is not given to~~  
 21 ~~all parties to, or intervenors in, such proceedings.~~

22 ~~"(2) 'Interested person' means any person (includ-~~  
 23 ~~ing a member or employee of any Government agency or~~  
 24 ~~authority) other than a member or employee of the~~

1 ~~agency before which the on-the-record proceeding is~~  
 2 ~~pending who communicates with an agency member or~~  
 3 ~~employee with respect to any such on-the-record agency~~  
 4 ~~proceeding.~~

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

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

11 ~~"(c) In any agency proceeding which is subject to sub-~~  
 12 ~~section (b) of this section—~~

13 ~~"(1) no interested person shall make or cause to be~~  
 14 ~~made to any member of the agency in question, adminis-~~  
 15 ~~trative judge, or employee who is or may be involved in~~  
 16 ~~the decisional process of the proceeding any ex parte~~  
 17 ~~communication;~~

18 ~~"(2) no member of the agency in question, adminis-~~  
 19 ~~trative judge, or employee who is or may be involved in~~  
 20 ~~the decisional process of the proceeding shall make or~~  
 21 ~~cause to be made to an interested person any ex parte~~  
 22 ~~communication;~~

23 ~~"(3) a member of the agency in question, adminis-~~  
 24 ~~trative judge, or employee who is or may be involved~~

~~in the decisional process of the proceeding, who receives a communication in violation of this subsection, shall place in the public record of the proceeding—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

19       ~~"(1) to require any agency to promulgate regula-~~  
 20       ~~tions if the agency has not promulgated such regulations~~  
 21       ~~within the time period specified; or~~

22       ~~"(2) to set aside agency regulations issued pursuant~~  
 23       ~~to this subsection that are not in accord with the require-~~  
 24       ~~ments of this section, and to require the promulgation~~  
 25       ~~of regulations that are in accord with this section.~~

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

7       ~~"(i) The district courts of the United States shall have~~  
 8       ~~jurisdiction to enforce the requirements of subsections (c)~~  
 9       ~~and (e) of this section by declaratory judgment, injunctive~~  
 10       ~~relief, or otherwise. The action may be brought by any~~  
 11       ~~citizen or person resident in the United States. The~~  
 12       ~~action shall be brought in the district wherein the plaintiff~~  
 13       ~~resides or has his principal place of business, or where the~~  
 14       ~~agency in question has its headquarters. Where a person~~  
 15       ~~other than an agency, agency member, administrative judge,~~  
 16       ~~or employee is alleged to have participated in a violation of~~  
 17       ~~the requirements of this section, such person may, but need~~  
 18       ~~not, be joined as a party defendant; for purposes of joining~~  
 19       ~~such person as a party defendant, service may be had on~~  
 20       ~~such person in any district. Among other forms of equitable~~  
 21       ~~relief, the court may require that any ex parte communica-~~  
 22       ~~tion made or received in violation of the requirements of this~~  
 23       ~~section be published, and, having due regard for orderly~~  
 24       ~~administration and the public interest, may set aside any~~  
 25       ~~agency action taken in a proceeding where the violation~~

1 occurred. The jurisdiction of the district courts under this  
 2 subsection shall be concurrent with that of any other court  
 3 otherwise authorized by law to review agency action. Any  
 4 such court may, at the application of any person otherwise  
 5 properly a party to a proceeding before such court to review  
 6 an agency action, inquire into asserted violations by the  
 7 agency of the requirements of this section, and afford the  
 8 relief authorized by this section in the case of proceedings  
 9 by district courts.

10 “(j) In any action brought pursuant to subsection (g)  
 11 and (i) of this section, cost of litigation (including reason-  
 12 able fees for attorneys and expert witnesses) may be appor-  
 13 tioned to the original parties or their successors in interest  
 14 whenever the court determines such award is appropriate.”

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

20 SECTION 1. SHORT TITLE.—This Act may be cited as  
 21 the “Government in the Sunshine Act”.

22 SEC. 2. DECLARATION OF POLICY.—It is hereby de-  
 23 clared to be the policy of the United States that the public  
 24 is entitled to the fullest practicable information regarding  
 25 the decisionmaking processes of the Federal Government.

1 It is the purpose of this Act to provide the public with such  
 2 information, while protecting the rights of individuals and  
 3 the ability of the Government to carry out its responsibilities.

4 SEC. 3. DEFINITIONS.—For purposes of this Act the  
 5 term, “person” includes an individual, partnership, cor-  
 6 poration, association, or public or private organization other  
 7 than an agency.

## 8 TITLE I—CONGRESSIONAL PROCEDURES

9 SEC. 101. SENATE COMMITTEE HEARING PRO-  
 10 CEDURE.—(a) The Legislative Reorganization Act of 1946  
 11 is amended—

12 (1) by striking out the first sentence of section  
 13 133(b);

14 (2) by adding after section 133B the following:

### 15 “OPEN SENATE COMMITTEE MEETINGS

16 “SEC. 133C. Each meeting of a standing, select, or  
 17 special committee of the Senate, or any subcommittee thereof,  
 18 shall be open to the public, except that a portion or portions  
 19 of any such meeting may be closed to the public if the commit-  
 20 tee or subcommittee, as the case may be, determines by record  
 21 vote of a majority of the members of the committee or sub-  
 22 committee present that the matters to be discussed or the  
 23 testimony to be taken at such portion or portions—

24 “(1) will disclose matters necessary to be kept secret



1 *in the interests of national defense or the foreign policy*  
2 *of the United States;*

3 *“(2) will relate solely to matters of committee staff*  
4 *personnel or internal staff management or procedure;*

5 *“(3) will tend to charge an individual with crime or*  
6 *misconduct, to disgrace or injure the professional standing*  
7 *of an individual, or otherwise to expose an individual to*  
8 *public contempt or obloquy, or will represent a clearly*  
9 *unwarranted invasion of the privacy of an individual;*

10 *“(4) will disclose the identity of any informer or*  
11 *law enforcement agent or will disclose any information*  
12 *relating to the investigation or prosecution of any viola-*  
13 *tion of law that is required to be kept secret in the*  
14 *interests of effective law enforcement; or*

15 *“(5) will disclose information relating to the trade*  
16 *secrets or financial or commercial information pertaining*  
17 *specifically to a given person if—*

18 *“(A) an Act of Congress requires the informa-*  
19 *tion to be kept confidential by Government officers*  
20 *and employees; or*

21 *“(B) the information has been obtained by the*  
22 *Government on a confidential basis, and is required*  
23 *to be kept secret in order to prevent undue injury to*  
24 *the competitive position of such person.”.*

25 *This section shall not apply to meetings to conduct hearings.*

1 *(b) Paragraph 7(b) of Rule XXV of the Standing*  
2 *Rules of the Senate is repealed.*

3 *(c) Title I of the table of contents of the Legislative*  
4 *Reorganization Act of 1946 is amended by inserting imme-*  
5 *diately below item 133B the following:*

*“133C. Open Senate committee meetings.”.*

6 *SEC. 102. Clause 2(g)(1) of Rule XI of the Rules of*  
7 *the House of Representatives is amended to read as follows:*

8 *“(g)(1) Each meeting of a standing, select, or spe-*  
9 *cial committee or subcommittee, shall be open to the public,*  
10 *except that a portion or portions of any such meeting may be*  
11 *closed to the public if the committee or subcommittee, as the*  
12 *case may be, determines by record vote of a majority of the*  
13 *members of the committee or subcommittee present that the*  
14 *matters to be discussed or the testimony to be taken at such*  
15 *portion or portions—*

16 *“(A) will disclose matters necessary to be kept*  
17 *secret in the interests of national defense or the foreign*  
18 *policy of the United States;*

19 *“(B) will relate solely to matters of committee staff*  
20 *personnel or internal staff management or procedure;*

21 *“(C) will tend to charge an individual with crime*  
22 *or misconduct, to disgrace or injure the professional*  
23 *standing of an individual, or otherwise to expose an in-*  
24 *dividual to public contempt or obloquy, or will represent*

1 *a clearly unwarranted invasion of the privacy of an in-*  
2 *dividual;*

3 *“(D) will disclose the identity of any informer or*  
4 *law enforcement agent or will disclose any information*  
5 *relating to the investigation or prosecution of any viola-*  
6 *tion of law that is required to be kept secret in the inter-*  
7 *ests of effective law enforcement; or*

8 *“(E) will disclose information relating to the trade*  
9 *secrets or financial or commercial information pertaining*  
10 *specifically to a given person if—*

11 *“(i) an Act of Congress requires the informa-*  
12 *tion to be kept confidential by Government officers*  
13 *and employees; or*

14 *“(ii) the information has been obtained by the*  
15 *Government on a confidential basis, and is re-*  
16 *quired to be kept secret in order to prevent undue*  
17 *injury to the competitive position of such person.”.*

18 *This clause shall not apply to meetings to conduct*  
19 *hearings.*

20 *SEC. 102. (a) CONFERENCE COMMITTEES.—The Leg-*  
21 *islative Reorganization Act of 1946 is amended by inserting*  
22 *after section 133C, as added by section 101(3) of this Act,*  
23 *the following new section:*

1 *“OPEN CONFERENCE COMMITTEE MEETINGS*

2 *“SEC. 133D. Each conference committee between the*  
3 *Senate and the House of Representatives shall be open to*  
4 *the public except when the managers of either the Senate*  
5 *or the House of Representatives in open session determine*  
6 *by a rollcall vote of a majority of those managers present,*  
7 *that all or part of the remainder of the meeting on the day*  
8 *of the vote shall be closed to the public.”.*

9 *(b) Title I of the table of contents of the Legislative Re-*  
10 *organization Act of 1946 is amended by inserting immedi-*  
11 *ately below item 133C, as added by section 101(c) of this*  
12 *Act, the following:*

*“133D. Open conference committee meetings.”.*

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

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

22 *(2) with full recognition of the constitutional right*

1 of either House to change such rules (so far as relating  
2 to such House) at any time, in the same manner, and to  
3 the same extent as in the case of any other rule of such  
4 House.

## 5 TITLE II—AGENCY PROCEDURES

6 SEC. 201. (a) This section applies, according to the  
7 provisions thereof, to the Federal Elections Commission and  
8 to any agency, as defined in section 551(1) of title 5, United  
9 States Code, where the body comprising the agency consists of  
10 two or more individual members, at least a majority of whom  
11 are appointed to such position by the President with the  
12 advice and consent of the Senate. Except as provided in  
13 subsection (b), all meetings of such agencies, or a subdivision  
14 thereof authorized to take action on behalf of the agency, shall  
15 be open to the public. For purposes of this section, a meeting  
16 means a gathering, electronically or in person, of at least  
17 the number of agency members required to take action on  
18 behalf of the agency where such gathering results in the  
19 joint consideration or disposition of official agency business.  
20 Informal discussions between only two members of an agency  
21 which do not result in the disposition of official agency busi-  
22 ness shall not constitute a meeting for purposes of this section.  
23 (b) Except where the agency finds that the public in-  
24 terest requires otherwise, (1) subsection (a) shall not apply to  
25 any portion or portions of an agency meeting, or any portion

1 or portions of a meeting of a subdivision thereof authorized  
2 to take action on behalf of the agency, and (2), subsections  
3 (c) and (d) shall not apply to any information pertaining  
4 to such meeting otherwise required by this section to be dis-  
5 closed to the public, where the agency, or the subdivision  
6 thereof conducting the meeting, properly determines that such  
7 portion or portions of its meeting, or such information—

8 (1) will disclose matters (A) specifically authorized  
9 under criteria established by an Executive order to be  
10 kept secret in the interests of national defense or foreign  
11 policy and (B) are in fact properly classified pursuant  
12 to such Executive order;

13 (2) will relate solely to the agency's own internal  
14 personnel rules and practices;

15 (3) will disclose information of a personal nature  
16 where disclosure would constitute a clearly unwarranted  
17 invasion of personal privacy;

18 (4) will involve accusing any person of a crime, or  
19 formally censuring any person;

20 (5) will disclose information contained in investi-  
21 gatory records compiled for law enforcement purposes,  
22 but only to the extent that the disclosure would (A)  
23 interfere with enforcement proceedings, (B) deprive  
24 a person of a right to a fair trial or an impartial  
25 adjudication, (C) constitute an unwarranted invasion

1 of personal privacy, (D) disclose the identity of a con-  
 2 fidential source, (E) in the case of a record compiled  
 3 by a criminal law enforcement authority in the course  
 4 of a criminal investigation, or by an agency conducting  
 5 a lawful national security intelligence investigation, dis-  
 6 close confidential information furnished only by the confi-  
 7 dential source, (F) disclose investigative techniques and  
 8 procedures, or (G) endanger the life or physical safety  
 9 of law enforcement personnel;

10 (6) will disclose trade secrets, or financial or com-  
 11 mercial information obtained from any person, or an-  
 12 other agency, where such information must be kept secret  
 13 in order to prevent substantial injury to the competitive  
 14 position of the person to whom such information relates;

15 (7) will disclose information which must be kept  
 16 confidential in order to avoid premature public dis-  
 17 closure of a proposed action by—

18 (A) an agency which regulates currencies,  
 19 securities, commodities, or financial institutions  
 20 where such disclosure would (i) lead to serious  
 21 financial speculation in currencies, securities, or  
 22 commodities, or (ii) seriously endanger the stability  
 23 of any financial institution; or

24 (B) any agency where such disclosure would

1 seriously frustrate implementation of the proposed  
 2 agency action, or private action contingent thereon.

3 This paragraph shall not apply in any instance where  
 4 the agency has already disclosed to the public the general  
 5 content or nature of its proposed action, or where the  
 6 agency is required by law to make such disclosure prior  
 7 to taking final agency action on such proposal;

8 (8) will disclose information contained in or related  
 9 to examination, operating, or condition reports prepared  
 10 by, on behalf of, or for the use of an agency responsible  
 11 for the regulation or supervision of financial institutions;

12 (9) will specifically concern the agency's partici-  
 13 pation in a civil action pending in Federal or State  
 14 court, or the initiation, conduct, or disposition by the  
 15 agency of a particular case of formal agency adjudica-  
 16 tion pursuant to the procedures in section 554 of title 5,  
 17 United States Code, including any case of adjudication  
 18 that would otherwise be excluded from such section by  
 19 reason of the exceptions contained in subsection (a) of  
 20 section 554; or

21 (10) will disclose information required to be kept  
 22 confidential by any other statute establishing particular  
 23 criteria or referring to particular types of information.

24 (c)(1) Action under subsection (b) shall be taken only



1 when a majority of the entire membership of the agency, or  
 2 of the subdivision thereof authorized to conduct the meeting  
 3 on behalf of the agency, votes to take such action. A separate  
 4 vote of the agency members, or the members of a subdivision  
 5 thereof, shall be taken with respect to each agency meeting a  
 6 portion or portions of which are proposed to be closed to the  
 7 public pursuant to subsection (b), or with respect to any  
 8 information which is proposed to be withheld under subsec-  
 9 tion (b). A single vote may be taken with respect to a series  
 10 of meetings, a portion or portions of which are proposed to  
 11 be closed to the public, or with respect to any information  
 12 concerning such series of meetings, so long as each meeting in  
 13 such series involves the same particular matters, and is  
 14 scheduled to be held no more than thirty days after the initial  
 15 meeting in such series. The vote of each agency member par-  
 16 ticipating in such vote shall be recorded and no proxies shall  
 17 be allowed. Whenever any person whose interests may be  
 18 directly affected by a meeting requests that the agency close  
 19 a portion or portions of the meeting to the public for any of  
 20 the reasons referred to in paragraph (3) or (4) of sub-  
 21 section (b), the agency shall vote whether to close such meet-  
 22 ing, upon request of any one of its members. Within one day  
 23 of any vote taken pursuant to this paragraph, the agency  
 24 shall make publicly available a written copy of such vote.

25 (2) If a meeting or portion thereof is closed to the

1 public, the agency shall, within one day of the vote taken  
 2 pursuant to paragraph (1) of this subsection, make publicly  
 3 available a full written explanation of its action closing the  
 4 meeting, or portion thereof, together with a list of all persons  
 5 expected to attend the meeting, and their affiliation. The re-  
 6 quirements of this paragraph shall not apply to action closing  
 7 a preliminary meeting described in paragraph (2) of sub-  
 8 section (d).

9 (3) Any agency, a majority of whose meetings will  
 10 properly be closed to the public, in whole or in part, pursuant  
 11 to paragraph (6), (7)(A), or (8) of subsection (b), may  
 12 provide by regulation for the closing of such meetings, or  
 13 portion of such meetings, so long as a majority of the mem-  
 14 bers of the agency vote at the beginning of such meeting, or  
 15 portion thereof, to close the meeting, and a copy of such vote  
 16 is made available to the public. The provisions of this sub-  
 17 section, and subsection (d), shall not apply to any meeting  
 18 to which such regulations apply, except that the agency shall  
 19 provide the public with public announcement of the date,  
 20 place, and subject matter of the meeting at the earliest prac-  
 21 ticable opportunity.

22 (d)(1) In the case of each meeting, except a meeting  
 23 described by paragraph (2) of this subsection, the agency  
 24 shall make public announcement, at least one week before  
 25 the meeting, of the date, place, and subject matter of each

1 meeting, whether open or closed to the public, and the name  
 2 and phone number of the official designated by the agency to  
 3 respond to requests for information about the meeting. Such  
 4 announcement shall be made unless a majority of the mem-  
 5 bers of the agency, or of the members of the subdivision  
 6 thereof conducting the meeting, determines by a vote that  
 7 agency business requires that such meetings be called at an  
 8 earlier date, in which case the agency shall make public  
 9 announcement of the date, place, and subject matter of such  
 10 meeting, and whether open or closed to the public, at the  
 11 earliest practicable opportunity. The subject matter of a  
 12 meeting may be changed following the public announcement  
 13 required by this paragraph if (A) a majority of the entire  
 14 membership of the agency, or of the subdivision thereof con-  
 15 ducting the meeting, determines by a vote that agency busi-  
 16 ness so requires, and that no earlier announcement of the  
 17 change was possible, and (B) the agency publicly announces  
 18 such change at the earliest practicable opportunity. Imme-  
 19 diately following the public announcement required by this  
 20 paragraph, notice of such announcement shall also be sub-  
 21 mitted for publication in the Federal Register unless publi-  
 22 cation of such notice prior to the meeting is not practicable.

23 (2) In the case of a preliminary meeting concerned  
 24 solely with determining the date, place, and subject matter of  
 25 a subsequent meeting, and whether such subsequent meeting

1 should be open or closed to the public, the public announcement  
 2 of the date, place, and subject matter of such preliminary  
 3 meeting, and whether open or closed to the public, shall be  
 4 made at the earliest practicable opportunity.

5 (e) A complete transcript or electronic recording ade-  
 6 quate to fully record the proceedings shall be made of each  
 7 meeting, or portion of a meeting, closed to the public, ex-  
 8 cept for a meeting, or portion of a meeting, closed to the  
 9 public pursuant to paragraph (9) of subsection (b). The  
 10 agency shall make promptly available to the public the com-  
 11 plete transcript or electronic recording of the discussion at  
 12 such meeting of any item on the agenda, or of the testimony  
 13 of any witness received at such meeting, where such discus-  
 14 sion or testimony does not contain any information specified  
 15 in paragraphs (1) through (10) of subsection (b). Copies  
 16 of such transcript, or a complete transcription of such elec-  
 17 tronic recording disclosing the identity of each speaker, shall  
 18 be furnished to any person at the actual cost of duplication  
 19 or transcription. The agency shall maintain a complete ver-  
 20 batim copy of the transcript, or a complete electronic record-  
 21 ing of each meeting, or portion of a meeting, closed to the  
 22 public, for a period of at least two years after such meeting,  
 23 or until one year after the conclusion of any agency pro-  
 24 ceeding with respect to which the meeting, or a portion thereof,  
 25 was held, whichever occurs later.

1       (f) Each agency subject to the requirements of this sec-  
 2       tion shall, within one hundred and eighty days after the en-  
 3       actment of this Act, following consultation with the Office of  
 4       the Chairman of the Administrative Conference of the United  
 5       States and published notice in the Federal Register of at least  
 6       thirty days and opportunity for written comment by any  
 7       persons, promulgate regulations to implement the require-  
 8       ments of subsections (a) through (e) of this section. Any  
 9       person may bring a proceeding in the United States Dis-  
 10      trict Court for the District of Columbia to require an agency  
 11      to promulgate such regulations if such agency has not pro-  
 12      mulgated such regulations within the time period specified  
 13      herein. Any person may bring a proceeding in the United  
 14      States Court of Appeals for the District of Columbia to set  
 15      aside agency regulations issued pursuant to this subsection  
 16      that are not in accord with the requirements of subsections (a)  
 17      through (e) of this section, and to require the promulga-  
 18      tion of regulations that are in accord with such subsections.

19      (g) The district courts of the United States have juris-  
 20      diction to enforce the requirements of subsections (a) through  
 21      (e) of this section by declaratory judgment, injunctive relief,  
 22      or other relief as may be appropriate. Such actions may be  
 23      brought by any person against an agency or its members  
 24      prior to, or within sixty days after, the meeting out of which  
 25      the violation of this section arises, except that if public an-

1      nouncement of such meeting is not initially provided by the  
 2      agency in accordance with the requirements of this section,  
 3      such action may be instituted pursuant to this section at any  
 4      time prior to sixty days after any public announcement of  
 5      such meeting. Before bringing such action, the plaintiff  
 6      shall first notify the agency of his intent to do so, and allow  
 7      the agency a reasonable period of time, not to exceed ten  
 8      days, to correct any asserted violation of this section, except  
 9      that such reasonable period of time shall not be held to exceed  
 10     two working days where notification of such asserted violation  
 11     is made prior to a meeting which the agency has voted to  
 12     close. Such actions may be brought in the district wherein the  
 13     plaintiff resides, or has his principal place of business, or  
 14     where the agency in question has its headquarters. In such  
 15     actions a defendant shall serve his answer within twenty days  
 16     after the service of the complaint. The burden is on the  
 17     defendant to sustain his action. In deciding such cases the  
 18     court may examine any portion of a transcript or electronic  
 19     recording of a meeting closed to the public, and may take such  
 20     additional evidence as it deems necessary. The court, having  
 21     due regard for orderly administration and the public interest,  
 22     as well as the interests of the party, may grant such equitable  
 23     relief as it deems appropriate, including granting an injunc-  
 24     tion against future violations of this section, or ordering the  
 25     agency to make available to the public the transcript or elec-

1 *tronic recording of any portion of a meeting improperly*  
 2 *closed to the public. Except to the extent provided in subsec-*  
 3 *tion (h) of this section, nothing in this section confers jurisdic-*  
 4 *tion on any district court to set aside or invalidate any agency*  
 5 *action taken or discussed at an agency meeting improperly*  
 6 *closed to the public in violation of this section.*

7 *(h) Any Federal court otherwise authorized by law to*  
 8 *review agency action may, at the application of any person*  
 9 *properly participating in the proceeding pursuant to other*  
 10 *applicable law, inquire into asserted violations by the agency*  
 11 *of the requirements of this section, and afford any such relief*  
 12 *as it deems appropriate.*

13 *(i) In any action brought pursuant to subsection (f),*  
 14 *(g), or (h) of this section, the reasonable costs of litigation*  
 15 *(including reasonable fees for attorneys and expert witnesses)*  
 16 *may be awarded or apportioned among any of the original*  
 17 *parties, or their successors in interest, whenever the court*  
 18 *determines such award is appropriate. In the case of appor-*  
 19 *tionment of costs against an agency or its members, the costs*  
 20 *may be assessed by the court against the United States.*

21 *(j) The agencies subject to the requirements of this*  
 22 *section shall annually report to Congress regarding their*  
 23 *compliance with such requirements, including a tabulation*  
 24 *of the total number of agency meetings open to the public,*

1 *the total number of meetings closed to the public, the rea-*  
 2 *sons for closing such meetings, and a description of any*  
 3 *litigation brought against the agency under this section.*

4 *SEC. 202. (a) Section 557 of title 5, United States*  
 5 *Code, is amended by adding at the end thereof the following*  
 6 *new subsection:*

7 *“(d) In any agency proceeding which is subject to sub-*  
 8 *section (a) of this section, except to the extent required for*  
 9 *the disposition of ex parte matters as authorized by law—*

10 *“(1) no interested person shall make or cause to be*  
 11 *made to any member of the body comprising the agency,*  
 12 *administrative law judge, or other employee who is or*  
 13 *may be involved in the decisional process of the proceed-*  
 14 *ing, an ex parte communication relevant to the merits of*  
 15 *the proceeding;*

16 *“(2) no member of the body comprising the agency,*  
 17 *administrative law judge, or other employee who is or*  
 18 *may be involved in the decisional process of the proceed-*  
 19 *ing, shall make or cause to be made to an interested per-*  
 20 *son an ex parte communication relevant to the merits of*  
 21 *the proceeding;*

22 *“(3) a member of the body comprising the agency,*  
 23 *administrative law judge, or other employee who is or*  
 24 *may be involved in the decisional process of said proceed-*

ing who receives, or who makes, a communication in violation of this subsection, shall place on the public record of the proceeding:

“(A) written communications transmitted in violation of this subsection;

“(B) memorandums stating the substance of all oral communications occurring in violation of this subsection; and

“(C) responses to the materials described in subparagraphs (A) and (B) of this subsection;

“(4) upon receipt of a communication in violation of this subsection from a party, or which was caused to be made by a party, the agency, administrative law judge, or other employee presiding at the hearing may to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation;

“(5) the prohibitions of this subsection shall apply at such time as the agency may designate, but in no case shall they apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed,

in which case the prohibitions shall apply at the time of his acquisition of such knowledge.”.

(b) The second sentence of section 554(d) of title 5, United States Code, is amended to read as follows: “Such employee may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.”.

(c) Section 551 of title 5, United States Code, is amended—

(1) by striking out “and” at the end of paragraph (12);

(2) by striking out the “Act” at the end of paragraph (13) and inserting in lieu thereof “Act; and”

(3) by adding at the end thereof the following new paragraph:

“(14) ‘ex parte communication’ means an oral or written communication not on the record with respect to which reasonable prior notice to all parties is not given.”.

(d) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: “The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, con-

1 sider a violation of section 557(d) of this title sufficient  
2 grounds for a decision adverse to a party who has committed  
3 such violation or caused such violation to occur.”.

4 SEC. 203. Except as specifically provided by section 201,  
5 nothing in this title confers any additional rights on any per-  
6 son, or limits the present rights of any such person, to inspect  
7 or copy, under section 552 of title 5, United States Code, any  
8 documents or other written material within the possession of  
9 any agency. This title does not authorize any information to be  
10 withheld from Congress.

11 SEC. 204. The provisions of this title shall become ef-  
12 fective one hundred and eighty days after the date on which  
13 this Act is enacted, except that the provisions of section 201  
14 requiring the issuance of regulations to implement such sec-  
15 tion shall become effective upon enactment.



**[COMMITTEE PRINT NO. 3]**

JUNE 18, 1975

**Calendar No.**

**94TH CONGRESS  
1ST SESSION**

**S. 5**

**[Report No. 94— ]**

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**A BILL**

**To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.**

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**By Mr. CHILES, Mr. ABOUREZEK, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. LEAHY, Mr. MCGOVERN, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. RUBIOFF, Mr. ROTH, Mr. STAFFORD, Mr. STONE, Mr. SYMINGTON, Mr. TUNNEY, and Mr. WEICKER**

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JANUARY 15, 1975

Read twice and referred to the Committee on  
Government Operations

JUNE , 1975

Reported with an amendment

JMB

THE WHITE HOUSE  
WASHINGTON

July 25, 1975

MEMORANDUM FOR: THE STAFF SECRETARY  
THROUGH: PHIL BUCHEN *T.W.B.*  
FROM: BILL CASSELMAN *BC*  
SUBJECT: "Pennsylvania Avenue Development Corporation  
James Lynn Memo of July 23, 1975"

We have reviewed the attached memorandum and believe that there are two additional alternatives which the President should consider--one of which we would strongly recommend.

Both alternatives stem from the need to resolve the status of certain properties along the Avenue whose future has long been in doubt because of a statutory moratorium on construction, improvement, or demolition, not in conformance with the Plan. The properties in question include the Willard Hotel, Kann's, Lansburgh's and a parcel of land owned by the Penn Market Corporation. The owners of the Willard are already in court challenging the moratorium. Another year's delay will probably result in litigation by Penn Market and possibly Kann's and Lansburgh's.

In order to avert this problem, two additional alternatives should be put before the President. The first alternative ("2b") would be to endorse implementation of the Plan now and also submit legislation seeking borrowing authority for this fiscal year; the budget request, however, still would be made part of the FY 77 program.

By seeking authorizing legislation now, we would shorten the authorization-appropriation cycle. Hopefully, this would have the effect of staying the hand of owners who are concerned about a long-term cloud over their properties and are considering litigation. The Corporation is currently of the view that it will prevail in the Willard suit, but it realizes that courts do not have an infinite amount of patience with moratoria affecting the rights of property owners. The Corporation may not prevail in future suits. Therefore, we recommend this additional alternative as having all of the "pros and cons" of alternative 2a, plus the added benefit of possibly averting threatened litigation.





A second alternative ("2c") would be to seek an appropriation for funding the existing \$50 million borrowing authority to permit the purchase of the above-described properties this year. It is estimated that the cost of such acquisitions would be less than \$20 million. This alternative would also require endorsement of the Plan and the submission of legislation and a budget request as part of the FY 77 program. As such, alternative 2c would have the same general "pros" as 2a, but would require an expenditure of funds during FY 76. There would be no doubt, however, that this alternative would permit the Corporation to remove the cloud over major private properties and prevent the future deterioration of the area. Any potential litigation would thereby be thwarted.

Incidentally, we disagree with the first "con" in Alternative 2 that the Corporation staff would be "without significant functions in 1976." Assuming the Congress provides FY 76 salaries and expenses for the staff, there would be sufficient work to keep the Corporation active during the interim. Property appraisals, zoning changes, working drawings for landscaping and reconstructing the Avenue, street closings, gathering of development data, etc., still remain to be done.

As a final observation, we advise that the Administration communicate its views on the Plan immediately to the Senate and House Interior Committees. House Interior Subcommittee No. 1, chaired by Roy Taylor, has been holding hearings on the Plan and is anxiously awaiting an indication of an Administration position with respect to its implementation. Silence will not be taken as an assent by Taylor, who has been pressing Corporation witnesses for an indication of White House support for the Plan.



THE WHITE HOUSE  
WASHINGTON

July 24, 1975

MEMORANDUM FOR: THE STAFF SECRETARY

THROUGH: PHIL BUCHEN

FROM: BILL CASSELMAN *BC*

SUBJECT: Pennsylvania Avenue Development Corporation  
James Lynn Memo of July 23, 1975

We generally concur in the attached memorandum.

However, it should be noted that selection of the recommended option would probably require the Corporation to exercise its borrowing authority as soon as such authority is enacted and funded. This action would be necessary in order to acquire certain properties along the Avenue whose future has long been in doubt as a result of a statutory moratorium on construction, improvement, or demolition. The properties in question include the Willard Hotel, Kann's, and a parcel of land owned by the Penn Market Corporation. The owners of the Willard are already in court challenging the moratorium. Another year's delay will probably result in litigation by Penn Market and possibly Kann's.

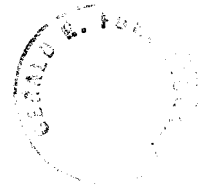
In order to avert this problem, it might be more advisable to seek the \$200 million in borrowing authority from the Congress now, with the understanding that an appropriation would not be sought until 1977. This would hasten the authorization-appropriation cycle and probably allow the Corporation to stay the hand of owners who are concerned about a long-term cloud over their properties. In the alternative, an appropriation could be sought under the existing \$50 million borrowing authority to allow the purchase of certain properties this year. It is estimated that the cost of such acquisitions would be less than \$10 million.



Assuming the Congress provides the FY 76 salaries and expenses for the Corporation staff, there should be sufficient work to keep the Corporation active during the interim. Property appraisals, zoning changes, working drawings for landscaping and reconstructing the Avenue, street closings, gathering of development data, etc., still remain to be done.

As a final observation, we would advise that the Administration communicate its views on the Plan immediately to the Senate and House Interior Committees. House Interior Subcommittee No. 1, chaired by Roy Taylor, has been holding hearings on the Plan and is anxiously awaiting an indication of an Administration position with respect to implementation of the Plan. Silence will not be taken as an assent by Taylor who has rightly been badgering Corporation witnesses for an indication of White House support for the Plan.

Enclosure



## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 23, 1975

Time:

FOR ACTION: Phil Buchen  
Jim Cannon  
Max Friedersdorf  
Jack Marsh

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Friday, July 25

Time: 10 A. M.

SUBJECT:

Pennsylvania Avenue Development Corporation  
James Lynn memo of July 23, 1975

## ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor  
For the President



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

JUL 23 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN  
SUBJECT: Pennsylvania Avenue Development Corporation

The purpose of this memorandum is to seek your guidance on whether the Administration should submit legislation to authorize funding to implement the Pennsylvania Avenue Development Plan.

Background

On November 19, 1974, the Pennsylvania Avenue Development Corporation in accordance with law transmitted the plan to the Congress. If, during the 60 day legislative review period neither House passed a resolution rejecting the plan, then execution could begin.

During the budget review process for FY 1976, the Corporation requested resources for plan implementation as well as salaries and expenses. At that time, you decided to request only salaries and expenses for the Corporation in 1976 and defer the decision on authorization of resources for plan implementation until the 60 legislative days of congressional review had expired.

The 60 legislative days have now run and no adverse congressional resolution was passed. Under the terms of the Act, no construction or structural improvement in the area may take place unless in conformity with the plan, thereby placing a cloud over all property within the development area.

Discussion

The authorization request for plan implementation consists of a \$130M Federal appropriation for the "public improvements" included in the plan, and two loan requests totalling \$200M to assist in the development of the project. The Corporation requests that the



Budget Authority for the \$130M Federal appropriation and the \$200M loan be made available immediately, though the outlays would occur over the approximately 14-year life span of the Corporation's development of the project.

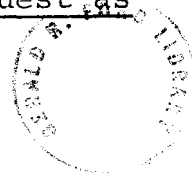
The rationale for this form of financing is that appropriation of the full Federal share would be a catalyst for private investment in the project. Presently, it appears that there is little likelihood of significant private investment, given the area's deteriorated surroundings. The Corporation's staff strongly argues that the front-end authority is needed to provide adequate assurance that the \$250M private investment called for by the plan can be realized.

The \$130M appropriation (first year outlays--\$8.8M) would be used to pay for public costs not normally borne by private developers. These costs include public works, relocation assistance, site improvements, historic preservation and renovation, and costs for changes in land use, e.g., the downzoning of one site from commercial to residential.

The \$200M in borrowing authority is to be used to finance land acquisitions. These costs would be recovered from either ground sales or ground leases. It is anticipated that \$50M of the \$200M in borrowing authority would be used in a construction revolving fund to finance all mortgageable expenses involved in building costs (construction, taxes, interest, insurance, etc.). These costs would be recovered at mortgage closings and the use of revolving funds should allow savings in time and cost.

#### Alternatives

- Alternative #1. Submit legislation providing the resources necessary to begin plan implementation.
- Alternative #2. Submit no legislation at this time but submit both legislation and a budget request in January 1976 as part of the 1977 budget submission.
- Alternative 2a. Endorse implementation of plan now but submit legislation and budget request as part of the 1977 budget.



Alternative #3. Submit legislation to repeal the plan and further Federal involvement in the development of Pennsylvania Avenue.

Pros and Cons

Alternative #1. (Provide resources for implementation)

Pro

- Would provide for immediate actions to improve the Pennsylvania Avenue area based upon a detailed agreed upon plan.
- Would remove all clouds over property in the area.
- Would carry out previous Administration commitments and sponsorship of the program.
- Follows-up on presumed intent of Congress to implement the plan.

Con

- Would provide substantial Federal resources in a limited political and geographical area.
- Would provide resources in an area which is not as economically depressed as others (locally or nationally).
- Would begin a "new start" in FY 1976, although major expenditures would occur in future years. (FY 1976 outlays--\$8.8M)

Alternative #2. (Submit legislation and budget request for FY 1977)

Pro

- Provides no Administration endorsement of new Federal expenditures in FY 1976.

Con

- Leaves the Corporation staff without significant functions in 1976.



- Risks possibility of no congressional funding for salaries and expenses of Corporation staff in FY 1976.
- Leaves a 12 month cloud over already negatively affected private property in area, because of requirement that construction be in conformance with the plan.
- Could contribute to further and more rapid deterioration of the area.
- Conflicts with presumed intent of Congress in allowing plan to become effective.

Alternative #2a. (Endorse implementation of the plan now but submit legislation and budget request as part of the FY 1977 program.)

Pro

- Would confirm Administration endorsement of program but avoid new Federal expenditures in FY 1976.

Con

- Same as #2 above, but possibly lessened by private commitment to program in future.

Alternative #3. (Submit legislation to repeal plan implementation.)

Pro

- Removes all questions regarding Federal involvement and allows private market forces to operate.
- Insures no future Federal expenditures for this proposal.

Con

- Could lead to haphazard development of the "National Avenue."
- Some other Federal plan for avenue development could again become law.
- Contrary to presumed congressional intent in allowing plan to become operative.



Recommendation

OMB recommends Alternative #2a. Submission of a legislative package to implement the Pennsylvania Avenue plan would be deferred until submission of your FY 1977 program in January 1976. An announcement at this time, however, that within the budgetary totals arrived at for FY 1977, sufficient funds will be included to get the plan underway would lessen objections from proponents in Congress and elsewhere.

These alternatives have been reviewed by the Domestic Council and Jack Marsh. They also recommend Alternative #2a.

