January 21, 1976

MEMORANDUM FOR: JIM LYNN

FROM: JACK MARSH

John Rhodes called me today to express great concern he and others have on the pending Sunshine Act, which will be reported out shortly according to Horton and McCloskey, both of whom share his concern.

John would like to have as quickly as possible as much information as we can give him from the standpoint of debate and amendments when the matter comes before the Floor. He has requested information on the cost of this measure.

In this regard, he would like to have OMB furnish him with a projected cost of the Freedom of Information Act, the Privacy Act and the Sunshine Act, if the latter becomes law.

Would it be possible for someone in your Department to prepare the cost estimates on these three measures as per Congressman Rhodes' request?

Many thanks.

JOM/dl
cc: Max Friedersdorf
Alan Kranowitz

Reported out

94TH CONGRESS
2D SESSION

H. R. 11656

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1976

Ms. ABZUG (for herself, Mr. FASCELL, Mr. BROOKS, Mr. MOSS, Mr. MACDONALD of Massachusetts, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. WRIGHT, Mr. FUQUA, Mr. CONYERS, Mr. JAMES V. STANTON, Ms. COLLINS of Illinois, Mr. JOHN L. BURTON, Mr. HARRINGTON, Mr. DRINAN, Mr. MEZVINSKY, Ms. JORDAN, Mr. EVANS of Indiana, Mr. MOFFETT, Mr. MAGUIRE, Mr. ASPIN, Mr. GUDE, Mr. MCCLOSKEY, Mr. STEELMAN, and Mr. PRITCHARD) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes

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

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 552 (e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of agency business; and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b) Except as provided in subsection (c), every por-

tion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

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

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose information required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

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

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

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates

currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance where the content or nature of the proposed agency action already has been disclosed to the public by the agency, or where the agency is required by law to make such disclosure prior to taking final agency action on such proposal; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d) (1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency

members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this sub-

section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

"(4) Any agency, a majority of the portions of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such portions in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the date, place, and subject matter of the meeting and each portion thereof at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether

it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time and in no case later than the commencement of the meeting or portion in question. The time, place, or subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph only if (1) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(f) (1) A complete transcript or electronic recording adequate to record fully the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, ex-

cept for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of subsection (c). The agency shall make promptly available to the public, in a location easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, except for such portion or portions of such discussion or testimony as the agency, by recorded vote taken subsequent to the meeting and promptly made available to the public, determines to contain information specified in paragraphs (1) through (10) of subsection (c). In place of each portion deleted from such a transcript or transcription the agency shall supply a written explanation of the reason for the deletion, and the portion of subsection (c) and any other statute said to permit the deletion. Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at no greater than the actual cost of duplication or transcription or, if in the public interest, at no cost. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency pro-

ceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

"(2) Written minutes shall be made of any agency meeting, or portion thereof, which is open to the public. The agency shall make such minutes promptly available to the public in a location easily accessible to the public, and shall maintain such minutes for a period of at least two years after such meeting. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time therefor provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Colum-

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

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the

public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public such portion of the transcript or electronic recording of a meeting as is not authorized to be withheld under subsection (c) of this section. Except to the extent provided in subsection (i) of this section, nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the judicial review proceeding, inquire into violations by the agency of the requirements of this section and afford any such relief as it deems appropriate.

"(j) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g), (h), or (i) of this section, except that costs may be assessed against an individual member of an agency only in the case

where the court finds such agency member has intentionally and repeatedly violated this section and against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(k) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(l) Except as specifically provided in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, except that the provisions of this Act shall govern in the case of any request made pursuant to such section to copy or inspect the transcripts or electronic recordings described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in subsection (f) of this section.

"(m) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(n) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to such individual under section 552a of this title.

"(o) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

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

"(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda

stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

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

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

"(2) This section does not constitute authority to withhold information from Congress.".

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

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

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

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

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.".

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings),".

(b) Section 552 (b) (3) of title 5, United States Code, is amended to read as follows:

"(3) required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;".

EFFECTIVE DATE

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect one hundred and eighty days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3 (a) of this Act, shall take effect upon enactment.

COMMITTEE ON
GOVERNMENT OPERATIONS

U.S. House of Representatives
2157 RAYBURN HOUSE OFFICE BUILDING
225-5051

MEMORANDUM

TO: Minority Members
Committee on Government
Operations

FROM: Minority Staff

Attached is a copy of the Horton substitute for H.R.11656 as revised 2/24/76.

THE SUBSTITUTE BILL IS THE SAME AS H.R. 11656 EXCEPT AS INDICATED BELOW

SEC. 3, Subsection (a)(1). The definition of "agency" is a specific list of the affected agencies and replaces the unclear definition in H.R. 11656 which would lead to unnecessary confusion and litigation.

Subsection (a)(2) limits the definition of meeting to gatherings for the purpose of conducting official agency business of at least the number of individual agency members required to take final action on behalf of the agency. The definitions in H.R. 11656 would apply even to encounters which were not gatherings for the purpose of acting in behalf of the agency.

Subsection (d)(3)

Subsection (f)(1) requires for every meeting closed pursuant to the provisions of this legislation the retention of a minute entry by the agency in lieu of the verbatim transcript required in H.R. 11656. References to a transcript or electronic recording are deleted from subsections (h), (1), and (n).

Subsection (h) limits venue for actions brought under this legislation to the district in which the agency in question has its headquarters or where the meeting in question occurred. H.R. 11656 permits such action to be brought also where the plaintiff resides or has his principal place of business.

Subsection (j) eliminates the personal liability of an individual agency member for attorney's fees and costs provided in H.R. 11656.

SEC. 4 (d)(1) adds "knowingly" to the H.R. 11656 definition of ex parte communications prohibited by the section, and by deleting the word "public" on page 15, line 20, exempts from placement in the public record all documents, or portions thereof, even though the nature of which, if the subject of an agency meeting, would permit the closing of such meeting. H.R. 11656 would require disclosure of such documents in every case.

In general, the purpose

Generally,

WRITE ONLY ON ONE SIDE OF EACH PAGE

94th CONGRESS
2d SESSION

H.R.

IN THE HOUSE OF REPRESENTATIVES

Mr. HORTON introduced the following bill; which was referred to the Committee on

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.
(Insert title of bill here)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings

"(a) For purposes of this section --

"(1) the term 'agency' means

Board for International Broadcasting;
Civil Aeronautics Board;
Commodity Credit Corporation (Board of Directors);
Commodity Futures Trading Commission;
Consumer Product Safety Commission;
Equal Employment Opportunity Commission;
Export-Import Bank of the United States (Board of Directors);
Federal Communications Commission;
Federal Election Commission;
Federal Deposit Insurance Corporation (Board of Directors);
Federal Farm Credit Board within the Farm Credit Administration;
Federal Home Loan Bank Board;
Federal Maritime Commission;
Federal Power Commission;
Federal Reserve Board;
Federal Trade Commission;
Harry S. Truman Scholarship Foundation (Board of Trustees);
Indian Claims Commission;
Inter-American Foundation (Board of Directors);
Interstate Commerce Commission;
Legal Services Corporation (Board of Directors);
Mississippi River Commission;
National Commission on Libraries and Information Science;
National Council on Educational Research;
National Council on Quality in Education;
National Credit Union Board;
National Homeownership Foundation (Board of Directors);
National Labor Relations Board;
National Library of Medicine (Board of Regents);
National Mediation Board;
National Science Board of the National Science Foundation;
National Transportation Safety Board;
Nuclear Regulatory Commission;
Occupational Safety and Health Review Commission;
Overseas Private Investment Corporation (Board of Directors);
Parole Board;
Railroad Retirement Board;
Renegotiation Board;
Securities and Exchange Commission;
Tennessee Valley Authority (Board of Directors);
Uniformed Services University of the Health Sciences (Board of Regents);
U.S. Civil Service Commission;
U.S. Commission on Civil Rights;
U.S. Foreign Claims Settlement Commission;
U.S. International Trade Commission;
U.S. Postal Service (Board of Governors); and
U.S. Railway Association;

"(2) the term 'meeting" means the gathering for the purpose of conducting official agency business of at least the number of individual agency members required to take final action on behalf of the agency; and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b) Except as provided in subsection (c), every por-

tion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

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

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose information required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

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

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

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates

currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance where the content or nature of the proposed agency action already has been disclosed to the public by the agency, or where the agency is required by law to make such disclosure prior to taking final agency action on such proposal; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d) (1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency

members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this sub-

section, make publicly available a full written explanation of its action closing the portion ~~together with a list of all persons requested to attend the meeting and their affiliation~~.

"(4) Any agency, a majority of the portions of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such portions in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the date, place, and subject matter of the meeting and each portion thereof at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether

it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time and in no case later than the commencement of the meeting or portion in question. The time, place, or subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph only if (1) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(f)(1)For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall

publicly certify that, in his opinion, the meeting may be closed to the public and shall state the relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the date, time and place of the meeting, the persons present, the generic subject matter of the discussion at the meeting, and the actions taken, shall be incorporated into a minute entry retained by the agency."

"(2) Written minutes shall be made of any agency meeting, or portion thereof, which is open to the public. The agency shall make such minutes promptly available to the public in a location easily accessible to the public, and shall maintain such minutes for a period of at least two years after such meeting. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time therefor provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Colum-

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

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district where the agency in question has its headquarters or where such meeting occurred. In such actions a defendant shall serve his answer within twenty days after the service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the defendant to sustain his action. [redacted]

~~public, and may take such additional evidence as it deems necessary~~. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, ~~requiring the agency to make available to the public such portion of the transcript or electronic recording of a meeting as is not authorized to be withheld under subsection (c) of this section.~~ Except to the extent provided in subsection (i) of this section, nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the judicial review proceeding, inquire into violations by the agency of the requirements of this section and afford any such relief as it deems appropriate.

"(j) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g), (h), or (i) of this section, except that costs may be assessed

against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(k) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(l) Except as specifically provided in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, ~~except that the provisions of this Act shall govern in the event of any request made pursuant to such section to copy or inspect the transcripts or electronic recordings described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in subsection (f) of this section.~~

"(m) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(n) Nothing in this section authorizes any agency to withhold from any individual any record, ~~including transcripts or electronic recordings required by this Act,~~ which is otherwise accessible to such individual under section 552a of this title.

"(o) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

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

"(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall knowingly make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall knowingly make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who knowingly makes or causes to be made, a communication prohibited by this subsection shall place on the [redacted] record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda

stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and knowingly made or 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 on account of such violation; and

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

"(2) This section does not constitute authority to withhold information from Congress.".

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

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

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

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

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.".

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings),".

(b) Section 552 (b) (3) of title 5, United States Code, is amended to read as follows:

"(3) required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;".

EFFECTIVE DATE

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect one hundred and eighty days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3 (a) of this Act, shall take effect upon enactment.

THE SUBSTITUTE BILL IS THE SAME AS H.R. 11656 EXCEPT AS INDICATED BELOW

SEC. 3, Subsection (a)(1). The definition of "agency" is a specific list of the affected agencies and replaces the unclear definition in H.R. 11656 which would lead to unnecessary confusion and litigation.

Subsection (a)(2) limits the definition of meeting to gatherings for the purpose of conducting official agency business of at least the number of individual agency members required to take final action on behalf of the agency. The definitions in H.R. 11656 would apply even to encounters which were not gatherings for the purpose of acting in behalf of the agency.

Subsection (d)(4). The requirement of H.R. 11656 to list all persons expected to attend a closed meeting and their affiliation is deleted in the substitute because inferences not in the public interest could be drawn from such information.

Subsection (f)(1) requires for every meeting closed pursuant to the provisions of this legislation public certification by the chief legal officer of the agency citing the relevant exemptive provisions and the retention of a minute entry by the agency in lieu of the verbatim transcript required in H.R. 11656. Such entry shall incorporate a copy of the certification, together with a statement from the presiding officer of the meeting setting forth the date, time and place of the meeting, the persons present, the generic subject matter of the discussion at the meeting, and the actions taken. References to a transcript or electronic recording are deleted from subsections (h), (l), and (n).

Subsection (h) limits venue for actions brought under this

legislation to the district in which the agency in question has its headquarters or where the meeting in question occurred. H.R. 11656 permits such action to be brought also where the plaintiff resides or has his principal place of business.

Subsection (j) eliminates the personal liability of an individual agency member for attorney's fees and costs provided in H.R. 11656.

SEC. 4 (d)(1) adds "knowingly" to the H.R. 11656 definition of ex parte communications prohibited by the section, and by deleting the word "public" on page 15, line 20, exempts from placement in the public record all documents, or portions thereof, even though the nature of which, if the subject of an agency meeting, would permit the closing of such meeting. H.R. 11656 would require disclosure of such documents in every case.

NOTE: Deletions are indicated on the enclosed copy of the substitute bill.

Treasury advance

State set up agents comm

230,000 over budget of Treas

(1) 2 visas 5/5

(2) 230,000 ?!?

(3) addit'l comm & 2 with CA did go

(4) State not in mtg

(5) HHAC going to Calif

FEB 2[illegible] 1976

THE WHITE HOUSE
WASHINGTON

Date February 25, 1976

TO: RUSS ROURKE

FROM: KEN LAZARUS

ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

_____ Prepare Response

_____ Please Handle

XX For Your Information

_____ File

REMARKS:

Attached is a copy of the draft memo which I have done up for Jack's signature. Before it was even signed, Jack and Max stopped me in the hall, took the original and gave it to Cheney for his discussion with the President.

I will keep you posted.

THE WHITE HOUSE

Washington

February 25, 1976

MEMORANDUM FOR THE PRESIDENT

THROUGH:

FROM:

SUBJECT: H.R. 11656 and S. 5 --
"Government in the Sunshine" Bills.

This is to present a series of options which are available to you in responding to legislative initiatives on the bills noted above.

BACKGROUND

H.R. 11656 and its companion measure in the Senate, S. 5, are referred to as "Sunshine" bills. They would require that certain "multiheaded" agencies, e.g., FTC, SEC, CSC, etc., give advance notice of their meetings and hold them open to public observation unless they vote to close a session for reasons specifically enumerated in the bill. For those meetings which an agency votes to close, a verbatim transcript would have to be made.

On November 6, 1975, the Senate by a vote of 94-0 passed S.5. On January 21, the House Subcommittee on Government Information and Individual Rights reported H.R. 11656 to the full House Committee on Government Operations which placed the bill on its agenda for a meeting scheduled for February 26.

It is doubtful that final consideration by the full House Government Operations Committee can be delayed.

Aside from the problems necessarily attendant to the basic purpose of these bills, six major problems remain.

SHORTCOMINGS

First, the agencies to be covered are defined very ambiguously and uncertainly. This could lead to litigation over just which agencies are covered. It is possible that agencies which are not intended to be covered such as the

Council of Economic Advisers may fall within this expansive definition. OMB and Justice have urged that the agencies be covered by specifically listing them.

Second, the requirement for making and keeping a verbatim transcript of all closed meetings, and the judicial review thereof to insure a proper closing, may well have an inhibiting effect on the staff discussions which these agencies have. Additional problems are raised by the requirement for transcribing discussions pertaining to market-sensitive financial information.

Third, the definition of "meeting" subject to the provisions of the bill turns on what is actually discussed at the meeting, a definition which is as difficult for the agency to bear the burden of proving (as it must if challenged in court) as it is conceptually to understand.

Fourth, the bill would permit a civil action to be brought against the individual members of relevant agencies and when a plaintiff substantially prevails in such action and the members actions in violation of the bill are "intentional and repeated", attorney fees and other costs of the plaintiff may be assessed against the individual member. On the other hand, costs could go against the plaintiff when the suit was initiated "primarily for frivolous or dilatory purposes"

Fifth, the bill would amend the Freedom of Information Act to reverse a recent Supreme Court decision which held that statutes which authorize the withholding of information upon a finding as general as the public interest are valid authority to withhold information under the Freedom of Information Act.

Sixth, venue provisions set forth in the bill would authorize the filing of suit anywhere in the Nation to enforce its provisions.

So far the most vocal opponents of the bills have been the SEC and the FRB, although OMB and Justice who have been quite active and every other agency which has commented on the bill has also objected to it.

Frank Horton has drafted a substitute bill which would resolve these major shortcomings, and Pete McCloskey is prepared with a series of amendments should the substitute bill be voted down. The minority members want your position on this "Sunshine" legislation.

OPTIONS

In presenting the options below, the assumption has been made that the bill even as currently written would not have a veto sustained on a vote to override.

The options are:

1. Authorize Frank Horton and Pete McCloskey to state that you would veto the "Sunshine" bill in its current form.

PRO: If an override vote is in doubt, this would most likely result in changes to some of the most objectionable provisions.

CON: Would "escalate" the issue and posture you against "sunshine".

2. Authorize Horton and McCloskey to state that you would sign their bill in the nature of a substitute, and say nothing of a veto.

PRO: Would show that the minority had your support and permit speculation on a veto.

CON: The "sunshine" advocates may be more responsive to an express veto threat.

3. Avoid taking any position on this legislation at this time.

PRO: Avoids being publicly postured against "sunshine" and the concept of "open government".

CON: Significantly reduces the prospects of making the needed changes and would "deflate" the zeal of the minority members.

RECOMMENDATIONS:

We recommend Option 2, and also suggest that you speak to both Frank Horton and Pete McCloskey by phone, today if possible, but prior to tomorrow morning's meeting of the full House Government Operations Committee. There would not appear to be any advantage to be gained in actually meeting with Horton and McCloskey at this time.

THE WHITE HOUSE
WASHINGTON

Connie:

Russ said to put a copy of this in pending. He said you will have to continue to bug these people for the legislation.

Donna has the file -- she has made up a subject file on this.

k

2/25/76

THE WHITE HOUSE

WASHINGTON

February 12, 1976

MEMORANDUM FOR: JACK MARSH

FROM: RUSS ROURKE

Jack, as I mentioned to you, I participated in a meeting on Wednesday dealing with "Government in the Sunshine" legislation. Based on the content of that meeting, it has been decided that the attached draft memo from you to the President should not be sent.

In brief, the legislation as presently proposed would be an absolute disaster. We explored various possibilities directed at either delaying Committee and House floor action on this legislation or, if that effort proved futile, possible ways to amend the legislation to make it more acceptable.

In any event, based on the 94-0 vote it got in the Senate and the fact that there is a "motherhood" title, it is highly unlikely that a veto would be successful. I will continue to work with Dick Parsons, Ken Lazarus and Ed Schmults on this matter.

It is anticipated that a revised memo from you to the President will be prepared within the next several weeks.

(FYI, Bill Nichols of OMB is also closely involved in this matter.)

R — memo aborted in favor of this go but for background M

February 13, 1976

MEMORANDUM FOR: KEN LAZARUS

FROM: RUSS ROURKE

Ken, reference the attached copy of my February 12 memo to Jack Marsh concerning the "Government in the Sunshine" meeting. Jack suggests that a background only memo be submitted to the President now. Taking advantage of your very gracious offer for a second time, may I ask that you prepare a current status background memo (without options), from Jack Marsh to the President.

Thanks again, Ken.

RAR:kar

THE WHITE HOUSE
WASHINGTON

February 10, 1976

MEMO FOR: ED SCHMULTS
DICK PARSONS
/RUSS ROURKE

FROM: KEN LAZARUS

Attached is a draft memorandum to the President on the "Government in the Sunshine" bills.

A meeting is set with Congressmen McCloskey and Horton at 2 p.m. Wednesday (2/11) in the Roosevelt Room. We can finalize the memo after this meeting.

THE WHITE HOUSE

WASHINGTON

DRAFT

February 10, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JACK MARSH

SUBJECT: H. R. 11656 and S. 5 --
"Government in the Sunshine" Bills.

This is to present a series of options which are available to you in responding to legislative initiatives on the bills noted above.

BACKGROUND

H. R. 11656 and its companion measure in the Senate, S. 5, are referred to as "Sunshine" bills. They would require that certain "multiheaded agencies"(e.g., FTC, SEC, CSC, etc.) give advance notice of their meetings and hold them open to public observation unless they vote to close a session for reasons specifically enumerated in the bill. For those meetings which an agency votes to close, a verbatim transcript would have to be made.

On November 6, 1975, the Senate by a vote of 94-0 passed S. 5. On January 21, the House Subcommittee on Government Information and Individual Rights reported H. R. 11656 to the full House Committee on Government Operations which placed the bill on its agenda for a meeting scheduled for February 19. (Postponed)

Although I am hopeful that consideration by the full House Government Operations Committee will be delayed until March when several key minority members will be present, the Administration will soon be forced to announce a firm position on these proposals.

SHORTCOMINGS

Aside from the problems necessarily attendant to the basic purpose of these bills, five major problems remain:

First, the agencies to be covered are defined very ambiguously and uncertainly. This could lead to litigation over just which agencies are covered. It is possible that agencies which are not intended to be covered such as the Council of Economic Advisers may fall within this expansive definition. OMB and Justice have urged that the agencies be covered by specifically listing them.

Second, the requirement for making and keeping a verbatim transcript of all closed meetings, and the judicial review thereof to insure a proper closing, may well have an inhibiting effect on the staff discussions which these agencies have. Rod Hills and Arthur Burns are also particularly upset about transcribing discussions pertaining to market-sensitive financial information especially since the bill does not authorize withholding these transcripts from Congress. However, a floor amendment in the Senate to exempt the SEC and FRB from coverage was defeated 57-36, and the House Subcommittee defeated an amendment offered by Pete McCloskey to exempt this type of information from the transcript requirement.

Third, the definition of "meeting" subject to the provisions of the bill turns on what is actually discussed at the meeting, a definition which is as difficult for the agency to bear the burden of proving (as it must if challenged in court) as it is conceptually to understand.

Fourth, the bill would permit a civil action to be brought against the individual members of relevant agencies and when a plaintiff substantially prevails in such action and the members actions in violation of the bill are "intentional and repeated", attorney fees and other costs of the plaintiff may be assessed against the individual member. On the other hand, costs could go against the plaintiff when the suit was initiated "primarily for frivolous or dilatory purposes."

Fifth, the bill would amend the Freedom of Information Act to reverse a recent Supreme Court decision which held that statutes which authorize the withholding of information uponafinding as general as the public interest are valid authority to withhold information under the Freedom of Information Act.

In addition, there are a variety of poorly drafted provisions which would make the operation under the bill burdensome, slow and costly.

So far the most vocal opponents of the bills have been the SEC and the FRB, although OMB and Justice who have been quite active and every other agency which has commented on the bill have also objected to it.

OPTIONS

In presenting the options set forth below, the assumption has been made that the bill even as currently written would not have a veto sustained on a vote to override.

The options are:

1. Clearly signal or have OMB signal that unless the major problems are corrected, the bill will be vetoed.

PRO: Would likely result in desirable changes in some of the most objectionable provisions of the bill.

CON: Would likely ensure passage of the measure during this session.

2. Propose, or have proposed, a set of specific amendments to meet the major objections to the bill.

PRO: Same as option #1 but also offers something "positive" in place of a veto threat.

CON: Same as option #1. Additionally, congressional concern may be more responsive to threats of veto than offers of signature.

3. Do not commit to a course of action at this time, but "string out" the legislative action in hopes of inaction this session.

PRO: If successful would avoid both a bill and a veto.

Avoids any negative Presidential involvement.

CON: There is a great deal of momentum behind this "motherhood" issue and the changes of a successful delay "may not be good.

The delaying action will not go unnoticed by the bill's proponents.

DECISION

Option 1 (signal veto unless amended) _____

Option 2 (propose specific amendments) _____

Option 3 (delay Congressional action) _____

[1/28/76]

...President with ...of the Senate, ...the bill in... ...which formal ...to those at which ...to dis... ...of agency ...would ...meeting of the ...Business is con...

...that every meeting ...unless it falls within ...specific exemptions ...as to whether a portion ...the presumption ...favor of opening. Even if a ...within an exception, the ...may be open where the public ...so requires.

...meeting may be closed unless a ...majority of the membership votes to ...such action. Such a vote need not ...occur during a meeting and could ...only be taken by circulating a writ... ...ballot or tally sheet in advance.

A copy of each vote on closing a meeting must be made available to the public whether or not the meeting or portion is closed. This will inform the public as to the full voting record of each agency member on openness questions. When a vote on the issue of closing fulfills the requirements for closing, an explanation of the action and a list of persons expected to attend the meeting must also be made public.

Agencies are required to publicly announce, at least 1 week prior to a meeting, its date, location, and other relevant information.

The keeping of a complete, verbatim transcript or electronic recording of each portion of a meeting closed to the public would be required—except for discussions dealing with adjudications or agency participation in civil actions—and any portion of each transcript or recording whose release would not have the effect set forth in one or more of the exemptions would have to be made available to the public. Under the bill as approved by the Government Operations Committee, deletions would be replaced by a written explanation of the reason and the statutory authority for each. Written minutes of open meetings will also be required to be kept and made publicly available.

Any person could challenge in court the closing of a meeting or any other violation of the openness requirements of the bill, and the burden of sustaining the closing or other action in question would be upon the agency. The court could enjoin future violations of the act or release the transcript of an improperly closed meeting.

II. EX PARTE COMMUNICATIONS

Section 4 of the bill would enact a general prohibition on ex parte communications between agency decisionmaking personnel, including commissioners and administrative law judges, and outside persons having an interest in the outcome of a pending proceeding. These provisions would apply to executive agencies without regard to whether they are headed by a collegial body or a single individual.

The communications prohibited by the exparte section would include only those relative to the merits of the proceeding. Thus, an inquiry of an agency clerk as to the procedural status of an adjudication or rulemaking matter would not be unlawful under the bill. A violation of the ...in something ...of the proceeding ...on the merits ...unfair ...ex parte ...law. See, for example, *Home Box Office, Inc. v. FCC*, 567 F. 2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977).

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2 of the bill entitle it the "Government in the Sunshine" Act and set forth a policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government.

Section 3 of the bill, which contains the open meeting provisions, would enact a new section 552b of title 5 of the United States Code. The new section would be composed of subsections (a) through (o), which provide as follows:

Subsection (a) contains definitions. Subsection (a)(1) defines "agency" to include any agency, as defined in the Freedom of Information Act, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President and confirmed by the Senate, as well as any subdivision thereof authorized to act on behalf of the agency.

Subsection (a)(2) defines a "meeting" as an assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency. A "meeting" does not include meetings held solely to take action under this section.

Subsection (a)(3) defines "member" as an individual who belongs to a collegial body heading an agency. If a majority of the members of an agency or subdivision are appointed by the President and confirmed by the Senate, then any member of the body in question is covered by the bill. For example, the Federal Open Market Committee, which sets our monetary policy, has 12 members, seven of whom are appointed by the President and confirmed by the Senate and five of whom are not. Since the FOMC is an "agency" under the legislation, all 12 individuals are "members."

Subsection (b)(1) provides that agency members shall not jointly conduct or dispose of agency business without complying with the provisions of this legislation.

Subsection (b)(2) provides that every portion of every meeting of an agency shall be open to public observation, except as provided in subsection (c). The agency must provide adequate seating space, visibility, and acoustics. The public is intended to be in the same room as the agency members.

Subsection (c) permits an agency to close a meeting and to withhold the transcript thereof where the disclosure of the information to be discussed can be reasonably expected to come within 1 of 10 exemptions. These exemptions, which roughly parallel those in the Freedom of Information Act, include—

First, material concerning the nation defense.

Second, information related solely to the internal personnel rules and practices of an agency.

Third, information required or permitted to be withheld by any other statute containing particular criteria. I have been asked whether section 212(f) of the Immigration Act, 8 U.S.C. 1182(f), comes within this provision. I have reviewed that statute and I believe that it does qualify. The same is true as to 18 U.S.C. section 9, a part of the Census Title.

Fourth, information that would disclose trade secrets and commercial or financial material obtained from a person and privileged or confidential, as interpreted in cases such as *National Parks & Conservation Assn. v. Morton*, 498 2d 765, 770 (D.C. Cir. 1974).

Fifth, a discussion that would involve accusing any person of a crime, or formally censuring any person.

Sixth, information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Seventh, investigatory information compiled for law enforcement purposes if it falls into one of six specific categories listed in this paragraph.

Eighth, information contained in or relating to bank condition reports.

Ninth, information the premature disclosure of which would be likely to lead to significant financial speculation, significantly endanger the stability of any financial institution, or significantly frustrate implementation of a proposed agency action. The last part of this exemption will not apply where the content or nature of the proposed agency action has been disclosed to the public by the agency, or where the agency will be required to make such disclosure prior to taking final action on the proposal.

Tenth, discussions that specifically concern the agency's issuance of a subpena, or the agency's participation in an adjudication by the agency.

Subsection (d) provides methods and procedures for closing a meeting. A majority of the agency membership must vote to close and all votes on the issue of closing must be made public. If a meeting is closed, an explanation of the closing and a list of those expected to attend must be made public. A specific short-cut procedure is provided in subsection (d)(4) for agencies who have a large volume of certain types of meetings and expect to close most or all of them.

Subsection (e) requires a week's notice of a meeting, unless agency business requires a lesser time period.

Subsection (f) requires a transcript or electronic recording to be made of a closed meeting, unless closed under exemption (10), relating to civil and administratory proceedings. The transcript or recording shall promptly be made available to the public, except for such portions as the agency determines contain information falling within 1 of the 10 exemptions. The bill as reported by the Government Operations Committee

Pettis	Satterfield	Thompson
Pickle	Schneebeli	Thone
Pike	Schroeder	Thornton
Poage	Schulze	Treen
Preyer	Sebelius	Udall
Price	Shipley	Ullman
Pritchard	Shriver	Van Deerlin
Quie	Sikes	Vander Veen
Quillen	Simon	Vanik
Rangel	Sisk	Vigorito
Reuss	Slack	Waggonner
Richmond	Smith, Iowa	Walsh
Rinaldo	Smith, Nebr.	Wampler
Risenhoover	Snyder	Weaver
Roberts	Solarz	Whalen
Robinson	Spellman	White
Rodino	Spence	Whitehurst
Roe	Staggers	Whitten
Rogers	Stanton,	Wilson, Bob
Rooney	J. William	Wilson, C. H.
Rose	Stanton,	Winn
Rosenthal	James V.	Wirth
Rostenkowski	Stark	Wolff
Roush	Steed	Wright
Rousselot	Steelman	Wydler
Roybal	Steiger, Wis.	Wylie
Runnels	Stokes	Yates
Ruppe	Studds	Yatron
Russo	Symms	Young, Alaska
Ryan	Symington	Young, Fla.
St Germain	Talcott	Young, Tex.
Santini	Taylor, Mo.	Zablocki
Sarasin	Taylor, N.C.	Zeferetti
Sarbanes	Teague	

NAYS—0

NOT VOTING—41

Baggi	Jones, Tenn.	Rostenkowski
Burton, John	Kelly	Sisk
Carney	Landrum	Skubitz
Clay	Litton	Steiger, Ariz.
Daniel	Lundine	Stephens
Esch	Mathis	Stratton
Fenwick	O'Hara	Stuckey
Fountain	O'Neill	Sullivan
Gaydos	Peyser	Symington
Hansen	Rees	Wampler
Hébert	Regula	Wiggins
Helstoski	Rhodes	Wilson, Tex.
Henderson	Riegle	Young, Ga.
Hinshaw	Roe	

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Landrum.
Mr. Daniel with Mr. Stuckey.
Mr. Lundine with Mr. Clay.
Mr. Rostenkowski with Mr. O'Hara.
Mr. Sisk with Mr. Riegle.
Mr. Fountain with Mr. Esch.
Mr. Stratton with Mrs. Fenwick.
Mr. Helstoski with Mr. Hansen.
Mr. Jones of Tennessee with Mr. Hébert.
Mr. Symington with Mr. Kelly.
Mr. Baggi with Mr. Rees.
Mr. John Burton with Mr. Henderson.
Mr. Carney with Mr. Regula.
Mr. Gaydos with Mr. Mathis.
Mr. Roe with Mr. Peyser.
Mr. Stephens with Mr. Steiger of Arizona.
Mrs. Sullivan with Mr. Skubitz.
Mr. Young of Georgia with Mr. Wampler.
Mr. Charles Wilson of Texas with Mr. Wiggins.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON MILITARY COMPENSATION OF COMMITTEE ON ARMED SERVICES TO MEET THIS AFTERNOON AND TOMORROW MORNING, JULY 29, 1976, DURING 5-MINUTE RULE

Mr. O'BRIEN. Mr. Speaker, I ask unanimous consent that the Subcommittee on Military Compensation of the Committee on Armed Services be permitted to meet during the time the House is proceeding under the 5-minute rule this afternoon, July 28, and tomorrow morning, July 29, 1976.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

RESIGNATION AS MANAGER AND APPOINTMENT OF MANAGER ON H.R. 8410, PACKERS AND STOCKYARDS ACT OF 1921 AMENDMENTS

Mr. WEAVER. Mr. Speaker, I ask unanimous consent to be excused from further service as manager on the part of the House on the committee of conference on the bill (H.R. 8410), Packers and Stockyards Act of 1921 Amendments.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

The SPEAKER. The Chair appoints as a manager of the committee of conference on H.R. 8410, Packers and Stockyards Act of 1921 Amendments, the gentleman from Oklahoma (Mr. ENGLISH), to fill the vacancy just created.

The Clerk will notify the Senate of the change in managers.

GOVERNMENT IN THE SUNSHINE ACT

Ms. ABZUG. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11656) to provide that meetings of Government agencies shall be open to the public, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentlewoman from New York (Ms. ABZUG).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11656, with Mrs. BURKE of California in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Pursuant to the rule, general debate will continue not to exceed 2 hours, 1 hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, and 1 hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

Under the rule, the gentlewoman from New York (Ms. ABZUG), the gentleman from New York (Mr. HORTON), the gentleman from Alabama (Mr. FLOWERS), and the gentleman from California (Mr. MOORHEAD), will each be recognized for 30 minutes.

The Chair recognizes the gentlewoman from New York (Ms. ABZUG).

Ms. ABZUG. Madam Chairman, I yield myself such time as I may consume.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, the general purpose of H.R. 11656 is to provide that meetings of multimember federal agencies shall be open to the public, with the exception of discussions of certain specific areas. The bill also prohibits ex parte communications to and from agency decisionmaking personnel with respect to the merits of pending proceedings.

This bill is sponsored by 26 members of the Committee on Government Operations and was voted out of the committee by a vote of 32 to 7.

The Judiciary Committee, which also considered this bill, ordered it reported by voice vote; 26 Members of the House are sponsors of either this bill or a similar version of it, and S. 5, which is also quite like H.R. 11656, passed the other body by a vote of 91 to 0 last December 6. In its present form, this measure represents a great deal of hard work on the part of the members and staff of both committees and an effort to meet reasonable objections raised by agencies in the executive branch.

Absent special circumstances, there is no reason why the public should not have the right to observe the agency decisionmaking process firsthand. In the words of FCC Commissioner Glen O. Robinson, who testified before the Government Information and Individual Rights Subcommittee on this legislation:

Chief among the benefits (of the legislation) is increasing public understanding of administrative decisionmaking processes. * * * I do not know whether increased understanding will lead to greater confidence in administrative decisionmaking. Quite possibly, it could lead to less confidence. But either of these outcomes * * * can be beneficial: If, in the light of such scrutiny, a Government agency shows itself to be deserving of trust, then by all means it should have it; conversely, if that same scrutiny reveals an agency to be inept, inefficient, or not in pursuit of the public interest, then obviously that agency does not deserve, and should not have, public trust. (Hearings on H.R. 10315 and H.R. 9828, p. 98.)

The legislation requires that when an agency closes a meeting under one of the exemptions in the bill, it must make a recording or verbatim transcript of the closed portion and release to the public any part of the recording or transcript that does not contain exempt information. A second purpose of this requirement is to assure that a citizen has a meaningful remedy when a meeting has been illegally closed, namely, the release by the court of the transcript of the illegally closed portion.

The purpose of the provisions of the bill prohibiting ex parte communications is to insure that agency decisions required to be made on a public record are not influenced by private, off-the-record communications from those personally interested in the outcome.

SUMMARY OF MAJOR PROVISIONS OF THE LEGISLATION

I. OPEN MEETINGS

The open meeting provisions would apply to approximately 50 Federal agencies that are presently covered by the Freedom of Information Act and the Privacy Act, and are headed by a body of two or more members, a majority

requires that in place of each deletion, the agency must explain the reason and the statutory authority therefor. The Judiciary Committee has reconcluded that this provision be deleted, but we are opposed to their amendment and will request a separate vote on it when the bill is read for amendment under the 5-minute rule. For meetings that are open to the public—and the idea of the bill is that most agency meetings will be open—only minutes of the meeting need be kept.

Subsection (g) requires agencies to promulgate regulations implementing the legislation.

Subsection (h) provides for judicial review of alleged violations of the open meeting provisions. A plaintiff may sue where the meeting is held, where the agency has its headquarters, or in Washington, D.C. If the court finds that a meeting has been closed unlawfully, it may enjoin future violations or order the release of such portions of the transcript as do not contain exempt information. A court acting solely under this section may not invalidate the substantive agency action taken at the meeting in question, even if it was unlawfully closed. In a judicial proceeding for review of a substantive agency action, the reviewing court may consider, under 5 U.S.C. 706, whether the provisions of this bill have been complied with.

Subsection (i) authorizes an award of attorney fees to a party suing under this section who substantially prevails. Costs may be assessed against a plaintiff only where he has initiated the action primarily for frivolous and dilatory purposes.

Subsection (j) requires annual agency reports to Congress on compliance with this section.

Subsection (k) provides that this act does not affect rights under the Freedom of Information Act, except that the transcripts made under this act are to be governed by this act.

Subsection (l) provides that this section does not constitute authority to withhold information from Congress and does not authorize the closing of any meeting otherwise required to be open.

Subsection (m) provides that nothing herein allows an agency to withhold from an individual a record otherwise available to him under the Privacy Act.

Subsection (n) provides that if any meeting is subject to both this act and the Federal Advisory Committee Act, the provisions of this act shall govern.

EX PARTE COMMUNICATIONS

Section 4 contains the provisions of the bill regarding ex parte communications. It prohibits anyone having an interest in a proceeding to make an ex parte communication to an agency decisionmaking official relative to the merits of a proceeding once the proceeding has been noticed for a hearing. Communications made in violation of this prohibition are to be placed upon the public record.

For a violation of the prohibition, an agency would have discretion to impose sanctions. In an extraordinary instance, these could even include loss of the proceeding on the merits by the violator, but where the violator can demonstrate that the violation was inadvertent, the imposition of so drastic a sanction would be arbitrary and not proper.

CONFORMING AMENDMENTS

Section 5 makes two amendments of a conforming nature, and section 6 provides that the bill shall take effect 180 days after its enactment and that implementing regulations shall be promulgated prior to the effective date.

Mr. Chairman, I include the following letters in support of the pending legislation for the further information of the Members:

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., July 25, 1976.

Hon. BELLA S. ABZUG,
Hon. DANIEL B. FASCELL,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVES ABZUG AND FASCELL: Consumer Federation of America, the nation's largest consumer organization representing more than 30 million consumers, enthusiastically supports the Government in the Sunshine Act (H.R. 11656).

It is no secret that public confidence in government is at an all time low. A major source of citizen cynicism is the growing conviction that government decisions are often made behind closed doors with access and input being, too frequently the exclusive privilege of well-financed special interest groups. The public recognizes the transparence of the standard government position that it can only conduct business effectively if its proceedings are closed to the public.

The legislation which will be considered today is a sensible and drastically needed step in the direction of providing citizens with the opportunity to better scrutinize the vast number of meetings conducted daily at multi-member agencies. It also recognizes the importance of establishing procedures for ex-parte communications.

We are actively opposed to a series of amendments whose architect is Arthur Burns and whose sponsor will undoubtedly be Rep. Frank Horton.

1. DEFINITION OF MEETING

The first amendment would restructure the definition of meeting in such a way that if the announced purpose of the agency meeting was not to "conduct business" the meeting would not be classified as an "open meeting" which the public could automatically attend. Clearly this amendment could and would be used by agency officials intent on thwarting the goal of this legislation. How easy it will be to camouflage a business meeting behind some non-business sounding announced topic. With no objective standard to determine what is a meeting "to conduct business" the ability for judicial review of agency abuse will, practically speaking, be non-existent.

MINUTES VS. VERBATIM TRANSCRIPTS

The second amendment would permit the taking of minutes as opposed to the requirement of a verbatim transcript at "closed" meetings. Minutes taken by the most competent of people are no substitute for the comprehensive verbatim transcript. For example, a particular monologue, dialogue or phraseology may at the time of the actual meeting seem inconsequential and consequently either be omitted from the minutes or paraphrased. Yet later that very issue may be extremely important to affected persons. The participants and the public should never have to rely on minutes of the proceedings. If the issue is serious enough to warrant being discussed at a meeting, any discussion at that meeting should be transcribed. In closed meetings even more than open meetings there must be a check against inaccurate or incomplete minutes.

TRANSCRIPTS EXEMPTION

The third amendment would exempt [illegible] and the Federal Reserve Board from the [illegible] requirement.

[illegible]

The fourth amendment would be [illegible] description have the practical effect of excluding the SEC and banking agencies.

There is no logical or equitable reason either amendment and the amendments are particularly offensive because they are examples of the FRB's consistent arrogantly transcend accountability.

Finally, we would like to [illegible] active support of an amendment which understand will be introduced by you, Fascell. That amendment would require at any time there is a "deletion" from transcript, there must be submitted a written statutory citation to that section of the which would allow such a deletion. amendment will ensure an additional ure of accountability into the bill.

Sincerely,

CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

June 27, 19[illegible]

DEAR REPRESENTATIVE: This week House will vote on the Government in Sunshine legislation, H.R. 11656, which been reported by both the Government erations and Judiciary Committees fo ing thorough hearings and committee bate. We urge you to support this legisl which provides for open meetings in m member executive branch agencies and uniform standards for ex parte contact also urge you to oppose the four A Burns amendments to be offered by resentative Horton and to support the cell amendment.

In testimony more than ten years prior to enactment of the Freedom o formation Act, the Federal Reserve te that an Information Act would impair Board's effectiveness both as an instru of national economic policy and as a re tory body. In the 94th Congress A Burns made similar predictions of about the Sunshine bill, although he mitted in public testimony that the eral Reserve Board has had no pro under the Freedom of Information A statute of similar purpose and design spite of this admission, Burns has be strenuously to remove the Board from bill. He failed in the Senate and he in both House Committees. He should succeed on the House floor.

The following four weakening am ments which will be proposed on the are overlapping because they are all signed to accomplish the same goal: plete or partial exemption of the ban agencies.

1. *Definition of Meetings:* The bill c posed defines a meeting which mus open in terms of what actually occ whether agency business is conducte disposed of. This is an objective stan about which there can be little dispu either business was conducted or it was The agenda for the meeting will state is intended to be accomplished, but determination of whether the provisio the bill apply will be governed by what ally took place. If during a meeting a sub comes up which is covered by one of th exemptions in the bill, the agency can into executive session, a routine proce

The Burns amendment, in contrast, w allow a determination of whether the applied on the basis of the intended

JOHN CHAMBERS.

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

Ms. ABZUG. I yield to the gentleman from North Carolina.

(Mr. MARTIN asked and was given permission to revise and extend his remarks.)

Mr. MARTIN. Madam Chairman, let me thank the gentlelady from New York, the distinguished chairman of the subcommittee, for yielding to me.

In order to clarify subsection 3(c) of this bill, H.R. 11656, in this subsection are set forth some 10 standards that would qualify an agency to close its meeting to the public and not disclose its deliberations.

When I served as county commissioner in Mecklenburg, N.C., we adopted a similar policy requiring open meetings—subject to certain reasonable exceptions. One exception which we found to be essential to our duties was the consideration of prospective real estate transactions. We knew that if we publicly discussed proposals to purchase or lease land or facilities and disclosed any details about it, the price of that land or facility would rise. That would especially be true if the owner/seller could see how much we might be willing to pay, or that our alternative opportunities were limited or that we were especially anxious to buy. So we closed our meetings until we could get an option on one or more properties.

In examining subparagraph 3(c)(9)(B) of this bill, I find language which may or may not allow this principle. Subparagraph (9b) protects "information the premature disclosure of which would * * * significantly frustrate implementation of a proposed agency action." I would ask my colleague whether it is intended to include under this exception the preliminary discussion of proposed real estate transactions.

Ms. ABZUG. To answer the gentleman from North Carolina (Mr. MARTIN), Madam Chairman, I think there is no question that subsection (9)(B), which reads: "(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action . . . ," would cover very well the circumstance which the gentleman from North Carolina (Mr. MARTIN) describes.

Mr. MARTIN. Madam Chairman, I thank the gentlewoman from New York for that answer, and I appreciate the gentlewoman's yielding.

Mr. HORTON. Madam Chairman, I yield myself such time as I may consume.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Madam Chairman, I subscribe wholeheartedly to the objectives of this legislation. The public's faith in the integrity of Government rests on public understanding of the reasons for governmental decisions, and on the accountability of Government officials for those decisions which set legislative or administrative policies which impact on the Nation as a whole. However, as recognized in the declaration of policy of H.R. 11656, the public is not necessarily served by complete and unfettered disclosure of all Government decisionmaking processes. The words "fullest practicable information" as used in the bill indicate the need for certain sensible limitations.

My principal concern is that the Congress which has enacted the two basic planks for Federal information policies, the Freedom of Information Act and the Privacy Act, should adopt a sunshine bill which is consistent with the principles laid down in the two landmark bills we have already enacted. The bill before you does not fully meet this standard since it erodes the clarity and firmness of the FOI Act exemptions, and threatens to erode the privacy protections we have erected for those involved in adjudications before collegial agencies.

I believe that a number of provisions of H.R. 11656 are inconsistent with the declaration of policy contained in the bill itself, and that these provisions would permit or mandate disclosures which would injure the rights of individuals and injure the ability of the Government to carry out its responsibilities.

I addressed my concerns with several specific provisions of H.R. 11656 in the Committee on Government Operations, and in a statement filed with the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary.

At that time, I took issue with the following features of H.R. 11656: First, the verbatim transcripts requirement for closed meetings, second, the definition of "agency," third, the definition of "meeting" fourth, the identification of persons expected to attend a closed meeting, fifth, the prescribed venue for actions brought under this legislation, sixth, the personal liability of individual agency officials, and seventh, the unfettered disclosure of all ex parte communications.

Since then certain improvements have been made by the Judiciary Committee, but serious problems still exist. But I feel it is possible to amend the bill in a way that would let every bit as much sunshine behind the doors of Government agency deliberations and provide a brand of sunshine which is less clouded by procedural redtape and confusion than that created by H.R. 11656.

If the Judiciary Committee amendments are adopted my remaining differences with the bill concern primarily the verbatim transcript requirement and the definition of meeting and at an appropriate time I shall offer an amendment to each of these provisions.

The verbatim transcript requirement

of H.R. 11656 as reported by the Government Operations Committee could drastically destroy the provisions of the bill which permit certain meetings to be closed. While the provisions of the bill permit an agency to decide, by recorded vote at a subsequent meeting, whether portions of a transcript may be withheld from the public, it offers no guidance to the officials making such decisions. In the case of agencies involved in the regulation of financial institutions, for example, harmful inferences drawn from the deletions could result in market speculation or damage to the stability of our financial markets and institutions.

The possibility of later disclosure of a verbatim transcript will inhibit free discussion about sensitive matters and thus impair the decisionmaking process in instances where candor is essential.

Moreover, the effect of the transcript requirement of the bill when coupled with relevant procedural requirements would lead to a situation bordering on the ridiculous.

The bill provides that votes to close meetings must be cast in person, no proxies being permitted. Thus a meeting must be held to vote on closing a subsequent meeting or meetings, and another meeting must be held to vote on any change in the time, place, or subject matter of a meeting already announced.

When these procedural requirements are coupled with the verbatim transcript or electronic recording requirements, the prospect is one of mind-boggling infinity. Thus, when a meeting is properly closed, the complete transcript or electronic recording of the proceedings must be made available to the public except for such portions determined by a recorded vote to fall within the exemptive provisions. In order to avoid the disclosure of such portions of the transcript, the meeting called to discuss, consider and vote on the proposed deletions must also be closed pursuant to the procedural requirements cited above. Since this meeting would be closed to consider information coming within the exemptive provisions of the bill, the complete transcript or electronic recording of such meeting must also be made available to the public except for those portions determined by a recorded vote to fall within the exemptive provisions. Again, in order to avoid the disclosure of such portions of the transcript of the second closed meeting, a third meeting called to consider and vote on the proposed deletions stemming from the second meeting must be closed, and the transcript of that meeting must be furnished at a fourth closed meeting and so on and on ad infinitum. Obviously, some rule of reason must prevail in the implementation of such a provision, but the letter of the law, if observed, would be paralytic in its effect.

The Judiciary Committee amendments eliminate the requirement for agency members to vote upon deletions from transcripts and the requirement that agencies provide explanations of the reasons for deletions and the exemption relied upon. However, harmful inferences can still be drawn from the deletions and the recording of later disclosure will inhibit full exchange of views on sensitive issues.

I do not subscribe to the position that the [illegible] is essential to the [illegible] and I feel [illegible] can be [illegible] along the lines of an amendment that I plan to introduce at an appropriate time. The amendment would substitute minutes for verbatim transcripts or electronic recordings. The discovery procedures available to U.S. district courts do not depend upon the availability of verbatim transcripts or electronic recordings of agency meetings. While the concepts embodied in H.R. 11656 stem from "sunshine" or "open meeting" statutes of the States, none of the 10 State statutes, so far as I can determine, has a verbatim transcript requirement for either open or closed meetings.

Meetings covered by the bill should be those gatherings for the purpose of conducting official agency business of at least the number of individual agency members required to take final action on behalf of the agency. The meeting definition in both versions of H.R. 11656 would apply even to casual or social encounters which were not gatherings for the purpose of acting in behalf of the agency. The Judiciary Committee version is the more burdensome and refers to any "assembly or simultaneous communication." Accordingly, I shall offer an amendment to narrow the definition to cover meetings for the purpose of conducting agency business.

I feel that venue for actions brought under this legislation should be limited in accordance with language in the Judiciary Committee amendments, that is to the district in which the agency in question has its headquarters or where the meeting in question occurred or in the District Court for the District of Columbia. The bill as reported by the Committee on Government Operations permits such actions to be brought also where the plaintiff resides or has his principal place of business. This could lead to duplicative lawsuits spread across the country covering the same agency meeting or meetings.

I oppose the provisions of H.R. 11656 as reported by Government Operations imposing personal liability on individual agency members for attorney's fees and court costs. The assessment of attorney fees and other litigation costs personally against individual members of an agency can only lead to a further dilapidation of the rewards of public service. This provision would not only discourage qualified persons from accepting agency appointments, but would inhibit performance of official duties by those in office. The Judiciary Committee amendment prudently deletes this requirement.

It is not possible to estimate the costs of complying with the provisions of H.R. 11656. Certainly the time of a majority of the entire membership of an agency spent in the repeated voting sessions attendant upon closed meetings; the time spent by lawyers and other staff members examining documents; litigation costs arising from actions created by this bill; the administrative burden of preparing a verbatim transcript of each closed meeting, of deleting exempt portions and of providing a copy of the remainder to the public will be significant.

Let me not be misunderstood. My remarks are not intended to weaken the disclosure requirements of the bill but rather to improve it by achieving a balance between the disclosure requirements and the need for government to operate effectively. Neither complete confidentiality nor complete disclosure is desirable and we need to guard against the temptation to overemphasize one for the other in today's morbid climate of distrust and suspicion.

Mr. FLOWERS. Madam Chairman, I yield myself such time as I may consume.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, I shall be very brief here. Our committee, the Committee on the Judiciary, and the subcommittee which I chair, the Subcommittee on Administrative Law and Governmental Relations, was referred this bill on a sequential basis.

The gentleman from Texas, the distinguished chairman of the Committee on Government Operations, and I, as well as other Members have been somewhat concerned in the last year and a half over what we have gotten ourselves into with dual reference and sequential reference. I am afraid that unless we straighten out our proceedings in this regard before the organization of the next Congress, we are going to find a whole lot of redundant work being done in the 95th Congress like it has been done in the 94th Congress. I hope that someone with more wisdom than I can figure out the solution while maintaining the jurisdictional integrity of the various committees. But I think were it not for the fact that the gentleman from Texas is in the peculiar situation of being the ranking Democrat on the Committee on the Judiciary, and the chairman of the distinguished Committee on Government Operations as well, thereby having a position of leadership on both committees having jurisdiction not only of this legislation but of some previous legislation, we could have had some problems in the handling of the bill. Of course, I always welcome the opportunity of working with my distinguished friend from Texas, but we both agree that there is too much ground to be plowed for us to be going over each other's work.

Mr. BROOKS. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Texas.

Mr. BROOKS. I thank the gentleman for yielding.

I want to commend the gentleman from Alabama for doing a splendid job on the Committee on the Judiciary in handling this legislation, and I want to say that I share with him a feeling that this is a duplicating effort on the part of Congress.

Mr. BROOKS. We refer a bill to the "A Committee," it works up a bill, the subcommittee has hearings, the legislation is reported by the full committee

I ... I ... Connecticut ... and then ... I ... here in ... I ... to ... I ... over ... the ... I ... Connecticut ... this ... can ... there ... has ... or ... I ... If we want to get ... there ... is not the ... to ... I want to say I share the ... of my friend, the gentleman ... Alabama (Mr. FLOWERS) on this ... subject.

Mr. FLOWERS. We have now before the committee a bill that is referred to committees for the purposes of matters under the jurisdiction of ... committees. As the gentleman knows this generally means that when one has a bite at the apple he just takes a look at the apple and takes the bite from the place where it looks best.

We are not always going to be on the receiving end of this matter, because the last time we had an issue between two committees it was our committee that had primary jurisdiction and the Government Operations Committee had the second bite, so this is just an evening out process and in working with the leadership on both sides we hope to circumvent this problem of redundancy in the future.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, would the gentleman explain to the House and to the committee what he intends to do with regard to the action taken by the Judiciary Committee? What is his intention?

Mr. FLOWERS. If the gentleman will allow me to proceed, I will speak very briefly to the merits and what I intend to do here this afternoon.

We had sequential reference in our committee and we then went over the entire bill with a view to making whatever amendments we deemed to be appropriate. We did make about 10 or 11 amendments, some of them more or less technical in nature and some 3 or 4 rather substantive in nature. I intend at the appropriate time to offer an amendment in the nature of a substitute which will embody all of the amendments that were approved by the Judiciary Committee as well as those amendments that were approved by the Government Operations Committee. There would then be no committee amendments to the bill coming from either committee.

Then the parliamentary situation, as this Member would understand it, is at that point the substitute would be subject to amendment. The gentleman has some amendments, I know the gentleman from California (Mr. MOORHEAD), the ranking minority member on the subcommittee has some amendments, as well as the gentleman from Ohio (Mr. KINDNESS), and we will proceed on those ...

I ... that there will be objection ... Government Op... to one ... in the pro... [illegible] ... gentleman from ... will of course ... [illegible] ... and then we will proceed as ... each one of the ... and finish the ...

... Chairman, if the gentleman will yield, I feel that ... to handle this ... be very compli... cated if we have to handle it by amendment, but with the substitute we would have the entire bill as passed by the Government Operations Committee as amended by the Judiciary Committee, and we can exercise our will on that basis.

Mr. FLOWERS. Madam Chairman, meetings of agencies subject to the provisions of this bill are to be open to public observation unless information being discussed at the meeting falls within an express exception. Public awareness and interest in Government are important in our democratic processes. This bill, by promoting ... in Government, should lead to improved decisionmaking and greater accountability on the part of the Government.

The Committee on the Judiciary was referred this bill on a sequential basis and prior to the Committee on the Judiciary reporting the bill, the bill had been the subject of a report by the Committee on Government Operations. Since the two committees are in essential agreement on the bill, I will confine my remarks to the amendments proposed by the Committee on the Judiciary.

First, the committee recommended a change in the definition of "meeting" as provided in new section 552b added to title 5 by the bill. As so amended, the term "meeting" would mean an assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least a number of individual agency members required to take action on behalf of the agency. There would be an exception for meetings required to decide matters covered by subsection (d), the subsection concerning the closing of meetings. The meetings covered by the exception would concern matters which are procedural in nature and involve decisions to vote ... of meetings. Such meetings could not include the conduct or disposition of any other agency business. The committee also recommended an amendment to section (b) to add language providing that agency members cannot jointly conduct or dispose of agency business other than as provided in new section 552b. The amended subsection would not prohibit agencies from disposing of noncontroversial matters by ... circulation.

The subcommittee added the words "or permitted" to exception (3) of subsection (c), which is the exception permitting closing of meetings involving infor... [illegible] ... authorized to be withheld by ... ute. Prior to the amendment, only ... statutes which "require" the ... holding of information would authorize ... the closing. By the insertion of the ... "or permitted", more statutes which ... permit the withholding of information ... but allow judgment or discretion with ... given forms and effect. This amendment ... is consistent with the language and ... pose of those statutes which provide ... basic authority for such withholding.

Exception (7) of subsection (c) ... covers the closing of meetings in order ... avoid disclosure of investigatory records ... compiled for law enforcement purposes. ... The exceptions in this bill were ... patterned after the Freedom of Information ... Act as set forth in the Administrative ... Procedure Act provisions of title 5 of ... the United States Code in section 552. ... That section concerns written records. ... This bill has a slightly different orientation and concerns the right of the public to observe agency meetings at which information will be given in oral discussions. This amendment makes a necessary clarification as to the exception that it applies to information which, if written, would be contained in such investigatory records.

Exception (9) permits the closing of meetings when the premature disclosure of certain information could lead to financial speculation, endanger the stability of a financial institution, or frustrate the implementation of a proposed agency action. In the latter case, the exception would not be available after the content or nature of the agency action had already been disclosed to the public. Amendments were added by the committee to clarify the exception by expressing language as to the time when the exception would no longer be available. This was done by providing it would not be available after the disclosure or after public notice of rulemaking as provided in the Administrative Procedure Act.

Paragraph (f) of subsection (d) permits the closing of meetings pursuant to agency rules in certain instances where a majority of the business would justify closing, in other words, meetings that fall in certain categories. The committee added a clarification to better identify the meetings subject to the exception and this was done by deleting the words "the portions" where the original language would have required that a majority of the portions of agency meetings would have to be closed in order to permit closing by rules, and substituting therefor the majority of meetings for the same purpose, it being very difficult to determine a majority of "portions" of meetings.

TRANSCRIPT REQUIREMENT

Subsection (f) of the new section concerning transcripts of closed meetings and requires that a complete transcript or an electronic recording which is adequate to record the proceeding shall be made of each agency meeting or portion of a meeting closed to the public with the single exception of meetings closed to the public pursuant to paragraph 10 of subsection (c). The committee considered the difficulties incident to the review of the transcript of closed meeting

withheld by the original provisions of the bill. The bill would have required that each deletion authorized by an exemption in the section would be made by [illegible] of the agency taken [illegible] respect to the section. It was believed that this would impose a considerable expense on the time of the senior officials of the agency and that this would be unnecessary and time consuming. It was determined that the intent of the [illegible] could be adequately carried out by limiting this provision and similarly changing the provision requiring a written explanation of the reason and strategy [illegible] for each deletion.

These amendments would not change the requirements of the section requiring revised copies of the transcript or transcription of the electronic recordings available to any person upon payment of the cost of duplication or its transcription. Further, it is provided that if the agency determines it to be in the public interest, the material can be made available to the public without cost. The complete verbatim copy of the transcription or the complete electronic recording of each meeting closed to the public would be maintained by the agency for at least 2 years after the meeting or until 1 year after the conclusion of the agency proceeding with respect to which the meeting was held, whichever occurs later.

COURT JURISDICTION UNDER SECTION 552(b)

Subsection (b) provides jurisdiction in the district courts of the United States to enforce the requirements of sections (b) through (f) of the new section. Such actions may be brought by any person against the agency prior to or within 60 days after the meeting at which the alleged violation of the section occurred. The time limit would be varied in the event that a public announcement of the meeting had not been made in accordance with the requirements of the section. The original version of the bill would have provided jurisdiction in the courts to bring such actions against the agency or its members. The committee recommended the deletion of the provision for [illegible] of actions for since the subsection authorizes no action against the agency, there would be no necessity to join individual members to gain court jurisdiction.

Further, the committee also amended the bill to delete the provision authorizing the assessment of court costs against individual agency members. These amendments remove the objection that individual agency members would be subject to suit for official acts and possible assessment of costs and attorneys fees in these circumstances. In line with these amendments, the committee recommended the deletion of the provision in the bill that would have permitted the assessment of costs against individual members of an agency.

Objections were raised at the hearings on the bill concerning the breadth of the provisions concerning venue for actions brought by the bill. The committee concluded that there should be no limitation upon the jurisdiction provided in the bill over persons who could bring the actions contemplated by the bill. However, the bill concerns meetings and matters relating to meetings that have a definite relation to certain locations, and the [illegible] governing [illegible] of [illegible] could be [illegible] to provide venue in the district where the agency is held, where the agency has its headquarters, or in the District Court for the District of Columbia.

SCOPE OF JUDICIAL REVIEW

Subsection (h) of section 552b as contained in the bill reported by the committee would have provided that any Federal court otherwise authorized by law to review agency action could on application of any person properly participating in the judicial review proceedings inquire into the violations of the requirements of the section and afford any relief it deemed appropriate. The committee recommends deletion of this language. It was concluded that the provisions of section 706 of title 5 of the Administrative Procedure Act provides adequate authority to inquire into the matters apparently referred to in original subsection (h).

Section 706 concerns judicial review and details the basis for invalidating agency action. Item 2(d) as contained in that section authorizes a court to set aside agency action which was taken "without observance of procedures required by law." In consideration of matters covered by this section, the courts, in reviewing actions, would then therefore be required to proceed in accordance with their normal procedures under section 706. This would be given violations of the provisions of section 552b would be considered as are other matters covered by this provision in the Administrative Procedure Act. The reviewing court would then be in a position to determine whether the violation was of material prejudice to the party involved.

EX PARTE PROCEEDINGS

Section 4(a) of the bill adds a new subsection (d)(1) to section 557 of title 5, United States Code, concerning ex parte communications in relation to [illegible] under the Administrative Procedure Act. Section 557 concerns decisions based on the record of hearings conducted in accordance with section 556. The new subsection (d) added by this bill would provide [illegible] and procedures relating to ex parte communications relative to the merits of agency proceedings. The bill would apply to ex parte communications relative to the merits of such proceedings by interested persons outside the agency made to agency personnel involved or expected to be involved in the decisional process.

Similarly, no such agency official could make any ex parte communication to an interested party outside the agency. The interpretation of the new subsection in section 557 results in the provisions being made applicable to adjudications and to formal rulemakings. The language of the bill provides for [illegible] communications to be made a part of the public record of the proceedings along with written responses and memorandums of oral responses. In the event there is such an ex parte communication, the agency, administrative law judge, or presiding employee may require a party to show cause why his claim or interest in the proceeding should not be denied, dismissed, or directed, or otherwise [illegible] upon adversely.

As introduced, the bill would have also amended the Freedom of Information Act provisions of section 552(b)(3) to limit the exception for information covered by statutes to only information covered by statutes which require the information of a particular type or criteria be withheld. This would not provide an exception for statutes which permit the agency to determine whether such information should be released or not. The amendment was made because the language is unduly restrictive. For example, the section concerning release of atomic energy information permits a continuous review of restricted data to permit declassification where information may be declassified "without undue risk to the common defense and security" 42 U.S.C. 2162.

Mr. Chairman, I urge the approval of the bill with the amendments recommended by the Committee on the Judiciary.

Madam Chairman, I reserve the balance of my time.

Mr. HORTON. Madam Chairman, I yield 10 minutes to the gentleman from California (Mr. McCLOSKEY).

The CHAIRMAN. If there is no objection, the Chair would like to recognize the gentleman from California (Mr. MOORHEAD) for 20 minutes and then come back to the gentleman from New York (Mr. HORTON).

The Chair now recognizes the gentleman from California (Mr. MOORHEAD) for 20 minutes.

Mr. MOORHEAD of California. Madam Chairman, I yield myself such time as I may consume.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. MOORHEAD of California. I yield to the gentleman from New York.

PARLIAMENTARY INQUIRY

Mr. HORTON. Madam Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state the parliamentary inquiry.

Mr. HORTON. Madam Chairman, is it the intention of the Chair to rotate?

The CHAIRMAN. Yes, that is the intention of the Chair.

Mr. HORTON. Would the gentleman from California (Mr. MOORHEAD) then have 20 minutes before I come back to my time?

The CHAIRMAN. The gentleman will probably use a portion of that 20 minutes himself. We will then come back to the gentleman from New York (Mrs. [illegible]) and to the gentleman from New York (Mr. HORTON).

Mr. HORTON. Madam Chairman, I thank the Chair.

(Mr. MOORHEAD of California asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of California. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this piece of legisla-

tion that is before us has a very complimentary goal, that is, to give the people ... to the operation of our Government. ... must be balanced ... a very delicate scale as to the ... that can be done ... in any given instance in holding back ... operation of Government. ... to be followed if we are going to ... that it [illegible] ... such disclosures. Sunshine is naturally unfair, perhaps unconstitutional, if it ... upon individual privacy rights. ... is irrational if it interferes with ... the ability of our Nation's economic stability or the value of our currency.

My point is that the sunshine legislation is ... and valid only with respect to certain governmental activities. Everyone in this House knows that there are certain activities of Government that ... and should not be in the public ... or released for general distribution. So, in drafting this type of ... we must be very careful about every detail of its impact. Sunshine legislation should not be used as a ... to interfere with Government ... in the valid performance of the ... for which they were created.

H.R. 11656, as ... by the Committee on the Judiciary, goes a long way ... concerning the important balance ... I am specially [illegible] the ... and the provisions in ... have been improved. An ... ally for ... exists and ... individual agency of ... been removed. Importantly, ... version of this legislation ... the controversial verbatim ... requirement more reasonable ... the deletion of exempt mate- ... meeting transcripts. If this ... confidentiality ... in the final bill, it may be ... and also ...

d.

... unwise attempt to reverse ... Court's decision in *Administrator, FAA v. Robertson*, 422 U.S. 255 ... been effected.

... hope that all of the improvements added to H.R. 11656 by ... on the Judiciary will receive favorable action in this House. ... would make this legislation, ... likely to ... legislation, and far less ... to the ... and ... Government agencies and ...

... strongly urge that the House ... consider additional improving ... that will be offered by my ... and colleague, the gentleman ... (Mr. MOSHER). As ... the Committee on H.R. 11656 ... Committee ... and ambiguous ... Constitution is pivotal in the ... of the rights of the Government. ... is required, and the amendment of the gentleman from New York (Mr. MOSHER) would accomplish that.

The gentleman from Ohio (Mr. KINDNESS), a member of the Judiciary Subcommittee, also has a very important amendment to offer to this legislation, specifying which agencies are to be subject to this act.

I will offer an amendment later on in the debate which would provide that persons bringing an action under this legislation must meet minimal standard of standing requirements.

The legislation as it is presently written, changes the present court rules to allow any individual, whether he has an interest or not, to bring litigation. This only causes a disruption of our entire court system. It allows professional litigators to get involved for whatever purposes they might want to, many times to make a case for themselves or to make a financial benefit of some kind through encouraging groups to finance their actions. I will offer an amendment which will do away with this particular provision.

I believe that we have made some substantial steps toward improvement in the action of the Judiciary Committee, and for that reason my comments on the sequential referral would not be the same as some of my colleagues have been earlier. I think in this particular case we have made substantial improvements in the case of sequential referrals. I realize, however, that many times it does cause a delay in getting legislation before the House.

My purpose here today is not to be obstructive to this legislation. I strongly agree with the ideals and principles underlying Government in the sunshine legislation. I do not want to hurt the operation of our Government, and for that reason I am supporting the amendments I have already referred to.

Ms. ABZUG. Madam Chairman, I yield such time as he may consume to the gentleman from Florida (Mr. [illegible]).

(Mr. [illegible] was given permission to revise and extend his remarks).

Mr. PASCELL. Madam Chairman, I rise in support of H.R. 11656, the Government in the Sunshine Act.

As the principal sponsor of this legislation in the House, I urge that it be adopted. The bill would take a long overdue step to open governmental operations so as to help restore confidence among the public.

The bill has been carefully considered for many years. It has been introduced in the 92d, 93d, and 94th Congresses. There have been many hearings by various committees in the House and Senate, and there have been extensive contacts and consultations with the executive branch agencies affected.

The Sunshine measure builds on long experience with the Freedom of Information Act, the Administrative Procedure Act, and the Privacy Act. It is concerned with the people's right to know what is being done by Federal agencies. They need to know not only the final decisions, but the discussions which go into those decisions.

Very few people would argue with the principle of Government in the sunshine. Actually, this is the cornerstone of our democracy. Without public access to information on governmental actions, there can be no adequate basis on which individual citizens can form judgments and cast their votes for those who exercise the functions of Government.

To the extent that secrecy exists in Government, I believe that by and large it is the product of inertia and the following of what seems at first glance to be the easiest expedient—that of withholding information from the public. After all, if the public does not know what happened or what has been done it cannot fault the officials who are responsible for such actions. Thus, the officials involved may feel that by excluding the public they can be safely immune from criticism if the results are not favorable.

Yet, in the long run, such secrecy causes more problems than it solves. Eventually, the truth usually leaks out, and when this happens after-the-fact, it breeds public distrust and condemnation which may be directed against officials other than those responsible for any misdeeds. The whole Government suffers when our people perceive that it is working secretly against them.

What we need is a means to shatter the complacency of officials who needlessly follow practices of secrecy and make it so difficult to operate in such a manner that a policy of open government becomes the easy way out. Then we will have true "government in the sunshine" as officials learn that opening the decisionmaking process to the public is not only harmless, but beneficial.

In seeking to open the conduct of public business by Federal agencies, we in the Congress are asking no more than we have already imposed on ourselves. In 1973, the House adopted legislation which I cosponsored amending the rules to strengthen the requirement for open hearings and open committee meetings including meetings for the markup of legislation. Prior to that action, 56 percent of House hearings and meetings were open to the public in 1972. In contrast, under the stronger open meetings rule adopted in the 93d Congress, 82 percent of all House committee hearings and markup sessions were open to the public in 1974.

I have seen no drastic adverse consequences as a result of the new congressional open meetings policy. Instead, the legislative output has been stepped up, and we can point with pride to the fact that any member of the public can find out virtually all he wants to know about congressional actions, if not more than he wants to know.

The legislation before you would take similar action with respect to Federal agency meetings. Some 30 agencies headed by more than one governing member, appointed by the President and

subject to Senate confirmation, come under its provisions. These include such agencies as the Civil Aeronautics Board, the [illegible] Commission, the Federal Communications Commission, the Federal Trade Commission, the Federal Power Commission, the Interstate Commerce Commission, the Securities and Exchange Commission, and others.

H.R. 11656 sets forth the policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of the act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

Under the bill, agencies may close meetings if the matters to be discussed fall within 10 exempted areas. These areas include national defense and foreign policy, internal personnel practices, information required or permitted to be withheld by another statute, trade information, law enforcement records, and information used by agencies that regulate the supervision of financial institutions.

These exemptions give ample leeway to any agency to protect information where there is a legitimate public interest in secrecy. The exemptions generally parallel the Freedom of Information Act and are consistent with the sound criteria developed through legislative study, administrative experience, and judicial interpretation.

We have included provisions under which a member of the public can go to court to challenge an agency's action closing a meeting or portion thereof. Reasonable attorney's fees may be awarded to a successful plaintiff at the discretion of the judge.

In cases where meetings are closed to the public, the agency is required to keep an electronic recording or transcript. In such cases, or where portions of meetings are closed, the original bill required that the agency explain the reason and statutory authority and provide a summary or complete copy of the withheld material. The Government Operations Committee, after hearing objections to this from the Federal Reserve Board and others, approved a compromise which merely required a statement of the reason and statutory basis. Unfortunately, the Judiciary Committee amendments would delete even this requirement, so that only a blank space would be left in a transcript without even a hint of [illegible] or by what authority. I hope that this proposed change is [illegible] by the House.

One of the reasons for requiring some reference to deleted material is to enable citizens to have some information of the subject matter. This would enable them to exercise their rights to judicial review. Under the bill, a judge may examine a transcript in camera to determine whether deletions fit within the [illegible] exemptions. Unless a person knows in general the type of subject affected, however, he would be unable to challenge a deletion.

I know that many Members have been contacted by the Federal Reserve Board or by other agencies with respect to provisions of the legislation. Each of their objections was considered in both the subcommittee and full Government Operations Committee, and further in the Judiciary Committee for many hours. We took votes on each objection. Some amendments were approved in line with agency recommendations. The others were found to lack merit, after extensive debate. There have been one or two subsequent matters raised, but on close examination, there also lack merit.

The bill sets forth a workable and practical system for opening up the operations of the agencies to public scrutiny. It make no monumental changes, since to a large extent the bill will codify what agencies are already doing by regulation. In general, the agencies have no great problem with it. Even the burden on agency heads for complying with the requirement of votes on deletions has been exaggerated. This could easily be done by circulating a tally sheet. No second meeting is required.

It is true that the Federal Reserve Board will probably never be satisfied with any legislation which seeks to open its operations even partially. The agency would like to be excluded completely from the bill. Lacking that, it would like to avoid keeping a transcript. This is absurd. Even in the Congress, we keep transcripts on all our meetings. We deal with national security and other information at least as sensitive as anything done by the Federal Reserve Board.

We have listened to everything the Board has said and have come to them compromised by approving a specific exemption for financial regulatory agencies which will enable them to close up anything with significant information discussed. To allow them to operate in total secrecy without even keeping a transcript would be a serious mistake.

The agencies' reasonable concerns have been accommodated. We have included a section on ex-parte contacts which is not controversial. In short, the bill takes a fair and balanced approach toward the goal of increased public involvement in the governmental process.

I urge that the Government in the Sunshine bill be approved.

CONGRESS OF THE UNITED STATES,
Washington, D.C., July 28, 1976

Hon. BELLA S. ABZUG,
Hon. DANIEL B. FISCHER,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVES ABZUG AND FISCHER: Common Cause, a national citizens' lobby, the nation's largest consumer organization representing more than 200,000 members, [illegible] respectfully requests the Government in the Sunshine Act (H.R. 11656).

It is our belief that a public confidence in government is at an all time low. A major source of this cynicism is the growing conviction that government decisions are often made behind closed doors with secrets and favors being too frequently the exclusive privilege of well [illegible] and [illegible] groups. [illegible] that it can only [illegible] if its proceedings are opened to the public.

The legislation which will be considered today is a sensible and desperately needed step in the direction of providing citizens with the opportunity to better scrutinize the vast number of meetings conducted daily at [illegible] and elsewhere. It also recognizes the importance of establishing procedures for ex-parte communications.

We are particularly opposed to a series of amendments [illegible] Arthur Burns and whose sponsor will undoubtedly be Rep. Frank Horton.

1. Definition of Meeting

The first amendment would restructure the definition of meeting in such a way that if the announced purpose of the agency meeting was not to "conduct business" the meeting would not be classified as an "open meeting" which the public could automatically attend. Clearly this requirement could and would be used by agency officials intent on thwarting the goal of this legislation. How easy it will be to camouflage a business meeting behind some non-business sounding announced topic. With no objective standard to determine what is a meeting "to conduct business" the ability for judicial review of agency abuse will, practically speaking, be non-existent.

2. Minutes vs. Verbatim Transcripts

The second amendment would permit the taking of minutes as opposed to the requirement of a verbatim transcript at "closed" meetings. Minutes taken by the most competent of people are no substitute for the comprehensive verbatim transcript. For example, a particular monologue, dialogue or phraseology may at the time of the actual meeting seem inconsequential and consequently either be omitted from the minutes or paraphrased. Yet later that very issue may be extremely important to affected persons. The participants and the public should never have to rely on minutes of the proceedings. If the issue is serious enough to warrant being discussed at a meeting, any discussion at that meeting should be transcribed. In closed meetings even more than open meetings there must be a check against inaccurate or incomplete minutes.

3. Transcript Exemption

The third amendment would exempt SEC and the Federal Reserve Board from the transcript requirement.

4. SEC, Banking Agency Exemption

The fourth amendment would by generic description have the practical effect of excluding the SEC and banking agencies.

There is no logical or equitable reason for either amendment and the amendment's are particularly offensive because they are new examples of the FRB's consistent attempts to arrogantly transcend accountability.

Finally, we would like to emphasize our active support of an amendment which we understand will be introduced by you, Rep. Fascell. That amendment would require that at any time there is a "deletion" from the transcript, there must be submitted a written statutory citation to that section of the law which would allow such a deletion. This amendment will ensure an additional measure of accountability into the bill.

Sincerely,
CAROL TUCKER FOREMAN,
Executive Director.
MICHAEL C. REMY,
Legislative Director.

Mr. HORTON. Madam Chairman, I yield 10 minutes to the gentleman from California (Mr. McCLOSKEY).

(Mr. McCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Madam Chairman, I do not want to belabor the time of the Committee in general debate on this matter on the specific amendments which

only 2 years ago that we

because of which

that if Congress wanted any in-

from the executive branch,

to the ultimate authority. With

to these areas and abuses of

by the executive branch, in the

of anger and passion we passed

amendments to the Freedom of Information

Act in 1974, and then in 1975 we

amended the Privacy Act to try to protect

individuals against these abuses of information by

the executive branch.

I think frankly, I would feel better

about this legislation had we held over-

sight hearings on the problems for the

executive branch which have been

caused by the Freedom of Information

Act amendments and the Privacy Act

amendments.

We know, for example, that both the

Freedom of Information Act amendments

and the privacy bill have imposed in-

credible new burdens of paperwork and

complexity and additional personnel. We

have a Paperwork Commission created by

this Congress which is studying how to

try to cut back on the paperwork and

the complexity and the costs to Government

which we have added as a result

of the Freedom of Information Act amendments and the privacy

bill.

Madam Chairman, briefly stated, this

bill is founded on the proposition that

the Government should, to the fullest

extent possible, conduct the public's business

in public. To that end, the bill re-

quires all Federal agencies headed by

more than one person to conduct their

meetings that are open to all

I want to make it clear that I have no

disagreement with these principles. But,

[illegible] vital, it could, needlessly and

even foolishly, interfere with the proper

[illegible] Federal agencies. I believe that the amend-

ments will end up

[illegible] Government

[illegible] which is

[illegible] unnecessarily while providing no benefits

for anyone.

My difficulties with this bill are few

but important. This bill can be significantly improved in the following ways:

[illegible]

The bill in its present form requires

[illegible] meeting or transcript [illegible]

parts of every meeting which is legally

closed under the agency exemptions con-

tained in the bill. This is simultaneously

the bill's most onerous and its most use-

less provision. It is onerous because of

the [illegible] involved in

[illegible] not only the

[illegible] of transcribing the verbatim record, releasing it to

staff [illegible] It is useless because,

[illegible] It is useless because,

under the act, these transcripts,

made at considerable expense, will never

be made publicly available if the meeting

was legally closed. Their only function is

to serve as a policing aid to enable the

courts to determine if the closing was

proper. I think there must be a simpler,

more efficient way to accomplish this

goal.

This provision will undermine the goals

of the Freedom of Information Act and the Privacy Act. If these

transcripts are, in existence, their dis-

closure will undoubtedly be the object of

a significant amount of Federal court

litigation. One way or another, some of

the information in these transcripts will

become public, and the protections pro-

vided for individuals contained in the

Privacy Act, and for various types of ex-

empt matters in the Freedom of Infor-

mation Act, will be eroded. Thus, sensi-

tive agency discussions which the bill

recognizes should not be held in public—

would be subject to being recorded in

full, and to the publication of an edited

transcript. Those who will benefit most

from this, I am afraid, are the special

interests who can well afford to pay

their agents or lobbyists to attend every

open meeting and pore over every tran-

script of closed discussions made avail-

able.

I believe that the unnecessary tran-

script requirement should be deleted. Instead, agencies should be required to

maintain minutes of closed meetings.

These minutes will set forth the matters

discussed at a closed meeting, and will

enable a court to determine if a meeting

was properly closed. If it was, the

court will have every power in equity at

its command to remedy the situation in

the manner it believes is required.

[illegible]

This bill is directed not only at formal

meetings of agencies convened to con-

duct agency business—which I believe

[illegible] the legitimate subject of this

[illegible] Rather, the bill broadly ex-

tends its coverage to any "assembly or

[illegible] communication concerning

joint conduct or disposition of

[illegible] by two or more" members

the agency.

[illegible] bringing together

[illegible] that any assembly, simultaneous

communication concerning agency matter,

whether or not its purpose is to conduct

business, would be subject to prior pu-

blic notice, the open meeting requirements

and the requirements that a record

the meeting, or a transcription be made.

In other words, all telephone conversations and meetings of agency members

at backyards, on the golf course, or

where would be covered by the act if

conversation included the mere mention

of any matter pending before the agency.

A more important objection to

provision than the fact that it may put

[illegible] with some already burdened agencies,

lives, however, is the fact that this

vision strikes one of the most important

exemptive provisions of the Freedom of

Information Act, the exemption

[illegible] agency discussions. Congress and the

courts have long recognized the need

agency personnel to discuss, in private,

regulatory matters and to freely explore

all options that may be open—without

the fear that these discussions will one

day be publicly revealed. The heads of

multimember agencies have this need as

well as the members of their staffs.

I believe that the bill should apply

whenever agency members convene in a

formal meeting for the purpose of pass-

ing upon matters before the agency. It

should not apply if the agency members

meet informally, not for the purpose of

voting or deciding matters, but only for

preliminary discussion among themselves

of the important issues they will ultimately have to make an informed judg-

ment upon.

ENCOURAGEMENT OF UNNECESSARY LITIGATION

As I noted, the "sunshine" bill has

laudable purpose. But I think we all al-

perceive a need to try to cut the cost of

Government and, in particular, to cut the

need for mountains of paperwork. In

addition, we are beginning to perceive the

need to discourage undue litigation in the

Federal court system. The benefits of

open Government which the bill achieves

are sharply offset by the costly, and un-

necessary, burdens it places on the Gov-

ernment and on the Federal court sys-

tem.

This act provides that any person—

not merely one interested in the matter

before the agency—can bring an action

to challenge the closing of a meeting.

That suit can be brought in the plain-

tiff's home district, regardless of the

place the agency is located or the meet-

ing was held. Obviously, one closed meet-

ing could be the subject of challenge in

any number of districts, necessitating ex-

tensive travel by Government lawyers to

litigate these challenges. The burden of

proof is always on the agency, and as

agencies have discovered in Freedom of

Information Act litigation, that burden is

a difficult one to meet. Finally, if in the

opinion of the court the plaintiff merely

"substantially prevails," he is entitled to an award of attorney's fees and costs.

This act will be a drain on the manpower and monetary resources of the Department of Justice and the legal staffs of the agencies that will have to resist these suits. These provisions will be a bonanza for the legal profession and—more importantly—for the special interests who can afford to hire them to delay, impede, and obstruct the processes of the regulatory agencies.

I am aware that the object of this bill is to make Government open to the people, and there may well be some action taken by public interest groups to force open an improperly closed meeting. But, by and large, the ones who will be taking advantage of this bill's provisions will be corporate and other special interests attempting to stave off what they deem to be unfavorable Government action. We have seen too many cases where agency action was unnecessarily protracted due to long, drawn-out court battles. This bill gives the special interests just one more forum in which to fight the agency.

The right to file suit under this bill should be limited to actions brought by a person aggrieved by agency action taken at a closed meeting—the standard which has governed access to the courts for review of agency action since the enactment of the Administrative Procedure Act in 1946. It is unwise to throw the courts open to anyone, anywhere, who is of a mind to throw a wrench into the workings of the Government.

CONCLUSION

We must remember that the Federal agencies have been created by the Congress, and given the job of promoting goals deemed by the Congress to be of utmost importance. Thus, when we impede the agencies, we only harm our own legislative objectives.

I am aware that criticism may on occasion be justifiably leveled at some agency action. But the answer to that problem is for Congress to address and correct the agencies when they go astray, not to obstruct, indiscriminately, all agency action of every kind.

I think we make a mistake when we try to saddle the agencies with onerous and unnecessary burdens such as the verbatim transcript requirement of this legislation, when we erode the protections previously afforded for closed discussions of important policy matters by agency heads and staff, and when we subject them to harassment by burdensome litigation. Who will benefit? Will we protect the man for whose benefit an agency is attempting to devise a protective rule in accord with congressional direction, or will we merely provide a means for the interests that would be affected by that rule to impede the effectuation of the will of Congress?

I would like at this time to ask a question of the gentlewoman from New York. If we pass the sunshine bill today, which in effect adds section 552(b) to the code, the Freedom of Information Act being 552 and the Privacy Act being 552(a), may we not soon have an oversight hearing, within the next year, on the workings of the Privacy Act and the Freedom of Information Act?

Ms. ABZUG. If the gentleman will yield, I think there is no question about it.

While I have the opportunity to answer the gentleman on the Sunshine Act, I would point out that most of the hearings we have had, or a good number of them, have dealt with oversight of the Freedom of Information Act and the Privacy Act.

On the question of information that is being provided or not being provided under the Freedom of Information Act, questions have come up concerning the application of the Privacy Act and what was required of the Members of Congress in order to get information for their constituents.

We held significant meetings with relevant agencies concerning some of the paper work and the bureaucratic interpretations of this act, and we continued to hold hearings regularly to deal with the implementation and interpretation of the act.

The gentleman can be assured that this committee and its successor, because it is charged with the responsibility, will have oversight, and I know it will conduct oversight hearings on sunshine.

Mr. McCLOSKEY. If I may respond to the gentlewoman, I do not want to be misinterpreted. I have commended the gentlewoman on the vigor with which she has approached the Freedom of Information Act amendments and the abuses of it, the oversight of the Privacy Act and the abuses of it. But my concern in oversight on the complexity and the cost to Government which was not appropriate until now that we do this on the Privacy Act because the Privacy Act would have been in effect only a year in September. But we have testimony from many agencies. They have all indicated that the cost to the Government has become extremely burdensome, and that the complexity of government operations has increased tremendously.

Ms. ABZUG. If the gentleman will yield further, I think the gentleman makes a valid point. I think on all such as this, which involves privacy, the Freedom of Information Act, and now this Sunshine Act, which involves agencies of Government and the operation of very important functions, should at a certain point, when we have collected the information, be the subject of intensive oversight. I would certainly recommend that and see that it takes place.

Mr. McCLOSKEY. I thank the gentlewoman.

Madam Chairman, I would like to speak briefly on the amendments which will be offered, because I think these amendments are crucial to producing a craftsmanlike bill.

On the first amendment, on the question of meetings, I would ask my colleagues to consider whether we in the Congress could operate with the definition of "meetings," as it presently exists in this bill. The definition of "meetings" in the bill, as it exists now, means if another Member and myself were to meet on, say, committee business, if we to meet in the well of the House, were to meet at the lunch counter we were to meet in our offices and d the subject of a pending bill, we have to have a transcript of that m ing and it would have to be pro produced for the public unless it within one of the specific exemp and we would have to vote on the ap exemptions. This prevents discuss members in casual contacts amongst other.

I think this should be amended. look at congressional procedures in same context, we would preclude the ecutive branch from doing somethin would never consider precluding for selves.

Ms. ABZUG. If the gentleman yield, I want to point out that the g leman's fear in this connection is completely carried out. Unless the a quorum of this agency, there w be no requirement such as the gentle describes. It would not constitute a m ing under the statute or under the l lation as we now propose it.

Mr. LONG of Maryland. Madam Ch man, will the gentleman yield?

Mr. McCLOSKEY. I yield to the tleman from Maryland.

Mr. LONG of Maryland. Ma Chairman, I might point out that u the practices of the Committee on propriations, ordinarily two mem constitute a quorum.

Mr. McCLOSKEY. This is my prob Madam Chairman. Let us take my subcommittee, which has seven mem Assuming that four members consti a quorum and that four of us sh meet in the well of the House to dis problems we have on a bill, that st will constitute a meeting which w then require a recorded transcript.

Ms. ABZUG. Madam Chairman, if gentleman will yield further, I wo rather not interrupt the gentlem presentation, except that I do want clarify this point. The quorum that gentleman referred to is for the pur of conducting a hearing and not for purpose of doing business. I think ther a distinction there, and I do not ag with the gentleman.

I do not want to interrupt the gen man on this point any further exc to make the record clear from a le lative point of view. I think we ought be clear as to what that means.

Mr. McCLOSKEY. Madam Chairm we have a disagreement, and it is sting and worth debating and wo resolving today. I would point out th much of the argument for this sunsh bill has been on the basis that in ma cases enlightened States have adop sunshine bills.

However, as to this meeting requir ment, in my State of California there no requirement for a casual meeting b tween a number of people who ultimat can conduct business for a city coun or board of supervisors that they ha to supply a recorded transcript or h a vote, and there is no requirement. think we are searching here for balanc so we can assure good operations in Co

[illegible]ernment after we have had several decades of abuse of power by Government. We [illegible] to recognize, however, that in the future members of a commission will [illegible] of the [illegible] of [illegible] [illegible] [illegible] the [illegible].

We [illegible] for [illegible]. We are going to have to [illegible] people to serve on the commissions and to govern this country [illegible].

[illegible] If I [illegible] [illegible] to serve [illegible] [illegible] bill today, I would [illegible] [illegible] [illegible] I could comply with these provisions of meetings and furnishing [illegible] transcripts and still do my job [illegible]ly.

Madam Chairman, I will reserve the balance of my time now and save it for argument on the specific amendments.

Mr. FLOWERS. Madam Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. MOORHEAD of California. Madam Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. Kindness).

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Madam Chairman, like many other Members of the House, I find that I am in a somewhat [illegible] situation with respect to this bill. Here we are again, a small, closely [illegible] group, sitting here in an [illegible] manner debating in a stimulated way a rather important bill. Only a few of us are here, and this is going to affect all of us in some degree.

However, we have here a proposal before us that all of us, I think, can readily agree will aim in the right direction, toward providing openness in the conduct of public affairs. Naturally, we have some disagreements concerning some [illegible] of the bill. They have all been pointed out at this time, I believe, and I [illegible] like to express my support for the concept of this bill.

However, there is a problem, as the bill is now written, because it is my feeling that there are certain governmental [illegible] that by their very nature have to be kept privileged or not published. [illegible] functions carried out [illegible] Government agencies, the Federal Reserve Board being one of the [illegible]ples, require a sequestered [illegible] setting for the conduct of [illegible]berations.

[illegible] the conclusion of general [illegible] House will have an opportunity [illegible] on the amendments that [illegible] been discussed, and yet I [illegible] to emphasize one amendment [illegible] that is the one which would [illegible] definition of "agency."

[illegible] among the agencies that [illegible] and will be covered by [illegible] the Members' special con[illegible] think, is the Federal Reserve [illegible], however, the Securities [illegible] Commission has some [illegible] [illegible] for the Members [illegible]

[illegible] Reserve Board's deliberations [illegible] policies often involve [illegible] matter. If such deliberations became totally open to the public, financial markets may react in some cases dramatically, and the stability of our economy is likely to be affected in some degree.

Madam Chairman, I would just like to point out something by way of quoting from a May [illegible] letter from Arthur Burns, the Chairman of the Board of Governors of the Federal Reserve System. He states:

It is our belief that the Federal Reserve Board is unlike [illegible] Government agencies insofar as the subject matter of its decisional process is concerned. With few exceptions, each of the Board's regularly scheduled meetings is involved with matters the sensitivity and [illegible] of which, if exposed to public discussion, could lead to misunderstanding, misinterpretation, and disruptive and harmful speculations. Examples include deliberative processes in monetary policy formulation; receipt, transmission and evaluation of national and international market information; and, incident to the formulation of bank regulatory policy, discussion of confidential appraisals, and sensitive judgments relating to member bank and [illegible] holding company operations, individuals, etc.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. KINDNESS. I yield to the gentlewoman from New York.

Ms. ABZUG. Madam Chairman, I wonder whether the gentleman from Ohio (Mr. KINDNESS) is aware of the fact that all of the subjects that he has mentioned come within the exemptions in the bill. We had in the Government Operations Committee and in the Judiciary Committee [illegible] discussion on this issue, and what we did in the way of exemptions more than covers the gentleman's concerns.

Mr. KINDNESS. I do not choose to yield further on the point because I have the bill, I have read the bill, and I understand what is contained in the bill. I think we could carry this dialog on into several other sections of the bill so as to modify the effect of what the gentlewoman from New York points out.

Ms. ABZUG. If the gentleman will yield further, I just wish to point out that we share his concern and the concern of Chairman Burns on this issue.

[illegible] provides adequate protection for these concerns, particularly in exemptions 2 and 9 of the bill.

I might also point out that when we passed the Freedom of Information Act back in 1966, the Federal Reserve expressed similar concerns:

Could leave exposed to individuals [illegible] [illegible] records and materials related to the [illegible] monetary policy functions [illegible] [illegible] directed functions. Such a result could impair the Board's effectiveness both as an instrument of national economic policy and as a regulatory body.

This was said by the Chairman of the Board in 1966. This has never happened, and Mr. Burns admitted that when he testified before my subcommittee.

I merely quote it to the gentleman to allay his fears.

Mr. KINDNESS. Madam Chairman, I thank the gentlewoman from New York for seeking to allay my fears, but the attempt fails.

The Federal Reserve Board further more, in addition to what has already been read, often has before it detailed financial and nonfederal information.

The Securities and Exchange Commission often has similar information before it; and these two agencies, I think, probably the most serious questions before us as to what should be the coverage of this bill.

Mainly, Madam Chairman, I think our concern should be: Just what is it that we are doing?

I think oftentimes we have measures before us that have wonderful titles, that sound good, and gain all kinds of support; but contained within those bills are provisions that make it very difficult to support the entire content of the bill.

Madam Chairman, when we go about providing for Government in sunshine, I might state that there was no answer given in the subcommittee or in the Committee on the Judiciary itself, in considering this matter, to the question: Why not include all of the executive branch, the departments of the executive branch of the Government, in this Government in the sunshine bill instead of the collegial-headed agencies?

Obviously, the answer has to be that this was a simple formula approach. Collegial agencies only being included, gives us a starting point, but we do not really know how many are really included within the scope of this bill and thus list exactly the agencies we want to cover. As a starting point I think that this is far better than the broad approach that can give us so much trouble as to the question of which agencies and commissions are actually covered.

A further example, which will be brought out during the debate on the amendment is the Commodity Credit Corporation in the Department of Agriculture. Anyone who was to think about it and looks up the law and statutory provisions concerning the Commodity Credit Corporation, will soon discover that the Secretary of Agriculture actually directs the operations of that board. So it is an open question right off the bat as to whether the Commodity Credit Corporation is covered by this bill. Yet it is listed in the Senate report as typical of those agencies that would be covered by the bill.

I assure the Members that the interests of the American people are not best served by having Government in the sunshine litigated but rather by having Government in the sunshine.

Ms. ABZUG. Madam Chairman, I yield such time as he may consume to the chairman of the Committee on Government Operations, the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Madam Chairman, I want to thank the gentlewoman from New York for yielding me this time.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, this bill is hardly new or surprising. Here in Congress we have become used to operating in the sunshine. Nearly every State has opened its governmental processes to some degree. What is surprising is that

we have taken so long to extend this worthwhile practice to the executive branch, and that some of the people [illegible] it.

I would like to commend the chairman and members of the Government Information and Individual Rights for the excellent job they did on this bill. It has been carefully considered by two subcommittees and two full committees. All interested parties have had a chance to express their views. As a result, the bill strikes a reasonable balance between the right of the public to know what its Government is doing, and the need to protect the rights of individual citizens and to ensure that the Government's ability to function is not impaired.

When Government actions are taken in secret behind closed doors, we not only undermine public confidence in Government, but we can wind up pretty far off target and without the public support our Government needs if it is going to stay in business.

H.R. 11633 should help avoid those difficulties. By opening up the meetings of some 30 Federal agencies, it will assure there is public understanding of the actions of those agencies.

If the public understands and sees what goes on, it is more likely to accept and have confidence in our actions. Opening up those meetings will also assure that the officials of those agencies are accountable for their actions. That is what government of the people, by the people, and for the people is all about.

Certainly there are occasions when meetings should not be open. H.R. 11633 recognizes this and provides for closing them in these situations. It affords protection for trade secrets and information that could be damaging to financial institutions or to stock exchanges. It prevents invasions of personal privacy and shields against disclosure of crime investigation records. National security is [illegible]. These safeguards that are [illegible] provided.

But what H.R. 11633 really safeguards is the public interest. It affirms the basic constitutional premise that this is a government of the people, and that those who serve it should be fully accountable to the people for their actions. As former President Harry Truman is fondly noted for saying, "If you can't stand the heat, get out of the kitchen." I would add that if you cannot stand the light, get out of the Government.

Mr. HORTON. Madam Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. [illegible]).

(Mr. [illegible] of Texas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

Mr. COLLINS of Texas. Madam Chairman, the most capable individual in Washington is the person who files the papers to our congressional files. These [illegible] are [illegible] but before we rush into this [illegible] we should carefully evaluate all of its [illegible].

There are very few individuals in the administrative groups of Government who have the courage to say things in open meetings that they would say behind closed doors. This applies especially to [illegible] who come up with [illegible] key [illegible] sitting in the front row with [illegible] unorganized group who might have a more worthy cause.

[illegible] a bill [illegible] Congress which is hard to understand. It provides for double pensions for a group of [illegible] Federal employees. They will get [illegible] and civil service pensions. This bill was opposed by the Defense Department, the Civil Service Commission, the National Taxpayers Union, and the administration. Yet, in spite of a strong fight, the bill passed Congress by 301 to 117.

This bill should have been killed in committee. We created a $1 billion deficiency against an already deficient civil service pension plan. National Guard technicians will now be getting a double pension check whereas a four star general is only entitled to enter one pension plan.

Just as in Congress, where much of this [illegible] spending should be eliminated at the committee level behind closed doors, we find the same thing in these agencies. When they talk frankly among themselves, they use more common sense. When they talk in front of the press, the television, and the pressure [illegible] groups, the [illegible] have ears [illegible] in both directions, and human nature will have them responding to the pressures of whatever outsiders are present. [illegible] history [illegible] which becomes [illegible] request is a public thrill is sure to fall.

This bill invites expensive lawsuits from every lawyer who has time on his hands. I recall a case here in the District of Columbia 2 months ago in which Judge Joyce Green ordered the District of Columbia government to pay an attorney, Gilbert Hahn, Jr., the amount of $166,000 for his work in suing the city to overturn the system of real estate tax assessments. This [illegible] attempted to find yet another way to confiscate an already bankrupt city, and for this service he was paid this exorbitant fee.

I can't understand the enthusiasm of the [illegible] from New York etc. [illegible] this [illegible] bill. However, I would compare the problems developed here with her own New York City which has too much sunshine but not enough [illegible] and not enough [illegible] to work out the fiscal problems involved in the governmental functions.

We are already too overcommitted [illegible] when the President originally came into office, the budget was $340.7 billion. We are now talking about $415 billion. But even more than the fact that we are spending four times as much, we are running a $100 billion deficit.

I'm sure [illegible] how these agency officials of the Federal Government could effectively and productively administer the [illegible] citizens with the hubbub and hassle of press and pressure groups on hand. Sometimes administrators like to ask questions for information to their viewpoints, but even a can be misinterpreted on a pu hours.

I am always amazed at ho Congress publish one set of everyone else, and yet that according to a different set remedies. I serve on the Oversight and Investigations where I am the ranking [illegible] recently, the chairman and th ity helped that committee upon from the committee and Commission files be made pub records consisted of [illegible] which were being reviewed pending a decision. This inform been brought to the SEC on a [illegible] and my own personal o that the matter did not war public statement from the SE the SEC was keeping the matt [illegible]vement and reviewing all facts, we subpoenaed the inf and our chairman released it to One immediate effect of this is be that it will be very difficult ture to obtain voluntary d These companies came forwa whether they had done anythin and brought in all of the facts formation for an opinion and But public disclosure is affe [illegible]ected by the public in the s as an indictment might be [illegible].

Let us look at our own Oversi [illegible]ittee in Commerce, to which I This committee has 45 membe staff. They are not appointed [illegible]ership, but are appointed ent exclusively, subject to hiring a by the chairman of the committee are his personal staff. We have written by the committee requ limits any staff member repo the minority from ever seeing material in investigation files. I say that represents the Republ in this committee is not entitl any of the raw material as it [illegible]eloped and studied by the s therefore, a Congressman who might go in to review the reco allowed to photostat any of this to take back for our staff to an study further.

Here is an Oversight and Rev mittee that is responsible onl majority, and will provide no [illegible]ion to the minority staff. Here mittee of Congress which is ass responsibility of oversight and gation which works behind clos The chairman of our committ author of the Freedom of Inf Act.

I feel this way about all of t strike for the Government." A many in Congress who believe the facts should be made publ those that they are personally in their own committee. This bill is one of the most unnecess to come before Congress this s

Mr. HORTON. Madam Chair yield such time as he may co the gentleman from Connecti (Mr. [illegible]).

(Mr. SARASIN asked and was given permission to revise and extend his remarks.)

Mr. SARASIN. Madam Chairman, to [illegible] the myriad problems confronting us as a nation today would [illegible] repetitive of everything we are [illegible] and hearing from our constituents and from the newspapers and television. [illegible] one I am an agrarian, family [illegible] to one that has become [illegible] urbanized and mechanized, with [illegible] nature of the society depending on one another to meet their various [illegible]. We realize that none of us can any [illegible] independently. Problems [illegible] too large to be solved on the [illegible] local, or State level and the [illegible] Government has become the [illegible] to provide needed assistance to resolve these problems.

Government, in large part, has grown [illegible] response to these problems and to [illegible] an arbiter, regulator, and administrator of the problems which people face but cannot solve on their own. Government resources are vast, just as the [illegible] involved in allocating and [illegible] these resources has created a large Federal bureaucracy. The problems we face today are inherently more complex than those faced by our ancestors 200 years ago.

Our problems have evolved from the [illegible] and innovation which we [illegible] to make our lives more comfortable. Therefore, we have entrusted to Government agencies the decisionmaking [illegible] to identify and approach these [illegible] they environmental, energy, [illegible] or economic. Yet most of [illegible] agency activities and [illegible] removed from public view. [illegible] our problems have a continually [illegible] face, so must our approaches to finding solutions. Our national goals, our programs and governmental policies must be reshaped and made responsive to these variable conditions.

[illegible] Federal Government continues to [illegible] many aspects of our daily lives. [illegible] totally free from the [illegible] of Government. But just as our [illegible] Government was created as a [illegible] of the people, so must it remain. The growth of the bureaucracy has [illegible] governmental actions. Those in [illegible] often forget that their mandates [illegible] from the people and it is to the people that they must remain responsive.

[illegible] need for open Government has become [illegible] apparent through revelations of misuse of Government [illegible] of authority, and [illegible]. This bill would [illegible] toward avoiding these [illegible] activity in the future [illegible] these activities to the [illegible] of public visibility.

[illegible] Government would have multiple [illegible]. Citizens would be educated [illegible] how Government operates. [illegible] Individuals would [illegible] to review the Government [illegible] process [illegible] to their everyday [illegible] should be open to [illegible]. The particular bill which [illegible], H.R. 11656, would go far in [illegible] intelligent understanding of American institutions and how they operate. Although I have difficulty with some portions of the bill, I believe that one of the essential principles of a free government is the right of the people to know how their Government makes decisions.

Although Congress has a tradition for excluding itself from the requirements which it imposes on other Government agencies, especially those of the executive branch, we, too, have acted to open our meetings and hearings to public oversight. It is just this sort of public scrutiny which makes Federal Administrators more responsive to the demands of the American public.

In addition, I favor the safeguards written into the bill providing protection relating to matters of individual privacy, national security, and financial disclosure. The bill would protect the rights of individuals and the ability of the Government to carry out its responsibilities.

I agree with Thomas Jefferson that effective self-government requires that the people participate in every feature of the political process. The American public has a right to participate in the execution of the laws passed by Congress. Government in the sunshine is a further step in the direction of opening our political processes to public participation.

Mr. STEELMAN. Madam Chairman, it is a pleasure for me to speak today in support of H.R. 11656, the Government in the Sunshine Act. This legislation is the logical result of our realization that we must open up the doors of our Government to public scrutiny. We must allow the people to view the process of decisionmaking to increase understanding, dispel cynicism, and provide access to information vital for an informed citizenry. To deny the public the right to know not only breeds distrust, but, in fact, threatens the basic ideas inherent in and crucial to our democratic form of government.

The "sunshine" bill represents a logical extension of legislation passed by Congress over the last decade designed to give the people the right to know.

We first concerned ourselves with the problem of secrecy in government in 1955 by creating a special Subcommittee on Government Information. The investigative and legislative hearings of this subcommittee contributed significantly to the enactment of the Freedom of Information Act. In March 1973, we adopted House Resolution 259 which required us to open up House committee deliberations to the public. Furthermore, on November 5, 1975, the Senate adopted a resolution which allows public observation of the markup sessions of Senate committees. Despite these efforts, though, too many doors remain closed.

The bill we have before us today will establish a policy of openness for approximately 50 multimember agencies. It requires a majority vote in open session to close a meeting, and then only if certain exemptions apply.

It is significant that the definition of a "meeting" in this bill not only covers sessions where formal action is taken, but also those at which a quorum of members deliberate informally regarding the conduct or disposition of agency business.

It is significant that there is a presumption of openness and that a majority vote by the entire membership is needed to close a meeting or any portion of it.

It is significant that any citizen can challenge in court the closing of a meeting or any violation of the openness requirements of the bill, and that the burden of proof of the propriety in closing a meeting rests with the agency in question.

Another important provision of the bill establishes for the first time statutory prohibitions on ex parte communications with agency members.

In considering "sunshine" legislation we must remember that public awareness of the processes of its government is essential to maintain an effective democratic form of Government. James Madison wrote:

> A popular government without popular information or the means of acquiring it is but a prologue to a farce or both. Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives.

It is a contradiction in terms to think we can have a democratic Government without an informed public. Particularly with the increasing size of government we must allow the people to review not only the decision, but the decisionmaking process.

H.R. 11656 is one way to handle the crisis of distrust of government that is rampant in our country today. It may not be a panacea for the problem, but it can aid the restoration of confidence so vital to our Nation's health. The time for "sunshine" is here, and I urge all my colleagues to join me in supporting H.R. 11656.

Mr. ASHLEY. Madam Chairman, I am thoroughly in accord with the principles embodied in the legislation before us today, H.R. 11656, the Government in the Sunshine Act. Passage of this measure will go a long way toward assuring accountability on the part of Federal agencies and increasing public knowledge of and participation in the official proceedings of their Government.

In brief, the bill requires all meetings of Government bodies headed by more than one person to be open to the public, with certain exemptions where such matters as national security and informative trade secrets are involved. The measure thus closely parallels and supplements the Freedom of Information Act in giving the people of this country greater access to the records of official Federal proceedings than has ever been allowed by any government in history.

There are however two provisions in the bill which could prove to be patently unworkable, possibly even mischievous, and I will support amendments to these sections in the interest of passage of a reasonable and practical piece of legislation.

First, H.R. 11656 requires that not only formal meetings be open to the public, but also that any assembly or simultaneous communication concerning agency

[illegible] I was extremely interested in the chairman's statement and s[illegible] to do a little [illegible] this same bill is to our own [illegible] rules. Much to my amazement, though I [illegible] I should not [illegible] been surprised given the fact that we tend to be tougher on the executive branch than ourselves, I found that this "sunshine" bill far exceeds any sunshine requirements which now apply to House committees. In effect, this bill establishes a double standard for sunshine between the two branches, and the one cut by the House is the [illegible] two branches of Congress.

Mr. Chairman, the [illegible] based on an examination of the House Rules, the published rules of each of its standing committees, and a telephone survey which [illegible] The results of this study [illegible] roughly and [illegible] to see [illegible] the list of what this bill requires to be opened to what is now required or permitted by our House committees.

OPEN MEETINGS

Section 3 of H.R. 11656, the sunshine bill, states that all portions of all meetings of Federal agencies headed by two or more individuals appointed by the President shall be open to public observation, and then goes on to list 10 narrow exceptions to that rule.

Clause 2(g) (1) of House Rule XI states that a committee meeting may be closed by majority vote for any reason.

On January 20, 1975, I introduced House Resolution 112 to require that all committee meetings, except for information whose disclosure would endanger national security or violate any law or rule of the House, should be open to public inspection. The resolution now has 87 cosponsors and is still languishing in the House Rules Committee.

Mr. Chairman, our following check of committee rules reveals that most are in conformity with the minimum requirements of the House rules, and not many have broader sunshine provisions. It should be noted, though, that most committee markup sessions are now open to the public. However, many committees do not permit to inspect committee minutes and reports them, though few committees provide a duplication service. Other, actual committee procedures are often [illegible] from House rules. I suggest. Nevertheless, these procedures vary greatly from committee to committee and presumably are subject to the dictates and whims of the committee chairman. Some committees will not even permit Members' individual staffers to see [illegible] reading transcripts which are open to public inspection, thus forcing time-consuming copying by hand.

VOTE TO CLOSE MEETINGS

Section 3(d) (1) of the sunshine bill requires a rollcall majority vote of the [illegible] all but procedural portions to [illegible] promptly available to the public and that copies be furnished to the public at no greater than the cost of duplication or [illegible] to the public, [illegible] of closed [illegible] Clause [illegible] rules [illegible] requires [illegible] open to public inspection by the public at reasonable times in the offices of the committee." All other information "shall be the property of the House and all Members of the House shall have access thereto." In other words, unlike the sunshine bill, there is no requirement in the House rules that a committee [illegible] that it be available to the public. And [illegible] bill, committee [illegible] to comply with [illegible] House rules [illegible] open to public inspection.

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Mr. ANNUNZIO. Mr. Chairman, I rise in strong support of H.R. 11656, the Government in the Sunshine Act, a bill to insure that the public will have the open and responsive Federal agencies to which they are fully entitled. I particularly support section 5(b) (1), requiring a complete transcript or full recording of each meeting, or portion of a meeting, which is closed to the public; and section 5(b) (2), requiring that minutes be kept of open meetings and made available to the public.

I believe that H.R. 11656 will greatly improve the accountability of Federal regulatory agencies, whose decisions have the effect of law. However, I believe that Congress should demand the same openness of our own committees that we would require Federal agencies to have. As many Members of Congress are aware, I have been involved in a dramatic example of the need for op[illegible]

committees.

The conference committees effectively act as a third legislative body, disassembling and redrafting the original bills of the House and the Senate. The final product can resemble a legislative Frankenstein for which no one wants credit or blame. The original intent of the bill can be perverted without a clue as to the source of the changes.

I specifically refer to the Tax Reduction Act of 1975, which became Public Law 94-12 with new language grafted onto section 907—language which had not been part of either the House or the Senate version of the bill. The result was the creation of an enormous tax loophole, primarily benefiting the four corporate owners of the ARAMCO oil consortium, to the detriment of the American public who lost $35 million in annual tax revenues.

I have previously described my efforts to determine the source of section 907 (c)(3). My efforts were thwarted by the lack of meaningful records, as is often the case where closed meetings are held. The committee conference members, with only their personal recollections to go by, could not recall how the language responsible for the loophole became part of the law. No one could even recall if it had ever been discussed. Given the extreme pressure under which conference committees normally work—in a race against time to complete legislation before the close of Congress—it is only surprising that this sort of mutation of legislation does not happen more often. The more complex a piece of legislation is, the more hopeless it becomes to account for any single change in its wording or intent without the availability of accurate records.

The arguments for requiring Federal regulatory agencies to hold open meetings with reliable records clearly apply with even more force to the conference committees who give our laws their final form. An agency ruling or decision having unanticipated and undesirable effects can be corrected with far greater speed and fewer complications than the product of a conference committee. Presently, a bill can become law before anyone has time to realize the harm that even a single minor change in the wording may cause because only the end product of the work is readily available to Members who are expected to vote it into law. As was the case with the tax reform bill, there may be efforts to which benefit from the unplanned to enlarge it I have introduced H. [illegible]52, to repeal the question- of the Tax Reduction Act.

[illegible] to take up this legislation [illegible] been successful this

[illegible] committee meetings [illegible] proposed legislation, [illegible] H.R. 11656, would have the [illegible] providing improved legislative [illegible] that courts can discern [illegible] Congress intends. Legislative [illegible] been published to [illegible] of the closed committee [illegible] should not, the procedure already passed by the Senate as part of S. 5, together with recordkeeping requirements similar to those included in H.R. 11656. The public would then be protected from the abuses fostered by the shroud of secrecy beneath which conference committees are now free to operate.

Mr. [illegible]. Madam Chairman, openness in Government must be a guiding precept of any true democrat. I am heartened that it represents a plank in my party's 1976 platform and a major goal of our Presidential nominee. It is thus particularly timely for the House to take another major step toward fulfillment of that goal by passage of H.R. 11656, the Government in the Sunshine bill.

In considering this bill, we must look back to first principles. Ours is a Government by consent of the governed. If the people are to exercise their right and duty of consent, they must know. It is not enough that the people's representatives know, for the authority conferred on the Executive by the Legislature ultimately flows from the people. And, if Government is to be in reality the servant of the people, rather than the reverse, then Government must be fully accountable to a knowing public for its official acts.

Madam Chairman, the issue posed here is basically simple. The modern leviathan which the executive branch has become in the last 3 decades has become accustomed to doing its business largely insulated from the people. The question is whether we are going to take another needed step in the direction of reversing that trend.

We enacted the original Freedom of Information Act, with the goal of making documents of executive departments and agencies generally available to the public, in 1966. And in 1974, we passed the major strengthening amendments needed to translate that objective into reality.

The purposes of the bill before us are basically twofold. One is to open to the public the meetings of multimember Federal agencies, except for discussions which fall within 10 exempted areas. The other is to prohibit ex parte communications between agency decisionmakers and interested parties, so as to insure that agency decisions which are supposed to be based on a public record are not influenced by private, off-the-record communications.

The open meeting rule would apply to about 50 Federal regulatory agencies, to all others which are covered by the Freedom of Information Act, and to those which are headed by a body of two or more members, a majority of whom is appointed by the President and confirmed by the Senate. It is also explicitly made applicable to the Federal Election Commission and the Postal Service. I might add, as an aside, that the public will doubtless be interested, though hardly inspired, to learn how the moguls of the Postal Service arrive at some of their singularly effective decisions, such as the one to spend a billion or so on machines which speed up parcel post by the zip-and-shred method.

covered under the Freedom of Information Act. They run the gamut from national security and foreign policy information, to accusations of individual criminal acts, and certain information on the regulation of securities, currency, and financial institutions. The bill requires that when an agency closes a meeting under 1 of the 10 exemptions, it must make a recording or verbatim transcript of the closed portion and release to the public all parts which do not actually contain exempt information. I might add that Dr. Arthur Burns, head of the Federal Reserve Board, who has been so receptive to congressional influence in monetary policy, opposes this bill because of the transcript requirement, but has admitted that all of his meetings on monetary policy and bank regulation could be closed.

I realize that there is much controversy surrounding the definition of those meetings which would be subject to the "sunshine" requirement, as well as the provision for transcripts of closed meetings. I say, however, that if we are to err, let us err for once on the side of openness. We have had a great deal of secrecy in our post-war Government. Why not try a whole lot of openness for a change.

In any event, let us not permit these issues to deflect us from the fundamental principle involved in this bill. We in the Congress have taken the big step of opening our committee and conference meetings to the public, including markup sessions in the House. There is no reason why we should expect any less of decisionmakers in the executive branch.

I urge my colleagues to support H.R. 11656 as another key step toward putting democratic theory into practice.

Mr. SIKES. Madam Chairman, let me begin by saying that I wholeheartedly agree with the objectives of this legislation. Coming from a State that pioneered "Government in the Sunshine," I feel also that I possess a broader view of the pitfalls that can await us if the legislation under consideration is adopted in its present form.

My study of the bill leads me to the conclusion that what we are doing in our zeal to open Government to the people, is creating a legal nightmare that can keep Government bogged down in an endless process of defending itself.

I call attention to four provisions of the bill that greatly disturb me. First. A lawsuit can be brought and the attorney fees and costs are guaranteed merely if the plaintiff "substantially prevails." Second. A plaintiff not only can obtain personal costs against individual members of an agency in certain cases, but costs can not be assessed against him even if he loses, unless it can be proven that the lawsuit was instigated for purely frivolous and dilatory purposes. Think for a moment of the position of the dedicated public servant. I personally feel it would further hamper our efforts to obtain qualified persons to work for Government. Third. Perhaps the most indefensible provision of the bill is the one that allows a person to bring a lawsuit in his own home district against any agency

that agency held the meeting.

These points alone will provide you with a portion of the legal nightmare we are creating.

In closing I wish to speak to a fourth provision that troubles me. That provision is the requirement that transcripts be kept of all closed meetings and be made available with proper regard for national security and other exemptions listed. While the intent is to provide the agency with a tool for defense in the event of lawsuits, it also provides a great temptation to those who would like to become instant heroes with the media. I think the House has proved conclusively that secrets are hard to keep.

Mr. HORTON. Madam Chairman, I have no further requests for time.

Ms. ABZUG. Madam Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. FLOWERS. Madam Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. FLOWERS: Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means an assembly or simultaneous communication concerning the joint conduct or disposition of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, but does not include meetings required or permitted by subsection (d); and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b)(1) Members as described in subsection (a)(2) shall not jointly conduct or dispose of agency business without complying with subsections (b) through (g).

(2) Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsection (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

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

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose information required or permitted to be withheld from the public by any statute establishing particular criteria or referring to particular types of information;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

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

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed agency action has been disclosed to the public by the agency, unless the agency is required by law to make such disclosure prior to taking final agency action on such proposal; or [illegible] a substantive rule pursuant to section 553(d) of this title; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d)(1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

"(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the date, place, and subject matter of the meeting and each portion thereof at the earliest practicable time and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time and in no case later than the commencement of the meeting or portion in question. The time, place, or subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph only if (1) a majority of

the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (2) the agency publicly announces each change and the vote of each member upon such change at the earliest practicable time.

(f)(1) A [illegible] shall make a complete transcript or electronic recording adequate to record fully the proceedings at each meeting, except that such recording need not be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of subsection (c). The agency shall make promptly available to the public, in a location easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, except for such portion or portions of such discussion or testimony as the agency determines to contain information specified in paragraphs (1) through (10) of subsection (c). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at no greater than the actual cost of duplication or transcription or, if the public interest, at no cost. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

"(2) Written minutes shall be made of any agency meeting, or portion thereof, which is open to the public. The agency shall make such minutes promptly available to the public in a location easily accessible to the public, and shall maintain such minutes for a period of at least two years after such meeting. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, after consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided for by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with subsections (b) through (f) of this section, and the provisions of regulations in accord with such subsections.

[illegible] district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought whether or not any agency meeting has been held or is proposed to be held. Such actions may be brought against an agency prior to, on, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held, or in the District Court for the District of Columbia. [illegible] In such actions a defendant shall serve his answer within twenty days after service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the agency to sustain its action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public such portion of the transcript or electronic recording of a meeting as is not authorized to be withheld under subsection (c) of this section. Nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Nothing in this section, [illegible] in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions of this Act shall govern in the case of any request made pursuit to such section to copy or inspect the transcripts or electronic recordings described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in subsection (f) of this section.

"(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts of electronic recordings required by this Act, which is otherwise accessible to such individual under section 552a of this title.

"(n) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

[illegible] ex parte communications.

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

"(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and made or caused to be made by a party or interested person, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

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

"(2) This section does not constitute authority to withhold information from Congress.".

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

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

(2) by striking out the "." at the end of paragraph (13) and inserting in lieu thereof "; and"; and

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

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(c) Section 557(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the in-

[illegible]

Sec. 5. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect on the [illegible] days after the date of the enactment.

(b) Subsection (g) of section 552 of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

Mr. FLOWERS (during the reading). Madam Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read, and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

(On motion of Mr. FLOWERS, and by unanimous consent, the time for debate on the bill was limited to 1 hour, to be equally divided and controlled by Mr. FLOWERS and Mr. ERLENBORN.)

Mr. FLOWERS. Madam Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to bring before the Committee of the Whole House on the State of the Union the amendment in the nature of a substitute to H.R. 12471, the Government in the Sunshine Act. This amendment is the product of many hours of hearings and discussions by the Subcommittee on Government Operations and the Committee on Government Operations. I do not believe that there is a great deal of controversy surrounding this amendment which I believe will be in conformity with the bill. However, there will be some things to say in reference to what I know will be the objections of the opponents of this amendment. Prior to one of the amendments that the Committee on the Judiciary recommended in its report, in regard to subsection (f) of the new section concerning the conduct of closed meetings, the Committee on Government Operations' bill requires that a complete transcript or electronic recording which is adequate to record the proceedings shall be made of each meeting closed to the public, except for consulting on a portion of a meeting closed to the public pursuant to paragraph (10) of subsection (c).

The committee considered the difficulties incident to the making of the transcript of the closed meeting as required by the original provisions of the bill. The bill would require that each deletion—this is under the Committee on Government Operations' version—authorized by an exemption in the section would be made by recorded vote of the agency taking the request to the meeting.

It was pointed out that this would require considerable expenditure of time of officials of the Agency, and this would be cumbersome and time consuming. We

[illegible]

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding.

If the gentleman will permit me, let me express my appreciation first to him and his subcommittee for the very careful and thorough consideration he gave this bill, and for the procedures by which we arrived at the bill. I also have no objection to the amendment except on the difference on the one the gentleman has pointed out. I intend to offer an amendment here as soon as I can to read that in place of each portion deleted from such transcript, the agency shall supply a written explanation of the reason, if called, simply on the theory that if we are going to be faced with issues of deletion, at least we ought to know what the citation of the statute is and some explanation of the deletion.

Mr. FLOWERS. I understand the gentleman fully, and it would only be my concern that we could get too specific here, and that the reason for the deletion might require too much elaboration and could be an onerous task.

Let me say before I stop, here that I fully support the legislation. I think it is an excellent piece of work that the gentleman's committee has done, the gentlewoman from New York (Ms. Abzug), the gentleman from Texas (Mr. Brooks), and all of the members of the Committee on Government Operations. You have brought us an excellent piece of work, something that has been long coming. And I think that the agencies are going to find that the rays of sunshine do not really bother them all that much.

Mr. FASCELL. If the gentleman will yield further, I agree, of course, that we have sunshine in the Congress. We cannot hurt the executive agencies. We are trying to help them.

I was very much impressed with the thorough consideration given by the [illegible] subcommittee. I know that there were a lot of amendments considered, but the committee went through them all and carefully decided which one they would support.

Mr. FLOWERS. I thank the gentleman for his comments.

Madam Chairman, I yield back the remainder of my time.

[illegible]

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FASCELL

Mr. FASCELL. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Fascell to the amendment in the nature of a substitute: Page 10, line [illegible] (c) and the paragraph [illegible] and insert in lieu thereof the following:

Mr. FASCELL. Madam Chairman, the bill provides that most of the meetings [illegible] be open to the public and it requires [illegible] are closed under the 10 exemptions. Therefore, it is the intent for those reasons that [illegible] of the meeting that turns out not to contain exempt material may be released to the public, and in case a suit is brought by the citizen. Under this bill of course that is a remedy a citizen has when a meeting is wrongfully closed.

The original bill, considered by the Government Operations Committee, requires when material is deleted the agency must state the reason and the statutory basis therefor and give a summary or paraphrase of the deleted material. Because some agencies objected to the requirement of the summary or paraphrase, that was dropped by the Government Operations Committee, leaving only the requirements for the reason and the statutory basis.

Then the bill went to the Judiciary Committee which recommended that that language be removed, and it is that language which I seek to restore to the bill, so that if there is a deletion we would have at least to give the reason and statutory citation. We maintain that is not unreasonable. It does not put an unnecessary or intolerable burden on the agency. But obviously all of us have had experience in dealing with our own transcripts where we are met with pages and pages of blank spaces which simply say "deletion." We can get nothing out of it. I can understand why we might not want to put a summary in and we have left that out, but I see no reason why we cannot say "security deletion, Public Law 1234, paragraph (a), (b), or (c)." That is not so bad.

It is, as the gentleman from Alabama says, no big deal but we think it will be helpful in carrying out the spirit and thrust of this act. I hope this simple amendment can be adopted.

Mr. HORTON. Madam Chairman, I rise in opposition to the amendment offered by Mr. Fascell which will require a reason be given for the deletion of certain exempted information or a summary of the deleted information.

I feel let me state I am opposed to the unique requirement of a verbatim transcript for reasons which have and will be elaborated on. There are many adverse consequences that will result if this amendment is passed but I request my colleagues to reflect on only two very clear and simple ones.

There are only 10 narrowly defined exemptions which can be asserted to withhold information from the public. The 10 are overwhelmingly supported by Members of both bodies of this Congress. Yet, this amendment says there

are 10 categories of information that should be [illegible], but not [illegible] [illegible] let us delete it from the public record, then let us [illegible] [illegible] giving the reason or a summary of the [illegible]. This clearly is [illegible] [illegible].

[illegible] that I would like to [illegible] [illegible] [illegible] is the primary purpose of this legislation. That is, to allow every citizen interested in the work of his Government access to proceedings conducted by various agencies. Again, I remind you of the 10 narrowly defined exemptions. However, if this amendment is passed, there will be hints, clues, and even summaries of information which should not be made public by the 10 exemptions. These clues and summaries will not aid or benefit the vast majority of the American public. They will, however, greatly benefit select and sophisticated groups. This amendment will provide information to these groups which, because of their expertise, can utilize in financial and market speculation. This clearly discriminates against the general public. This amendment could be titled "Aid and Benefit to Financial Speculators."

There are many other serious and complex consequences that will result if this amendment is passed but I only ask consideration of these two very simple and clear results as I feel they are more than sufficient to defeat this amendment.

Mr. MOORHEAD of California. Madam Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from California.

Mr. MOORHEAD of California. Madam Chairman, I am also opposed to this amendment. People in the agencies handling delicate matters, such as those connected with the market and many other things, have told us if they have to give an explanation, that people who are wise in the matters concerned will be able to tell from the explanation really what was in the part that was deleted and we fail to serve the purpose if we require that to be included. In many instances, it will work great harm to the country.

Mr. HORTON. Madam Chairman, I thank the gentleman.

I am opposed to the amendment and urge my colleagues to oppose it.

Mr. FASCELL. Madam Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to [illegible], she will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will not commence.

Members who have not already responded under the noticed quorum call [illegible] a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. [illegible]]

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Brown, Mich.	[illegible]	[illegible]
Cederberg	[illegible]	[illegible]
Chisholm	[illegible]	[illegible]
Clay	[illegible]	[illegible]
Cochran	Jones, Ala.	Stanton,
Collins, Ill.	Jones, N.C.	James V.
Conyers	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Dent	[illegible]	[illegible]
Derrick	[illegible]	[illegible]
Derwinski	[illegible]	[illegible]
Diggs	[illegible]	[illegible]
Dingell	Mathis	[illegible]
Downing, Va.	Murphy, N.Y.	Udall
Drinan	Nowak	Vander Veen
Esch	O'Hara	Waggonner
Evans, Colo.	O'Neill	Wiggins
Evans, Ind.	Patterson,	Wilson, C. H.
Evins, Tenn.	Calif.	Wilson, Tex.
Fascell	Pepper	Young, Alaska
Fountain	Pike	Zeferetti
Fraser	Railsback	
Gaydos	Randall	

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mrs. Burke of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill H.R. 11656, and finding itself without a quorum, she had directed the Members to record their presence by electronic device, whereupon 352 Members recorded their presence, a quorum, and she submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The gentleman from Texas (Mr. Brooks) is recognized for 5 minutes.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, I rise in support of the amendment offered by the gentleman from Florida (Mr. Fascell) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. Flowers) which amendment would require that the agencies seeking to [illegible] language or delete it in one form or another, to give a written explanation of why they cut it out and any statutes that are said to give them that authority.

The amendment is simple logic. If material is deleted from a transcript, some indication of the reason and the authority for the deletion should be stated and can be stated without any difficulty.

A blank space is going to be meaningless and confusing. It will cause more problems for the agency than a statement of the authority for the deletion would. The amendment is a compromise from the original language. The original bill provided for a summary or a paraphrase of that material. The Committee on Government Operations reduced that to a simple citation of the reason for the deletion. The citation of the authority for the deletion certainly is not onerous. It will not reveal any confidential information.

Madam Chairman, I support the amendment offered by the gentleman from Florida as a very reasonable and worthwhile compromise.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FLOWERS. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

Mr. FLOWERS. Madam Chairman, I do not think that this amendment and the subject matter we are dealing with here are as important as some of the other things we are going to deal with later on, on which there will be amendments to this legislation. However, I am constrained to oppose it.

The Committee on the Judiciary struck this provision, because it was our considered judgment that it did amount to an onerous task to foster off on these agencies, in addition to all of the other things we are putting into this legislation, if we require them to offer an explanation of the reasons for the deletion and the statutory authority. This could in effect amount to about the same thing as a summary, thereby giving rise to placing in the transcript the same information that would be the reason for their deleting the subject matter in the first place.

The full transcript will still be available for the judge, and we do not think there is any real reason for requiring the additional effort, the additional work on the part of rather high level people in these agencies and departments. Therefore, we did not think this provision was necessary.

Madam Chairman, I urge my colleagues to vote "no" on this amendment.

Mrs. FENWICK. Madam Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

I would like to ask a question. My trouble with this amendment is the definition of the word "explanation." Perhaps I should address this question to our colleague, the gentleman from Florida.

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

Mr. FLOWERS. I yield to the gentleman from Florida.

Mr. FASCELL. I thank you for yielding.

I will be delighted to answer the question of the gentlewoman. The explanation that is required would be that whatever the deletion is, it is within the statutory exemption, for example, because the testimony herein deleted might adversely affect the national security, or the national economy, or affect the rights or life of an individual, and it requires a citation of the statute of that authority. It does not require a summary or a paraphrasing of the testimony.

Mrs. FENWICK. If the gentleman will

and I rise in opposition to the amendment offered by the gentleman from New York (Mr. HORTON) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

[Ms. ABZUG addressed the Committee. Her remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HORTON), to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HORTON. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 204, noes 180, not voting 48, as follows:

[Roll No. 561]

AYES—204

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

NOES—180

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

NOT VOTING—48

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

The Clerk announced the following pairs:

On this vote:

Mr. Jones of Tennessee for, with Mr. O'Neill against.

Mr. Jeanette for, with Mr. Dent against.

Mr. Landrum for, with Mr. Zeferetti against.

Mr. Evins of Tennessee for, with Mr. Moorhead of Pennsylvania against.

preliminary staff reports on SEC stock fraud investigations, Federal Reserve Board bank examination activities, FTC antitrust investigations, Civil Service Commission disciplinary actions, and a host of similarly sensitive situations would be subject to publication of edited verbatim transcripts. No seasoned reporter or counsel for an affected party would have much trouble piecing together what an agency was up to if this procedure is required in the bill.

Proponents of the sunshine legislation repeatedly state that the bill's transcript requirements are essential to provide effective judicial review of agency action in closed meetings. It is my belief, which is shared by others, that this is not the case. The discovery proceedings available to the U.S. district courts do not depend upon the availability of verbatim transcripts or electronic recordings of agency meetings. Deputy Attorney General Harold R. Tyler, Jr., a former Federal judge (D.C., S.D., N.Y.), described the transcript provision in testimony before the House Government Operations Committee as "undoubtedly the most wasteful provision in the bill.". He noted that—

A transcript is not needed to secure judicial review of an improper closure, any more than it is needed to secure judicial review of other improper agency action. Any court can require the agency to supply an affidavit, under oath, as to what was discussed.

The transcript provision will be highly expensive to implement in terms of actual costs and time of agency members. It will result in voluminous paperwork and unnecessary accumulation of highly sensitive documents. It will be a constant source of litigation and an ever-present source of conjecture and speculation.

Moreover, the key sponsors of this bill stated from the outset that the sunshine bill is based on the experience of State sunshine laws. However, not a single State sunshine or open meetings law contains any requirement for verbatim transcripts. This provision is strictly an invention of the bill's sponsors and supporters at the Federal level.

I see no reason for the Federal Government to take such unprecedented action.

I see no reason why this provision should be maintained in the legislation we are considering and urge support for my amendment which would delete the verbatim transcript requirement and replace it with a requirement that minutes be kept of each closed meeting and retained by the agency. Such minutes would obviously be available for subpena and in camera examination in any court action brought to determine whether the open meeting provision of the sunshine law has been violated. Therefore, eliminating the transcript requirement would in no way weaken the enforceability of the open meeting provisions.

I urge the adoption of my amendment.

The CHAIRMAN. The time of the gentleman from New York (Mr. HORTON) has expired.

(By unanimous consent, Mr. HORTON was allowed to proceed for 2 additional minutes.)

Mr. PEPPER. Madam Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Florida.

Mr. PEPPER. I thank the gentleman for yielding.

Does the amendment offered by the able gentleman cover anything other than the Federal Reserve Board?

Mr. HORTON. It covers all agencies. What it does is to remove the restrictions of a verbatim transcript, and it also covers the Federal Reserve Board.

Mr. PEPPER. If the gentleman will yield further, does the able gentleman propose to offer another amendment limiting his amendment only to the Federal Reserve Board?

Mr. HORTON. I would not offer that if this carries, and I would hope that this amendment carries because it would cover the Federal Reserve Board, the SEC, and any other agency as defined in this title.

Ms. ABZUG. Madam Chairman, I move to strike the last word.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, I rise in opposition to the amendment, which has been rejected by both subcommittees and both full committees that have considered this legislation. H.R. 11656 generally requires that a transcript or electronic recording be kept of each closed meeting. In recognition of the fact that some agencies have a high volume of ordinary adjudicatory proceedings, transcripts are not required for closed meetings that discuss such proceedings or civil actions in which the agency is involved.

Under the scheme of this legislation, the existence of a transcript of a closed meeting has two critical functions. First, a meeting closed with the reasonable expectation that exempt material will be discussed will in many instances turn out to have little or no such discussion. The existence of a transcript or electronic recording will permit the agency to make public those portions of the discussion that do not contain exempt information.

Second, the existence of a transcript is the primary potential remedy for a litigant who proves to a court that a meeting was unlawfully closed. Since any court ruling will almost always come long after the meeting is held, and since a plaintiff suing only under this act will not be able to overturn the substantive action taken at an unlawfully closed meeting, what remedy has he other than to have the transcripts made available to him? I note in this connection that although the judicial review provisions of this legislation permit the court to make the transcript public if the meeting was unlawfully closed, the court would not disclose discrete items contained within such a transcript which are themselves of an exempt character. For example, if a meeting were closed because of a purported discussion of trade secrets and a court later ruled that the agency did not have a proper basis for this closing, the court would not release the small portion of the transcript that contained a reference to some irrelevant personal proclivity of an individual who was the subject of the discussion, since that would be protected by the bill's personal privacy exemption.

As for the fact that few, if any States require transcripts, it should be noted that 24 of the 49 State open meeting statutes provide criminal penalties for violations, 2 more impose civil penalties, and 19 render the substantive action taken at an unlawfully closed meeting void or voidable. None of these sanctions is available under this bill, leaving the possible disclosure of the transcript as the only remedy for an improper closing.

On the question of cost, given the fact that most meetings are supposed to be open under this legislation, there should not be all that many transcripts to keep. The Congressional Budget Office, both House committees that have considered the bill, and the Senate Government Operations Committee have all estimated that the average annual cost of this legislation will be less than $3,000 for each covered agency.

This amendment would remove the only enforcement remedy contained in the open meeting provisions of the sunshine bill, and I urge its rejection.

Mr. McCLOSKEY. Madam Chairman, I rise in support of the amendment.

(Mr. McCLOSKEY asked and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Madam Chairman, there are two aspects that the chairman of the subcommittee, the gentlewoman from New York (Ms. ABZUG) pointed out. She spoke of litigation, and it is quite clear that unless this amendment is adopted, this legislation provides a great case for legislation against the Federal Government in nearly every matter in which the Government operates, because of the lure of obtaining and making public information on the private meetings that are held on the subjects we have exempted, including national security matters, personnel matters, patent matters, and matters which may endanger the stability of financial institutions. The very reason why we should hold these matters private is to accomplish competent government in these fields.

When the gentlewoman speaks of litigation, I think we can see basically the reason why this section is in the bill. It is to permit additional litigation against the Government.

We have seen much litigation in both the Privacy Act and the Freedom of Informaiton Act, which are still in a shakedown process to see whether the benefits of those acts do not impose an undue burden on the Government. We have seen immense litigation in these areas.

I suggest that this verbatim transcript requirement, which is not found in any State law in this country—no Sunshine Act requires a verbatim transcript of private meetings—would be a fruitful source of litigation.

colleagues: Would we impose this on ourselves as Members of Congress? Would we require that all of our discussions of congressional business that are conducted privately be held subject to a full verbatim transcript?

There is no right to revise and extend here. There is no privilege in a verbatim transcript of a collegial meeting to go back and take out the words we thought were wrong. This is a verbatim transcript. This would in effect remove from the Members of the House of Representatives, if we imposed this on ourselves, the right to go back and correct our errors of grammar, our errors of syntax, or our errors when perhaps we went too far in our characterization of a colleague.

There is one final matter, and this goes back to ordinary human experience. Many of us were practicing attorneys in small towns.

If a person came to us and said, "Would you give me a recommendation as to a fellow attorney who can handle a will or a divorce or a criminal action," all of us will give a candid and truthful response: "No." We would say, "That man is corrupt" or "That man is incompetent."

However, would we give that same candid response if we knew that the verbatim words that we spoke in advising as to a fellow colleague were going to be in a record that might eventually be subpenaed and made public?

This has an immensely chilling effect on the kind of derogatory but truthful comment that an agency like the SEC must consider when they consider taking the stock of a company off the trading market because the vice president of the company is dishonest.

What person is going to say in an open meeting or in a closed meeting of which a verbatim transcript is being made, "I believe that man is crooked, for these reasons, A, B, and C, and therefore, we ought to take this stock off the market"?

Madam Chairman, in my judgment, this balance we seek between truth and candor on the part of a regulatory agency and the openness of their records is such that in this case the balance, in my judgment, comes down to the point where we should not require a verbatim transcript of the very meeting which we feel should be held privately in order to give people the opportunity to make candid and truthful comments.

Mr. SEIBERLING. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Madam Chairman, I think it is too bad that the author of this amendment has such a good advocate, because I think the merits of the amendment are far less than the gentleman's statement really justifies.

In the first place, we have already adopted an amendment that says that two persons can meet together and discuss anything they want without its being in the bill.

In the second place, if there is a meeting of members of the executive branch of the Government, which is comparable to a court in terms of its importance—then it should all be on the record. It is not the same as our deliberation.

Mr. McCLOSKEY. Let us take the case of our own CONGRESSIONAL RECORD. Would the gentleman say that our verbatim transcripts should not be subject to revision?

Mr. SEIBERLING. This is a legislative body, and our function is entirely different.

The CHAIRMAN. The time of the gentleman from California (Mr. McCLOSKEY) has expired.

(On request of Mr. DRINAN and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. DRINAN. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Madam Chairman, I appreciate the gentleman's argument, but how do we respond, again, if we get only minutes of a meeting held in secret? Then how can anyone ever establish the question of whether or not they had the right to go into a secret session and decide the fate of something very important?

Mr. McCLOSKEY. I do not think that the question of whether they have a right to go into secret session has anything to do with what they say in the secret session.

Mr. DRINAN. But if we have only minutes and not the transcript, how could anybody establish whether or not they had the right to do this in secret and come to the decisions which they came to, because there is absolutely no discussion; there is no provision for a transcript; there is nothing but summarized minutes? That could leave the petitioner whose fate is decided in secret without any recourse.

Mr. McCLOSKEY. What the gentleman says is properly so. That has been the law in this country for 200 years.

There is no city, county, State, agency, or any other body in government that is required to keep a verbatim transcript of a private meeting.

Would anyone urge that the Congress of the United States ought to impose upon the Federal Government a requirement that has not been imposed on any agency of government in this country for 200 years?

Mr. DRINAN. If the gentleman would yield further, this is a private meeting conducted in private by people who say they have a right to go into private session, and we have no facts on which we can base a decision on the initial question of whether they have a right to go into a private session.

Mr. McCLOSKEY. I know the gentleman from Massachusetts (Mr. DRINAN) looks forward to a new Democratic administration. However, I submit, is there any other government in the world, except this new administration, on which this requirement will be imposed?

The CHAIRMAN. The time of the gentleman from California (Mr. McCLOSKEY) has again expired.

(On request of Mr. HORTON and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. LEVITAS. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Georgia.

Mr. LEVITAS. Madam Chairman, I thank the gentleman for yielding.

Would the gentleman agree with me, in response to the observations made just now by our distinguished colleague, the gentleman from Massachusetts (Mr. DRINAN), that the sunshine laws, which have been in existence for a number of years in many States, including my own, have worked effectively? There have been opportunities for aggrieved parties to show that meetings were improperly held, without the necessity of the transcript, and that that is a sufficient answer to the need to protect the person who would otherwise be aggrieved.

However, let me explore this a little bit further.

Do I understand that this would require the chiefs of staff meeting in a secret session on national security matters to maintain a transcript?

Mr. McCLOSKEY. That is correct. If they are in a commission or a committee and a committee as defined by law is an agency, it would require a verbatim transcript, a recorded vote to close the meeting, and a transcript of the meeting which might ultimately be made available to the public.

My primary objection to this is that if we are going to test whether a verbatim transcript is helpful or harmful, we should not do so with every agency of a Federal Government which has had absolutely no experience at all in holding such hearings. If we wanted to test this as an experiment as to whether an agency might operate better through such a procedure that we should have the Federal Reserve Board or the Securities and Exchange Commission be required to do this. But this is a blanket requirement on all agencies of the Government, and we have had no experience at all. We have no estimates as to what the costs will be. We will be starting into a whole new profession, that of transcribing and reporting these agencies' procedures.

Also, Madam Chairman, bear in mind that every member of the Commission is going to spend a day deliberating in the Commission and then spend a day reviewing what they said in the meeting. The paperwork involved and the complexity of these transcripts is going to be stupendous.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. HORTON, and by unanimous consent, Mr. McCLOSKEY was allowed to proceed for 2 additional minutes.)

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, I think the question that was posed by the gentleman from Massachusetts (Mr. DRINAN) went to the question of what can we do without a transcript in the event we want to go to court to test whether

or not the meeting should have been closed? I think that is a good question. The answer is that that is done all of the time now. The court can, in camera, examine the proceedings, can get the minutes of the meeting, examine them, get the testimony of those who were present by whatever means are available. But the onerous requirement of having a transcript it seems to me is out of order insofar as the type of meetings we are talking about and the publication or making available the transcript.

Mr. McCLOSKEY. I thank the gentleman.

Mr. BROOKS. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment in the nature of a substitute.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Madam Chairman, the requirement that the Government agencies keep a transcript of their closed meeting follows very closely the procedures of many congressional committees. I see no reason why a Government agency could not keep a transcript through equipment that my 9-year-old boy has and can operate. It does not take any special talent as equipment.

In my opinion it is just the desire to keep permanently secret these Government activities of these agencies. But I say, Madam Chairman, that just because a meeting is closed is no reason that an official record of the business could not be and should not be kept. The decision to close the meeting may well have been made at an earlier meeting and if that is later reversed, then it is imperative that a transcript be available if the aims of any "sunshine" legislation are to be met.

Mr. FASCELL. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment to the amendment in the nature of a substitute.

Mr. FASCELL. Madam Chairman, the one government in the world that deals with transcripts is the Congress of the United States, I will say to my distinguished colleague, the gentleman from California (Mr. McCLOSKEY). We probably have more transcripts around here than any place else in the world and it is a darned good thing that we do, I will tell the Members, because we would not know what was going on if we did not have the transcripts.

I think it would be very helpful for every agency downtown, instead of having somebody keep minutes that simply say that they met and then the meeting was adjourned, that there be a transcript made so that we would know what was going on.

It seems to me it is very sensible for a government agency to have an official record of its actions in the nature of a transcript, even if it is locked up in its safe somewhere there ought to be an official record of the transaction of the business of a body of our Government that deals with the lives of millions of people. There ought to be that transcript somewhere. To say that the mere keeping of minutes is a sufficient substitute is to beg the question.

Let us talk about the fear that has been expressed that in some way the agency is going to be dragged into court, or that State agencies do not now require transcript keeping. The difference in the State agencies is that they have substantive penalties. They can undo the action of the agency when they go to court. No such penalty is provided in this bill.

The critical issue is the public's right to know. How does a transcript come to play in that, and is the fear real that in some way some person with derogatory information might get that information out? The answer is, "No." Why is that?

The plaintiff has the burden of proving his lawsuit that the agency meeting was improperly closed to start with. He has that burden. The relief that is granted under this bill, which is that information which should be released will be released. But the protection in the bill that is provided here is ample and adequate to allay the fears that have been expressed, because it says that the judge can only release that information which should be made public. Any information which would be properly withheld under one of the classifications or exemptions in the bill, the judge would have no right to release.

We cannot be held responsible for leaks in the agencies, if there is a fear that the stuff is going to get out. It is getting out now—the individual Members' copies of the minutes, documents, and papers. The transcript, whether it exists or not, is not going to solve the problem downtown. It is not going to give them any more or less protection.

The issue that is involved is that without the transcript the judge cannot really make a determination whether the plaintiff is entitled to his rights under this bill. What does he get when he gets all of it? What does he get out of it? Do the Members know what he gets? He gets the information which the public should have had in the first place. Why deny him that right? The whole purpose of the pending amendment is simply to do away with the transcripts, to make it absolutely almost impossible that any citizen of the United States would have the right ever to say, "I think that meeting was improperly closed. There is some information there which should have been made public." The court might say, "There is something there that ought to be made public." If it was not classified under this bill or some other law, the judge could release it. But if under this law it is properly exempted, or under some other law it is properly withheld, the judge has no discretion to release that information. The only information he can release is that information which should have been made public in the first instance. And the plaintiff, the citizen, had to go to all of the trouble to bring that suit. Now the gentleman wants to deny him with this amendment the right to the transcript. He wants to deny to the Government and to the Congress the official record, which could be kept locked up in the Government's safe, never to be seen by anybody unless in some way they have violated the law.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. EVANS of Colorado, and by unanimous consent, Mr. FASCELL was allowed to proceed for 2 additional minutes.)

Mr. EVANS of Colorado. Madam Chairman, will the gentleman yield?

Mr. FASCELL. I will be glad to yield to the gentleman from Colorado.

Mr. EVANS of Colorado. I thank the gentleman for yielding.

One thing that concerns me is the comment that the gentleman made about some citizen's rights being adversely affected in a private meeting and not being able to prove whether or not the meeting should or should not have been private unless he has got a transcript. It seems to me that correctness of the privacy of the meeting is determined by the action taken, that is, the ultimate action taken. What conversation went into the ultimate action that was taken is something else again, and I am a little concerned about feeling that the conversations behind the action are going to be the things that measure whether or not the action taken, of which he complains, was wrong to be taken in a private meeting.

Mr. FASCELL. Madam Chairman, I can say this to the gentleman: that the only way we can ever make the determination is for the plaintiff to bring a lawsuit and the judge to make a decision. The court is going to have to make that decision. If the transcript is available, the judge sees it "in camera" and then decides whether the transcript or any part of it is properly withholdable. If it is, it is not released. If he decides the information was improperly withheld, he has the discretion to release the information which should have been made public in the first instance or he can issue an injunction against the agency.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HORTON) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HORTON. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 201, noes 193, not voting 38, as follows:

[Roll No. 562]

AYES—201

Abdnor	Broomfield	Collins, Tex.
Adams	Brown, Mich.	Conable
Anderson, Ill.	Brown, Ohio	Conlan
Andrews, N.C.	Broyhill	Coughlin
Andrews, N. Dak.	Buchanan	Daniel, Dan
Archer	Burgener	Daniel, R. W.
Armstrong	Burke, Fla.	Davis
Ashbrook	Burleson, Tex.	de la Garza
Ashley	Butler	Delaney
Beard, Tenn.	Byron	Derrick
Bell	Carter	Derwinski
Biaggi	Cederberg	Devine
Biester	Chappell	Dickinson
Boggs	Clancy	Downing, Va.
Bowen	Clausen, Don H.	Duncan, Oreg.
Breckinridge	Clawson, Del	Duncan, Tenn.
Brinkley	Cochran	du Pont
		Eckhardt

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

NOES—193

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

NOT VOTING—38

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

The Clerk announced the following pairs:

Mr. Hébert for, with Mr. O'Neill against.

Mr. Landrum for, with Mr. Dent against.

Mr. Steiger of Arizona for, with Mr. Zeferetti against.

Mr. Wampler for, with Mr. John Burton against.

Mr. NEDZI and Mr. MIKVA changed their vote from "no" to "aye."

Mr. McDONALD and Mr. ROUSSELOT changed their vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. MOSS. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Moss to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 19, after line 12, add to section 5 the following new subsection:

"(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code"."

Mr. MOSS. Madam Chairman, the amendment is straightforward. It would cure an oversight in the Federal Advisory Committee Act. That act regulates, among other things, the organization, makeup, and openness of the many advisory committees which provide information and counsel to agencies of our Government. Unfortunately, the Federal Advisory Committee Act regulates public access to meetings of public advisors to agencies pursuant to the Freedom of Information Act, an act designed to regulate the disclosure of documents.

On its face, this is an inappropriate cross-reference in that act. But it was required when the Advisory Committee Act was passed because there did not exist at that time a measure which regulated meetings. With the consideration by the House of H.R. 11656, this is no longer the case. In substance, my amendment merely provides that the carefully crafted standards regulating openness of meetings contained in the Sunshine bill will be made applicable to Federal advisory committees.

I understand that this amendment is acceptable to the committee and I yield the balance of my time to the Honorable BELLA ABZUG for the purpose of receiving the views of the committee on this matter.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, the gentleman has presented the amendment to us, and I have gone over it. The minority will be very happy to accept the amendment. I believe it improves the bill.

Mr. MOSS. Madam Chairman, I thank the gentleman.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentlewoman from New York.

Ms. ABZUG. Madam Chairman, this is essentially a conforming amendment which would reflect in the Federal Advisory Committee Act the enactment of the sunshine bill.

When the Advisory Committee Act was enacted in 1972, we did not have a general open meeting law. As a result, that act provided that meetings of advisory committees were to be governed by the exemptions in the Freedom of Information Act. The FOIA exemptions, though are designed for documents rather than for meetings, and there have been a number of difficulties arising from that discrepancy. Now that we are enacting this open meeting legislation, which contains exemptions like those in the Freedom of Information Act, but tailored especially for meetings, we should apply these exemptions to the Advisory Committee Act as well. That is exactly what this amendment would do, and I am pleased to support it.

Mr. FLOWERS. Madam Chairman will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Alabama.

Mr. FLOWERS. Madam Chairman, the gentleman from California (Mr. Moss) has gone over this amendment with us and we have absolutely no objection to it. We concur in the amendment and are glad to accept it.

Mr. MOSS. Madam Chairman, I thank the gentleman, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was agreed to.

AMENDMENT OFFERED BY MR. MOORHEAD OF CALIFORNIA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. MOORHEAD of California. Madam Chairman, I offer an amendment

to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of California to the amendment in the nature of a substitute offered by Mr. FLOWERS:

On page 12, line 8, delete "by".

On page 12, line 9, delete "any person".

Mr. MOORHEAD of California. Madam Chairman, the bill as it is presently written permits any person, whether that person has an interest or not, to bring legal action to enforce the provisions of this legislation.

Our courts in this country are already tremendously overcrowded. Under the normal rule and under the present law in this country pertaining to courts, in all actions brought, except for a very few exceptions, the plaintiff must make some showing of specific harm to his interests.

There are certain professional litigators in this country who love to get into court and who try to find any kind of excuse to get into court, whether they have a reason for going to court or not. At the same time we have people who are failing to get their day in court on civil actions and who are delayed from month to month because of overcrowding in the courts. We have recently had a situation where many of the criminal defendants in the country who were indicted had to have their cases dismissed because they could not be brought to court on time.

We do not need this kind of delay built into our system. I think it is most important that under this legislation the same requirements for going to court should prevail as would prevail in any other kind of an action.

This amendment would simply require that a defendant who brought the action make some showing that he has been hurt in some way, even though very slightly, and then he could bring the action. If he would have had the door closed on him or if he wanted to be in the room when a hearing was held and had been kept out because it was a closed meeting, he would have a cause of action, but a person who was nowhere near the hearing and showed no interest in it would not have a cause of action.

Madam Chairman, I ask that the amendment be adopted.

Ms. ABZUG. Madam Chairman, I move to strike the last word, and I rise in opposition to the amendment.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Madam Chairman, I rise in opposition to the amendment. The Sunshine bill is designed to let any citizen see what agencies are doing by attending their meetings.

This bill is not designed for the benefit of those who are parties to agency proceedings, but for the benefit of all members of the public who want to know what the agencies are doing and how they go about making the decisions that affect all of our lives so pervasively. We cannot very well tell our constituents, "We are giving you the right to attend agency meetings, but you may not seek redress if an agency denies you that right." Unfortunately, that is exactly what this amendment would do.

The bill before you does not allow a citizen plaintiff to nullify the substantive action taken at an unlawfully closed meeting. The most that he can get is access to the transcript of the meeting and a court order prohibiting the agency from closing meetings on the grounds in question.

This concept of citizen standing is not a new one. It is in the Freedom of Information Act, which is now a decade old, and also in the Privacy Act. Those who have suggested that the standing provisions contained in the bill raise constitutional questions are not correct in their interpretation. The fact that the statute gives any person the right to attend an agency meeting confers standing sufficient to satisfy the constitutional requirements of article III.

We are giving any member of the public the right to attend agency meetings. To say the very least, it would be a gross misrepresentation and a cruel hoax on our part to at the same time prevent those to whom this right is given from taking any action to enforce it.

The amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MOORHEAD) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MOORHEAD of California. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 134, noes 258, not voting 40, as follows:

[Roll No. 563]

AYES—134

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

NOES—258

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

NOT VOTING—40

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

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

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. O'Neill against.

Mr. Henderson for, with Mr. Dent against.

Mr. Fountain for, with Mr. Zeferetti against.

So the amendment to the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Mr. FUQUA. Madam Chairman, I move to strike the last word.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Madam Chairman, as one of the cosponsors of the Government in the Sunshine Act, I want to say what great personal pride I feel in witnessing this debate today.

My home State of Florida originated government in the sunshine more than a decade ago and the results have been spectacular. People feel more confidence in their decisionmakers and, consequently, have more confidence in the decisions that are finally reached.

We need this concept at the national level and we need it now. Watergate and other events of the last few years have shown dramatically the need for openness in government. For far too long important decisions affecting the lives of all Americans have been made behind closed doors. This is not the way to run a democracy.

When administrative and executive agency decisions are reached, the people have a right to know what alternatives were considered and rejected, what pressures were applied by different interest groups and the reasoning behind the decision. Then, and only then, can we truly expect people to believe in these decisions.

In many important ways, our lives are affected by bureaucratic edicts. The people must have confidence in these edicts and in the way they were developed. This cannot occur when no one knows the decisionmaking processes involved.

The bill we are debating today makes ample room for those few exceptions when privacy at a meeting is required. But closed door meetings must be the exception and never the general rule.

We have made great strides in opening up House and Senate committee meetings as well as opening up the Democratic caucuses. The standards we have applied to ourselves have worked well and should be applied throughout the Federal Government.

People all across this Nation have lost confidence in their Government. We can help restore that confidence by our actions today. The Senate acted in a very responsible manner when they unanimously passed sunshine legislation and now it is the turn of the House of Representatives to show the American people our commitment to openness in Government.

Faith of a people in their Government is the cornerstone of a democracy. Public policy determined after public discussion of the issues is one of the precepts upon which that faith is based and we are all accountable today for our actions in maintaining and enlarging openness in Government.

AMENDMENT OFFERED BY MR. LATTA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. LATTA. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. LATTA to the amendment in the nature of a substitute offered by Mr. FLOWERS: Page 18, line 18, after "given" strike the period and insert "; but it shall not include requests for information on or status reports relative to any matter or proceeding covered by this subchapter."

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

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

Mr. LATTA. I yield to the gentleman from Alabama.

Mr. FLOWERS. Madam Chairman, the gentleman from Ohio has gone over the amendment with this Member. I think it would perhaps help out in the legislation.

I think that the problem might arise from someone's reading of the term in the first two subparagraphs of subsection 557(d)(1). It might be well to revise the definition of ex parte communication, to alleviate the situation.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. LATTA. I am happy to yield to the gentlewoman.

Ms. ABZUG. Madam Chairman, I have some problem with this. The language used here is "request for information."

Now, I feel "information" is a very broad word. I thought the gentleman was addressing himself to perfunctory inquiries, such as for status reports concerning particular proceedings. The word he has used might raise a lot of trouble and beyond where the gentleman really wants to go. I just wondered if the gentleman recognizes that and if the gentleman did, I might be willing to take this language to conference and there confine it to the intent of the gentleman, without allowing it to go all over the lot.

Mr. LATTA. Madam Chairman, may I respond to the gentlewoman. I think the word "information" is most important to this amendment, because we might get some agency or department downtown very narrowly construing the words "status report" and putting their own interpretation on it. If a Member of Congress calls downtown and wants a status report on a particular matter, they might put a very narrow interpretation on it. I might add that I went over the need for this amendment when I discussed the rule on the bill. I am trying to keep a door open so that we can get information from a department or agency without prejudice.

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

Mr. LATTA. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, I can appreciate the gentleman's concern about the narrowness of the phrase "status report"; but on the other hand, the question of the broadness or liberality of the word "information" on the other side, raises a question. I do not think the gentleman means this. This is the reason I ask this question. If an individual wants to contact a member of the Board who is making a decision, in the middle of a proceeding, to get information on that decision, that is not covered under this amendment? The gentleman does not contemplate making legitimate, under the law, the right of an individual to get to the decisionmaker in the middle of a proceeding?

Mr. LATTA. We are talking about ex parte communications.

Mr. FASCELL. If the gentleman will yield further, I might make a call to an agency even though I am not a party to the proceeding.

Let me ask this question. Under the gentleman's language, would it be legal for me to go to the judge and say, "Judge, I want you to vote my way on this decision."

Mr. LATTA. Absolutely not.

Mr. FASCELL. That is what I meant. Would it be legal for any other individual to call that judge?

Mr. LATTA. Absolutely not. I might say to the gentleman, people on this side and on that side working on the bill, drew this amendment with the understanding it would apply to everybody and not just be limited to Members of Congress.

Mr. FASCELL. Madam Chairman, if the gentleman will yield further, what the gentleman from Ohio has in mind is that routine inquiries going to agencies saying, "What is the situation? What is going on? How long is it going to take?"

This amendment makes it clear that kinds of inquiries would not be prevented and would not have to be put on the record, but any inquiry which would or could reasonably be considered as affecting or attempting to affect the decisionmakers' decision would be put on the record?

Mr. LATTA. That is correct.

Mr. FASCELL. Thus any ex parte communications which attempts to influence the decisionmaker would not be exempt under your language: is that the intent?

Mr. LATTA. That is what I intend.

Mr. HORTON. Madam Chairman, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from New York.

Mr. HORTON. Madam Chairman, I have been over the language the gentleman from Ohio has submitted and we feel it would be helpful and we accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. LATTA) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was agreed to.

AMENDMENT OFFERED BY MR. M'CLOSKEY TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. McCLOSKEY. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. McCLOSKEY to the amendment in the nature of a substitute offered by Mr. FLOWERS: On page 4, strike line 10 and everything that follows through line 13 and insert in lieu thereof the following:

"(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title) provided that such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

And on page 19, strike line 10 and everything that follows through line 12 and insert in lieu thereof the following:

"(3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;".

[Mr. McCLOSKEY addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. FASCELL. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I would like to get this matter straight in my mind, so I wish the gentleman from California (Mr. McCLOSKEY) would stay right where he is so he can answer my inquiry, because I am having a little problem also.

The original language in the bill of the Committee on Government Operations read that section 552(b)(3) of title V was amended to read: Subsection (3) "required to be withheld from the public by any statute establishing particular criteria or referring to particular types of information," and the gentleman has offered that as an amendment to the Freedom of Informaion Act to undo the Robertson case decision?

Mr. McCLOSKEY. Madam Chairman, if the gentleman will yield, that is correct.

Mr. FASCELL. Then the Committee on the Judiciary came along and added the words, "or permitted," to take care of those cases where we have a permissive statute having authority residing in the Secretary but not mandated by the Congress?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. Therefore, that covered both questions; that is to say, both types, where the Freedom of Information Act would not require information to be made public where it was required or permitted to be withheld; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. Either by law or by referring to particular types of information; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. I gather that what the gentleman is saying is that the qualifying clauses, to wit, establishing particular criteria or referring to particular types of information so qualify the exemption under the Freedom of Information Act or mandatory statute to the extent that the gentleman or somebody feels that even though we have a statute which authorizes an agency to withhold information, the language would be such that it would be required to release the information. That is the way I understand the gentleman's argument.

Therefore, he changes this around through the present amendment so that the qualifying amendment only applies to permissive statutes, those statutes which provide permission for the administrator; is that correct? It would be required that there be particular criteria or particular types of information, but that it would not apply to mandatory statutes; is that correct?

Mr. McCLOSKEY. That is correct.

What I have not made clear, perhaps, is this: This is my amendment adopted in the committee unanimously, but before the committee heard from HEW or from the Census Bureau.

In other words, we went too far in requiring all mandatory statutes of secrecy to be made subject to the Freedom of Information Act. We are pulling back from that requirement that all information required now to be secret by one law is to be made available under this new law. We are pulling back from the first part of the section.

The second section is the one in which the Committee on the Judiciary added the words "or permitted." They brought into the law the very decision we wanted to overrule in the Robertson case.

What we have done is to prohibit the requirement that when information is required to be made secret, we do not need to apply the Freedom of Information Act or the Sunshine Act to those laws.

Mr. FASCELL. How are we going to be governed under the present language? I do not see how, under the gentleman's amendment, except in the particulars which I have stated.

In other words, the way the amendment reads now, whenever there is a statute which mandates that information can be withheld, that is it, period. When it is withheld, there is no change in that under the bill or under the amendment.

Mr. McCLOSKEY. No, no. Under the bill as it stands, without my amendment now, the statute that requires information to be held secret has to have particular criteria in it or it becomes subject to being made public.

Mr. FASCELL. The gentleman is saying that what happens is that the basic law is being changed by the qualifying language; is that correct?

Mr. McCLOSKEY. That is correct.

Mr. FASCELL. The gentleman is saying that all laws that were passed, that have previously been passed, which required information to be withheld, would be subject to the requirement here so that if they did not say particular classes of information or particular criteria, that would modify the basic law and would make all the information available?

Mr. McCLOSKEY. Yes; in this country there are about 200 of these laws that the Supreme Court referred to, and unless the Court ordered it be be made secret and set particular criteria for it to be made secret, then by this amendment we are, in effect, directing the Director of the Census to make the information available, even though there is a specific law, because right in the statute there is a requirement for specific criteria.

Mr. FASCELL. If we take the gentleman's amendment at face value, I would hope it says what he says it does.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. McCLOSKEY) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The question was taken; and the Chairman, being in doubt, the Committee divided, and there were—ayes 34, noes 35.

RECORDED VOTE

Mr. McCLOSKEY. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 282, noes 112, not voting, 38, as follows:

[Roll No. 564]

AYES—282

Abdnor	D'Amours	Harsha
Adams	Daniel, Dan	Hayes, Ind.
Alexander	Daniel, R. W.	Hefner
Allen	Daniels, N.J.	Heinz
Anderson, Ill.	Davis	Henderson
Andrews, N.C.	de la Garza	Hillis
Andrews, N. Dak.	Delaney	Holland
	Derrick	Holt
Annunzio	Derwinski	Horton
Archer	Devine	Howe
Armstrong	Dickinson	Hubbard
Ashbrook	Dingell	Hughes
Ashley	Dodd	Hungate
Aspin	Downey, N.Y.	Hyde
AuCoin	Downing, Va.	Ichord
Bafalis	Duncan, Oreg.	Jacobs
Baldus	Duncan, Tenn.	Jarman
Beard, R.I.	du Pont	Jeffords
Beard, Tenn.	Early	Jenrette
Bedell	Edgar	Johnson, Colo.
Bell	Edwards, Ala.	Johnson, Pa.
Bennett	Emery	Jones, N.C.
Bergland	English	Jones, Okla.
Bevill	Erlenborn	Kasten
Biester	Eshleman	Kazen
Blanchard	Evans, Colo.	Kelly
Boggs	Evans, Ind.	Kemp
Boland	Fary	Ketchum
Bonker	Fenwick	Krebs
Bowen	Findley	Krueger
Brademas	Fish	LaFalce
Breaux	Fisher	Lagomarsino
Brinkley	Fithian	Latta
Broomfield	Flood	Leggett
Brown, Mich.	Florio	Lent
Broyhill	Flowers	Levitas
Buchanan	Flynt	Lloyd, Calif.
Burgener	Foley	Lloyd, Tenn.
Burke, Fla.	Ford, Tenn.	Long, Md.
Burke, Mass.	Forsythe	Lott
Burleson, Tex.	Frenzel	Lujan
Burlison, Mo.	Frey	McClory
Byron	Gaydos	McCloskey
Carter	Giaimo	McCollister
Cederberg	Gilman	McCormack
Chappell	Ginn	McDade
Clancy	Goldwater	McDonald
Clausen, Don H.	Gonzalez	McEwen
	Gradison	McFall
Clawson, Del	Grassley	McKay
Cleveland	Green	McKinney
Cochran	Gude	Madden
Cohen	Guyer	Madigan
Collins, Tex.	Haley	Mahon
Consble	Hall, Ill.	Mann
Conlan	Hall, Tex.	Mathis
Conte	Hamilton	Mazzoli
Cornell	Hammer-schmidt	Meeds
Cotter		Melcher
Coughlin	Hanley	Michel
Crane	Harris	Mikva

Milford	Randall	Steiger, Wis.
Mills	Rees	Stephens
Mineta	Regula	Symms
Minish	Risenhoover	Talcott
Mitchell, N.Y.	Roberts	Taylor, Mo.
Moakley	Robinson	Taylor, N.C.
Moffett	Rodino	Teague
Mollohan	Rogers	Thone
Montgomery	Rooney	Thornton
Moore	Roush	Traxler
Moorhead, Calif.	Rousselot	Treen
Morgan	Runnels	Ullman
Mosher	Ruppe	Van Deerlin
Murphy, Ill.	Russo	Vander Jagt
Murphy, N.Y.	Santini	Vander Veen
Murtha	Sarasin	Vanik
Myers, Ind.	Satterfield	Waggonner
Myers, Pa.	Schneebeli	Walsh
Natcher	Schulze	Whalen
Neal	Sebelius	White
Nedzi	Seiberling	Whitehurst
Nichols	Shipley	Whitten
Obey	Shriver	Wilson, Bob
O'Brien	Shuster	Winn
Pattison, N.Y.	Simon	Wirth
Pepper	Skubitz	Wolff
Perkins	Slack	Wright
Pettis	Smith, Iowa	Wydler
Pickle	Smith, Nebr.	Wylie
Pressler	Snyder	Yates
Price	Spellman	Yatron
Pritchard	Spence	Young, Alaska
Quie	Staggers	Young, Fla.
Railsback	Stanton, J. William	Zablocki

NOES—112

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

NOT VOTING—38

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

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. John Burton against.

Mr. Landrum for, with Mr. Riegle against.

Mr. O'Neill for, with Mr. Clay against.

Mr. SYMMS changed his vote from "no" to "aye."

Mr. BIAGGI and Mr. RINALDO changed their vote from "aye" to "no."

So the amendment to the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. KINDNESS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FLOWERS

Mr. KINDNESS. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. KINDNESS to the amendment in the nature of a substitute offered by Mr. FLOWERS: On page 2, strike lines 14–21 and insert the following in lieu thereof: "(1) the term 'agency' means:

Board for International Broadcasting;

Civil Aeronautics Board;

Commodity Futures Trading Commission;

Consumer Product Safety Commission;

Equal Employment Opportunity Commission;

Export-Import Bank of the United States (Board of Directors);

Federal Communications Commission;

Federal Election Commission;

Federal Deposit Insurance Corporation (Board of Directors);

Federal Farm Credit Board within the Farm Credit Administration;

Federal Home Loan Bank Board;

Federal Maritime Commission

Federal Power Commission;

Federal Trade Commission;

Harry S. Truman Scholarship Foundation (Board of Trustees);

Indian Claims Commission;

Inter-American Foundation (Board of Directors);

Interstate Commerce Commission;

Legal Services Corporation (Board of Directors;)

Mississippi River Commission;

National Commission on Libraries and Information Science;

National Council on Educational Research;

National Council on Quality in Education;

National Credit Union Board;

National Homeownership Foundation (Board of Directors);

National Labor Relations Board;

National Library of Medicine (Board of Regents);

National Mediation Board;

National Science Board of the National Science Foundation;

National Transportation Safety Board;

Nuclear Regulatory Commission;

Occupational Safety and Health Review Commission;

Overseas Private Investment Corporation (Board of Directors);

Railroad Retirement Board;

Renegotiation Board;

Tennessee Valley Authority (Board of Directors);

Uniformed Services University of the Health Sciences (Board of Regents);

U.S. Civil Service Commission;

U.S. Commission on Civil Rights;

U.S. Foreign Claims Settlement Commission;

U.S. International Trade Commission;

U.S. Postal Service (Board of Governors); and

U.S. Railway Association;

Mr. KINDNESS (during the reading). Madam Chairman, I ask unanimous consent that the amendment to the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Madam Chairman, I think this process that has been worked on this bill has been a very good example of improving some legislation so that it really reaches the point of being, I think, the best product that we can accomplish in the area, with the exception of the definition of "agency."

On page 2 of the bill, the current language defines an agency in terms of those bodies called "collegial" bodies, including members appointed by the President, with the advice and consent of the Senate; but we do not really know what that includes totally.

Over in the Senate, the report of the commitee included a listing of the Boards and Commissions that would be within the scope of coverage of the bill as it was dealt with in that body.

It is the long list of some 40-some different commissions and boards. I suggest that this is an occasion when we are taking an important step, but we ought to know exactly what we are doing when we do it. This amendment which I have submitted includes the listing that was in the committee report of the other body, with certain exceptions which I will enumerate.

One of the exceptions is the elimination of the Commodity Credit Corporation from the list. The reason for the Commodity Credit Corporation being eliminated is that, in fact, in statutory language, it is quite clear that it is not really a collegial body in the same sense as most of these others. As originally enacted in 1948, section 2 of 15 United States Code, section 714, the Charter Act of the Commodity Credit Corporation provided that the corporation was subject to the general direction and control of its board of directors. Then it went on, and in 1949, by amendment, that was changed so that the Commodity Credit Corporation functioning is subject now to the general supervision and direction of the Secretary of Agriculture.

Section 9 of the act of 1949 provides that the management of the corporation shall be vested in the board of directors, subject to general supervision and direction of the Secretary. I think it is quite clear that there is a case in which we did not intend to include that type of body; at least I would imagine that is the intention. But nonetheless it was in the listing in the Senate.

Also eliminated from the listing in the other body's committee report is the Federal Reserve Board. Because of some of the points that have been brought out here in debate and discussion today, there is so much involved in the functioning of that Board that by its very nature ought not to be disclosed, it would appear that almost a majority of the meetings of the Federal Reserve Board would be in the category where they have to be closed.

I suspect that we ought to see how this law functions before we start applying it

in sensitive areas of that nature. The same is true with the Securities and Exchange Commission, and the same is true with the Parole Board. The Parole Board was on the list in the other body and is not included in the list in this amendment.

I think we really should know exactly what we are doing when we apply this bill, which will become an act, and I am confident that it will. I am sure it has the broadest kind of support, and I suspect that we easily can and will include other bodies if this amendment is adopted. We will include other bodies in the coverage of it as we gain some experience with it.

I suspect that we should do that, and it should be the subject of oversight for the purpose of achieving that goal. We want government in the sunshine just as broadly as we can have it, but I do believe that we are venturing into the area of interminable litigation with the present language of the bill. It invites litigation; it invites uncertainty, and there is nothing better that we can do with the definition of agency than to make it certain and avoid that litigation that, in other references here in the Committee of the Whole today we have heard, would add to the burden of the courts which are already clogged.

Madam Chairman, I would urge support of the amendment.

[Ms. ABZUG addressed the Committee. Her remarks will appear hereafter in the Extensions of Remarks.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. KINDNESS) to the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS).

The amendment to the amendment in the nature of a substitute was rejected.

The CHAIRMAN. If there are no further amendments, the question is on the amendment in the nature of a substitute offered by the gentleman from Alabama (Mr. FLOWERS), as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MCFALL), having assumed the chair, Mrs. BURKE of California, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11656) to provide that meetings of Government agencies shall be open to the public, and for other purposes, pursuant to House Resolution 1207, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Ms. ABZUG. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 390, nays 5, not voting 37, as follows:

[Roll No. 565]

YEAS—390

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

NAYS—5

Burleson, Tex.	Dickinson	Teague
Collins, Tex.	Poage	

NOT VOTING—37

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

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Sikes.
Mr. Dent with Mr. Stuckey.
Mr. Zeferetti with Mr. Clay.
Mr. Rostenkowski with Mr. Karth.
Mr. Helstoski with Mr. O'Hara.
Mr. Fountain with Mr. Steiger of Arizona.
Mr. Jones of Tennessee with Mr. Statton.
Mr. John L. Burton with Mrs. Sullivan.
Mr. Landrum with Mr. Wiggins.
Mr. Melcher with Mr. Wampler.
Mr. Riegle with Mr. Young of Georgia.
Mr. Symington with Mr. Peyser.
Mr. Sisk with Mr. Esch.
Mr. Hébert with Mr. Hansen.
Mr. Ichord with Mr. Hightower.
Mr. Jones of Alabama with Mr. James V. Stanton.
Mr. Reuss with Mr. Steelman.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 1207, the Committee on Government Operations is discharged from the further consideration of the Senate bill (S. 5) to provide that meetings of Government agencies shall be open to the public, and for other purposes.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill S. 5 and to insert in lieu thereof the provisions of H.R. 11656, as passed, as follows:

That this Act may cited as the "Government in the Sunshine Act".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

OPEN MEETINGS

SEC. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and includes any subdivision thereof authorized to act on behalf of the agency;

"(2) the term 'meeting' means a gathering to jointly conduct or dispose of agency business by two or more, but at least the number of individual agency members required to take action on behalf of the agency, but does not include gatherings required or permitted by subsection (d); and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency.

"(b)(1) Members as described in subsection (a)(2) shall not jointly conduct or dispose of agency business without complying with subsections (b) through (g).

"(1) Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, subsection (b) shall not apply to any portion of an agency meeting and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meetings or the disclosure of such information is likely to—

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

"(2) relate solely to the internal personnel rules and practices of an agency;

"(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title): *Provided*, That such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) involve accusing any person of a crime, or formally censuring any person;

"(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

"(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidental source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

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

"(9) disclose information the premature disclosure of which would—

"(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation, or (ii) significantly endanger the stability of any financial institution; or

"(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed agency action already has been disclosed to the public by the agency, or unless the agency is required by law to make such disclosure prior to taking final agency action on such proposal, or after the agency publishes or serves a substantive rule pursuant to section 553(d) of this title; or

"(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

"(d)(1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c). A single vote may be taken with respect to a series of portions of meetings which are proposed to be closed to the public, or with respect to any information concerning such series, so long as each portion of a meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial portion of a meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

"(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

"(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each ber on the question. If a portion of a m is to be closed to the public, the agenc within one day of the vote taken purs paragraph (1) or (2) of this subsectio publicly available a full written expl of its action closing the portion t with a list of all persons expected to the meeting and their affiliation

"(4) Any agency, a majority of whos ings may properly be closed to the pursuant to paragraph (4), (8), (9) (10) of subsection (c), or any comb thereof, may provide by regulation closing of such meetings or portions in the event that a majority of the m of the agency votes by recorded vote beginning of such meeting, or thereof, to close the exempt portion tions of the meeting, and a copy vote, reflecting the vote of each mem the question, is made available to the The provisions of paragraphs (1), (3) (3) of this subsection and subsecti shall not apply to any portion of a m to which such regulations apply: *Pr* That the agency shall, except to the that such information is exempt fr closure under the provisions of sub (c), provide the public with pub nouncement of the date, place, and matter of the meeting and each thereof at the earliest practicable ti in no case later than the commence the meeting or portion in question.

"(e) In the case of each meeting, the shall make public announcement, at l week before the meeting, of the date and subject matter of the meeting, it is to be open or closed to the pub the name and phone number of the designated by the agency to respon quests for information about the m Such announcement shall be made majority of the members of the agenc mines by a recorded vote that agenc ness requires that such meeting be c an earlier date, in which case the agen make public announcement of th place, and subject matter of such m and whether open or closed to the pu the earliest practicable time and in later than the commencement of the or portion in question. The time, p subject matter of a meeting, or the mination of the agency to open or meeting, or portion of a meeting, to t lic, may be changed following the pu nouncement required by this paragra if (1) a majority of the entire mem of the agency determines by a record that agency business so requires a no earlier announcement of the cha possible, and (2) the agency publi nounces such change and the vote member upon such change at the practicable time and in no case lat the commencement of the meeting or in question.

"(f)(1) For every meeting closed p to paragraphs (1) through (10) of tion (c), the General Counsel or chi officer of the agency shall publicly that, in his opinion, the meeting closed to the public and shall state t vant exemptive provision. A copy certification, together with a stateme the presiding officer of the meeting forth the date, time and place of the m the persons present, the generic subje ter of the discussion at the meeting, actions taken, shall be incorporat minutes retained by the agency.

"(2) Written minutes shall be mad agency meeting, or portion thereof, open to the public. The agency sha such minutes promptly available to t lic in a location easily accessible to t lic, and shall maintain such minut period of at least two years after suc

ing. Copies of such minutes shall be furnished to any person at no greater than the actual cost of duplication thereof or, if in the public interest, at no cost.

"(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time therefor provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section, and to require the promulgation of regulations that are in accord with such subsections.

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b) through (f) of this section. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held, or in the District Court for the District of Columbia, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint, but such time may be extended by the court for up to twenty additional days upon a showing of good cause therefor. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public such portion of the minutes of a meeting as is not authorized to be withheld under subsection (c) of this section. Nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside, enjoin or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

"(k) Except as specifically provided in this section, nothing herein expands or limits the present rights of any person under section 552 of this title, except thatt he provisions of this Act shall govern in the case of any request made pursuant to such section to copy or inspect the minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the minutes described in subsection (f) of this section.

"(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof otherwise required by law to be open.

"(m) Nothing in this section authorizes any agency to withhold from any individual any record, including minutes required by this Act, which is otherwise accessible to such individual under section 552a of this title.

"(n) In the event that any meeting is subject to the provisions of the Federal Advisory Committee Act as well as the provisions of this section, the provisions of this section shall govern.".

(b) The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

EX PARTE COMMUNICATIONS

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

"(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no interested person outside the agency shall make or cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any interested person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and made or caused to be made by a party or interested person, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, require the person or party who has committed such violation or caused such violation to occur to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

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

"(2) This section does not constitute authority to withhold information from Congress.".

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

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

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

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

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for information on or status reports relative to the matter or proceeding covered by this subchapter.".

(c) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.".

CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 5, United States Code, is amended by inserting after "Section 552 (public information)," the words "section 552a (records about individuals), section 552b (open meetings),".

(b) Section 552(b)(3) of title 5, United States Code, is amended to read as follows:

"(3) specifically exempted from disclosure by statute (other than Section 552b of this title): *Provided*, That such statute (A) requires that the matters be withheld from the public, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;"; and

(c) Subsection (d) of section 10 of the Federal Advisory Committee Act is amended by striking out the first sentence and inserting in lieu thereof the following: "Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.".

EFFECTIVE DATE

SEC. 6. (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect one hundred and eighty days after the date of its enactment.

(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 11656) was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter, on H.R. 11656, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 1558. An act for the relief of Dr. Gernot M. R. Winkler; and

H.R. 1762. An act for the relief of Mrs. Lessie Edwards.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 14233) entitled "An act making appropriations for the Department of Housing and Urban Development, and for sundry independent executive agencies, boards, bureaus, commissions, corporations, and offices for the fiscal year ending September 30, 1977, and for other purposes."

The message also announced that the Senate agreed to the House amendments to the Senate amendments numbered 1, 2, 35, and 37 to the foregoing bill.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2212. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and for other purposes.

CONFERENCE REPORT ON H.R. 11670, COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1977

Mr. BIAGGI (on behalf of Mrs. SULLIVAN) filed the following conference report and statement on the bill (H.R. 11670) to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a yearend strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 94-1374)

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11670), to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a yearend strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 8 and 9.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, and 7, and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 10 and agree to the same with an amendment as follows: Strike out all after the first sentence of the amendment, and the Senate agree to the same.

That the House recede from its disagreement of the Senate amendment numbered 11 and agree to the same with an amendment as follows: Insert the following clarifying language: (1) in lines 4 and 5 of the amendment, after the word "specific", and before the word "vessels", insert the word "cargo-carrying"; (2) in line 15 of the amendment, after the word "permit", insert the words "issued pursuant to subsection (a)"; and (3) in line 17 of the amendment, after the word "Alaska", insert the words "and only", and the Senate agree to the same.

LEONOR K. SULLIVAN,
THOMAS L. ASHLEY,
MARIO BIAGGI,
THOMAS N. DOWNING,
PAUL G. ROGERS,
PHILIP E. RUPPE,
PIERRE S. DU PONT,
Managers on the Part of the House.

WARREN G. MAGNUSON,
RUSSELL B. LONG,
JOHN A. DURKIN,
TED STEVENS,
J. GLENN BEALL, JR.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11670), to authorize appropriations for the use of the Coast Guard for the procurement of vessels and aircraft and construction of shore and offshore establishments, to authorize for the Coast Guard a year-end strength for active duty personnel, to authorize for the Coast Guard average military student loads, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

PROCUREMENT OF VESSELS

Amendment No. 1: authorizes $86,168,000 for the procurement of vessels, as proposed by the Senate, instead of $187,186,000, as proposed by the House. This reduction in authorization was, in large part, replaced by the new authorizations contained in the amendments of the Senate numbered 6 and 7.

Amendment No. 2: authorizes the procurement of two high/medium endurance cutters, as proposed by the Senate, instead of four high/medium endurance cutters, as proposed by the House.

Amendment No. 3: deletes the authorization for the procurement of four small domestic icebreakers, as proposed by the House.

PROCUREMENT OF AIRCRAFT

Amendment No. 4: authorizes $24,300,000 for the procurement of aircraft, as proposed by the Senate, instead of $92,500,000, as proposed by the House. Of the total reduction of $68,200,000, $59,600,000 involved aircraft for the enhancement of Coast Guard law enforcement capability relating to Public Law 94-265. That part of the reduction was replaced by the new authorization provided in the amendment of the S bered 6. The remaining reductio 000 involved the procurement range surveillance aircraft.

Amendment No. 5: deletes procurement of six long-range aircraft and five short-range he copters, as proposed by the Hou

PROCUREMENT OF VESSELS AND

Amendment No. 6: authorizes for the procurement of vessels craft to carry out Coast Guar including fishery law enforcem posed by the Senate. This autho places $49,000,000 of the red Amendment No. 1, and $59,600,0 in the reduction in Amendment fecting the procurement costs high/medium endurance cutters Amendment No. 2, and the six surveillance aircraft and five shor covery helicopters, deleted by A No. 5. The conferees note that n ommendation has been received b gress delineating the exact mix and vessels needed for the additi imposed upon the Coast Guard enforcement responsibilities un Law 94-265, which extended Un jurisdiction over coastal fisheri miles from the coastline.

PROCUREMENT OF VESSELS WITH H CAPABILITY

Amendment No. 7: authorizes for the procurement of vessels wit ing capability, to be used on the G as proposed by the Senate. The note that this is an authorization terms for the specific authorizatio by the House, of $52,000,000 Amendment No. 1, for the procu four small domestic icebreakers, Amendment No. 3.

ANNUAL AUTHORIZATION

Amendment No. 8: would have House provision that, after fiscal no funds may be appropriated to use of the Coast Guard for (1) ope maintenance; (2) acquisition, co rebuilding, or improvement of aid gation, shore or offshore establishm sels or aircraft, or equipment relat (3) alteration of obstructive brid research, development, tests, or related to any of the above, unless priation of such funds has been by legislation enacted after Dec 1976.

Amendment No. 9: This technic ment, renumbering sections in the latd to Amendment No. 8.

ENFORCEMENT OF THE FEDERAL BO ACT OF 1971

Amendment No. 10: adds a new the bill, which would prohibit fund ized for the operation or maintena Coast Guard, from being used fo ment of the Federal Boat Safety A (46 U.S.C. 1451 et seq.), on Lake Wi kee and Lake Winnisquam, their necting waterways, or the Merrim in the State of New Hampshire du year 1977, or while the question Guard jurisdiction over such Lakes ways is before a Federal or State further provides that nothing the (1) prevent or limit the distributio to the State of New Hampshire Federal Boat Safety Act, or (2) authority or responsibility of t Guard to assist in search and resc tions in the State of New Hamp agreed upon by the conference, th ment strikes the second and third from the amendment of the Senate 10, leaving the first sentence inta ever, the conferees wish to make it the amendment, as agreed upon, is