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*UH - file w/ my memo to Buchen*

THE WHITE HOUSE  
WASHINGTON

December 9, 1975

MEMORANDUM FOR: VERN LOEN *VL*

THROUGH: PHIL BUCHEN *P.W.B.*

FROM: KEN LAZARUS *ka*

SUBJECT: S. 5 "Sunshine Law"

We have been following the development of S. 5 and H. R. 10315, bills to create a so-called "Government in the Sunshine Act."

A number of independent regulatory agencies and several Executive Branch departments are in the process of presenting their objections to the measure before Representative Abzug's Government Operations Subcommittee.

Attached for your information is a copy of a letter and attachment commenting on H. R. 10315 from OMB to Representative Brooks, Chairman of the full Committee on Government Operations which was recently cleared by this office. This letter represents the closest thing to an "Administration" position on the matter at the present time.

Please continue to keep us advised of further developments in this regard. |

Thank you.

Attachment





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

December 8, 1975

Honorable Jack Brooks  
Chairman, Committee on  
Government Operations  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Office of Management and Budget on H.R. 10315, the "Government in the Sunshine Act." Members of our respective staffs have held discussions concerning this bill.

The bill would require generally that meetings of the members of multiheaded Executive agencies be open to public observation. A meeting could be closed to the public if its subject matter fell within one of the bill's exemptions, but the agency would be required to prepare and maintain a transcript of the proceedings.

The purposes of the bill are to increase public understanding of the reasons for governmental decisions and to enhance the public's faith in the integrity of government. We support those objectives, but we perceive serious problems with this legislation. Some of these problems stem from the bill's drafting and others from its underlying concepts. Our principal objections to the bill are discussed in some detail in the attachment to this letter. Our most important concerns are summarized briefly in the paragraphs below.

The bill's definition of the agencies it would cover is unclear, and would lead to unnecessary confusion and litigation. We believe that the affected agencies should be specifically listed. Likewise, the bill's definition of the meetings it would cover could lead to serious difficulties. The bill's definition would make the decision as to whether there will be a meeting dependent upon what happens at the meeting. We believe that only those gatherings held for the purpose of jointly conducting agency business should be included.

Exception (9) of the bill permits the closing of a meeting when it would concern an agency's participation in a civil action in a Federal or State court. This exception should be broadened to include civil and criminal proceedings as well as actions before other agencies, foreign courts, and international tribunals, and arbitration proceedings.

The requirement that a vote be taken in order to close each meeting is unnecessarily burdensome upon those agencies which deal primarily with exempted matters. They should be permitted to close all such meetings by regulation.

We do not believe that the bill's exceptions are broad enough to protect the public interest in the case of agencies, such as the Federal Reserve Board and the Securities and Exchange Commission, which are charged with regulating financial institutions and securities and financial markets. A suggested amendment to correct this deficiency is set forth in the attachment to this report.

The bill's judicial review provisions also present difficulties. For example, they provide that district courts may entertain an action by any person to enforce the requirements of the bill by declaratory judgment, injunction, or other relief. It should be made clear that this bill does not authorize a court to set aside agency actions even if those actions were taken in a meeting improperly closed to the public. In our view, such a result would be unwarranted and would increase uncertainty, costs and delays in agency proceedings. The bill would also permit the assessment of attorney fees and litigation costs against individual agency members under certain circumstances. This provision would have the undesirable effects of inhibiting the willingness of qualified persons to accept agency appointments and inhibiting the performance of official duties by those in office.

In summary, we support the purposes of H.R. 10315, but we believe that those objectives can be and should be accomplished with far more certainty and far less disruption and delay in agency proceedings than this bill would provide.

The Office of Management and Budget is opposed to the favorable consideration of H.R. 10315 in its present form.

Sincerely,

James M. Frey  
Assistant Director for  
Legislative Reference

Attachment

The bill presently defines the agencies it would cover by an expansive definition of uncertain scope. Such a definition may well be appropriate for purposes of the Administrative Procedures Act, but is most inappropriate, expansive and unnecessary in this bill. The agencies sought to be covered are not numerous and can be specifically listed, thereby avoiding the seemingly endless disputes and litigation concerning coverage that we and other agencies have found to be so costly and time consuming in analogous situations. A successful precedent for this approach is the Government Corporation Control Act of 1945, 31 U.S.C. 841 et seq. This Act has been amended on several occasions to add or delete from its scope particular corporations, a practice which would be appropriate for H.R. 10315. Absolute clarity of coverage not only avoids the cost of the obvious uncertainties but also simplifies the drafting of other provisions of the bill, and the process of formulating the list of agencies need not be a protracted one.

A meeting is defined by the bill to be a gathering of the members of the agency where deliberations on agency business occur. Other provisions of the bill provide for advance public notice of these meetings and an opportunity for the injunction of them if closed to public observation. The definition of meeting is therefore crucial to the bill, for if there is not a meeting, the bill would not apply. It is also crucial that the requirements of a meeting be understood by the public and by the courts in advance of the actual holding of a meeting. This understanding is necessary if the agency is to bear its burden of justifying any decision to close a meeting in reliance upon the exceptions to the open meeting requirement. Unfortunately, the definition of meeting in the bill is dependent upon what occurs at a gathering. This paradoxical standard may be very difficult to demonstrate in advance, and may significantly frustrate the use of the exemptions in the bill. To the extent that the bill seeks to reduce any public suspicion concerning the manner in which the business of these agencies is conducted--an objective with which we agree--the unusual definition of meeting may well defeat this purpose by requiring agencies to demonstrate the impossible in order to justify closing a meeting for a reason which the Congress would acknowledge as necessary.

We would urge that a definition of meeting take the more usual form--a gathering with a purpose. Purpose is a common element in judicial determinations and capable of expression and proof in advance of any meeting. Any

concern that real agency business will be conducted at gatherings called for other purposes should be met by expressly precluding the conduct of agency business in such gatherings without compliance with this bill.

H.R. 10315 significantly improves S. 5 by the addition of a definition of "member". This definition can be simplified by the elimination of the Presidential appointment limitation if the agencies are listed in the bill. A definition of "official agency business" should also be added.

The agencies which would be covered by the bill are in the best position to provide comment upon the extent to which the exceptions to the requirement for meetings to be open to public observation meet their needs. Generally, however, since to some extent the exceptions in this bill track those in the Freedom of Information Act, the exceptions anticipate the existence of agency records as a requirement for closing. For instance, closing to avoid disclosing information contained in investigatory records is permitted upon the assumption that in all such instances there will be a record. The exceptions in the bill should insure that gatherings to discuss information not based on a record, but which if written would be such a record, may also be closed.

We believe that the exception for trade secrets and commercial or financial information should read exactly as the provision does in 5 U.S.C. 552(b)(4)--the Freedom of Information Act. The reason for the language in the bill is not clear but it will raise questions as to why the change was made and its impact. While we agree with the concern the bill expresses for the privacy of individuals, we are concerned that as presently stated the bill does not facilely interface with the Privacy Act. The bill would establish as a basis for closing a meeting a standard based upon "a clearly unwarranted invasion of personal privacy," as does the Freedom of Information Act, and a similar test for disclosures to third persons is carried through into the Privacy Act of 1974, 5 U.S.C. 552a(b)(2). This bill should not require the disclosure of information which would not be required to be disclosed to the public by the Privacy Act. We also do not agree that Federal employees surrender their privacy safeguards "with respect to [their] official duties or employment."

The paragraph limiting the utilization of exception (7) should be modified to permit the closing of a meeting even if there has been an unauthorized disclosure of some information pertaining to such meeting. The limitation as now written not only sanctions unauthorized disclosures, but provides an incentive for such disclosures. The limitation should be applicable only when the agency makes or when it is required by law to make a disclosure.

This exception (7) permits a closing in order to avoid untimely disclosure of an action when it would be likely to seriously frustrate the proposed agency action. Often, it is not the action which would be frustrated, but the policy underlying it. For example, release of information indicating an agency's interest in the acquisition of a certain tract of land may not frustrate the purchase of that land, but the acquisition at twice the price as a result of the speculation fostered by the disclosure would frustrate the policy underlying the proposed land acquisition. This provision should be modified accordingly.

Exception (9) authorizes a closing when the meeting would concern an agency's participation in a civil action in Federal or State court and also for matters generally within the scope of 5 U.S.C. 554. Although exceptions for criminal activities are present elsewhere in the bill, to avoid any question the bill should be amended to cover criminal actions as well. This exception should cover civil and criminal proceedings as well as actions, and such actions and proceedings should not be limited to State and Federal courts, but should, as several other agencies have urged, cover actions before other agencies and in foreign courts and other international tribunals and in arbitration proceedings. Furthermore, the citation in the bill to the procedures in Section 554 of Title 5---adjudicatory proceedings--eliminates as a basis for closing meetings the exceptions to Section 554 which also should be bases for closings. Section 553 of Title 5--the informal rule making provision--is itself a "sunshine" provision since it opens to public comment and participation most agency rule makings. This has been one of the most significant and successful provisions of the Administrative Procedures Act. The proceedings which lead to

the proposals which are subject to Section 553 should be permitted to be handled as they are now and it is recommended that the bill be modified to permit agencies to form the proposals subject to Section 553 without public observation if they choose to do so.

There are, of course, often statutes which require the withholding of certain information from the public. Exception (10) permits the closing of meetings which would disclose such information only for certain of these statutes. The effect of the bill in some instances would be to compel the disclosure in an open meeting of information specifically exempted from disclosure by another statute. We do not believe that H.R. 10315 should repeal existing law and require the disclosure of information specifically exempted from disclosure by statute. Such statutes have been enacted by Congress over the years to deal with situations where governmental concerns are overriding. The Freedom of Information Act did not repeal those provisions, and we see no justification for doing so now.

As to the procedures for closing meetings of these agencies, we believe that the number of members who are entrusted to take action on behalf of an agency in a meeting should be entrusted as well to determine whether such meeting satisfies the requirements of these exceptions and whether such meetings therefore should be closed. To require that for each such determination a majority of the entire membership must vote for such action would, we believe, impede the prompt conduct of the agency business, the necessity for which the bill in other areas provides. As presently drafted, H.R. 10315 permits any person whose interests may be directly affected to require a vote to close a meeting for reasons set forth in exceptions (3), (4) or (5). Similar concerns underlie exceptions (6), (7), (8) and (1) and should also permit any such person to require a vote to close a meeting.

In order to reduce the administrative impact and costs of the bill, any agency a majority of whose meetings may be closed to the public, should be able to provide for such closing by regulations, and not merely when the closing is for reasons set forth in exceptions (6), (7) (A), (8) or (9) as H.R. 10315 now provides.



H.R. 10315 permits an action to be brought in Federal district court for any violations of this bill against the agency and against any of the individual members of an agency. The bill also provides that in certain instances reasonable attorney fees and other litigation costs may be awarded against the agency and against the individual members. This potential personal liability on behalf of the individual members in the performance of their official duties is not in our opinion in the best interests of our Government. The specter of a personal defense for the performance of official duties would have an inhibiting effect upon the performance of such duties and upon the willingness of talented people to accept appointments to these positions. These provisions should be deleted.

The Senate Report on S. 5 indicates that that bill did not provide a basis for enjoining, voiding or setting aside of any agency action taken at a meeting. Thus, judicial action to enjoin, void or set aside agency action even if taken in a meeting improperly closed to public observation, cannot be based upon S. 5 and in our opinion should not be. Since H.R. 10315 uses the same language as S. 5, we trust that this most important aspect is your understanding as well. At a time when the Congress and the Executive are actively reviewing Governmental activities in general and the regulatory process specifically to reduce costs and delays, a provision permitting injunctions and encouraging protracted litigation on purely procedural grounds must be avoided.

There are other provisions of H.R. 10315 which, in part, because of the draftsmanship unnecessarily increase administrative difficulties and attendant costs and delay. For instance, the bill as drafted requires the members to have a second meeting to read a transcript of a closed meeting to vote on releasability of portions of it. By requiring instead that the agency release upon request, such portions of the transcripts as are not exemptable, the same results are achieved without a requirement for a second meeting to review the first. Furthermore, such an approach utilizes procedures to which agencies are now

accustomed; e.g., the Freedom of Information Act, permits delegation of initial decisions to an appropriate administrative official and allows agencies to establish administrative appeals within the agencies in instances of a denial of access to assist in reducing litigation.

There are many aspects to the judicial review provisions of the bill which seem unnecessary. For example, subsection (i) in its entirety does not appear to add anything to the bill or existing law except confusion engendered by speculation about its purpose. In the interests of some certainty to the subject matter covered by the bill, there should be a time limit on the judicial review provisions beyond which the various actions may not be brought. Also, the accelerated judicial review provisions have become more burdensome and difficult to attain as a result of the impositions of rigorous time demands in criminal proceedings and accelerated procedures in other civil actions and proceedings. Alternatives to these provisions should be considered.

The manner in which this bill would impact upon or conflict with other laws must be provided for more carefully than the bill currently provides. For instance, the repeal of other laws precluding disclosure of information has already been mentioned. The lack of interface provisions with the Federal Advisory Committee Act, 5 U.S.C. App. I, also requires a statutory resolution. Although the Senate Report on S. 5 recognizes the conflict between this bill and the Federal Advisory Committee Act in certain instances, S. 5 and H.R. 10315 do not provide by their terms, as they should, for a resolution of this conflict. If the agencies which would be covered by this bill are listed as we have recommended, agencies will not be covered both by this bill and the Federal Advisory Committee Act. However, when agencies which would be covered by this bill meet with advisory committees, the bill should provide for which provisions apply.

We also share the concern underlying the request of some agencies for a new subsection as follows that could be subsection (m) redesignating the present subsection (m) and (n) as (n) and (o) respectively:

"The requirements and provisions of this section shall not apply to the meetings of any agency which are likely to involve a discussion of information which, if disclosed, might, in the view of the agency involved, have an adverse effect on the financial markets in which securities are traded or on the professional participants in and self-regulators of the securities markets."

Section 5 of the bill would, as S. 5 would, prohibit ex parte communications in situations where agency determinations are required to be reached only on the record after an opportunity for hearing. We agree that such determinations should be based exclusively upon the administrative record, but we share the concern of many agencies including the Department of Justice that the provisions are overly broad as written and may be more appropriately handled by requiring agencies to set forth regulations in compliance with principles which would be set forth in the bill.

THE WHITE HOUSE

WASHINGTON

November 7, 1975

MEMORANDUM FOR: PHILIP BUCHEN  
THROUGH: MAX FRIEDERSDORF  
FROM: VERN LOEN  
SUBJECT: S. 5 "Sunshine Law"

This measure provides that meetings of government agencies and Congressional committees shall be open to the public.

The Administration's position as stated by OMB is that we do not object to the purpose of the bill, but oppose it as reported because of its imprecision and numerous technical deficiencies. For example, the bill fails to state clearly what activities are subject to its provisions or even what agencies are covered.

S. 5 passed the Senate on Thursday, November 6, 94-0, after rejecting by a vote of 36-57 the Javits' amendment to exempt Federal Reserve Board operations. The Federal Reserve was the only target agency which actively sought an exemption.

Among other agencies which would be affected are the FCC, the FDIC, the FHLBB and any other agencies headed by a Presidential appointee and run by a board of directors.

This is not only a "motherhood" bill, but places us in an institutional fight between the Executive and the legislative. Arthur Burns, I understand, is really worked up about it and will be contacting Jim Lynn.

Hearings began yesterday before Rep. Bella Abzug's Government Operations Subcommittee on Government Information and Individual Rights. Minority Members are Rep. Sam Steiger (R-Ariz.), Clarence Brown (R-Ohio) and Paul McCloskey (R-Calif.). There are eight Democratic Members of an extremely liberal stripe. The full committee is equally hostile.

In view of the prohibition on contacting independent agencies, it would appear that we need some guidance as to what the Administration position should be with regard to each affected agency and what proper strategy can be utilized. Otherwise, the President may be called upon to veto a bill with no hope of sustaining.

It is too late for action in the House during the remainder of this session, but Administration witnesses should be directed to request time and suggest amendments at the subcommittee level. If it is not cleaned up in subcommittee or full committee, there is little hope on the House floor.

A copy of the bill, S. 5, will be forthcoming.

*Bill - S.5. received from Records  
and sent to P. Buchen. on 11/10/75  
(put Vern's Report on it.)*

*Vera*

THE WHITE HOUSE  
WASHINGTON

Date 11/10

TO: PHILIP BUCHEN

FROM: VERN C. LOEN

Please Handle \_\_\_\_\_

For Your Information \_\_\_\_\_

Per Our Conversation \_\_\_\_\_

Other: attachment for memo of  
11/7/75.



## GOVERNMENT IN THE SUNSHINE ACT

SEPTEMBER 18 (legislative day, SEPTEMBER 12), 1975.—Ordered to be printed

Mr. CANNON, from the Committee on Rules and Administration and on behalf of the Committee on the Judiciary, submitted the following

### REPORT

[To accompany S. 5]

The Committee on Rules and Administration, to which was referred title I of the bill (S. 5) to provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes, having considered the same, reports favorably thereon with an additional amendment, and recommends that the bill as further amended by the Committee on Rules and Administration do pass.

The Committee on the Judiciary, to which was referred section 202 of Title II of the bill (S. 5), has been unable to act thereon due to the press of other legislative business, but agrees to report the bill with the reservation of the right to file on the floor of the Senate proposed amendments to this legislation at a later date.

S. 5 would provide that, except under certain specified circumstances, all meetings of multiheaded Government agencies and of congressional committees would be open to the public.

This measure was reported by the Committee on Government Operations on July 31, 1975, with an amendment in the nature of a substitute. On August 1, 1975, by unanimous consent, the bill was referred to the Committee on Rules and Administration for consideration of title I only, with instructions to report back no later than September 15. This reporting date was subsequently extended to September 19.

Title I, which is the subject of this Committee's consideration, would—

(1) Amend the Legislative Reorganization Act of 1946 to open to the public most meetings of Senate standing, select, and special committees (including all subcommittees), as well as meetings of joint committees and conference committees of the Congress;

(2) Repeal the present rule Senate on the subject (paragraph 7(b) of Rule XXV); and

(3) Amend Rule XI of the Rules of the House of Representatives to open to the public most meetings of House standing, select, and special committees (including all subcommittees).

The Committee on Rules and Administration is reporting S. 5 with an additional amendment, the effect of which would be to strike Title I from the bill. While the Committee generally agrees with the concept of more openness in Government as expressed in S. 5, it believes that in respect to congressional committees such purpose would more properly be achieved by direct amendment of the Standing Rules of the Senate rather than by amendment of the Legislative Reorganization Act of 1946. Consequently the Committee is reporting Senate Resolution 9 with an amendment in the nature of a substitute for that purpose. (For details of that proposal see the report of the Committee on Rules and Administration to accompany S. Res. 9.)

The Committee on Rules and Administration has recommended that in respect to congressional committees the purposes of S. 5 be accomplished by direct amendment of the Standing Rules, rather than by amendment of the Legislative Reorganization Act of 1946, for the following reasons:

Section 5 of Article I of the Constitution provides that "Each House may determine the Rules of its Proceedings, \* \* \*." In the Committee's judgment such a fundamental change in Senate procedure as further opening of committee meetings should be accomplished by simple resolution directly amending the Senate rules, thus obviating the necessity of participation by the House of Representatives or the President in a matter which is solely within the jurisdiction of the Senate itself.

The Legislative Reorganization Act of 1970 enacted certain provisions bearing on the procedure and organization of both Houses of Congress. In many instances that Act effected changes in the Standing Rules of the House of Representatives, while it left comparable or identical provisions relating to the Senate standing as provisions of public law, and not as comparable changes in the Standing Rules of the Senate. The Committee on Rules and Administration has undertaken a review of all such provisions of the Legislative Reorganization Acts (1946 and 1970) with the objective of ultimately incorporating all appropriate provisions into the Standing Rules themselves.

The Committee on Rules and Administration did not address itself to the matter of open meetings of joint committees of Congress, believing that subject should await experience gained under the new procedure in respect to standing committees, but by a vote of 7 to 1 it agreed to table Senate Resolution 12, which would have opened up conference committees. The vote to table Senate Resolution 12 was as follows:

YEAS—7

NAYS—1

Mr. Cannon  
Mr. Pell <sup>1</sup>  
Mr. Scott  
Mr. Byrd  
Mr. Griffin  
Mr. Allen  
Mr. Williams <sup>1</sup>

Mr. Hatfield

<sup>1</sup> Proxy.

It should be noted that since the Committee on Rules and Administration was directed by the Senate to confine its consideration only to Title I of S. 5, the Committee is thereby precluded from reporting the technical or conforming amendments in the other portions of S. 5 which would be required as a result of its recommended deletion of Title I. Thus, should the recommendation of the Committee on Rules and Administration be approved by the Senate, authority for making such necessary conforming amendments should be included within that approval.

## ROLLCALL VOTE ON S. 5

On the motion by Mr. Robert C. Byrd that Title I of S. 5 be stricken and the remainder of the bill be reported favorably, the Committee voted as follows:

YEAS—7

NAYS—1

Mr. Cannon  
Mr. Hatfield  
Mr. Pell <sup>1</sup>  
Mr. Scott  
Mr. Byrd  
Mr. Griffin  
Mr. Allen  
Mr. Williams <sup>1</sup>

<sup>1</sup> By proxy.

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1975

Referred to the Committee on Government Operations

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**AN ACT**

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

5 SEC. 2. DECLARATION OF POLICY.—It is hereby de-  
6 clared to be the policy of the United States that the public  
7 is entitled to the fullest practicable information regarding  
8 the decisionmaking processes of the Federal Government.  
9 It is the purpose of this Act to provide the public with such  
10 information, while protecting the rights of individuals and  
11 the ability of the Government to carry out its responsibilities.



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

5 SEC. 4. (a) This section applies, according to the pro-  
6 visions thereof, to the Federal Election Commission and to  
7 any agency, as defined in section 551 (1) of title 5, United  
8 States Code, where the collegial body comprising the agency  
9 consists of two or more individual members, at least a major-  
10 ity of whom are appointed to such position by the President  
11 with the advice and consent of the Senate. Except as provided  
12 in subsection (b), all meetings of such collegial body, or of  
13 a subdivision thereof authorized to take action on behalf of  
14 the agency, shall be open to the public. For purposes of this  
15 section, a meeting means the deliberations of at least the  
16 number of individual agency members required to take action  
17 on behalf of the agency where such deliberations concern the  
18 joint conduct or disposition of official agency business.

19 (b) Except where the agency finds that the public in-  
20 terest requires otherwise, (1) subsection (a) shall not apply  
21 to any agency meeting, or any portion of an agency meeting,  
22 or to any meeting, or any portion of a meeting, of a sub-  
23 division thereof authorized to take action on behalf of the  
24 agency, and, (2) the requirements of subsections (c) and  
25 (d) shall not apply to any information pertaining to such

1 meeting otherwise required by this section to be disclosed to  
2 the public, where the agency, or the subdivision thereof con-  
3 ducting the meeting, properly determines that such portion  
4 or portions of its meeting, or such information, can be reason-  
5 ably expected to—

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

11 (2) relate solely to the agency’s own internal  
12 personnel rules and practices;

13 (3) disclose information of a personal nature  
14 where disclosure would constitute a clearly unwarranted  
15 invasion of personal privacy;

16 (4) involve accusing any person of a crime, or  
17 formally censuring any person;

18 (5) disclose information contained in investigatory  
19 records compiled for law enforcement purposes, but  
20 only to the extent that the disclosure would (A) inter-  
21 fere with enforcement proceedings, (B) deprive a  
22 person of a right to a fair trial or an impartial ad-  
23 judication, (C) constitute an unwarranted invasion of  
24 personal privacy, (D) disclose the identity of a con-  
25 fidential source, (E) in the case of a record compiled

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

8 (6) disclose trade secrets, or financial or com-  
 9 mercial information obtained from any person, where  
 10 such trade secrets or other information could not be ob-  
 11 tained by the agency without a pledge of confidentiality,  
 12 or where such information must be withheld from the  
 13 public in order to prevent substantial injury to the com-  
 14 petitive position of the person to whom such information  
 15 relates;

16 (7) disclose information which must be withheld  
 17 from the public in order to avoid premature disclosure of  
 18 an action or a proposed action by—

19 (A) an agency which regulates currencies, se-  
 20 curities, commodities, or financial institutions where  
 21 such disclosure would (i) lead to significant finan-  
 22 cial speculation in currencies, securities, or commod-  
 23 ities, or (ii) significantly endanger the stability  
 24 of any financial institution;

25 (B) any agency where such disclosure would

1 significantly frustrate implementation of the pro-  
 2 posed agency action, or private action contingent  
 3 thereon; or

4 (C) any agency relating to the purchase by  
 5 such agency of real property.

6 This paragraph shall not apply in any instance where  
 7 the agency has already disclosed to the public the con-  
 8 tent or nature of its proposed action, or where the agency  
 9 is required by law to make such disclosure on its own  
 10 initiative prior to taking final agency action on such  
 11 proposal;

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

16 (9) specifically concern the agency's participation  
 17 in a civil action in Federal or State court, or the initia-  
 18 tion, conduct, or disposition by the agency of a particular  
 19 case of formal agency adjudication pursuant to the proce-  
 20 dures in section 554 of title 5, United States Code, or  
 21 otherwise involving a determination on the record after  
 22 opportunity for a hearing; or

23 (10) disclose information required to be withheld  
 24 from the public by any other statute establishing par-

1 ticular criteria or referring to particular types of  
2 information.

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

1 day of any vote taken pursuant to this paragraph, the agency  
2 shall make publicly available a written copy of such vote.

3 (2) If a meeting or portion thereof is closed to the  
4 public, the agency shall, within one day of the vote taken  
5 pursuant to paragraph (1) of this subsection, make publicly  
6 available a full written explanation of its action closing the  
7 meeting, or portion thereof, together with a list of all persons  
8 expected to attend the meeting, and their affiliation.

9 (3) Any agency, a majority of whose meetings will  
10 properly be closed to the public, in whole or in part, pursuant  
11 to paragraphs (6), (7) (A), (8), or (9) of subsection (b),  
12 or any combination thereof, may provide by regulation for  
13 the closing of such meetings, or portion of such meetings, so  
14 long as a majority of the members of the agency, or of the  
15 subdivision thereof conducting the meeting, votes at the be-  
16 ginning of such meeting, or portion thereof, to close the meet-  
17 ing, and a copy of such vote is made available to the public.  
18 The provisions of this subsection, and subsection (d), shall  
19 not apply to any meeting to which such regulations apply:  
20 *Provided*, That the agency shall, except to the extent that the  
21 provisions of subsection (b) may apply, provide the public  
22 with public announcement of the date, place, and subject mat-  
23 ter of the meeting at the earliest practicable opportunity.

24 (d) In the case of each meeting, the agency shall make  
25 public announcement, at least one week before the meeting,

1 of the date, place, and subject matter of the meeting, whether  
 2 open or closed to the public, and the name and phone number  
 3 of the official designated by the agency to respond to requests  
 4 for information about the meeting. Such announcement shall  
 5 be made unless a majority of the members of the agency,  
 6 or of the members of the subdivision thereof conducting the  
 7 meeting, determines by a vote that agency business requires  
 8 that such meetings be called at an earlier date, in which case  
 9 the agency shall make public announcement of the date,  
 10 place, and subject matter of such meeting, and whether open  
 11 or closed to the public, at the earliest practicable opportunity.  
 12 The subject matter of a meeting, or the determination of the  
 13 agency to open or close a meeting, or portion of a meeting,  
 14 to the public, may be changed following the public announce-  
 15 ment required by this paragraph if, (1) a majority of the  
 16 entire membership of the agency, or of the subdivision  
 17 thereof conducting the meeting, determines by a vote that  
 18 agency business so requires, and that no earlier announce-  
 19 ment of the change was possible, and, (2) the agency pub-  
 20 licly announces such change at the earliest practicable oppor-  
 21 tunity. Immediately following the public announcement re-  
 22 quired by this paragraph, notice of such announcement shall  
 23 also be submitted for publication in the Federal Register.

24 (e) A complete transcript or electronic recording ade-  
 25 quate to fully record the proceedings shall be made of each

1 meeting, or portion of a meeting, closed to the public, ex-  
 2 cept for a meeting, or portion of a meeting, closed to the  
 3 public pursuant to paragraph (9) of subsection (b). The  
 4 agency shall make promptly available to the public, in a place  
 5 easily accessible to the public, the complete transcript or elec-  
 6 tronic recording of the discussion at such meeting of any  
 7 item on the agenda, or of the testimony of any witness re-  
 8 ceived at such meeting, where no significant portion of such  
 9 discussion or testimony contains any information specified  
 10 in paragraphs (1) through (10) of subsection (b). Copies  
 11 of such transcript, or a transcription of such electronic re-  
 12 cording disclosing the identity of each speaker, shall be fur-  
 13 nished to any person at the actual cost of duplication or  
 14 transcription. The agency shall maintain a complete ver-  
 15 batim copy of the transcript, or a complete electronic record-  
 16 ing of each meeting, or portion of a meeting, closed to the  
 17 public, for a period of at least two years after such meeting,  
 18 or until one year after the conclusion of any agency pro-  
 19 ceeding with respect to which the meeting, or a portion  
 20 thereof, was held, whichever occurs later.

21 (f) Each agency subject to the requirements of this sec-  
 22 tion shall, within one hundred and eighty days after the en-  
 23 actment of this Act, following consultation with the Office of  
 24 the Chairman of the Administrative Conference of the United  
 25 States and published notice in the Federal Register of at least

1 thirty days and opportunity for written comment by any  
 2 persons, promulgate regulations to implement the require-  
 3 ments of subsections (a) through (e) of this section. Any  
 4 person may bring a proceeding in the United States Dis-  
 5 trict Court for the District of Columbia to require an agency  
 6 to promulgate such regulations if such agency has not pro-  
 7 mulgated such regulations within the time period specified  
 8 herein. Any person may bring a proceeding in the United  
 9 States Court of Appeals for the District of Columbia to set  
 10 aside agency regulations issued pursuant to this subsection  
 11 that are not in accord with the requirements of subsections  
 12 (a) through (e) of this section, and to require the promulga-  
 13 tion of regulations that are in accord with such subsections.

14 (g) The district courts of the United States have juris-  
 15 diction to enforce the requirements of subsections (a) through  
 16 (e) of this section by declaratory judgment, injunctive relief,  
 17 or other relief as may be appropriate. Such actions may be  
 18 brought by any person against an agency or its members  
 19 prior to, or within sixty days after, the meeting out of which  
 20 the violation of this section arises, except that if public an-  
 21 nouncement of such meeting is not initially provided by the  
 22 agency in accordance with the requirements of this section,  
 23 such action may be instituted pursuant to this section at any  
 24 time prior to sixty days after any public announcement of  
 25 such meeting. Before bringing such action, the plaintiff

1 shall first notify the agency of his intent to do so, and allow  
 2 the agency a reasonable period of time, not to exceed ten  
 3 days, to correct any violation of this section, except that  
 4 such reasonable period of time shall not be held to exceed  
 5 two working days where notification of such violation is  
 6 made prior to a meeting which the agency has voted to close.  
 7 Such actions may be brought in the district wherein the  
 8 plaintiff resides, or has his principal place of business, or  
 9 where the agency in question has its headquarters. In such  
 10 actions a defendant shall serve his answer within twenty days  
 11 after the service of the complaint. The burden is on the  
 12 defendant to sustain his action. In deciding such cases the  
 13 court may examine in camera any portion of a transcript or  
 14 electronic recording of a meeting closed to the public, and  
 15 may take such additional evidence as it deems necessary. The  
 16 court, having due regard for orderly administration and the  
 17 public interest, as well as the interests of the party, may  
 18 grant such equitable relief as it deems appropriate, includ-  
 19 ing granting an injunction against future violations of this  
 20 section, or ordering the agency to make available to the public  
 21 the transcript or electronic recording of any portion of a  
 22 meeting improperly closed to the public. Except to the extent  
 23 provided in subsection (h) of this section, nothing in this sec-  
 24 tion confers jurisdiction on any district court to set aside  
 25 or invalidate any agency action taken or discussed at an

1 agency meeting out of which the violation of this section  
2 arose.

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

9 (i) The court may assess against any party reason-  
10 able attorney fees and other litigation costs reasonably in-  
11 curred by any other party who substantially prevails in any  
12 action brought in accordance with the provisions of sub-  
13 section (f), (g), or (h) of this section. Costs may be  
14 assessed against an individual member of an agency only in  
15 the case where the court finds such agency member has  
16 intentionally and repeatedly violated this section, or against  
17 the plaintiff where the court finds that the suit was initiated  
18 by the plaintiff for frivolous or dilatory purposes. In the  
19 case of apportionment of costs against an agency, the costs  
20 may be assessed by the court against the United States.

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

1 sons for closing such meetings, and a description of any  
2 litigation brought against the agency under this section.

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

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

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

16 “(2) no member of the body comprising the agency,  
17 administrative law judge, or other employee who is or  
18 may reasonably be expected to be involved in the deci-  
19 sional process of the proceeding, shall make or know-  
20 ingly cause to be made to an interested person outside the  
21 agency an ex parte communication relevant to the merits  
22 of the proceeding;

23 “(3) a member of the body comprising the agency,  
24 administrative law judge, or other employee who is or  
25 may reasonably be expected to be involved in the deci-

1 sional process of such proceeding who receives, or who  
2 makes, a communication in violation of this subsection,  
3 shall place on the public record of the proceeding:

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

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

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

11 “(4) upon receipt of a communication knowingly  
12 made by a party, or which was knowingly caused to be  
13 made by a party in violation of this subsection; the  
14 agency, administrative law judge, or other employee  
15 presiding at the hearing may, to the extent consistent  
16 with the interests of justice and the policy of the under-  
17 lying statutes, require the person or party to show cause  
18 why his claim or interest in the proceeding should not  
19 be dismissed, denied, disregarded, or otherwise adversely  
20 affected by virtue of such violation;

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

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

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

5 (1) by striking out “and” at the end of paragraph  
6 (12);

7 (2) by striking out the “act.” at the end of para-  
8 graph (13) and inserting in lieu thereof “act; and”

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

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

15 (c) Section 556 (d) of title 5, United States Code, is  
16 amended by inserting between the third and fourth sentences  
17 thereof the following new sentence: “The agency may, to the  
18 extent consistent with the interests of justice and the policy  
19 of the underlying statutes administered by the agency, con-  
20 sider a violation of section 557 (d) of this title sufficient  
21 grounds for a decision adverse to a party who has knowingly  
22 committed such violation or knowingly caused such violation  
23 to occur.”.

24 SEC. 6. (a) Except as specifically provided by section  
25 4, nothing in section 4 confers any additional rights on

1 any person, or limits the present rights of any such person,  
 2 to inspect or copy, under section 552 of title 5, United  
 3 States Code, any documents or other written material  
 4 within the possession of any agency. In the case of any  
 5 request made pursuant to section 552 of title 5, United  
 6 States Code, to copy or inspect the transcripts or electronic  
 7 recordings described in section 4(e), the provisions of this  
 8 Act shall govern whether such transcripts or electronic re-  
 9 cordings shall be made available in accordance with such  
 10 request. The requirements of chapter 33 of title 44, United  
 11 States Code, shall not apply to the transcripts and electronic  
 12 recordings described in section 4(e). This Act does not  
 13 authorize any information to be withheld from Congress.

14 (b) Nothing in section 4 authorizes any agency to  
 15 withhold from any individual any record, including tran-  
 16 scriptions or electronic recordings required by this Act, which  
 17 is otherwise accessible to that individual under section 552a  
 18 of title 5, United States Code.

19 SEC. 7. The provisions of this Act shall become effec-  
 20 tive one hundred and eighty days after the date on which

1 this Act is enacted, except that the provisions of section 4  
 2 requiring the issuance of regulations to implement such sec-  
 3 tion shall become effective upon enactment.

Passed the Senate November 6, 1975.

Attest:

FRANCIS R. VALEO,

*Secretary.*



94TH CONGRESS  
1ST SESSION

S. 5

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**AN ACT**

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

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NOVEMBER 10, 1975

Referred to the Committee on Government Operations

[Report No. 94-354]

[Report No. 94-381]

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IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

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

JULY 31, 1975

Reported by Mr. CHILES, with an amendment

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

AUGUST 1, 1975

Referred jointly to the Committees on Rules and Administration and the Judiciary with instructions to report back not later than September 19, 1975

SEPTEMBER 18 (legislative day, SEPTEMBER 11), 1975

Reported by Mr. CANNON, from the Committee on Rules and Administration, with an additional amendment

[Omit the part in linetype italics]

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**A BILL**

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

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

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

6        ~~(1) “National defense” means—~~

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

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

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

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

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

23       ~~TITLE I—CONGRESSIONAL PROCEDURES~~

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

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

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

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

6        ~~“OPEN SENATE COMMITTEE MEETINGS~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~1 order shall immediately be referred to a Select Committee  
2 on Meetings consisting of the President pro tempore, the  
3 leader of the majority party, and the leader of the minority  
4 party. The select committee shall examine the complete  
5 verbatim transcript of the meeting in question and shall rule  
6 whether the vote to close the meeting was in accordance  
7 with subsection (a) of this section, or whether the vote to  
8 delete a portion or portions from publicly available copies  
9 of the meeting transcript was in accordance with subsection  
10 (d) of this section, as the case may be. The select committee  
11 shall report to the Senate within five calendar days (ex-  
12 cluding days where the Senate is not in session) a resolu-  
13 tion containing its findings. If the Senate adopts a resolution  
14 finding that the committee vote in question was not in  
15 accordance with the relevant subsection, it shall direct that  
16 there be made publicly available the entire transcript of  
17 the meeting improperly closed to the public or the portion  
18 or portions of any meeting transcript improperly deleted  
19 from the publicly available copy, as the case may be.~~

~~20 "(f) The Select Committee on Meetings shall not be  
21 subject to the provisions of subsection (a), (b), (c), or  
22 (d) of this section."~~

~~23 (b) Subsection (a) of subsection 242 of the Legislative  
24 Reorganization Act of 1970 is repealed.~~

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

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

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

~~6 SEC. 102. Clause 27 (f) (2) of Rule XI of the Rules of  
7 the House of Representatives is amended to read as follows:~~

~~8 "(2) (A) Each meeting of each standing, select, or  
9 special committee or subcommittee, including meetings to  
10 conduct hearings, shall be open to the public: *Provided*, That  
11 a portion or portions of such meetings may be closed to the  
12 public if the committee or subcommittee, as the case may be,  
13 determines by vote of a majority of a quorum of the com-  
14 mittee or subcommittee present that the matters to be dis-  
15 cussed or the testimony to be taken at such portion or  
16 portions—~~

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

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

1       ~~“(iii) will tend to charge with crime or misconduct,~~  
 2       ~~or to disgrace any person, or will represent a clearly~~  
 3       ~~unwarranted invasion of the privacy of any individual:~~  
 4       ~~Provided, That this paragraph shall not apply to any~~  
 5       ~~Government officer or employee with respect to his offi-~~  
 6       ~~cial duties or employment: And provided further, That~~  
 7       ~~as applied to a witness at a meeting, this paragraph shall~~  
 8       ~~not apply unless the witness requests in writing that the~~  
 9       ~~hearing be closed to the public;~~

10       ~~“(iv) will disclose information pertaining to any~~  
 11       ~~investigation conducted for law enforcement purposes,~~  
 12       ~~but only to the extent that the disclosure would (A)~~  
 13       ~~interfere with enforcement proceedings, (B) deprive~~  
 14       ~~a person of a right to a fair trial or an impartial adjudica-~~  
 15       ~~tion, (C) disclose the identity of a confidential source~~  
 16       ~~and, in the case of a record compiled by a criminal law~~  
 17       ~~enforcement authority in the course of a criminal investi-~~  
 18       ~~gation, or by an agency conducting a lawful national~~  
 19       ~~security intelligence investigation, confidential informa-~~  
 20       ~~tion furnished only by the confidential source, (D) dis-~~  
 21       ~~close investigative techniques and procedures, or (E)~~  
 22       ~~endanger the life or physical safety of law enforcement~~  
 23       ~~personnel; or~~

24       ~~“(v) will disclose information relating to the trade~~

1       ~~secrets or financial or commercial information pertain-~~  
 2       ~~ing specifically to a given person where~~

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

6               ~~“(II) the information has been obtained by the~~  
 7               ~~Federal Government on a confidential basis other~~  
 8               ~~than through an application by such person for a~~  
 9               ~~specific Government financial or other benefit, and~~  
 10              ~~the information must be kept secret in order to~~  
 11              ~~prevent grave and irreparable injury to the competi-~~  
 12              ~~tive position of such person.~~

13       ~~A separate vote of the committee shall be taken with respect~~  
 14       ~~to each committee or subcommittee meeting a portion or por-~~  
 15       ~~tions of which are proposed to be closed to the public pur-~~  
 16       ~~suant to this subsection. The vote of each committee member~~  
 17       ~~participating in each such vote shall be recorded and no~~  
 18       ~~proxies shall be allowed. Within one day of such vote, the~~  
 19       ~~committee shall make publicly available a written copy of~~  
 20       ~~such vote and, if a meeting or portion thereof is closed to~~  
 21       ~~the public, a full written explanation of its action.~~

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

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

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

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

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

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



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

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

22 ~~SEC. 103. (a) JOINT AND CONFERENCE COMMIT-~~  
 23 ~~TEES. The Legislative Reorganization Act of 1946 is~~  
 24 ~~amended by inserting after section 133C, as added by sec-~~  
 25 ~~tion 101(3) of this Act, the following new section:~~

1 ~~“OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS~~  
 2 ~~“SEC. 133D. (a) Each meeting of each joint committee~~  
 3 ~~and each subcommittee thereof, and each committee of con-~~  
 4 ~~ference shall be open to the public: *Provided*, That a por-~~  
 5 ~~tion or portions of such meetings may be closed to the public~~  
 6 ~~if the committee determines by vote of a majority of a quo-~~  
 7 ~~rum of the committee or subcommittee present that the~~  
 8 ~~matters to be discussed or the testimony to be taken at such~~  
 9 ~~portion or portions—~~

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

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

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

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

25 ~~“(4) will disclose information pertaining to any~~

1 ~~investigation conducted for law enforcement purposes,~~  
 2 ~~but only to the extent that the disclosure would (A) in-~~  
 3 ~~terfere with enforcement proceedings, (B) deprive a~~  
 4 ~~person of a right to a fair trial or an impartial adjudi-~~  
 5 ~~cation, (C) disclose the identity of a confidential source~~  
 6 ~~and, in the case of a record compiled by a criminal law~~  
 7 ~~enforcement authority in the course of a criminal investi-~~  
 8 ~~gation, or by an agency conducting a lawful national~~  
 9 ~~security intelligence investigation, confidential informa-~~  
 10 ~~tion furnished only by the confidential source, (D)~~  
 11 ~~disclose investigative techniques and procedures, or (E)~~  
 12 ~~endanger the life or physical safety of law enforcement~~  
 13 ~~personnel; or~~

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

17 ~~“(A) a Federal statute requires the informa-~~  
 18 ~~tion to be kept confidential by Government officers~~  
 19 ~~and employees; or~~

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

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

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

12 ~~“(b) Each joint committee, subcommittee, and commit-~~  
 13 ~~tee of conference shall make public announcement of the~~  
 14 ~~date, place, and subject matter of each meeting at least one~~  
 15 ~~week before such meeting unless the committee or subcom-~~  
 16 ~~mittee determines by a vote of a majority of a quorum of~~  
 17 ~~the committee or subcommittee present that committee busi-~~  
 18 ~~ness requires that such meeting be called at an earlier date,~~  
 19 ~~in which case the committee shall make public announce-~~  
 20 ~~ment of the date, place, and subject matter of such meeting~~  
 21 ~~at the earliest practicable opportunity.~~

22 ~~“(c) A complete transcript shall be made of each meet-~~  
 23 ~~ing of each joint committee, subcommittee, and committee~~  
 24 ~~of conference (whether open or closed to the public). Ex-~~

~~1 except as provided in subsection (d) of this section, a copy  
2 of each such transcript shall be made available for public  
3 inspection within seven days of each such meeting, and addi-  
4 tional copies of any transcript shall be furnished to any per-  
5 son at the actual cost of duplication. Notwithstanding the  
6 provisions of subsection (d), in the case of meetings closed  
7 to the public, the portion of such transcript made available  
8 for public inspection shall include a list of all persons  
9 attending and their affiliation, except for any portion of  
10 such list which would disclose the identity of a confidential  
11 source, or endanger the life or physical safety of law enforce-  
12 ment personnel.~~

~~13 “(d) In the case of meetings closed to the public pur-  
14 suant to subsection (a) of this section, the joint committee,  
15 subcommittee, or committee of conference may delete from  
16 the copies of transcripts that are required to be made avail-  
17 able or furnished to the public pursuant to subsection (c) of  
18 this section, those portions which it determines by vote of the  
19 majority of a quorum of the committee or subcommittee con-  
20 sist of materials specified in paragraph (1), (2), (3), (4),  
21 or (5) of subsection (a) of this section. A separate vote of  
22 the committee or subcommittee shall be taken with respect to  
23 the transcript of such meeting. The vote of each committee or  
24 subcommittee member participating in each such vote shall  
25 be recorded and published, and no proxies shall be allowed.  
26 In place of each portion deleted from copies of the transcript~~

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

~~12 “(e) A point of order may be raised against any com-  
13 mittee vote of a joint committee, subcommittee, or committee  
14 of conference to close a meeting to the public pursuant to sub-  
15 section (a) of this section, or any committee or subcommittee  
16 vote to delete from the publicly available copy a portion of a  
17 meeting transcript pursuant to subsection (d) of this section  
18 by committee or subcommittee members comprising one-  
19 fourth or more of the total number of the members of such  
20 committee or subcommittee present and voting for or against  
21 such action. Any such point of order shall be raised in either  
22 House within two calendar days after the vote against which  
23 the point of order is raised, and such point of order shall be  
24 a matter of highest personal privilege. Each such point of~~

1 ~~order shall immediately be referred to a Select Joint Com-~~  
 2 ~~mittee on Meetings consisting of the President pro tempore~~  
 3 ~~of the Senate, the Speaker of the House of Representatives,~~  
 4 ~~and the majority and minority leaders from each House. The~~  
 5 ~~select committee shall examine the complete verbatim tran-~~  
 6 ~~script of the meeting in question and shall rule whether the~~  
 7 ~~vote to close the meeting was in accordance with subsection~~  
 8 ~~(a) of this section, or whether the vote to delete a portion or~~  
 9 ~~portions from publicly available copies of the meeting tran-~~  
 10 ~~script was in accordance with subsection (d) of this section,~~  
 11 ~~as the case may be. The select committee shall report to both~~  
 12 ~~Houses a concurrent resolution within five calendar days~~  
 13 ~~(excluding days where either House is not in session) con-~~  
 14 ~~taining its findings. If both Houses adopt such a resolution~~  
 15 ~~finding that the committee vote in question was not in~~  
 16 ~~accordance with the relevant subsection, they shall direct~~  
 17 ~~that there be made publicly available the entire transcript of~~  
 18 ~~the meeting improperly closed to the public, or the portion~~  
 19 ~~or portions of any meeting transcript improperly deleted from~~  
 20 ~~the publicly available copy, as the case may be.~~

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

24 ~~(b) Title I of the table of contents of the Legislative Re-~~  
 25 ~~organization Act of 1946 is amended by inserting immedi-~~

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

~~“199D. Open joint and conference committee meetings.”~~

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

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

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

17 ~~TITLE II—AGENCY PROCEDURES~~

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

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

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

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

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

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

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

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

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

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

4 ~~(B) the information has been obtained by the~~  
 5 ~~Federal Government on a confidential basis other~~  
 6 ~~than through an application by such person for a~~  
 7 ~~specific Government financial or other benefit and~~  
 8 ~~the information must be kept secret in order to pre-~~  
 9 ~~vent grave and irreparable injury to the competitive~~  
 10 ~~position of such person;~~

11 ~~(6) will relate to the conduct or disposition (but~~  
 12 ~~not the initiation) of a case of adjudication governed by~~  
 13 ~~the provisions of the first paragraph of section 554 (a)~~  
 14 ~~of title 5, United States Code, or of subsection (1),~~  
 15 ~~(2), (4), (5), or (6) thereof.~~

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

1 ~~(c) Each agency shall make public announcement of~~  
 2 ~~the date, place, and subject matter of each meeting, and~~  
 3 ~~whether open or closed to the public, at least one week before~~  
 4 ~~each meeting. Such announcement shall be made unless the~~  
 5 ~~agency determines by a vote of the majority of its members,~~  
 6 ~~or in the case of a subdivision thereof authorized to take~~  
 7 ~~action on behalf of the agency, a majority of the members of~~  
 8 ~~the subdivision, that agency business requires that such meet-~~  
 9 ~~ings be called at an earlier date, in which case the agency~~  
 10 ~~shall make public announcement of the date, place, and sub-~~  
 11 ~~ject matter of such meeting, and whether open or closed to~~  
 12 ~~the public, at the earliest practicable opportunity.~~

13 ~~(d) A complete transcript or electronic recording ad-~~  
 14 ~~equating to fully record the proceedings shall be made of each~~  
 15 ~~meeting of each agency (whether open or closed to the pub-~~  
 16 ~~lic). Except as provided in subsection (e) of this section a~~  
 17 ~~copy of the transcript or electronic recording of each such~~  
 18 ~~meeting, together with any official minutes of such meeting,~~  
 19 ~~shall be made available to the public for inspection, and~~  
 20 ~~additional copies of any such transcript, minutes, or record-~~  
 21 ~~ing (or a copy of a transcription of the electronic recording),~~  
 22 ~~shall be furnished to any person at the actual cost of dupli-~~  
 23 ~~cation or transcription. Notwithstanding the provisions of sub-~~  
 24 ~~section (e), in the case of meetings closed to the public,~~  
 25 ~~the portion of such transcript made available for public~~  
 26 ~~inspection or electronic recording shall include a list~~

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~“(A) any written material submitted in viola-~~  
 5 ~~tion of this subsection; and~~

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

9 ~~“(C) responses, if any, to the materials de-~~  
 10 ~~scribed in subparagraphs (A) and (B) of this~~  
 11 ~~subsection;~~

12 ~~“(4) upon obtaining knowledge of a communica-~~  
 13 ~~tion in violation of this subsection prompted by or from~~  
 14 ~~a party or intervenors to any proceeding to which this~~  
 15 ~~section applies, the agency members or member, the~~  
 16 ~~administrative judge, or employee presiding at the hear-~~  
 17 ~~ings may, to the extent consistent with the interests of~~  
 18 ~~justice and the policy of the underlying statutes, require~~  
 19 ~~the party or intervenors to show cause why his claim~~  
 20 ~~or interest in the proceeding should not be dismissed,~~  
 21 ~~denied, disregarded, or otherwise adversely affected by~~  
 22 ~~virtue of such violation.~~

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

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

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

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

20 ~~“(f) Every agency notice of an opportunity for partici-~~  
 21 ~~pation by interested persons in a hearing shall contain a~~  
 22 ~~statement as follows:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~TITLE I—CONGRESSIONAL PROCEDURES~~

9 ~~SEC. 101. SENATE COMMITTEE MEETINGS.—(a) The~~  
 10 ~~Legislative Reorganization Act of 1946 is amended—~~

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

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

14 ~~“OPEN SENATE COMMITTEE MEETINGS~~

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

23 ~~“(1) will disclose matters necessary to be kept secret~~  
 24 ~~in the interests of national defense or the foreign policy~~  
 25 ~~of the United States;~~

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

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

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

13 ~~“(5) will disclose information relating to the trade~~  
 14 ~~secrets or financial or commercial information pertaining~~  
 15 ~~specifically to a given person if—~~

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

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

23 ~~This section shall not apply to meetings to conduct hearings.”.~~

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

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

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

4 ~~SEC. 102. HOUSE OF REPRESENTATIVES COMMITTEE~~  
 5 ~~MEETINGS.—Clause 2(g)(1) of Rule XI of the Rules of the~~  
 6 ~~House of Representatives is amended to read as follows:~~

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

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

17 ~~“(B) will relate solely to matters of committee staff~~  
 18 ~~personnel or internal staff management or procedure;~~

19 ~~“(C) will tend to charge an individual with crime~~  
 20 ~~or misconduct, to disgrace or injure the professional~~  
 21 ~~standing of an individual, or otherwise to expose an in-~~  
 22 ~~dividual to public contempt or obloquy, or will represent~~  
 23 ~~a clearly unwarranted invasion of the privacy of an in-~~  
 24 ~~dividual;—~~

~~“(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or~~

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

~~“(i) an Act of Congress requires the information to be kept confidential by Government officers and employees; or~~

~~“(ii) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.~~

~~This clause shall not apply to meetings to conduct hearings.”.~~

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

~~“OPEN CONFERENCE COMMITTEE MEETINGS~~

~~“SEC. 133D. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate~~

~~or the House of Representatives in open session determine, by a rolleall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.”.~~

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

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

~~SEC. 104. (a) JOINT COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133D, as added by section 102(a) of this Act, the following new section:~~

~~“OPEN JOINT COMMITTEE MEETINGS~~

~~“SEC. 133E. Each meeting of a joint committee of the Senate and House of Representatives, or any subcommittee thereof, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—~~

~~“(1) will disclose matters necessary to be kept~~

~~secret in the interests of national defense or the foreign policy of the United States;~~

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

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

~~“(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or~~

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

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

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

~~This section shall not apply to meetings to conduct hearings.”.~~

~~(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133D, as added by section 103(b) of this Act, the following:~~

~~“133E. Open joint committee meetings.”.~~

~~SEC. 105. EXERCISE OF RULEMAKING POWERS.—The provisions of this title are enacted by the Congress—~~

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

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

## TITLE II—AGENCY PROCEDURES

~~SEC. 201. (a) This section applies, according to the provisions thereof, to the Federal Election Commission and to any agency, as defined in section 551(1) of title 5, United~~

1 *States Code, where the collegial body comprising the agency*  
 2 *consists of two or more individual members, at least a major-*  
 3 *ity of whom are appointed to such position by the President*  
 4 *with the advice and consent of the Senate. Except as provided*  
 5 *in subsection (b), all meetings of such collegial body, or of*  
 6 *a subdivision thereof authorized to take action on behalf of*  
 7 *the agency, shall be open to the public. For purposes of this*  
 8 *section, a meeting means the deliberations of at least the*  
 9 *number of individual agency members required to take action*  
 10 *on behalf of the agency where such deliberations concern the*  
 11 *joint conduct or disposition of official agency business.*

12 *(b) Except where the agency finds that the public in-*  
 13 *terest requires otherwise, (1) subsection (a) shall not apply*  
 14 *to any agency meeting, or any portion of an agency meeting,*  
 15 *or to any meeting, or any portion of a meeting, of a sub-*  
 16 *division thereof authorized to take action on behalf of the*  
 17 *agency, and, (2) the requirements of subsections (c) and*  
 18 *(d) shall not apply to any information pertaining to such*  
 19 *meeting otherwise required by this section to be disclosed to*  
 20 *the public, where the agency, or the subdivision thereof con-*  
 21 *ducting the meeting, properly determines that such portion*  
 22 *or portions of its meeting, or such information, can be reason-*  
 23 *ably expected to—*

24 *(1) disclose matters (A) specifically authorized*  
 25 *under criteria established by an Executive order to be*

1 *kept secret in the interests of national defense or foreign*  
 2 *policy and (B) are in fact properly classified pursuant*  
 3 *to such Executive order;*

4 *(2) relate solely to the agency's own internal*  
 5 *personnel rules and practices;*

6 *(3) disclose information of a personal nature*  
 7 *where disclosure would constitute a clearly unwarranted*  
 8 *invasion of personal privacy;*

9 *(4) involve accusing any person of a crime, or*  
 10 *formally censuring any person;*

11 *(5) disclose information contained in investi-*  
 12 *gatory records compiled for law enforcement purposes,*  
 13 *but only to the extent that the disclosure would (A)*  
 14 *interfere with enforcement proceedings, (B) deprive*  
 15 *a person of a right to a fair trial or an impartial*  
 16 *adjudication, (C) constitute an unwarranted invasion*  
 17 *of personal privacy, (D) disclose the identity of a con-*  
 18 *fidential source, (E) in the case of a record compiled*  
 19 *by a criminal law enforcement authority in the course*  
 20 *of a criminal investigation, or by an agency conducting*  
 21 *a lawful national security intelligence investigation, dis-*  
 22 *close confidential information furnished only by the confi-*  
 23 *dential source, (F) disclose investigative techniques and*  
 24 *procedures, or (G) endanger the life or physical safety*  
 25 *of law enforcement personnel;*



1 (6) disclose trade secrets, or financial or com-  
 2 mercial information obtained from any person, where  
 3 such trade secrets or other information could not be ob-  
 4 tained by the agency without a pledge of confidentiality,  
 5 or where such information must be withheld from the  
 6 public in order to prevent substantial injury to the com-  
 7 petitive position of the person to whom such information  
 8 relates;

9 (7) disclose information which must be withheld  
 10 from the public in order to avoid premature disclosure of  
 11 an action or a proposed action by—

12 (A) an agency which regulates currencies,  
 13 securities, commodities, or financial institutions  
 14 where such disclosure would (i) lead to serious  
 15 financial speculation in currencies, securities, or  
 16 commodities, or (ii) seriously endanger the stability  
 17 of any financial institution;

18 (B) any agency where such disclosure would  
 19 seriously frustrate implementation of the proposed  
 20 agency action, or private action contingent thereon;  
 21 or

22 (C) any agency relating to the purchase by  
 23 such agency of real property.

24 This paragraph shall not apply in any instance where  
 25 the agency has already disclosed to the public the con-

1 tent or nature of its proposed action, or where the agency  
 2 is required by law to make such disclosure on its own  
 3 initiative prior to taking final agency action on such  
 4 proposal;

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

9 (9) specifically concern the agency's participation  
 10 in a civil action in Federal or State court, or the initia-  
 11 tion, conduct, or disposition by the agency of a particular  
 12 case of formal agency adjudication pursuant to the proce-  
 13 dures in section 554 of title 5, United States Code, or  
 14 otherwise involving a determination on the record after  
 15 opportunity for a hearing; or

16 (10) disclose information required to be withheld  
 17 from the public by any other statute establishing particu-  
 18 lar criteria or referring to particular types of  
 19 information.

20 (c) (1) Action under subsection (b) shall be taken only  
 21 when a majority of the entire membership of the agency, or  
 22 of the subdivision thereof authorized to conduct the meeting  
 23 on behalf of the agency, votes to take such action. A separate  
 24 vote of the agency members, or the members of a subdivision  
 25 thereof, shall be taken with respect to each agency meeting a

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

20 (2) If a meeting or portion thereof is closed to the  
21 public, the agency shall, within one day of the vote taken  
22 pursuant to paragraph (1) of this subsection, make publicly  
23 available a full written explanation of its action closing the  
24 meeting, or portion thereof, together with a list of all persons  
25 expected to attend the meeting, and their affiliation.

1 (3) Any agency, a majority of whose meetings will  
2 properly be closed to the public, in whole or in part, pursuant  
3 to paragraphs (6), (7)(A), (8), or (9) of subsection (b),  
4 or any combination thereof, may provide by regulation for  
5 the closing of such meetings, or portion of such meetings, so  
6 long as a majority of the members of the agency, or of the  
7 subdivision thereof conducting the meeting, votes at the begin-  
8 ning of such meeting, or portion thereof, to close the meeting,  
9 and a copy of such vote is made available to the public. The  
10 provisions of this subsection, and subsection (d), shall not  
11 apply to any meeting to which such regulations apply: Pro-  
12 vided, That the agency shall, except to the extent that the  
13 provisions of subsection (b) may apply, provide the public  
14 with public announcement of the date, place, and subject mat-  
15 ter of the meeting at the earliest practicable opportunity.

16 (d) In the case of each meeting, the agency shall make  
17 public announcement, at least one week before the meeting,  
18 of the date, place, and subject matter of the meeting, whether  
19 open or closed to the public, and the name and phone number  
20 of the official designated by the agency to respond to requests  
21 for information about the meeting. Such announcement  
22 shall be made unless a majority of the members of the agency,  
23 or of the members of the subdivision thereof conducting the  
24 meeting, determines by a vote that agency business requires  
25 that such meetings be called at an earlier date, in which case

1 the agency shall make public announcement of the date, place,  
 2 and subject matter of such meeting, and whether open or  
 3 closed to the public, at the earliest practicable opportunity.  
 4 The subject matter of a meeting, or the determination of the  
 5 agency to open or close a meeting, or portion of a meeting,  
 6 to the public, may be changed following the public announce-  
 7 ment required by this paragraph if, (1) a majority of the  
 8 entire membership of the agency, or of the subdivision  
 9 thereof conducting the meeting, determines by a vote that  
 10 agency business so requires, and that no earlier announce-  
 11 ment of the change was possible, and, (2) the agency pub-  
 12 licly announces such change at the earliest practicable oppor-  
 13 tunity. Immediately following the public announcement re-  
 14 quired by this paragraph, notice of such announcement shall  
 15 also be submitted for publication in the Federal Register.

16 (e) A complete transcript or electronic recording ade-  
 17 quate to fully record the proceedings shall be made of each  
 18 meeting, or portion of a meeting, closed to the public, ex-  
 19 cept for a meeting, or portion of a meeting, closed to the  
 20 public pursuant to paragraph (9) of subsection (b). The  
 21 agency shall make promptly available to the public, in a place  
 22 easily accessible to the public, the complete transcript or elec-  
 23 tronic recording of the discussion at such meeting of any  
 24 item on the agenda, or of the testimony of any witness re-  
 25 ceived at such meeting, where no significant portion of such

1 discussion or testimony contains any information specified  
 2 in paragraphs (1) through (10) of subsection (b). Copies  
 3 of such transcript, or a transcription of such electronic re-  
 4 cording disclosing the identity of each speaker, shall be fur-  
 5 nished to any person at the actual cost of duplication or  
 6 transcription. The agency shall maintain a complete ver-  
 7 batim copy of the transcript, or a complete electronic record-  
 8 ing of each meeting, or portion of a meeting, closed to the  
 9 public, for a period of at least two years after such meeting,  
 10 or until one year after the conclusion of any agency pro-  
 11 ceeding with respect to which the meeting, or a portion thereof,  
 12 was held, whichever occurs later.

13 (f) Each agency subject to the requirements of this sec-  
 14 tion shall, within one hundred and eighty days after the en-  
 15 actment of this Act, following consultation with the Office of  
 16 the Chairman of the Administrative Conference of the United  
 17 States and published notice in the Federal Register of at least  
 18 thirty days and opportunity for written comment by any  
 19 persons, promulgate regulations to implement the require-  
 20 ments of subsections (a) through (e) of this section. Any  
 21 person may bring a proceeding in the United States Dis-  
 22 trict Court for the District of Columbia to require an agency  
 23 to promulgate such regulations if such agency has not pro-  
 24 mulgated such regulations within the time period specified  
 25 herein. Any person may bring a proceeding in the United

1 States Court of Appeals for the District of Columbia to set  
 2 aside agency regulations issued pursuant to this subsection  
 3 that are not in accord with the requirements of subsections (a)  
 4 through (e) of this section, and to require the promulga-  
 5 tion of regulations that are in accord with such subsections.

6 (g) The district courts of the United States have juris-  
 7 diction to enforce the requirements of subsections (a) through  
 8 (e) of this section by declaratory judgment, injunctive relief,  
 9 or other relief as may be appropriate. Such actions may be  
 10 brought by any person against an agency or its members  
 11 prior to, or within sixty days after, the meeting out of which  
 12 the violation of this section arises, except that if public an-  
 13 nouncement of such meeting is not initially provided by the  
 14 agency in accordance with the requirements of this section,  
 15 such action may be instituted pursuant to this section at any  
 16 time prior to sixty days after any public announcement of  
 17 such meeting. Before bringing such action, the plaintiff  
 18 shall first notify the agency of his intent to do so, and allow  
 19 the agency a reasonable period of time, not to exceed ten  
 20 days, to correct any violation of this section, except that  
 21 such reasonable period of time shall not be held to exceed  
 22 two working days where notification of such violation is  
 23 made prior to a meeting which the agency has voted to close.  
 24 Such actions may be brought in the district wherein the  
 25 plaintiff resides, or has his principal place of business, or

1 where the agency in question has its headquarters. In such  
 2 actions a defendant shall serve his answer within twenty days  
 3 after the service of the complaint. The burden is on the  
 4 defendant to sustain his action. In deciding such cases the  
 5 court may examine in camera any portion of a transcript or  
 6 electronic recording of a meeting closed to the public, and  
 7 may take such additional evidence as it deems necessary. The  
 8 court, having due regard for orderly administration and the  
 9 public interest, as well as the interests of the party, may  
 10 grant such equitable relief as it deems appropriate, includ-  
 11 ing granting an injunction against future violations of this  
 12 section, or ordering the agency to make available to the public  
 13 the transcript or electronic recording of any portion of a  
 14 meeting improperly closed to the public. Except to the extent  
 15 provided in subsection (h) of this section, nothing in this sec-  
 16 tion confers jurisdiction on any district court to set aside  
 17 or invalidate any agency action taken or discussed at an  
 18 agency meeting out of which the violation of this section  
 19 arose.

20 (h) Any Federal court otherwise authorized by law to  
 21 review agency action may, at the application of any person  
 22 properly participating in the proceeding pursuant to other  
 23 applicable law, inquire into violations by the agency of the  
 24 requirements of this section, and afford any such relief as it  
 25 deems appropriate.

1       (i) The court may assess against any party reason-  
 2 able attorney fees and other litigation costs reasonably in-  
 3 curred by any other party who substantially prevails in any  
 4 action brought in accordance with the provisions of sub-  
 5 section (f), (g), or (h) of this section. Costs may be  
 6 assessed against an individual member of an agency only in  
 7 the case where the court finds such agency member has  
 8 intentionally and repeatedly violated this section, or against  
 9 the plaintiff where the court finds that the suit was initiated  
 10 by the plaintiff for frivolous or dilatory purposes. In the  
 11 case of apportionment of costs against an agency, the costs  
 12 may be assessed by the court against the United States.

13       (j) The agencies subject to the requirements of this  
 14 section shall annually report to Congress regarding their  
 15 compliance with such requirements, including a tabulation  
 16 of the total number of agency meetings open to the public,  
 17 the total number of meetings closed to the public, the rea-  
 18 sons for closing such meetings, and a description of any  
 19 litigation brought against the agency under this section.

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

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

1       “(1) no interested person outside the agency shall  
 2 make or knowingly cause to be made to any member of  
 3 the body comprising the agency, administrative law  
 4 judge, or other employee who is or may reasonably be  
 5 expected to be involved in the decisional process of the  
 6 proceeding, an ex parte communication relevant to the  
 7 merits of the proceeding;

8       “(2) no member of the body comprising the agency,  
 9 administrative law judge, or other employee who is or  
 10 may reasonably be expected to be involved in the decisional  
 11 process of the proceeding, shall make or knowingly  
 12 cause to be made to an interested person outside the  
 13 agency an ex parte communication relevant to the merits  
 14 of the proceeding;

15       “(3) a member of the body comprising the agency,  
 16 administrative law judge, or other employee who is or  
 17 may reasonably be expected to be involved in the deci-  
 18 sional process of such proceeding who receives, or who  
 19 makes, a communication in violation of this subsection,  
 20 shall place on the public record of the proceeding:

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

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

1           “(C) responses to the materials described in sub-  
2 paragraphs (A) and (B) of this subsection;

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

13           “(5) the prohibitions of this subsection shall apply  
14 at such time as the agency may designate, but in no case  
15 shall they apply later than the time at which a proceeding  
16 is noticed for hearing unless the person responsible for  
17 the communication has knowledge that it will be noticed,  
18 in which case the prohibitions shall apply at the time of  
19 his acquisition of such knowledge.”.

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

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

3           (1) by striking out “and” at the end of paragraph  
4 (12);

5           (2) by striking out the “act.” at the end of para-  
6 graph (13) and inserting in lieu thereof “act; and”

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

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

13           (d) Section 556(d) of title 5, United States Code, is  
14 amended by inserting between the third and fourth sentences  
15 thereof the following new sentence: “The agency may, to the  
16 extent consistent with the interests of justice and the policy  
17 of the underlying statutes administered by the agency, con-  
18 sider a violation of section 557(d) of this title sufficient  
19 grounds for a decision adverse to a party who has knowingly  
20 committed such violation or knowingly caused such violation  
21 to occur.”.

22           SEC. 203. (a) Except as specifically provided by section  
23 201, nothing in section 201 confers any additional rights  
24 on any person, or limits the present rights of any such  
25 person, to inspect or copy, under section 552 of title 5,

1 *United States Code, any documents or other written ma-*  
2 *terial within the possession of any agency. In the case of*  
3 *any request made pursuant to section 552 of title 5,*  
4 *United States Code, to copy or inspect the transcripts*  
5 *or electronic recordings described in section 201(e),*  
6 *the provisions of this Act shall govern whether such tran-*  
7 *scripts or electronic recordings shall be made available in*  
8 *accordance with such request. The requirements of chapter*  
9 *33, of title 44, United States Code, shall not apply to the*  
10 *transcripts and electronic recordings described in section 201*  
11 *(e). This title does not authorize any information to be with-*  
12 *held from Congress.*

13 *(b) Nothing in section 201 authorizes any agency to*  
14 *withhold from any individual any record, including tran-*  
15 *scripts or electronic recordings required by this Act, which*  
16 *is otherwise accessible to that individual under section 552a*  
17 *of title 5, United States Code.*

18 *SEC. 204. The provisions of this title shall become ef-*  
19 *fective one hundred and eighty days after the date on which*  
20 *this Act is enacted, except that the provisions of section 201*  
21 *requiring the issuance of regulations to implement such sec-*  
22 *tion shall become effective upon enactment.*

94TH CONGRESS  
1ST SESSION

**S. 5**

[Report No. 94-354]

[Report No. 94-381]

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**A BILL**

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

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

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JANUARY 15, 1975

Read twice and referred to the Committee on Government Operations

JULY 31, 1975

Reported with an amendment

AUGUST 1, 1975

Referred jointly to the Committees on Rules and Administration and the Judiciary with instructions to report back not later than September 19, 1975

SEPTEMBER 18 (legislative day, SEPTEMBER 11), 1975

Reported with an additional amendment



THE WHITE HOUSE  
WASHINGTON

April 13, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF  
FROM: CHARLES LEPPERT, JR. *CLJ.*  
SUBJECT: Sunshine Bill

Frank Polk advises that attempts to extend the reporting date on H. R. 11656, the "Government in the Sunshine Act" beyond the deadline of April 8 were unsuccessful.

cc: Alan Kranowitz  
Tom Loeffler  
Pat Rowland



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

March 25, 1976

EYES ONLY

MEMORANDUM TO: MAX FRIEDERSDORF/CHARLIE LEPPERT  
FROM: ALAN M. KRANOWITZ *AMK*  
RE: Sunshine Legislation

As you know, the "sunshine" bill, which was favorably reported by House Gov. Ops., was referred to House Judiciary with instructions that House Judiciary must report it out by April 6.

Deputy Attorney General Tyler testified before House Judiciary this morning and successfully criticized the bill to such an extent that Congressman Flowers, Chairman of the Subcommittee, thinks the bill is pretty bad. Bella Abzug and Dante Fascell also testified, and it was painfully evident to Flowers that they didn't know what they were talking about.

In view of the fact that Judiciary must report the bill out by April 6, they may not be able to do very much with it. However, if Flowers and/or Rodino were to go to the Speaker, they could possibly get a 30 day extension for Judiciary which would enable Judiciary to make at least some substantive changes in the bill, or at best delay it into early May, which might successfully kill the bill for this session.

Perhaps Charlie could talk to Flowers and/or Congressmen Wiggins or Hutchinson or Carlos Moorhead, ranking Republican on the Flowers Subcommittee, to try to get them to exert some pressure on Rodino to try to get another 30 days from the Speaker for Judiciary Committee consideration.

FILE

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 March 8, the House Government Operations Committee reported H.R. 11656, a bill which would be known as the "Government in the Sunshine Act" by a vote of . It was sequentially referred to the Administrative Practices Subcommittee (chaired by Mr. Flowers) of the Judiciary Committee for thirty days. Hearings were held at which the Deputy Attorney General and Assistant Attorney General, Office of Legal Counsel, Department of Justice and the General Counsels of the SEC and FTC appeared urging changes to the bill as reported by Government Operations primarily because of the bill's undesirable impact upon the provisions of the Administrative Procedures Act.

On April 8, the full House Judiciary Committee reported H.R. 11656 with changes. Those positive changes include:

- . the elimination of personal liability of agency members for official acts
- . the elimination of provisions providing for the substantive voiding of agency action for technical violations of the Act's procedures.
- . defining "meeting" in such a manner that gatherings required by this bill would not themselves be meetings
- . deletion of the requirement that there be another "meeting" of the agency members to vote on releasability of portions of transcripts made of any closed segment
- . limiting civil actions under this bill from being brought wherever a plaintiff might reside
- . permitting meetings to be closed when certain statutes require or permit the withholding of a document instead of just when the statute requires the withholdings (and a conforming FOIA amendment).
- . permits agencies to decide whether to allow the initial "brainstorming" sessions of regulation drafting, which will be subject to public rulemaking, to be open to public observation.