S, 5

Senate Passage:

GOVERNMENT IN THE SUNSHINE

Capping off a three-year effort, the Senate Nov. 6 unanimously passed a bill (S 5) requiring that most meetings of independent federal agencies be open to the public.

The bill also would bar informal—*ex parte*—contacts between agency officials and interested outsiders to discuss pending business.

S 5 coasted to passage on a 94-0 vote with virtually no opposition on the floor. The action followed by one day Senate adoption of a resolution (S Res 9) similarly opening most meetings of Senate committees and House-Senate conferences. House committee meetings have been open since 1973. *(Vote 467, Weekly Report p. 2425; Senate rules change, Weekly Report p. 2413)*

In the only other recorded vote on the bill, the Senate before passage rejected, 36-57, an amendment offered by Jacob K. Javits (R N.Y.) to exempt most meetings of the Federal Reserve Board from the bill's provisions. To exempt that agency, however sensitive its deliberations on monetary policy, would invite demands for similar exemptions by other agencies, supporters of the bill argued. *(Vote 466, Weekly Report p. 2425)*

Provisions

As passed by the Senate, S 5:

- Required the Federal Election Commission and all agencies headed by two or more persons appointed by the President and confirmed by the Senate to open all meetings to the public unless a majority voted to close a meeting.
- Defined a meeting as deliberations where at least a quorum of members meet to conduct or dispose of official business.
- Specified that a meeting could be closed only for discussions of the following 10 matters: 1) national defense or foreign policy; 2) agency personnel rules and practices; 3) information whose disclosure would constitute an unwarranted invasion of personal privacy; 4) accusations of a crime or formal censure; 5) law enforcement investigatory records; 6) trade secrets or financial or commercial information obtained under a pledge of confidentiality or where disclosure could damage competitive position; 7) information whose premature disclosure could lead to significant financial speculation, endanger the stability of a financial institution or frustrate a proposed agency action; 8) bank examination records and similar financial audits; 9) the agency's involvement in federal or state civil actions or similar legal proceedings where there is a public record; 10) information required by other laws to be kept confidential.
- Allowed a meeting to be closed by a majority record vote of all members, barring use of proxies; permitted a single vote to be taken to close a series of meetings on the same subject to be held within a 30-day period.
- Allowed a person affected by the deliberations of a meeting to request that it be closed.
- Required an agency to disclose its vote to close a meeting within one day, and to make public within 10 days a written explanation of its decision to close.
- Permitted agencies that regularly meet in closed session to devise general regulations to expedite closed meetings.
- Required advance public notice of the date, place and subject matter of all meetings.
- Required agencies to keep transcripts of closed meetings and make available to the public portions not exempted from disclosure.
- Provided for district court enforcement and review of the open-meeting requirements and placed the burden of proof in disputes upon the agency.
- Prohibited *ex parte* communications between agency officials and outsiders affected by pending agency business, required an official to make public any such contact and made *ex parte* communications grounds for ruling against a party in an agency proceeding.
- Required each agency to report annually to Congress the numbers of open and closed meetings, reasons for closing meetings and descriptions of any litigation against an agency under the law.
- Provided that the bill's provisions would take effect 180 days after enactment, required agencies to make public proposed open-meeting regulations before that date.

Voter Registration by Mail

The House Administration Committee Nov. 7 ordered reported, by a 17-6 vote, a bill (HR 1686) to establish a nationwide postcard voter registration system for federal elections. The action revived legislation that was killed in the House in 1974. *(1974 Almanac p. 659)*

The committee also used the bill to change the procedure Congress follows in reviewing regulations of the Federal Election Commission. Under an amendment included in the measure, the House and Senate no longer would have to vote to disapprove commission regulations to reject them. Instead, Congress could veto commission regulations by not acting on them within 30 legislative days. If a proposed regulation was not approved, it would be sent back to the commission.

The effect of that change would be to lift from the House and Senate the burden of having to veto commission regulations in recorded votes. *(Federal Election Commission, Weekly Report p. 2073)*

As approved by the committee, the postcard voter registration bill would establish a Voter Registration Administration within the Federal Election Commission to provide information to state officials concerning voter registration by mail and election problems in general.

The bill would require the Postal Service to distribute registration forms to every postal address and residence at least once every two years and prior to every special federal election. The bill further required that distribution of registration cards be made at no charge. The committee authorized up to $50-million for the registration program.

Background

The "Government in the Sunshine Act," as S 5 was entitled, was first introduced in the Senate by Lawton Chiles (D Fla.) in 1972. Government Operations subcommittees held two sets of hearings in 1974, and the legislation was reported by the full committee July 31, 1975 (S Rept 94-354).

As reported by the Government Operations Committee, S 5 included two sections. Title I required all congressional sessions—House and Senate—to be open. Title II contained the provisions affecting executive agencies.

Because Title I pertained to Senate operations, the bill subsequently was referred to the Rules and Administration Committee, which reported an amended version of the measure Sept. 18 (S Rept 94-381). The Rules Committee stripped Title I from the bill, then reported instead a separate resolution essentially allowing Senate committees to choose their own open-meeting rules. The Senate Nov. 5 rejected that version in favor of a broader Chiles-Roth (R Del.) resolution (S Res 9) opening committee meetings as a general rule. *(Earlier stories, Weekly Report p. 2265, 2125)*

The open-meeting provisions of S 5 would apply to 47 executive agencies, according to the Justice Department, ranging from major regulatory bodies such as the Federal Communications Commission down to the more obscure National Council on Quality in Education. They would not apply to executive departments and other cabinet-level agencies headed by a single chief executive.

The bill's *ex parte* provision stemmed from a 20-year effort to limit secret contacts with officials by lawyers, lobbyists and others interested in agency proceedings. It followed closely a draft proposed by the American Bar Association in 1974. The provision applied to all agencies, multi- or single-headed.

The House Government Operations Subcommittee on Government Information and Individual Rights began hearings on its own sunshine bills (HR 9868, HR 10315) on Nov. 6.

Floor Action

Although a parade of agencies had testified before the Government Operations Committee against S 5, the bill encountered no outright opposition on the Senate floor. Supporters attributed the lack of opposition to a reluctance of senators to line up against open government, a national antipathy to bureaucracy and the ice-breaking adoption of S Res 9 the day before.

"Forty-eight states have enacted some type of open meeting provision," Chiles declared in opening debate. "Now that Congress had taken the lead by opening its own doors, I feel that we are in an excellent position to request that executive agencies follow suit."

Opponents of S 5 in hearings had complained that open meetings would disrupt proceedings, inhibit free discussion and, by presenting just one stage to the public, cast a distorted image of agency procedures. Further, agency officials said, permitting affected parties to observe deliberations would subject officials to political pressure.

But supporters of S 5 maintained that the experience of states and other bodies with open meetings had dispelled most such concerns. On the contrary, they said, the presence of the public would promote better debate, encourage [illegible] attend meetings and force better reasoned decisions. The long-term benefit could be clearer public understanding of agency procedures and less distrust of government in general, supporters said.

Federal Reserve Board

The only real debate came on the Javits amendment, rejected 36-57, to exempt the Federal Reserve Board from the act except when the board was considering consumer protection matters. While making it clear that he supported the bill's over-all intent, Javits said he had been persuaded by Federal Reserve Chairman Arthur F. Burns that S 5 would open the monetary policy-making process to scrutiny and abuse by speculators. While the bill made special provisions for financial matters, Javits said, disclosure requirements still might lead to disclosure of information too sensitive for the public domain.

Chiles opposed making special exception for the Federal Reserve, saying provisions of S 5 had been tailored to meet its security needs. Chiles contended that Burns' primary concern was that the bill reflected adversely on the integrity of the board. "No agency of the people," Chiles argued, "should be exempted, just written out, because of the fact that it is supposed to be sacrosanct...."

Other Amendments

S 5 supporters did make one concession to the Federal Reserve Board. By voice vote, the Senate adopted an amendment offered by William V. Roth Jr. (R Del.) to change the wording in the exemptions to allow closed meetings if there was a prospect of "significant," rather than "serious," financial speculation.

The Senate also adopted by voice vote an amendment by Edward M. Kennedy (D Mass.) to bring the bill into conformity with the Administrative Procedure Act of 1946 (PL 79-404).

—By Ted Vaden

House Passage:

WHITE HOUSE SCIENCE ADVISER

With strong bipartisan support, the House Nov. 6 passed a bill (HR 10230) that would revive the position of presidential science adviser that former President Nixon abolished in 1973. President Ford supported the bill, and White House aides worked closely with the Science and Technology Committee to develop the compromise measure.

The bill culminated several years of committee study of what federal scientific activities should accomplish, how they should be coordinated and what sort of policy direction the White House should provide. In addition to reviving the White House science advisory structure, the bill would set forth a statement of national science policy goals and create a temporary committee to look at issues such as the possible creation of a cabinet-level Department of Science.

Background

The position of presidential science adviser was established in the late 1950s, partly in response to technological advances by the Soviet Union. In an effort to streamline the White House, President Nixon abolish-