

Opening Up Congress

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BACK IN THE 1970s, when Congress was in a mood to reform itself, both houses voted to require that bills be drafted in the open instead of behind closed doors. The change was sought by organizations such as Common Cause, which were trying to open up government and force special interest groups to cut their deals in public instead of in smoke-filled rooms.

But like other "public interest" reforms, including changes in campaign financing laws which led to the creation of the now-controversial political action committees, opening up the legislative drafting process has produced unforeseen results. For one thing, the congressional sunshine initiative became a tool for the very special interests whose power the reforms were supposed to dilute. Corporations and lobbying groups have seized on the open hearings to help them hold legislators accountable as never before.

The 1984 tax bill, now making its way through Congress, provides an opportunity to weigh the pros and cons of openness. While the Senate Finance Committee marked up its tax measure in public, the House Ways and Means committee, exercising its right to close deliberations after taking a public vote, shut the doors.

The verdict on these different approaches is surprisingly ambiguous. There were perhaps more narrow, single-interest provisions in the bill produced in the Senate Finance Committee's open sessions. These included relief for the inheritance problems of wealthy families and exemptions for a few companies from new rules on selling tax breaks.

But the results don't argue clearly for closing bill-drafting sessions, either, although the closed process is demonstrably more efficient. The only clear lesson may be that

creating reform is a complicated process. Sunshine is fine, but special interests, as well as the public interest, may prosper in it.

During the closed House Ways and Means Committee mark-up, the action was brisk and lobbyists and the press were kept outside, littering the halls of the Longworth House office building with candy wrappers and cigarette butts. On the Senate side, mark-up sessions were long and sometimes chaotic. The drafting took weeks. Everything was subject to change, with lobbyists reversing key votes.

Between the lobbyists, who arrived early and stayed all day seeking scarce committee room seats, and platoons of staff and press, Senate committee sessions were well attended -- but not by the general public. Except for those whose livelihoods depended on it, there wasn't much interest in the tax code arcana.

What took weeks on the Senate side took two days in Ways and Means. And what took the better part of a week on the Senate floor and ended at dawn after a punishing 19-hour session, took just hours on the House floor.

When the House bill came to the floor, amendments were barred. But any amendment could be offered on the Senate bill, and nearly 100 were offered or threatened. The Senate committee's forceful chairman, Robert Dole (R-Kan.), using what a lobbyist called "cloture by personality" finally wrapped it up.

"Closed" doesn't mean what it did back in the days of the smoke-filled room. Finding out what is going on now is so easy that constituents called one member complaining about a major vote by the time he arrived back in his office. Other changes have enhanced the power of special interests to influence tax policy in open or closed sessions, especially pressure from pervasive and powerful PACs.

A major argument in favor of closed sessions is that they make it possible to reach consensus on compromises without putting anyone on the spot. The open system and recorded votes often operate against consensus. In fact, some compromises in the Senate committee's package were worked out at a closed caucus -- a brief interlude in an otherwise generally open process.

"In at least some circumstances, you probably get better legislation from closed sessions," said Rep. Donald Pease (D-Ohio), one of a few members of the Ways and Means Committee who votes against closing meetings. "Clearly in the type of

atmosphere we worked in recently we had to enact some tax provisions that people don't like, and I think it's easier to do that in closed session."

Closed sessions allow a member to support a lobbyist's position without an audience to note how fervent or perfunctory the advocacy is. A lot of business can be disposed of when members are off the record. They also allow members to ask questions without worrying about looking dumb, legislators acknowledge. But closed sessions may allow deals that would get nowhere in open hearings. "If you have to discuss them in public, a lot of the chaff drops out," noted a Senate staffer.

The openness of the Senate process did not deter the Finance Committee from taking up politically difficult issues, including extending the time it takes for real estate investors to collect tax write-offs. The committee voted to do so, despite efforts of lobbyists. Later the provision was watered down on the floor. And though they accepted some, the Senate committee turned down more special interest proposals than they adopted.

By and large, the House and Senate bills are similar in their general outlines. On some controversial issues the Senate bill is tougher. On others the House bill is. But whether the House or the Senate bill is better, is not the question that produces the answer to which system is better in the long run.

"My bottom line is that closed mark-ups can often produce better legislation and therefore serve the public interest," said Pease, a former newspaperman. "I still come out opposed to closed mark-ups. I think, when it comes down to it, that members ought to screw up their courage and vote for what they think is right -- regardless of what lobbyists are out in the audience."

Closed sessions don't necessarily mean bad legislation and sunshine doesn't guarantee good laws. Openness just makes the process and the results slightly easier to discern.

