



# CRS Report for Congress

## Secret Sessions of the House and Senate

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“Secret,” or “closed,” sessions of the House and Senate exclude the press and the public. They are held to discuss business such as Senate deliberations during impeachment trials, issues of national security, and sensitive communications received from the President, all deemed to require confidentiality and secrecy. During a secret session, the doors of the chamber are closed. The chamber and its galleries are cleared of all individuals except Members and those officers and employees specified in the rules or essential to the session. Secret sessions occur infrequently. Any Member of Congress may request one, although there is usually agreement in advance among Members. For a longer discussion of secret sessions, see CRS Report RS20145, *Secret Sessions of Congress: A Brief Historical Overview*, by Mildred Amer.

### Authority in the Constitution and Rules

Authority for the House and Senate to hold secret sessions appears in Article I, section 5, of the Constitution, which says: “Each House may determine the Rules of its proceedings...Each House shall keep a journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their judgment require Secrecy...” Both chambers have implemented this section through rules and precedents. A chamber’s rules apply during secret sessions in the House and Senate, except during impeachment deliberations in the Senate.

In the House, Rule XVII, clause 9, governs secret sessions, including the types of business to be considered behind closed doors. A motion to resolve into a secret session may only be made in the House, not in Committee of the Whole. A Member who offers such a motion announces the possession of confidential information, and moves that the House go into a secret session. The motion is not debatable, but, if agreed to, the Member making the motion is recognized under the one-hour rule in closed session.

For Senate impeachment proceedings, Rules XX and XXIV of the Senate Rules for Impeachment Trials govern secret deliberations. The Senate has interpreted these rules to require open deliberations during impeachment trials, unless the Senate votes to close its doors during deliberations. Standing Senate Rules XXI, XXIX, and XXXI cover secret sessions for legislative and executive business (nominations and treaties). Rule XXI calls for the Senate to close its doors once a motion is made and seconded. The motion is not debatable, and its disposition is made behind closed doors. Rule XXIX calls for Senate consideration of treaties to be conducted in secret unless the Senate lifts the “injunction

of secrecy,” which it usually does and undertakes by unanimous consent. Rule XXXI mandates that all nominations, treaties, and other matters be considered in open session unless the Senate votes to do so in secret, and, for treaties, the injunction of secrecy has been removed.

## History and Current Practice

The Continental Congress and the Constitutional Convention met in secret. The Senate met in secret until 1794, its first rules reflecting a belief that the body’s various special roles, including providing advice and consent to the executive branch, compelled it to conduct its business behind closed doors. The Senate’s executive sessions (to consider nominations and treaties) were not opened until 1929.

Since 1929, the Senate has held 54 secret sessions, generally for reasons of national security. On November 1, 2005, the Senate met behind closed doors to discuss Iraq war intelligence. Six of the seven most recent secret sessions, however, were held during the impeachment trial of President Bill Clinton.<sup>1</sup> In 1997, the Senate met in secret to consider the Chemical Weapons Convention Treaty and in 1992, to debate the “most favored nation” status of China. The Senate also closed its doors during the impeachment trial of federal judges in 1933 and 1936 and on six occasions in the 1980s.

The House met frequently in secret session through the end of the War of 1812, and then only in 1825 and in 1830. Since 1830, the House has met behind closed doors only four times: in 1979 to discuss the Panama Canal, in 1980 to discuss Central American assistance, in 1983 to discuss U.S. support for paramilitary operations in Nicaragua, and in 2008 during debate on the Foreign Intelligence Surveillance Act (FISA).<sup>2</sup>

Members and staff of both houses are prohibited from divulging information from secret sessions, and all staff are sworn to secrecy. Violations of secrecy are punishable by the disciplinary rules of a chamber. A Member may be subject to a variety of punishments, including loss of seniority, fine, reprimand, censure, or expulsion. An officer or employee may be fired or subject to other internal disciplinary actions.

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<sup>1</sup> On January 8, 1999, the Senate Democratic and Republican Conferences held a rare joint, secret meeting in the old Senate chamber to discuss the procedure for the pending impeachment trial of the President, but this was not a formal, secret session of the Senate.

<sup>2</sup> There have been several recent, unsuccessful attempts to force the House to hold a secret session. On September 26, 2006, the House voted not to go into a secret session to discuss an assessment of the war in Iraq. See *Congressional Record*, daily edition, vol. 152, September 26, 2006, p. H7371. On May 10, 2007, the House rejected three different motions to hold a secret session during the debate on the Intelligence Authorization Act for Fiscal Year 2008. See *Congressional Record*, daily edition, vol. 153, May 10, 2007, pp. H4795-4796, H4808, and H4867-H4868. For the debate prior to the 2008 secret session, refer to *Congressional Record*, daily edition, vol. 164, Mar. 13, 2008, pp. H1690-H1699.

## Transcripts

The proceedings of a secret session are not published unless the relevant chamber votes, during the meeting or at a later time, to release them. Then, those portions released are printed in the *Congressional Record*.

If the House decides not to release a transcript, it is ultimately transferred to the clerk of the House for transmittal to the archivist of the United States for preservation at the National Archives and Records Administration. The transcripts may be made available to the public after 30 years (Rule VII, clauses 3 and 4).

If the Senate does not approve release of a secret session transcript, the transcript is stored in the Office of Senate Security and ultimately sent to the National Archives and Records Administration. The proceedings remain sealed until the Senate votes to remove the injunction of secrecy.