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EXECUTIVE BUSINESS AND EXECUTIVE SESSIONS

The executive business of the Senate includes both nominations and treaties submitted to the Senate by the President of the United States for its "Advice and Consent." This business of the Senate is handled separately from its legislative business.

Treaties are referred to the Committee on Foreign Relations and nominations are referred to one of the various committees of the Senate, basically determined on the grounds of which committee handled the legislation creating the position.

When committees report treaties or nominations to the Senate, they are placed on the Executive Calendar, as distinct from the Calendar of Business, on which legislation is placed. These two calendars are printed separately.

When the Senate considers nominations and treaties, it goes into executive session (which is an open session unless the Senate orders the doors closed), as distinct from legislative session, and a separate *Journal* is kept of the proceedings thereon.

The rules for the consideration of executive business are different and distinct from the rules for the consideration and disposition of legislative business.

Rule XXIX

[When President Meets With Senate; Special Sessions of Senate, and Procedure When Acting on Confidential and Executive Business]

1. When the President of the United States shall meet the Senate in the Senate Chamber for the consideration of Executive business, he shall have a seat on the right of the Presiding Officer. When the Senate shall be convened by the President of the United States to any other place, the Presiding Officer of the Senate and the Senators shall attend at the place appointed, with the necessary officers of the Senate.

2. When acting upon confidential or Executive business, unless the same shall be considered in open Executive session, the Senate Chamber shall be cleared of all persons except the Secretary, the Assistant Secretary, the Principal Legislative Clerk, the Parliamentarian, the Executive Clerk, the Minute and Journal Clerk, the Sergeant at Arms, the Secretaries to the Majority and the Minority, and such other officers as the Presiding Officer shall think necessary; and all such officers shall be sworn to secrecy.

3. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret; and all treaties which may be laid before

the Senate, and all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

4. Whenever the injunction of secrecy shall be removed from any part of the proceedings of the Senate in closed Executive or legislative session, the order of the Senate removing the same shall be entered in the Legislative Journal as well as in the Executive Journal, and shall be published in the Congressional Record under the direction of the Secretary of the Senate.

5. Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceeding of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

6. Whenever, by the request of the Senate or any committee thereof, any documents or papers shall be communicated to the Senate by the President or the head of any department relating to any matter pending in the Senate, the proceedings in regard to which are secret or confidential under the rules, said documents and papers shall be considered as confidential, and shall not be disclosed without leave of the Senate.

Rule XXII, Paragraph 1

[Precedence of Motions]

When a question is pending, no motion shall be received but—

To adjourn.

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

To take a recess.

To proceed to the consideration of executive business.

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Adjourn in Executive Session:

When the Senate adjourns in executive session its next meeting will be convened in executive session.[1]

The Senate meets in executive session when adjournment was taken on a previous day in the absence of a quorum while in executive session.[2]

[1] *See* May 31, 1972, 92-2, *Record*, p. 19408; July 24 and 25, 1939, 76-1, *Record*, p. 9899.
[2] *See* July 25, 1939, 76-1, *Record*, p. 9899.

Amend Motion To Proceed to Consideration of Executive Business, Out of Order:

A motion to proceed to the consideration of executive business is not amendable.[3]

Business Not in Order:

A motion, made in legislative session, to print as a document the report of the hearings on a certain nomination was decided by the Senate, on appeal, to be a matter belonging to the executive business of the Senate and could not be considered in open session when objection was made.[4]

Closed Session for Executive Business:

See "Open Sessions," p. 839.

Consideration of Executive Business, Order of Procedure:

See also "Recess—Business Following a Recess of the Senate," p. 840; "Nominations," pp. 938–953; "Treaties," pp. 1294–1310.

After the Senate goes into executive session, it may determine its order of procedure for the consideration of executive business.[5]

Consideration of the Motion To Proceed to Executive Business:

See also "Table, Motion to," p. 841.

Unless the Senate recesses or adjourns as in executive session, it is necessary in legislative session, if the Senate desires to transact executive business, to move to go into executive session.[6]

A motion to proceed to the consideration of executive business is in order at any time.[7] To proceed to the consideration of executive business (1) has priority over morning

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[3] Feb. 22, 1922, 67–2, *Record*, p. 2875.

[4] Aug. 20, 1912, 62–2, *Journal*, p. 589, *Record*, p. 11347. This decision was before the adoption of the change in the rules to provide for open session for the consideration of all executive business.

[5] Jan. 15, 1912, 62–2, *Record*, pp. 943–45.

[6] *See* Jan. 15, 1912, 62–2, *Record*, pp. 943–45.

[7] Apr. 7, 1941, 77–1, *Record*, p. 3070.

business; [8] (2) it is in order during the consideration of a privileged resolution for the seating of a Senator; [9] (3) it is in order pending the consideration of a bill under a unanimous consent agreement;[10] (4) it takes precedence over a motion to take up a bill; [11] and the Senate may have a yea and nay vote on the motion to proceed to the consideration of executive business which is not debatable.[12]

A motion to go into executive session is not subject to a motion to table.[13]

In 1912, a motion to proceed to the consideration of certain arbitration treaties in open executive session was held to have precedence over a motion to take up a Senate resolution.[14]

Pending a demand for the yeas and nays on a motion to lay an amendment on the table, a motion to proceed to the consideration of executive business is in order and takes precedence.[15]

A Senator who has been recognized may not be interrupted against his will or taken off the floor by another Senator to offer a motion to go into executive session. *See* "Debate," p. 742.

The receipt of a message from the President of the United States has been regarded as intervening business, and a renewal of a motion for an executive session rejected immediately prior to the receipt of the message was held to be in order.[16]

Less than a quorum having voted upon a motion to proceed to the consideration of a House bill upon the Calendar, but a quorum having appeared in response to a call of the Senate, the Chair held, in 1912, that a motion to proceed to the consideration of executive business was in order, as such a motion was in order at any time; [17] but in 1914, when a quorum was not present to vote on a motion, the Chair ruled a motion to proceed to the consideration of executive business was not in order in that a rollcall was proceeding.[18]

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[8] Apr. 4, 1914, 63-2, *Record*, p. 6225.
[9] Mar. 29, 1893, 52-2, *Journal*, p. 178, 53-Special Session, *Record*, pp. 48-49.
[10] Aug. 16, 1912, 62-2, *Record*, pp. 11081-82.
[11] Feb. 26, 1903, 57-2, *Record*, p. 2702.
[12] Feb. 26, 1979, 96-1, *Record*, pp. 3163-64.
[13] July 28, 1980, 96-2, *Record*, p. 19967.
[14] Mar. 5, 1912, 62-2, *Record*, p. 2816.
[15] Sept. 21, 1893, 53-2, *Record*, p. 1639.
[16] Feb. 20, 1885, 48-2, *Record*, p. 1954.
[17] *See* Aug. 24, 1912, 62-2, *Record*, p. 11798.
[18] Sept. 11, 1914, 63-2, *Record*, p. 14992.

Less than a quorum having voted on a motion for an executive session, unanimous consent is required, after the development of a quorum, to lay before the Senate a message from the President of the United States; the regular order is to continue to vote on the motion for an executive session.[19]

Under a unanimous consent agreement to consider, at a specified hour, certain amendments to a treaty, it was held, upon the arrival of such hour, that the Senate would automatically resolve itself into executive session without a motion to that effect.[20]

Upon the arrival of an hour previously fixed by the Senate for an executive session, the Senate automatically goes into executive session.[21]

Under Rule XXII, a motion to adjourn or recess takes precedence over a motion to proceed to the consideration of executive business.[22]

Debate of Motion To Consider Executive Business:

A motion to proceed to the consideration of executive business is not debatable. *See* "Executive Session, Debate of Motion for," p. 742.

Discharge Committee From a Nomination or Treaty:

See "Discharge of Committees," pp. 802–806; "Discharge of Committee Before Consideration of," pp. 943–944.

Floor Cannot Be Taken Away To Offer Motion for:

See "Interruption of Senator Who Has the Floor Is Not Allowed—Except by His Consent," pp. 749–753.

Germaneness of Debate:

See also "Germaneness of Debate," pp. 742–745.

Germaneness of debate is not required in executive session except during the first 3 hours of a new calendar day

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[19] Dec. 23, 1914, 63–3, *Record*, p. 626.
[20] *See* Oct. 2, 1919, 66–1, *Record*, p. 6265.
[21] Mar. 8, 1926, 69–1, *Record*, pp. 5219–20.
[22] Dec. 13, 1932, 72–2, *Record*, pp. 393–94.

after the Morning Hour or the pending or unfinished business has been laid before the Senate.[23]

Rule XIX, paragraph 1(b) of the Senate requires that all debate be germane during the first 3 hours of each calendar day after the Morning Hour, or after the pending or unfinished business has been laid down, whichever comes first.[24]

The Senate, except as restricted by Rule XIX, paragraph 1(b), can debate another proposition while in executive session since germaneness of debate is not otherwise required.[25]

Journal, Executive Journal:

An amendment to the *Executive Journal* is not in order when the *Executive Journal* is not before the Senate. Once the Senate has begun to consider a nomination, the *Executive Journal* is no longer before the Senate.[26]

Legislation:

A motion, when in executive session, to return to legislative session or legislative business is not debatable. *See* "Legislative Session, Debate of Motion for," p. 756.

"Legislative as in Executive" Session:

The Senate, while in legislative session under unanimous consent procedure, has utilized from time to time the procedure of receiving reports and acting on nominations "as in executive session," but such action does not constitute an executive session of the Senate.[27]

During an executive session, a request to transact business as in legislative session is construed to be action upon the part of the Senate to return to legislative business.[28]

Legislative Business Not Displaced by Executive Session:

The adoption of a motion to proceed to the consideration of executive business has no effect on the status of

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[23] *See* Sept. 25, 1968, 90-2, *Record*, pp. 28111-12.
[24] *Ibid.*
[25] *See* May 28, 1959, 86-1, *Record*, p. 9216.
[26] Sept. 9, 1987, 100-1, *Record*, pp. S 11851-60.
[27] *See* Apr. 17, 1944, 78-2, *Record*, p. 3481.
[28] Apr. 1 and 2, 1914, 63-2, *Journal*, p. 211, *Record*, pp. 6109, 6139.

legislation; the legislative business is not displaced but merely suspended for the duration of the executive session. For details on, *see* "Displacement of Pending or Unfinished Business," pp. 664–669.

The pending legislative business is not affected when the Senate goes into executive session, and when the Senate returns to legislative session that matter recurs as the pending business.[29]

Legislative Business Out of Order in Executive Session:

Legislative business cannot be taken up for consideration during an executive session over an objection [30] and such a motion is not in order; hence, a motion, in executive session, to proceed to the consideration of a bill is not in order,[31] nor is the consideration of a conference report in order.[32]

When the Senate is considering a nomination, the granting of a unanimous consent request to proceed as in morning business does not take the Senate out of executive session.[33]

While the Senate is in executive session, it is not in order to receive a bill from the House of Representatives and lay it before the Senate for a first and second reading.[34]

When the Senate is considering executive business, it is not in order to consider a legislative resolution, except by unanimous consent.[35]

Legislative Session:

Executive business in legislative session is out of order. *See* "Executive Business Consideration of," p. 670; "Executive Business in Legislative Session Out of Order," pp. 907–908; for debate of executive business in legislative session, *see* "Legislative—Executive Business," p. 756; "Consideration of Executive Business, Order of Procedure," p. 834.

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[29] Dec. 4, 1985, 99–1, *Record*, p. 34117.

[30] Oct. 28, 1919, 66–1, *Record*, p. 7632; Mar. 2, 1931, 71–3, *Record*, p. 6708; *see also* May 28, 1959, 86–1, *Record*, p. 9216; Aug. 1, 1955, 84–4, *Record*, p. 12641.

[31] Mar. 8, 1926, 69–1, *Record*, pp. 5219–20.

[32] Oct. 28, 1919, 66–1, *Record*, p. 7629; *see* Sept, 25, 1968, 90–2, *Record*, p. 28112.

[33] Feb. 19, 1985, 99–1, *Record*, pp. 2599–2600.

[34] *See* June 14, 1957, 85–1, *Record*, p. 9176.

[35] Feb. 23, 1985, 99–1, *Record*, p. 3276.

Lies Over One Day—Resolution of Ratification:

See "Treaties," pp. 1294–1310.

Motions Relating to Executive Session, Held Out of Order:

A motion that the Senate proceed to the consideration of executive business at a future time is not in order.[36]

A motion in executive session that when a nomination under consideration was disposed of, the Senate proceed to consider a resolution relating to membership in the World Court, then pending before a committee, was held not to be in order.[37]

During the consideration in executive session of a resolution relating to the World Court, a motion to adopt a resolution, submitted on the same legislative day, calling on the Secretary of State for certain related documents, was conceded to be out of order.[38]

Nominations:

Nominations are considered in executive session. For details on consideration of, *see* "Nominations," pp. 938–953.

Open Sessions:

The rule relating to proceedings on nominations was amended in 1929 so as to provide for the transaction of all business of the Senate in open session unless otherwise ordered.[39]

Petitions:

Petitions relating to executive business should be presented in executive and not legislative session.[40]

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[36] Mar. 2, 1914, 63–2, *Record*, p. 4138.
[37] Mar. 10, 1925, 69-Special Session, *Record*, p. 92.
[38] Jan. 23, 1926, 69–1, *Record*, p. 2658.
[39] June 18, 1929, 71–1, *Journal*, p. 121, *Record*, p. 3055.
[40] Feb. 26, 1884, 48–1, *Record*, p. 1374.

Quorum:

A motion to consider executive business is considered as business for purpose of a quorum. *See* "Quorum," pp. 1038–1078.

Reading of Executive Proceedings in Legislative Session:

Reading of certain executive proceedings in legislative session is out of order. *See* "Executive Business in Legislative Session Out of Order," pp. 907–908.

Receipt and Reference of Executive Business:

Form of unanimous consent agreement adopted by the Senate to authorize the receipt and reference of executive business on days when the Senate is in session but when there is no executive session during that day:

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that for the remainder of this Congress it be in order to refer treaties and nominations on the days when they are received from the President even when the Senate has no executive session that day.

The PRESIDING OFFICER. Without objection, it is so ordered.[41]

Recess—Business Following a Recess of Senate:

When the Senate convenes following a recess, the unfinished or pending business, be it in executive or legislative session, comes down automatically.[42]

A motion pending at the time the Senate takes a recess in executive session is the pending business when the Senate next meets.[43]

Reference:

References of nominations and treaties should be made in executive session and reference on days when there is no executive session should be made by unanimous consent as in executive session,[44] unless a general order is adopted as was done on March 6, 1974.

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[41] Mar. 6, 1974, 93–2, *Record*, p. 5591.
[42] *See* Sept. 25, 1968, 90–2, *Record*, pp. 28111–12.
[43] Rule XXII; *see also* Mar. 16, 1945, 79–1, *Record*, pp. 2348–49.
[44] Jan. 6, 1936, 74–2, *Journal*, pp. 18–19.

Resolution of Ratification—Lie Over One Day:

See "Treaties," pp. 1294–1310.

Resolutions on Executive Business:

Resolutions to discharge committees from nominations go over a day on objection to their consideration. *See* "Discharge of Committee Before Consideration of," pp. 943–944.

Table, Motion To:

Under Rule XXII, a motion to table a motion to go into executive session is not in order.

A motion to go into executive session is not subject to a motion to table.[45]

Treaties:

Treaties are considered in executive session. For details on consideration of, *see* "Treaties," pp. 1294–1310.

Unanimous Consent Not Required:

A motion that the Senate go into executive session to consider the Executive Calendar is not subject to an objection by a Senator.[46]

Unfinished Business:

The Senate can have no unfinished executive business in the sense that it has unfinished legislative business, which is laid down at the close of the Morning Hour.[47]

Veto Message:

The Chair in 1919, ruled that a House message on a vetoed bill could be laid before the Senate while in executive session, but declined to rule at that time whether or not action thereon could be taken without a return to legislative session; the Senate subsequently returned to legislative session, when the message was laid before the Senate and the reconsideration of the bill proceeded

[45] July 28, 1980, 96–2, *Record*, p. 19967.
[46] *See* June 20, 1962, 87–2, *Record*, p. 11085.
[47] Jan. 15, 1912, 62–2, *Record*, pp. 943–45.

with.[48] On another occasion, the Senate received a veto message from the House of Representatives while the Senate was in executive session.[49]

Vote:

A motion to print in the *Congressional Record* a yea and nay vote on a nomination which was taken in closed session can only be made in executive session.[50] This ruling was made before the rule on the consideration of nominations was amended in June of 1929, previous to which all executive business was considered in closed session unless by vote the Senate decided to meet in open executive session. As a consequence of which, votes taken in closed session on nominations were not printed in the *Record* unless the Senate took action to that effect.

EXECUTIVE DAY

For definition of, *see* "Executive Day," p. 714.

EXECUTIVE DEPARTMENTS, INQUIRIES FROM

See "Departmental Inquiries," p. 799.

EXPENDITURE RESOLUTIONS

See "Investigations and Inquiries," pp. 881–890.

EXPULSION OF SENATORS

"Each House may * * * punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." [1]

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[48] Oct. 28, 1919, 66–1, *Record*, pp. 7619–20.
[49] May 25, 1988, 100–2, *Record*, p. S 6555.
[50] May 21, 1929, 71–1, *Record*, p. 1598.
[1] Constitution of the United States, Article I, Section 5, Clause 2.