

Private Legislation

Nearly half of all the laws enacted by Congress have been private laws.¹ Unlike public law, which applies to public matters and deals with individuals only by classes, the provisions of private law apply to “one or several specified persons, corporations, [or] institutions.”²

Private legislation has its foundation in the right to “petition the government for a redress of grievances”³ guaranteed to all citizens by the First Amendment to the U.S. Constitution. Congress sometimes chooses to enact private law to grant relief in situations where no other legal remedies are available. Private legislation is premised on the idea that public law cannot cover all situations equitably, and sometimes Congress must address special circumstances with specially targeted legislation. In this sense, private law has been called “an anomaly,”⁴ since it is intended to address specific problems that public law either created or overlooked.

The 1st Congress enacted 10 private laws. The 59th Congress—the historic high water mark of private legislation—enacted 6,249. Reporters observing the 59th Congress (1905–1906) noted that, on one occasion, 320 private pension bills passed the House in an hour and a half, “an average of three each minute.” One reporter characterized the Chairman of the Committee of the Whole as presiding with “auctioneer-like qualities” as these private pension measures were raised and rapidly adopted in turn.⁵

Today Congress enacts very little private legislation. In the last 10 Congresses combined it has enacted just 159 private measures, a mere two percent of the amount passed in the 1905–1906 sessions alone. In the 108th Congress, just one percent of the laws enacted by Congress were private – the lowest percentage of private legislation enacted at any time in the nation’s history.

The first private law enacted by Congress in 1789 awarded a year-and-a-half’s pay at the rank of Captain to a foreign citizen serving in the U.S. military.⁶ Since that time, Congress has enacted over 45,000 private laws dealing with issues both commonplace and extraordinary: providing pensions or lump sum payments to soldiers and widows, satisfying sundry monetary claims against the government, correcting military records, eliminating the “political disabilities” of Civil War rebels, fixing immigration problems, extending patents, providing vessel documentation, refunding tariffs or overpayments, expediting the naturalization process for a potential Olympian, authorizing the Speaker of the House to wear a foreign military decoration, and permitting the family of an immigrant murdered in a post 9/11 hate crime to remain in the United States.

Historically, most private legislation introduced in the House of Representatives was considered by various private claims Committees in the House⁷ or by the Committee on Immigration and Naturalization.⁸ The 1946 Legislative Reorganization Act⁹, however,

transferred jurisdiction over both immigration and claims to the House Committee on the Judiciary, along with jurisdiction over patents. Thus, since 1947, only a fraction of private measures dealing with sundry matters such as public lands, vessel documentation, military awards, veterans' benefits and legislation relating to tax and tariffs introduced in the House have been referred to Committees other than the House Committee on the Judiciary.

While the overall volume of private law has not been large in recent years, the internal workload of the Judiciary Committee and of its Members and professional staff, in dealing with private legislation has remained significant. Over the last 27 years, the House Judiciary Committee has processed 91 percent of all private laws enacted. In addition, the importance of the task of reviewing such legislation is as high as ever. In its truest sense, each private measure referred to the House Judiciary Committee represents a plea for relief from a petitioner who, in theory, has no other recourse. The problems involved may touch on some of the most important and emotionally-charged subjects imaginable: a mother's plea to bring an adopted child into the United States, the death of a soldier's toddler due to government negligence, payments justly owed to a small business but tied up in bureaucratic red tape.

Since 1947, private immigration and claims bills have been handled in the House by subcommittees of the full Judiciary Committee, initially known as Subcommittee No. 1 (dealing with immigration and nationality) and Subcommittee No. 2 (dealing with claims against the government.)¹⁰ Currently, such measures are referred to one Judiciary subcommittee, the Subcommittee on Immigration, Border Security, and Claims, for review.

Individual private cases are examined by the Subcommittee to determine if they meet the criteria for private relief and are in keeping with precedents and with Congress's overarching goal of making equitable law.

The decline in the introduction of private legislation in recent decades stems primarily from incremental reforms made by Congress to delegate the authority to address most private grievances administratively or through the courts. Examples of this progression include the creation of the United States Court of Claims in 1855, the enactment of the Federal Tort Claims Act, and the passage of similar statutes permitting administrative settlement of most military claims.¹¹ Likewise, changes in immigration law have, at times, led to reductions in the introduction of private legislation in Congress.¹²

Congress has also made numerous internal reforms that have had the effect of reducing the amount of private legislation introduced. For example, section 131 of the 1946 Legislative Reorganization Act barred the introduction of private bills addressing grievances that might be resolved by the Tort Claims Procedure of Title 28, bills to grant a pension, to construct a bridge over a navigable stream, or to correct a military or naval record. These provisions were made part of the standing rules of the House in 1953, and are currently codified in Rule XIII, clause 4.¹³

As former House Judiciary Committee Chairman Emanuel Celler noted, these changes initially did "effect some change in the private bill workload," reducing the percentage of private measures enacted from 55 percent immediately before the reforms, to 34 percent after their adoption.¹⁴

Additional reforms undertaken by the House Judiciary Committee in 1947 barred stays of deportation simply because of the introduction of a private bill for “stowaways, deserting seamen, and border jumpers.” The Committee realized that a large fraction of private immigration bills were being introduced by Members, not with the hope of them becoming law, but simply to stay deportation proceedings. The simple introduction of a relief bill meant that the alien would not be deported while the measure was pending, whether or not the measure was ever acted upon.

The volume of private legislation introduced, and as a result, the workload of the House Judiciary Committee, however, remained unmanageably large despite these reforms. In the 90th Congress (1967–1968), for example, House Judiciary Subcommittee No. 2 was referred 779 private claims bills and oversaw the enactment of 116 of them into law. Subcommittee No. 1 was referred over 6,000 private immigration bills.¹⁵ According to former Rep. William Cahill, this represented “the largest number [of private immigration bills] ever introduced” up to that time.¹⁶ While the Judiciary panel worked hard to meet its responsibilities – its immigration subcommittee held 37 meetings and oversaw the enactment of 216 private laws – the strain from such legislative volume meant that it was simply, “unable to remain current.”¹⁷

In response to this challenge, the restrictions on stays of deportation for certain petitioners were further broadened. According to Rep. Cahill, in 1967, the Committee rule “was broadened to include those who entered the United States as transients en route to third countries and [who] illegally remain[ed] in this country.”¹⁸ New Judiciary Committee rules adopted in 1969, and amended in 1971, further tightened procedures for the consideration of private immigration measures and contributed significantly to an overall decline in their introduction. Specifically, the rules altered Committee policy by eliminating the stay of deportation of various additional petitioners that used to be automatic upon the introduction of a private immigration bill. These Judiciary Committee rules changes led the introduction of private immigration bills to “drop sharply.”¹⁹

The marked reduction in private laws enacted in recent decades stem largely from these reforms, but doubtless also stems in part from periodic accusations of impropriety or the appearance of impropriety in the introduction of private measures. In 1969 and 1976, Members and staff in both chambers were accused of soliciting and accepting bribes in exchange for the introduction of private immigration measures.²⁰ In addition, the widely-publicized 1980 FBI Abscam bribery sting operation revolved, in part, around requests for the introduction of private bills in exchange for money.²¹

Today, in considering private immigration bills, the Judiciary Committee generally reviews only those cases that are of such an extraordinary nature that an exception to the law is needed and acts favorably on only those private bills that meet certain well-defined precedents. The Subcommittee has published detailed rules of procedure for the consideration of private immigration and claims bills, and works regularly with Members and staff to guide them in the framing and drafting of private legislation on behalf of their constituents.²²

Table 1. Enacted Private Measures Referred to the House Committee on the Judiciary:1979–2006

Congress & Year	Judiciary Referred Measures Enacted	Percentage of Total Judiciary Referred Private Measures to Become Private Law	Total Private Laws Enacted	Percentage of Private Laws Handled by Judiciary
96th Congress (1979 and 1980)	114	14%	123	92%
97th Congress (1981 and 1982)	48	7%	56	85%
98th Congress (1983 and 1984)	51	12%	52	98%
99th Congress (1985 and 1986)	23	7%	24	95%
100th Congress (1987 and 1988)	42	17%	48	87%
101st Congress (1989 and 1990)	13	8%	16	81%
102nd Congress (1991 and 1992)	20	16%	20	100%
103rd Congress (1993 and 1994)	6	7%	8	75%
104th Congress (1995 and 1996)	4	6%	4	100%
105th Congress (1997 and 1998)	10	13%	10	100%
106th Congress (1999 and 2000)	21	15%	24	87%
107th Congress (2001 and 2002)	6	7%	6	100%
108th Congress (2003 and 2004)	4	4%	6	66%
109th Congress (2005 and 2006)	0	–	0	–
TOTAL	362	11%	397	91%

SOURCES: Library of Congress SCORPIO data base, files C101 through C105, and congressional Legislative Information System database, 106th–109th Congresses. 109th Congress includes first session only.

Table 2. Subject of Private Measures Referred to the House Judiciary Committee: 1967–2004²³

Congress & Year	Immigration & Naturalization		Claims		Patent or Copyright		Other		Total
	House	Senate	House	Senate	House	Senate	House	Senate	
90th Congress (1967 and 1968)	5,972	306	727	52	2	0	0	0	7,059
91st Congress (1969 and 1970)	4,932	139	670	45	0	0	0	0	5,786
92nd Congress (1971 and 1972)	2,085	59	573	36	1	1	0	0	2,755
93rd Congress (1973 and 1974)	548	59	454	17	11	1	0	0	1,090
94th Congress (1975 and 1976)	551	58	363	11	13	3	0	0	999
95th Congress (1977 and 1978)	546	120	359	10	3	0	0	0	1,038
96th Congress (1979 and 1980)	486	54	302	15	4	0	0	0	861
97th Congress (1981 and 1982)	400	61	224	3	2	0	0	0	690
98th Congress (1983 and 1984)	217	29	178	4	3	0	0	0	431
99th Congress (1985 and 1986)	155	27	127	4	16	0	0	0	329
100th Congress (1987 and 1988)	96	11	138	2	11	0	0	0	258
101st Congress (1989 and 1990)	58	5	93	3	6	3	1	0	169
102nd Congress (1991 and 1992)	33	9	72	4	3	4	1	0	126
103rd Congress (1993 and 1994)	29	4	44	3	5	1	1	0	87
104th Congress (1995 and 1996)	14	0	46	1	3	0	1	0	65
105th Congress (1997 and 1998)	35	6	34	0	2	0	0	0	77
106th Congress (1999 and 2000)	82	14	37	1	1	0	1	0	136
107th Congress (2001 and 2002)	48	7	25	1	1	0	0	0	82
108th Congress (2003 and 2004)	69	12	17	0	1	0	0	0	99
TOTAL	16,356	980	4,483	212	88	13	5	0	22,137

SOURCE: House Committee on the Judiciary Activity Reports and Legislative Information Service of the Library of Congress.

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- ¹ According to data obtained from *Cannon's Precedents of the House of Representatives*, v.7, §1028, the Calendar of the *United States House of Representatives and History of Legislation* from the 74th through 79th Congresses, and the *Congressional Record's* Resume of Congressional Activity from the 80th through 109th Congresses, between 1789 and 2006, Congress enacted a total of 94,120 laws. Of these, 45,937 — 49 percent — have been private laws.
- ² *Hinds' Precedents of the House of Representatives*, v.4, §3285.
- ³ U.S. Congress, Constitution, *Jefferson's Manual, and Rules of the House of Representatives*, H.Doc. 108–241, 108th Cong., 2nd sess. (Washington: GPO, 2005), §208, p. 90. (Hereafter referred to as “House Manual”).
- ⁴ “Private Bills in Congress,” *Harvard Law Review*, vol. 79, June 1966, p. 1684.
- ⁵ “Three Pensions a Minute,” *New York Times*, May 12, 1906, p. 9.
- ⁶ Congressional Quarterly's Guide To Congress, 5th ed., vol. I (Washington: Congressional Quarterly, Inc., 2000), p. 526.
- ⁷ These include the House Committees on Claims; Pensions and Revolutionary Claims; Private Land Claims; Revolutionary Claims; Military Pensions; Invalid Pensions; Revolutionary Pensions; War Claims; and Pensions. David T. Canon, Garrison Nelson, Charles Stewart III, *Committees in the U.S. Congress, 1789–1946*, vol. 1, (Washington: CQ Press, 2002), pp. VI–XXXV.
- ⁸ U.S. Congress, House Committee on the Judiciary, *History of the Committee on the Judiciary of the House of Representatives*, Committee Print, 92nd Cong. 2nd sess., (Washington: GPO, 1972), p. 5.
- ⁹ P.L. 79–601, 60 Stat. 812.
- ¹⁰ CRS Typed Report, (*Trends in Activity on Private Legislation in Congress*), by Richard S. Beth, p. 8.
- ¹¹ CRS Typed Report, (*Trends in Activity on Private Legislation in Congress*), by Richard S. Beth.
- ¹² Other changes in immigration law have arguably led to increases in the introduction of private bills at certain points in congressional history. For more information on immigration policy and its effect on private legislation, see *Trends in Activity on Private Legislation in Congress*, by Richard S. Beth, and CRS Report RL33024, Private Immigration Legislation, by Margaret Mikyung Lee.
- ¹³ *House Manual*, §822, p. 601.
- ¹⁴ Rep. Emanuel Celler, remarks in the House, *Congressional Record*, daily edition, vol. 95, pt. 15, May 12, 1949, p. A2901.
- ¹⁵ U.S. Congress, House Committee on the Judiciary, Summary of Activities, Committee Print, 90th Cong., 2nd sess., (Washington: GPO, 1968), p. 9.
- ¹⁶ Rep. William T. Cahill, remarks in the House, *Congressional Record*, vol. 115, pt. 20, Mar. 12, 1969, p. H1629.
- ¹⁷ *Ibid.*, p. H1630.
- ¹⁸ Rep. William T. Cahill, remarks in the House, *Congressional Record*, vol. 115, pt. 20, Mar. 12, 1969, p. H1629.
- ¹⁹ Richard L. Madden, “Private Immigration Bills Found to Drop Sharply,” *New York Times*, Oct. 25, 1972, p. 14.
- ²⁰ “Rep. Helstoski Denies He Got Payoffs,” *New York Times*, June 26, 1976, p. A5.
- ²¹ Charles R. Babcock, “FBI ‘Sting’ Ensnarers Several In Congress,” *The Washington Post*, Feb. 3, 1980, p. A1.
- ²² Subcommittee Rules of Procedure are available on the House Committee on the Judiciary's website: <http://judiciary.house.gov/Printshop.aspx>.
- ²³ Includes simple and concurrent resolutions as well as bills and joint resolutions. “Other” category includes measures conferring honorary citizenship, and those dealing with criminal prosecution or special prosecutors.