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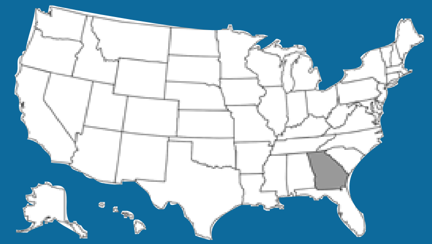

It is my privilege to present you with Volume 1, Issue 4 of the Federal Edition of *At Issue*.

Last month, the President signed the Nation Defense Authorization Act (NDAA) into law for Fiscal Year 2017. This issue provides an overview of the NDAA and the impact it will have on defense discretionary spending. A highlight of programs affecting the Department of Defense and Military Health Care are reviewed.

In 2015, President Obama and the United States Environmental Protection Agency (EPA) announced the Clean Power Plan. Congressional and state responses to the plan are discussed in this issue along with what the plan means for Georgia.

Finally, we look at the Electoral College from its implantation to the current process and any possible reform.

I hope you find this edition of *At Issue* useful. I want to thank the staff of the Senate Press Office and Senate Research Office for their work in preparing it.

If you have topics to suggest for future publications, please do not hesitate to contact me.

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Federal Funding

Supporting the Armed Forces: The National Defense Authorization Act for Fiscal Year 2017

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Created by the Legislative Reorganization Act of 1946, the Armed Services Committees of the U.S. Senate and House of Representatives have legislative oversight over the annual defense authorization bill, the National Defense Authorization Act (NDAA). On December 23, 2016, the President signed the conference report to S. 2943 and H.R. 4909, the NDAA for Fiscal Year 2017.

The NDAA authorizes a total of $619 billion for defense discretionary spending, which is $3.2 billion above President Obama's budget request, which provides in part:

- $543.4 billion in base funding, including $523.7 billion for the Department of Defense (DOD) and $19.4 billion for the Department of Energy; and
- $67.8 billion in Overseas Contingency Operations (OCO) funding, which includes the $5.8 billion in supplemental funding requested by President Obama for operations in Iraq, Syria, and Afghanistan.

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Highlights

Organizational Reforms

This year, the Senate Armed Services Committee conducted a comprehensive review of the roles, missions, and organization of the major actors in the DOD – the Office of the Secretary of Defense and the defense agencies, the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, and the military services. Among several provisions, the NDAA:

- Allows the next Secretary of Defense to create and delegate decision-making authority to a series of cross-functional teams to achieve core objectives of the DOD;
- Directs a reduction of 110 general and flag officers on Active Duty by no later than December 31, 2022, and the redistribution of authorized general and flag officers across the military departments and the joint pool;
- Reduces the number of Senior Executive Service civilian employees in the DOD commensurate with the reduction of flag and general officers;
- Caps the size of the National Security Council staff at 200, down from approximately 300-400 employees, over the course of an 18-month transition period; and
- Elevates U.S. Cyber Command to a unified command.

Acquisition Program

- Eliminates the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) by February 2018, and divides its duties between two new offices: a new Under Secretary of Defense for Research and Engineering and an Under Secretary for Acquisition and Sustainment;
- Adds significant funding to drive advancements in research and development;
- Creates new pathways for the DOD to do business with non-traditional defense firms;
- Provides new authorities for the rapid prototyping, acquisition, and fielding of new capabilities; and
- Streamlines regulations to procure commercial goods and services, establishing a preference for fixed-price contracts.

Military Health Care

- Makes no changes to out-of-pocket costs for current force or retirees;
- Provides two comprehensive TRICARE options for service members, their families, and retirees: a managed care option and a non-referral network option;
- Establishes a Joint Trauma System within the Defense Health Agency and a Joint Trauma Education and Training Directorate to develop enduring partnerships with civilian academic medical centers and large metropolitan teaching hospitals with level-one trauma centers;
- Expands DOD telehealth capabilities;
- Eliminates referrals for urgent care and ensures urgent care access for military families;
- Extends care, standardizes appointment scheduling, and increases the number of appointments available at Military Treatment Facilities (MTF) primary care clinics;
- Expands public-private partnerships to increase and complement MTF services provided to beneficiaries; and
- Enables retirees to purchase durable medical equipment at the DOD cost.

Readiness Stabilization; Force Support

- Authorizes a 2.1 percent across-the-board pay raise for members of the uniformed services - the largest military pay increase since 2010;
- Reauthorizes over 30 types of bonuses and special pays aimed at encouraging enlistment, reenlistment, and continued service by active-duty and reserve component military personnel;
- Stems the drawdown of military end strength by authorizing 476,000 soldiers in the Active Army; 323,900 sailors in the Active Navy; 321,000 airmen in the Active Air Force; and 185,000 marines in the Active Marine Corps.
- Directs a fair adjudication process for members of the California National Guard in cases of inappropriate issuance of bonuses;
- Extends the Special Survivor Indemnity Allowance through May 31, 2018;
- Authorizes $30 million in supplemental impact aid to local educational agencies with military dependent children and $5 million in impact aid for schools with military dependent children with severe disabilities; and
- Directs $4.6 billion to reduce training shortfalls, support weapons maintenance, and sustain facilities.

Weapons Systems

- Authorizes $10.5 billion for the Joint Strike Fighter program, including $8.5 billion for procurement of 63 aircraft, including 43 F-35As, 16 F-35Bs, and four F-35Cs;
- Extends the prohibition on retirement of the A-10 until the F-35 Joint Strike Fighter initial operational testing and evaluation is completed;
- Authorizes $2 billion for procurement of 11 P-8 Poseidon anti-submarine warfare aircraft and $185 million for two F/A-18 Super Hornet fighter aircraft;

- Authorizes $1.5 billion to fully support the Ohio-class ballistic missile submarine replacement program;
- Authorizes $2.6 billion for procurement of Army aircraft including 52 AH-64 Apaches, 36 UH-60 Blackhawks, and 22 CH-47 Chinooks;
- Authorizes $1.6 billion for upgrades to M1 Abrams tanks, M2 Bradley infantry fighting vehicles, and Stryker armored combat vehicles;
- Fully supports modernizing the nuclear triad of ICBMs, bombers, and nuclear submarines;
- Authorizes an increase of $440 million for procurement of an amphibious transport dock or the amphibious ship replacement (LX(R)).
- Increases transparency on the B-21 Long Range Strike Bomber program by enhancing reporting requirements on program performance data;
- Prohibits revisions to, or deviations from, the current Littoral Combat Ship (LCS) acquisition strategy; and
- Reduces procurement authorization for the Distributed Common Ground System-Army by over $24 million and directs the Army to acquire a non-developmental, commercially-available solution.

Overseas Operations

- Authorizes $3.4 billion for the European Deterrence Initiative to deter Russian aggression;
- Extends and increases security assistance to the Government of Ukraine for $350 million. The agreement requires Ukrainian defense institutional reforms;
- Authorizes $3.4 billion for the Afghanistan Security Forces Fund;
- Adds an additional $455 million to the $146 million requested by the President to modernize Israel's layered missile defense system;
- Urges the Secretary of Defense to carry out a program of exchanges of senior military officers and senior officials between the United States and the Government of Taiwan designed to improve military-to-military relations; and
- Modernizes the security cooperation workforce responsible for the planning, monitoring, execution, and evaluation of security cooperation programs. The NDAA also requires the Secretary of Defense to submit a consolidated security cooperation budget.

Uniform Code of Military Justice (UCMJ)

- Modernizes the UCMJ to improve efficiency and transparency;
- Expands the statute of limitations for child abuse offenses and fraudulent enlistment;
- Streamlines the post-trial process; and
- Establishes new offenses such as improper use of government computers, retaliation, and prohibited activities with military recruits and trainees by a person in a position of special trust.

Detention Policy

The NDAA extends the prohibition on the use of funds:

- For transfer to the United States of individuals detained at Guantanamo Bay;
- To construct or modify facilities in the United States to house detainees transferred from Guantanamo Bay;
- To transfer or release individuals detained at Guantanamo Bay to Libya, Somalia, Syria, or Yemen; and
- For realignment of forces at, or closure of, the United States Naval Station, Guantanamo Bay, Cuba.

However, notably absent from the bill are provisions that would have:

- Required women to register with Selective Service;
- Allowed federal contractors to discriminate against workers on the basis of sexual or gender orientation; and
- Blocked the sage grouse from being listed on the endangered species list. - *AF*

Federal Regulations and Policy

The Clean Power Plan: A Constitutional Showdown

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The Clean Power Plan

On August 3, 2015, President Obama and the United States Environmental Protection Agency (EPA) announced the final version of the Clean Power Plan – a policy established under EPA's rules and regulations which requires states to cut carbon emissions from existing power plants by providing state-by-state targets and a framework under which states may meet those targets. According to the EPA, carbon dioxide accounts for nearly three-quarters of global greenhouse gas emissions and 82 percent of U.S. greenhouse gas emissions. Under the Plan, each state has a different target because of each state's unique mix of electricity-generation resources, technological feasibility, costs, and emissions reductions potential. Each state must meet its individualized target by 2030, with the ultimate goal of reducing national carbon emissions by at least 32 percent by 2030. The EPA made extensive revisions to its initial version of the Clean Power Plan, which was proposed on June 18, 2014, to address the concerns raised by state regulators and utilities.

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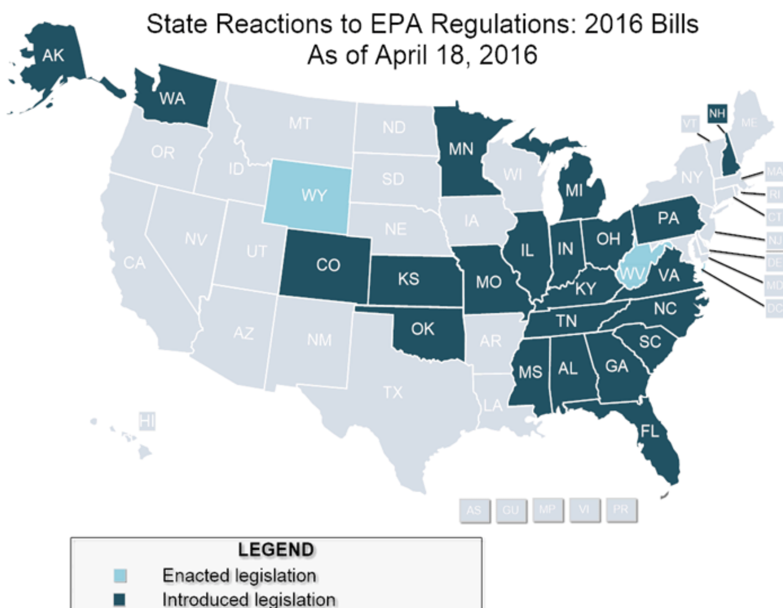
The EPA argues that states have the flexibility to develop measures to meet their targets, and include increasing coal plant efficiency, shifting coal generation to natural gas generation, increasing renewable power generation, and increasing nuclear generation. To demonstrate how a state plans to comply with its target, states are required to submit a "final compliance plan," or two-year extension request, to the EPA by September 6, 2016. If a state fails to submit a plan, or if the plan is deemed inefficient by the EPA, that state will be subject to a Federal Implementation Plan imposed by the EPA. Although the EPA estimates the cost at $8.4 billion, many judicious observers are concerned that the Clean Power Plan could affect reliability and affordability of electricity in the State. Georgia's two United States Senators, Johnny Isakson and David Perdue, have warned of electric rate increases, with Perdue vowing to "fight them with every tool at my disposal."

Congressional Response to the Clean Power Plan

Both the United States House and Senate have passed legislation that would either delay implementation of the Clean Power Plan or permit states to decline submission of a final compliance plan without being subject to a forced Federal Implementation Plan. House Resolution 2042, or the "Ratepayer Protection Act of 2015," passed the U.S. House of Representatives, delaying implementation of the Clean Power Plan until all legal challenges against it have been resolved. The bill also exempts states from the Clean Power Plan if they can show that the Plan would threaten electricity reliability or negatively affect ratepayers in their state. Similar legislation was passed in the Senate Environment and Public Works Committee, known as the "Affordable Reliable Electricity Now Act of 2015," or Senate Bill 1324. Senate Bill 1324 permits states to not adopt or submit a final compliance plan without being subject to the Federal Implementation Plan. Neither piece of legislation has passed both chambers of Congress.

State Response to the Clean Power Plan

Over two dozen states, including Georgia, filed suit against the EPA, alleging the agency exceeded its statutory authority in mandating the carbon emissions reductions. Thus, the biggest legal question about the Clean Power Plan is whether the EPA has legal authority to impose the carbon emissions regulatory requirements. The EPA argues it is using its statutory authority under Section 111(d) of the Clean Air Act to require states to limit carbon emissions from existing power plants. While Section 111(d) grants the EPA the authority to regulate air pollution, opponents of the Clean Power Plan argue that the EPA does not have the power to require states to comply with carbon emissions regulations by requiring more natural gas and renewable energy power plants. Oral arguments on the merits of the case were heard on September 27, 2016 by the United States Circuit Court of Appeals in Washington, D.C. While the Clean Power Plan was supposed to take effect this year, despite the lawsuit, it was temporarily blocked by the United States Supreme Court earlier this year, and will remain blocked until the lawsuit is resolved, including any appeals made to the Supreme Court.



Source: National Conference of State Legislatures

On December 14th, Georgia Attorney General Chris Carr joined a 24-state coalition urging President-elect Donald Trump to issue an executive order and take formal administrative action to withdraw the Clean Power Plan. The coalition also urged Congress to adopt legislation preventing the EPA from developing similar rules and regulations in the future. Georgia, along with many other states, has also proposed legislation that creates an "Interstate Power Compact," which is an agreement among states not to comply with federal policy. This would allow participating states to maintain their sovereignty and retain responsibility to regulate clean air and electricity in their own states. During the 2016 Legislative Session, Senator Charlie Bethel introduced Senate Bill 311, legislation serving to create an Interstate Power Compact between Georgia and other states. The Interstate Power Compact in this particular bill prohibits member states from submitting any filing of state compliance plans required by the Clean Power Plan. Senate Bill 311 was heard in the Senate Natural Resources and Environment Committee, but not voted on. Alabama and Missouri also introduced legislation that would establish an Interstate Power Compact, but neither pieces of legislation have reached final passage.

What the Clean Power Plan Means for Gerogia

If either the lawsuit against the EPA or the Interstate Power Compact is unsuccessful in preventing implementation of the EPA's Clean Power Plan, Georgia, like other states, will have a specific carbon emissions target to meet by 2030. State goals vary, but by 2030, all state targets must fall in a range of 771 lbs/MWh (pounds of carbon dioxide per megawatt-hour of electricity generated) to 1,305 lbs/MWh. Georgia's 2030 target is 1,049 lbs/MWh. - *KM*

Congressional Research Service: Informing the Legislative Debate

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The content of this article was adapted from two reports issued by the Congressional Research Service: Thomas H. Neale, Cong. Research Serv., RL32611, The Electoral College: How It Works in Contemporary Presidential Elections (2012); Kevin J. Coleman et al., Cong. Research Serv., R42139, Contemporary Developments in Presidential Elections (2012). A legislative branch agency within the Library of Congress, the Congressional Research Service (CRS) provides policy and legal analysis to committees and members of both the U.S. House and Senate, regardless of party affiliation. Like our Senate Research Office, CRS reports are written exclusively for members of the legislature and their staff, but may be shared by the requesting party thereafter. Consequently, the CRS does not release its reports to the public, although many are made available and housed at digital libraries such as the University of North Texas or accessed via subscription-based services such as Lexis.

Moving forward, our office will incorporate surfaced CRS reports that engage timely topics affecting the federal government. This edition of *At Issue* features a thorough review of the Electoral College.

The Electoral College: A Primer

When Americans vote for President and Vice President, they are actually choosing presidential electors, known collectively as the Electoral College. It is these officials who choose the President and Vice President of the United States. The complex elements comprising the Electoral College system are responsible for one of the most important processes of the American constitutional system: a failure to elect a Chief Executive, or, worse, the choice of a Chief Executive whose legitimacy might be open to question, could precipitate a profound constitutional crisis.

Constitutional Origins

The Constitutional Convention of 1787 considered several methods of electing the President, including selection by Congress, by the governors of the states, by the state legislatures, by a special group of Members of Congress chosen by lot, and by direct popular election. Late in the convention, the matter was referred to the Committee of Eleven on Postponed Matters, which devised the Electoral College system in its original form. This plan, which met with widespread approval by the delegates, was incorporated into the final document with only minor changes. As devised by the committee, the College met several standards; it sought to

- Reconcile and balance differing state and federal interests;
- Give the states, at their discretion, the authority to provide for popular participation in the election, or to retain control of the process within the legislature;
- Afford the "smaller" states some additional leverage by providing the "constant two" or "senatorial electors,", thereby ensuring that the election process would not be totally dominated by the more populous states;
- Preserve the presidency as independent of Congress for election and reelection; and
- Generally insulate the election process from political manipulation.

In the final analysis, the Electoral College method of electing the President and Vice President was perhaps the best deal the delegates felt they could forge—one of many compromises that contributed to the convention's success. Alexander Hamilton expressed the convention's satisfaction, and perhaps the delegates' relief at the solution they had crafted, when he wrote this of the Electoral College in *The Federalist Papers*:

> The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents . . . I venture somewhat further, and hesitate not to affirm that if the manner of it be not perfect, it is at least excellent. It united in an eminent degree all the advantages the union of which was to be wished for.

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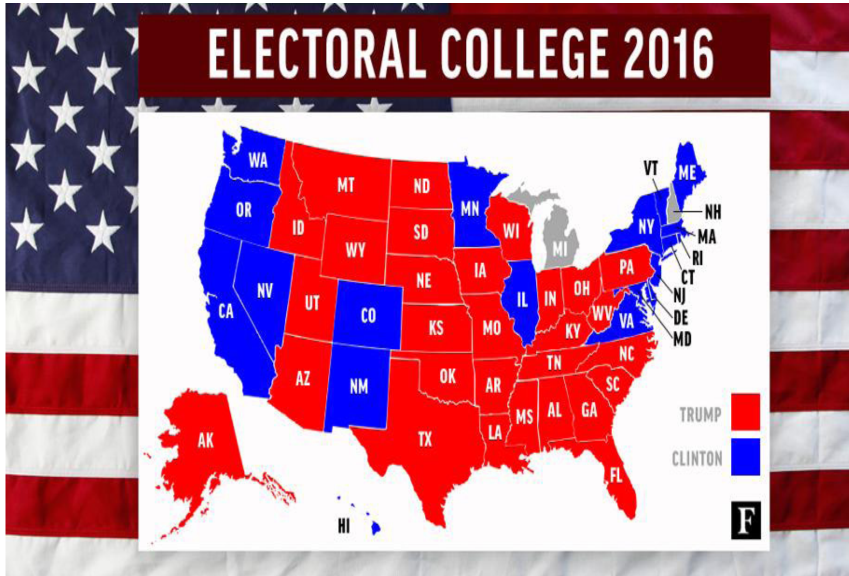
Process

Article II, Section 1 of the Constitution, as amended in 1804 by the 12th Amendment, sets forth the requirements for election of the President and Vice President. It authorizes each state to appoint, by whatever means the legislature chooses, a number of electors equal to the combined total of its Senate and House of Representatives delegations, for a contemporary total of 538 electors, including three from the District of Columbia. Since the Civil War, the states have universally provided for popular election of the presidential electors. Anyone may serve as an elector, except Members of Congress and persons holding offices of "Trust or Profit" under the Constitution. In each presidential election year, the political parties and other groups that have secured a place on the ballot in each state nominate a "slate" or "ticket" of candidates for elector.



When voters cast a single vote for their favored candidates on general election day - the Tuesday after the first Monday in November - they are actually voting for the slate of electors pledged to those candidates. The entire slate of electors winning the most popular votes in the state is elected, a practice known as winner-take-all or the general ticket system.

Maine and Nebraska use an alternative method, the district plan, which awards two electors to the popular vote winners statewide, and one to the popular vote winners in each congressional district. Electors assemble in their respective states on the Monday after the second Wednesday in December (December 19 in 2016). They are expected to vote for the candidates they represent. While there is considerable evidence that the founders assumed they would be independent, weighing the merits of competing presidential candidates, the electors have been regarded as agents of the public will since the first decade under the Constitution. They are expected to vote for the candidates of the party that nominated them. "Faithless" electors provide an occasional exception to that accepted rule.

Although 24 states seek to prohibit faithless electors by a variety of methods, including pledges and the threat of fines or criminal action, most constitutional scholars believe that once electors have been chosen, they remain constitutionally free agents, able to vote for any candidate who meets the requirements for President and Vice President. Faithless electors have been few in number (since the 20th century, one each in 1948, 1956, 1960, 1968, 1972, 1976, and 1988, one blank ballot cast in 2000, and one in 2004), and have never influenced the outcome of a presidential election.

Separate ballots are cast for President and Vice President, after which the Electoral College ceases to exist until the next presidential election. State electoral vote results are reported to Congress and are counted and declared at a joint session of Congress, usually held on January 6 of the year succeeding the election, a date that may be altered by legislation. A majority of electoral votes (currently 270 of 538) is required to win, but the results submitted by any state are open to challenge at the joint session, as provided by law.

Contemporary Reform

The Electoral College system has demonstrated both durability and adaptability during more than two centuries of government under the U.S. Constitution. Although its constitutional elements have remained largely unchanged since ratification of the 12th Amendment, the Electoral College has never worked quite the way the founders anticipated: as an indirect, deliberate selection process, carefully filtered from political considerations. Instead, it accommodated the demands of an increasingly democratic and political-party dominated presidential election system, ultimately evolving into a patchwork assemblage of constitutional provisions, state laws, political party practices, and enduring traditions that, with several notable exceptions, has delivered the popular vote winners in most presidential elections. Past proposals for change by constitutional amendment, or by state reform of its process for choisng electors, have included various reform options and direct popular election, but no substantive action on this issue has been taken in Congress for more than 20 years. The final verdict is this: the Electoral College remains an excellent system for chosing the Chief Magistrate, in spite of, or perhaps because of, its adaptability and its enduring legacy. - *DE*

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