



Architect of the Capitol: Appointment Process and Current Legislation

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Summary

The Architect of the Capitol (AOC) is responsible for “the maintenance, operation, development, and preservation of 16.5 million square feet of buildings and more than 450 acres of land throughout” the United States Capitol Complex.

The Architect is appointed by the President with the advice and consent of the Senate. The Legislative Branch Appropriations Act, 1990, established a 10-year term for the Architect as well as a bicameral, bipartisan congressional commission to recommend candidates to the President. As amended, this law provides for a commission consisting of 14 Members of Congress, including the Speaker of the House, the President pro tempore of the Senate, the House and Senate majority and minority leaders, and the chair and ranking minority members of the Committee on House Administration, the Senate Committee on Rules and Administration, and the House and Senate Committees on Appropriations.

Alan M. Hantman was the first Architect appointed under the 1989 act. He declined to seek reappointment and served from January 30, 1997, to February 4, 2007. Stephen T. Ayers, who served as Acting Architect of the Capitol since Mr. Hantman’s retirement, was nominated by the President on February 24, 2010, for a 10-year term. The nomination was referred to the Senate Committee on Rules and Administration. The committee held a hearing on April 15, 2010, during which the chair and ranking member praised Mr. Ayers for his work as acting Architect and congratulated him on the nomination. Mr. Ayers was confirmed by voice vote in the Senate on May 12, 2010.

During recent Congresses, multiple bills have been introduced that would alter the AOC appointment process and require the appointment to be made by the leadership of Congress rather than the President. One of these bills, H.R. 2843, the Architect of the Capitol Appointment Act of 2010, passed the House on February 3, 2010.

Bills removing the President from the process of appointing the Architect have been discussed for at least 50 years. Some of the Architect’s current duties, however, may potentially raise a question as to whether the Architect is an “Officer of the United States” such that his appointment must comply with the requirements of the Appointments Clause of the Constitution.

For additional information on the AOC, please see CRS Report RL31121, *The Capitol Visitor Center: An Overview*, by Stephen W. Stathis; and CRS Report RL34694, *Administering Green Programs in Congress: Issues and Options*, by (name redacted).

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The Office of the Architect of the Capitol (AOC) is responsible for “the maintenance, operation, development, and preservation of 16.5 million square feet of buildings and more than 450 acres of land throughout the Capitol complex. This includes the House and Senate office buildings, the Capitol, Capitol Visitor Center, the Library of Congress buildings, the Supreme Court building, the U.S. Botanic Garden, the Capitol Power Plant, and other facilities.”¹ The AOC carries out its bicameral, nonpartisan responsibilities using both its own staff and contracting authority for architectural, engineering, and other professional services.

Since 1989, the Architect has been filled through appointment by the President, with the advice and consent of the Senate, following the forwarding of recommendations to the President from a bicameral commission consisting of Members of Congress. The Architect serves for a 10-year term and may be reappointed.

The position was vacant for more than three years following the retirement of Alan Hantman on February 4, 2007.² On February 24, 2010, President Barack Obama nominated Stephen T. Ayers, who had been serving in an acting capacity during the vacancy, to a 10-year term. The nomination was referred to the Senate Committee on Rules and Administration, which held a hearing on April 15, 2010. The Senators in attendance at the hearing praised Mr. Ayers and congratulated him on the nomination. Mr. Ayers was confirmed by voice vote in the Senate on May 12, 2010.

The appointment of the Architect has been a subject of periodic consideration for at least 50 years. It is a topic that has received increased attention during periods in which there has been a vacancy in the position and periods of congressional dissatisfaction with either the work of the incumbent or the involvement of the President in what some Members view as an internal legislative branch matter. The 111th Congress has considered changes to the appointment of the Architect, with one bill (H.R. 2843) reported and passed in the House.

This report discusses the history of the selection of the Architect and recent legislation. An **Appendix** provides websites for brief biographical information about each of the 10 individuals who have served as Architect of the Capitol.

¹ Architect of the Capitol, “About Us,” available at <http://www.aoc.gov/aoc/index.cfm>. The legal responsibilities of the Architect of the Capitol are dispersed through several titles of the *United States Code*. References to AOC duties are included in Title 2 (Congress), Title 5 (Government Organization and Employees), Title 36 (Patriotic Societies and Observances), Title 40 (Public Buildings, Property, and Works), Title 41 (Public Contracts), and Title 42 (Public Health and Welfare). U.S. Architect of the Capitol, *2008 Performance And Accountability Report*, available at <http://www.aoc.gov/aoc/cfo/upload/AOC-2008-Performance-and-Accountability-Report-7.pdf>, p. iv. The buildings the AOC has responsibility for include the U.S. Capitol; Capitol Visitor Center; Russell Senate Office Building; Dirksen Senate Office Building; Hart Senate Office Building; Webster Hall; Cannon House Office Building; Longworth House Office Building; Rayburn House Office Building; Ford House Office Building; House Page Dorm; Botanic Garden Conservatory; Botanic Garden Administration Building; National Garden; Thomas Jefferson Building; John Adams Building; James Madison Building; Special Facilities Center; Supreme Court Building; Thurgood Marshall Federal Judiciary Building; Capitol Power Plant Complex; Eney, Chesnut, Gibson Memorial Building; the Senate Childcare Center; Alternate Computer Facility; Ft. Meade Building; National Audio-Visual Conservation Center in Culpeper, VA; U.S. Capitol Police Buildings; U.S. Capitol Police Training Facility; and the U.S. Capitol Police Dog Kennel and Training Facility. Leased facilities, which according to the AOC account for approximately 500,000 square feet of space, include Postal Square, GPO Building, U.S. Capitol Police Maintenance Facility, Fairchild Building, the U.S. Capitol Police Off-Site Delivery Center, and Storage/Logistics Warehouse, all located in Washington, D.C. (Ibid., p. 4).

² Obtained from <http://www.aoc.gov/aoc/architects/hantman.cfm>.

Current Appointment Process

The Architect is “appointed by the President by and with the advice and consent of the Senate for a term of 10 years.”³ This procedure was established by the Legislative Branch Appropriations Act, 1990, which also created a congressional commission responsible for recommending at least three individuals to the President for the position of Architect of the Capitol.⁴ The commission originally consisted of 10 Members (including the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the House of Representatives and the Senate, and the chairs and the ranking minority members of the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate).

In considering the FY1990 Legislative Branch Appropriations Act, the Senate Appropriations Committee proposed revising the process by having the President nominate the Architect for a 10-year term, subject to the advice and consent of the Senate. Previously, the position did not require Senate confirmation. In the report accompanying H.R. 3014, the Senate Appropriations Committee stated the following:

These changes will conform the process of the appointment of the Architect more closely to the appointment procedure followed for other officers of similar stature. The Committee believes this will accord proper recognition to the importance of the functions of this office and help to promote greater accountability in their performance.⁵

During the limited Senate discussion on the provision, Senator Harry Reid, chairman of the Legislative Appropriations Subcommittee, declared that the committee’s amendment “better reflects the institutional status of the Architect as an officer of the legislative branch and should make the lines of accountability in the performance of his duties much less ambiguous.”⁶ Senator Don Nickles, ranking member of the subcommittee, noted the fixed term of the Architect would be similar to that of the Comptroller General, who is appointed for a 15-year term.⁷ The legislative history does not appear to indicate why the shorter term was chosen for the Architect.

In conference, House and Senate negotiators agreed to a compromise that reflected the absence in the Senate proposal of any formal role for the House in the selection of a future Architect. The compromise expanded the Senate’s language by providing for a bicameral congressional advisory commission. The conference report does not provide additional information on this decision or any other options considered.⁸ The compromise was accepted in both Houses without debate and the measure was signed into law on November 21, 1989.⁹

³ 2 U.S.C. 1801(a)(1).

⁴ P.L. 101-163, November 21, 1989, 103 Stat. 1068, 2 U.S.C. 1801.

⁵ U.S. Congress, Senate Committee on Appropriations, *Legislative Branch Appropriations, 1990*, report to accompany H.R. 3014, 101st Cong., 1st sess., S. Rept. 101-106 (Washington: GPO, 1989), pp. 37-38.

⁶ Sen. Harry Reid, “Legislative Branch Appropriations, 1990,” remarks in the Senate, *Congressional Record*, vol. 135, September 6, 1989, p. 19591.

⁷ Sen. Don Nickles, “Legislative Branch Appropriations, 1990,” remarks in the Senate, *Congressional Record*, vol. 135, September 6, 1989, p. 19593.

⁸ U.S. Congress, *Making Appropriations for the Legislative Branch for the Fiscal Year Ending September 30, 1990, and for other purposes*, report to accompany H.R. 3014, H. Rept. 101-254 (Washington, GPO: 1989), p. 19.

⁹ “Conference Report on H.R. 3014, Legislative Branch Appropriations Act, 1990,” Vote in the House, *Congressional* (continued...)

The commission was expanded in 1995 to include the chairs and ranking minority members of the House and Senate Appropriations Committees.¹⁰

Changing the Current Procedure for Selecting the Architect: Comparison of Recent Legislation

Since the enactment of the new procedure in 1989, a few bills have been introduced to change the process of appointing the Architect. These proposals would shift the Architect appointment responsibility from the President to specified Members of Congress. As with earlier bills, statements in the *Congressional Record* by bill sponsors have cited an interest in using the appointment process to protect the prerogatives of, and ensure accountability to, the legislative branch. Some discussions also have addressed the appropriate role of the House of Representatives, which does not play a formal role in the confirmation of Presidential nominees.

In the 111th Congress, two measures (H.R. 2185 and H.R. 2843) have been introduced to remove the President from the Architect appointment process and shift it to the congressional leaders and chairs and ranking members of specific congressional committees. Under both measures, which were introduced by House Appropriations Committee Legislative Branch Subcommittee chair, Representative Debbie Wasserman Schultz, the Architect would still serve a 10-year term. Under H.R. 2843, as reported, the Architect would be appointed jointly by the same 14-member panel that currently is responsible for recommending candidates to the President. This bill was reported by the Committee on House Administration (H.Rept. 111-372) on December 10, 2009. It was discharged by the Committee on Transportation and Infrastructure the same day. The House agreed to the bill, as amended to include an 18-member panel,¹¹ by voice vote on February 3, 2010. It was received in the Senate and referred to the Committee on Rules and Administration.

Under H.R. 2185, which was introduced on April 30, 2009, and referred to the Committee on House Administration and Committee on Transportation and Infrastructure, the Architect would be appointed jointly by the Speaker of the House, the Senate majority leader, the minority leaders in the House and Senate, the chairs and ranking minority members of the House and Senate Committees on Appropriations, and the chairs and ranking minority members of the Committee

(...continued)

Record, vol. 135, September 28, 1989, pp. 22270-22271; "Legislative Branch Appropriations, 1990 – Conference Report," Vote in the Senate, *Congressional Record*, vol. 135, November 9, 1989, p. 28052; and P.L. 101-163, 103 Stat. 1068, 2 U.S.C. §1801.

¹⁰ P.L. 104-19, July 27, 1995, 109 Stat. 220. The official record provides little additional information on the changes considered in 1995. Additional membership on the commission was first agreed to in the conference report on H.R. 1158, the Second Supplemental Appropriations and Rescissions Act, 1995, which was vetoed by President Clinton on June 7, 1995. The joint explanatory statement accompanying the conference committee report did not indicate why the provision was added. Subsequently in the same Congress, the provision was included in the original version of H.R. 1944, the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995, which was introduced on June 28. It passed the House the next day following the adoption of one amendment agreed to by voice vote and passed the Senate without amendment on July 21. It became P.L. 104-19 on July 27, 1995.

¹¹ The bill, as amended, would include in addition to the original 14-member panel: the chair and ranking minority member of the Committee on Transportation and Infrastructure of the House of Representatives, a member of the Senate to be designated by the majority leader of the Senate, and a member of the Senate to be designated by the minority leader of the Senate.

on House Administration and Senate Committee on Rules and Administration. Similar legislation (H.R. 6656), with the same 12-member appointing panel, was introduced in the 110th Congress and referred to two committees, although no further action was taken.

During the 109th Congress, former Representative Ray LaHood of Illinois sponsored H.R. 4446 to establish a uniform appointment process and 10-year term of service for the Architect, the Comptroller General, and the Librarian of Congress. This proposal provided for joint appointment by four Members, including the Speaker, the majority leader of the Senate, and the minority leaders of the House of Representatives and Senate. **Table 1** compares the Members involved in appointment under current law and these bills.

Table 1. Members Included in Appointing Panel under Recent Proposals

	1989 Appointment Act, as Amended	H.R. 4446, 109th Cong.	H.R. 6656, 110th Cong.	H.R. 2185, 111th Cong.	H.R. 2843, 111th Cong.	H.R. 2843, 111th Cong., as Passed by the House
Speaker	1	1	1	1	1	1
President pro Tempore	1				1	1
House majority Leader	1				1	1
Senate Majority Leader	1	1	1	1	1	1
House Minority Leader	1	1	1	1	1	1
Senate Minority Leader	1	1	1	1	1	1
Chair and Ranking Member Committee on House Administration	2		2	2	2	2
Chair and Ranking Member Committee on Senate Rules and Administration	2		2	2	2	2
Chair and Ranking Member Committee on House Appropriations	2		2	2	2	2
Chair and Ranking Member Committee on Senate Appropriations	2		2	2	2	2
Chair and Ranking Member Committee on House Committee on Transportation and Infrastructure						2
A Member of the Senate to be designated by the majority leader of the Senate, and a member of the Senate to be designated by the minority leader of the Senate						2
Total	14	4	12	12	14	18

Source: CRS survey of legislation.

Initial Implementation of the 1989 Architect of the Capitol Selection Act

Following the decision of George White, who served as Architect from January 27, 1971, until November 21, 1995, not to seek reappointment under the new process, Alan Hantman was nominated under the new procedure to a 10-year term by President Clinton on January 6, 1997.¹² Following a hearing on January 28, 1997, the Senate Committee on Rules and Administration favorably reported his nomination. Mr. Hantman was confirmed by the Senate by voice vote on January 30, 1997.¹³ Declining to seek reappointment, Mr. Hantman retired on February 4, 2007, and Stephen T. Ayers, the current Architect, began service as the Acting Architect of the Capitol.¹⁴

During Hantman's service, GAO and some Members of Congress criticized his office for its management practices, rising costs, and missed deadlines associated with the U.S. Capitol Visitor Center (CVC) and other projects, and alleged health and safety violations in the utility tunnels beneath the Capitol Complex.¹⁵ The criticism culminated in a provision in the House-passed version of the FY2007 Legislative Branch Appropriations bill (H.R. 5521, 109th Congress) to strip Hantman of his responsibilities and give them to the Comptroller General or his designee.¹⁶

Although the language was included in H.R. 5521 when it passed the House on June 7, 2006, this language was not included in the substitute amendment reported by the Senate Appropriations Committee on June 22, 2006. No further action was taken on this bill in the 109th Congress. The Revised Continuing Appropriations Resolution, 2007 (H.J.Res. 20, P.L. 110-5), which was enacted on February 15, 2007, and funded the legislative branch for the remainder of FY2007, also did not contain this language. The episode, however, drew more attention to this position and to its appointment.

¹² The 1989 act required Mr. White to be reappointed under the new procedure no later than the sixth anniversary of the enactment of the law if he chose to remain in office. (P.L. 101-163, sec. 319(b), November 21, 1989, 103 Stat. 1068).

¹³ "Executive Calendar," remarks in the Senate, *Congressional Record*, vol. 143, January 30, 1997, pp. 1304-1307, 1312. From the retirement of Mr. White until the confirmation of Mr. Hantman, William L. Ensign served as Acting Architect of the Capitol.

¹⁴ According to the biography provided by the AOC, Mr. Ayers was appointed Acting Deputy Architect/Chief Operating Officer (COO) in October 2005 and then selected for the position in March 2006 (<http://www.aoc.gov/aoc/architects/Stephen-T-Ayers.cfm>). Pursuant to 2 U.S.C. 1804, the Deputy Architect "shall act as Architect of the Capitol during the absence or disability of that official or whenever there is no Architect."

¹⁵ See, for example, testimony of David M. Walker, Comptroller General, U.S. Government Accountability Office, before the Senate Committee on Appropriations, Subcommittee on the Legislative Branch, *Priority Attention Needed to Manage Schedules and Contracts*, GAO-05-714T (Washington: May 17, 2005); U.S. Congress, Senate Committee on Appropriations, Subcommittee on the Legislative Branch, *Progress of Construction of the Capitol Visitors Center, 2005*, hearings, 109th Cong., 1st sess., May 17, 2005 (Washington: GPO, 2005), pp. 9-11; U.S. Congress, House Committee on Appropriations, *Legislative Branch Appropriations Bill, 2007*, report to accompany H.R. 5521, 109th Cong., 2nd sess., H.Rept. 109-485 (Washington: GPO, 2006), pp. 15-16, 25-26, 49-51; U.S. Congress, Senate Committee on Appropriations, *Legislative Branch Appropriations, 2007*, report to accompany H.R. 5521, 109th Cong., 2nd sess., S.Rept. 109-267 (Washington: GPO, 2006), pp. 29, 34.

¹⁶ The language stated: "Sec. 210. For fiscal year 2007 only, all authorities previously exercised by the Architect of the Capitol, including but not limited to the execution and supervision of contracts; and the hiring, supervising, training, and compensation of employees, shall be vested in the Comptroller General of the United States or his designee: Provided, That this delegation of authority shall terminate with the confirmation of a new Architect of the Capitol." U.S. Congress, *House Committee on Appropriations, Legislative Branch Appropriations, 2007*, report to accompany H.R. 5521, 109th Cong., 2nd sess., H.Rept. 109-485 (Washington: GPO, 2006), pp. 49-50.

Filling the Most Recent Vacancy

Between the announcement that Mr. Hantman would retire and the nomination and confirmation of Mr. Ayers, few congressional announcements were made regarding the status of the Architect vacancy and the submission of the recommendations to the President.

During a hearing on the FY2008 appropriations request on April 24, 2007, before the House Legislative Branch Appropriations Subcommittee, Acting Architect Stephen Ayers responded to a question about the status from ranking member Representative Zach Wamp:

I did speak to the [Senate] Rules Committee about the selection process.... They have told me that their executive recruiter is currently interviewing potential candidates, and I surmise that they would give them that list of potential candidates in a month or two. So that is about the extent of my knowledge of that.¹⁷

Although the list of names was reportedly transmitted to President George W. Bush in the summer of 2007, the identity of the candidates was not publicly released by the commission.¹⁸

In its activities report on the 110th Congress (2007-2008), the Committee on House Administration summarized congressional actions and indicated concern about the current process:

Although the commission forwarded three candidates [to the President], complex circumstances prevented final selection and confirmation of the Architect. The Committee anticipates completion of the appointment process in the 111th Congress, but in the meantime is reviewing whether the process is simply broken and requires new legislation.¹⁹

The three-year period following the retirement of the former Architect was also noted in the February 3, 2010, debate in the House on passage of the bill.²⁰ Mr. Ayers was confirmed by the Senate on May 12, 2010.²¹

Evaluation of the Current Bicameral Congressional Commission Process In Choosing the Architect

The initial selection process, as well as the recent search for a successor, have raised a number of potential issues for consideration. These issues, which are discussed below, include the length of the commission's work and the potential for extended vacancies in the position; the operation of

¹⁷ U.S. Congress, House Appropriations Committee, *Legislative Branch Appropriations for 2008*, hearings, pt. 3, 110th Cong., 1st sess., April 24, 2007 (Washington: GPO, 2007), p. 300.

¹⁸ "Finalists for AOC's Top Job Delivered to President Bush," by John McArdle, *Roll Call*, August 13, 2007.

¹⁹ U.S. Congress, House Committee on House Administration, *Report on the Activities of the Committee on House Administration During the One Hundred Tenth Congress*, 110th Cong., 2nd sess., H.Rept. 110-924 (Washington: GPO, 2008), p. 18.

²⁰ *Congressional Record*, February 3, 2010, pp. H480-H482.

²¹ *Congressional Record*, May 12, 2010, p. S3662.

the commission; and what would happen in the event an incumbent seeks reappointment as Architect.

Time Frame for Filling a Vacancy

Although the commission may transmit names whenever there is a vacancy, it is not clear from either the statute or the legislative history exactly when the commission proceeds. The act does not address the possibility of the bicameral congressional commission beginning its work before an incumbent's departure. In addition, the statute is silent on any time frame for the commission's forwarding of recommendations following a retirement, presidential action on the commission's recommendation, or congressional action once a nomination has been received.

Internal Operations of the Commission

The statute provides no guidance on how the commission should operate, including who presides over its meetings, where and how meetings are called, how many members of the commission constitute a quorum, if nominees need unanimous approval, or how the commission receives administrative or financial support. If the commission has rules of procedure, they have not been made public nor have the criteria for choosing potential nominees.

When former Architect Alan Hantman was chosen, press reports were the only source of information that he was among the candidates whose names were forwarded to President Clinton for consideration.²² One press account indicated that "Hantman is the 'primary choice' of the 14-Members of Congress appointed to find the Capitol's tenth Architect."²³ This same press account reported: "According to a letter from the chairman of the Senate Rules and Administration Committee Chairman John Warner (R-VA), Hantman was the first choice of the Members 'by a substantial margin.'"²⁴ The account quotes an aide as reporting that "all 14 commission members voted either by ballot or proxy for the nominees," although the votes were not published.²⁵

Process of the Reappointment of an Incumbent Architect

There are also unresolved questions should an incumbent Architect decide to seek reappointment under the current process established in 1989. It is not clear if or when the commission would form under this circumstance or if the incumbent Architect would need to be chosen again among at least two other potential candidates. Should the President choose not to reappoint the incumbent, it is unclear if formal notification would be required before the commission could begin its work or how this would be accomplished.

²² Juliet Eilperin, "Rockefeller Center Architect Top Pick For Capitol Position," *Roll Call*, September 23, 1996, pp. A-1, A-28.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

Increasing Congressional Involvement in the Architect Appointment: Discussion Preceding the Process Established in 1989

Prior to 1989, the Architect was selected by the President for an unlimited term without any formal involvement of Congress. Paul Rundquist, congressional scholar and former specialist at the Congressional Research Service, noted in testimony before the Senate Rules and Administration Committee in 1996 that “the fact that the Architect of the Capitol was a congressional agent nominated by the President without confirmation by the Senate does not seem to have troubled Congress until recent years.”²⁶

Bills related to the qualifications and appointment of the Architect have been periodically introduced since at least the 1950s; however, little action was taken on these proposals. **Table 2** provides information on these bills.

Bills proposing a new appointment process have taken various approaches. Two changes ultimately enacted include requiring the advice and consent of the Senate and establishing a commission to recommend names to the President. In addition to the proposals contained in recent legislation, bills making the Architect a congressional appointee have proposed a joint appointment by the Speaker and President pro tempore; alternating appointment between the Speaker and President pro tempore; and a commission of Members recommending candidates to the Speaker and President pro tempore, with ratification by the chambers. The bills also varyingly address the term of office, eligibility for reappointment, procedure for removal, and procedures following early vacancies. While some of these bills have focused only on the Architect, many of the bills beginning in the early 1970s also addressed the appointment of the other presidential appointees in the legislative branch, including the Librarian of Congress, the Comptroller General and the Deputy Comptroller,²⁷ and the Public Printer. A number of questions periodically have been raised about the ability of Congress to remove the President from the appointment process. These include the implication or interpretation of the Appointments Clause of the Constitution and whether or not this would require any revision in the powers and duties currently vested with the Architect.

In addition to the buildings and grounds of Congress and the legislative branch, the AOC’s responsibilities include functions that extend beyond the legislative branch. For example, the AOC is responsible for “non-legislative branch” facilities, including the Supreme Court and the Thurgood Marshall Federal Judiciary Building. Moreover, the Architect serves as a member of several “non-legislative branch” governing or advisory bodies, including the Advisory Council on Historic Preservation, the District of Columbia Zoning Commission, the National Capital Memorial Commission, and the Art Advisory Committee to the Washington Metropolitan Transit Authority. These responsibilities raise a question as to whether the Architect is an “Officer of the

²⁶ U.S. Congress, Senate Rules and Administration Committee, 104th Cong., 2nd sess., February 29, 1996 (unpublished), but available from FDCHMedia, Inc. Dr. Rundquist gave testimony before the Senate Rules and Administration Committee during a review of the operations of various Senate officers and a study of criteria for the selection of a new AOC.

²⁷ The Deputy Comptroller General position has been vacant since 1980. For additional information, see CRS Report RL30349, *GAO: Government Accountability Office and General Accounting Office*, by (name redacted).

United States” such that his appointment must comply with the requirements of the Appointments Clause of the Constitution.²⁸

Supreme Court jurisprudence establishes that “any appointee exercising significant authority pursuant to the laws of the United States is an Officer of the United States, and must, therefore, be appointed in the manner prescribed by §2, cl. 2, of that Article.”²⁹ If, however, the individual does not qualify as an “officer,” then Congress may deviate from the strictures of the Appointments Clause. Given that modern Supreme Court jurisprudence has established that the separation of powers doctrine is implicated chiefly in instances where the core constitutional functions of the branches are involved,³⁰ it is not clear that the “non-legislative branch” functions of the AOC are significant enough to raise constitutional concerns. Thus, it would appear that the method of appointment of the Architect might be changed to provide for congressional appointment without raising separation of powers questions.³¹ Conversely, in the event that the “non-legislative branch” functions of the AOC were to be considered by a reviewing court significant enough to raise constitutional concerns, the functions of the AOC could be modified, and any “non-legislative branch” duties could be legislatively designated elsewhere.³²

Statements from Members introducing legislation frequently cited a desire to preserve congressional prerogatives and ensure congressional accountability, although some Members acknowledged that such a move might raise additional issues or questions. For example, in his remarks on S. 1658, which related to the Architect’s appointment, Senator Paul Douglas of Illinois noted on April 1, 1965, that there “may be constitutional problems with respect to congressional appointment of an officer of the Congress.”³³ A decade later, in his statement accompanying H.R. 8616, which addressed the appointment of the Public Printer, Librarian of Congress, Comptroller General, and Architect of the Capitol, Representative Jack Brooks of Texas said,

It is hard for me to understand how earlier Congresses could decide to leave ... appointment [of officers of Congress] to the President. ... The doctrine of separation of powers is basic to our government and Congress contributes to the weakening that system when it permits the President to exercise authority in the legislative domain.³⁴

²⁸ U.S. Constitution. Art. II, § 2, cl. 2 (stating that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments”). Portions of this section authored by (name redacted), Legislative Attorney in the American Law Division.

²⁹ *Buckley v. Valeo*, 424 U.S. 1, 125-126 (1976).

³⁰ *See, e.g., Mistretta v. United States*, 488 U.S. 361, 380-81 (1989).

³¹ It should be noted that while Congress may abolish and create offices, it may not use this power in such a manner as to usurp the President’s power to remove an officer. *See* Richard A. Cirillo, “Abolition of Federal Offices as an Infringement on the President’s Power to Remove Federal Executive Officers: A Reassessment of Constitutional Doctrines,” *Fordham Law Review*, vol. 42, March 1974, pp. 562, 588-93.

³² Likewise, it is possible that a reviewing court would determine that duties of the AOC in the judicial and executive contexts are permissible in light the Supreme Court’s declaration that potential separation of powers conflicts may be ignored where they are part of a framework resulting in a “de minimis” violation. *See, e.g., Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 856 (1986).

³³ Sen. Paul Douglas, “The Architect of the Capitol Should be a Qualified Architect and Should be Appointed by the Congress,” remarks in the House, *Congressional Record*, vol. 111, April 1, 1965, p. 6523.

³⁴ Rep. Jack Brooks, “Toward Restoring Power and Prestige of Congress,” remarks in the House, *Congressional* (continued...)

In 1980, Senator Robert C. Byrd of West Virginia sponsored legislation to have any future presidential nominee for Architect be subject to the advice and consent of the Senate. The bill, S. 2760, was reported by the Senate Rules and Administration Committee and passed the Senate late in the 96th Congress by voice vote.³⁵ Prior to Senate passage, Senator Byrd noted that of the legislative branch officers appointed by the President, the Architect was the only one not subject to Senate confirmation.³⁶ There was no House action on this bill.

Table 2. Proposals to Alter the Appointment of the Architect: 1959-Present

Bill	Date of Introduction	Congressional Action (if any)	Process	Term of Office (if specified)
H.R. 2843, 111 th Cong.	June 12, 2009	Reported by Committee on House Administration (12/10/2009) H.Rept. 111-372 Passed House (2/3/2010)	appointed jointly by 18 Members, including the Speaker of the House, the President pro tempore of the Senate, the House and Senate majority and minority leaders, a member of the Senate to be designated by the majority leader of the Senate, a member of the Senate to be designated by the minority leader of the Senate, and the chair and ranking minority members of the Committee on House Administration, the House Committee on Transportation and Infrastructure, the Senate Committee on Rules and Administration, and the House and Senate Committees on Appropriations	10 years
H.R. 2185, 111 th Cong.	April 30, 2009		appointed jointly by 12 Members, including the Speaker of the House, the majority leader of the Senate, the House and Senate minority leaders, and the chair and ranking minority members of the Committee on House Administration, the Senate Committee on Rules and Administration, and the House and Senate Committees on Appropriations	10 years

(...continued)

Record, vol. 121, July 14, 1975, pp. 22668-22669.

³⁵ U.S. Congress, Senate Committee on Rules and Administration, *Providing That The Architect of the Capitol Shall Be Appointed By The President By And With The Advice And Consent Of The Senate*, report to accompany S. 2760, 96th Cong., 1st sess., S. Rept. 96-818 (Washington: GPO, 1980); and "Appointment of the Capitol Architect," *Congressional Record*, vol. 126, November 24, 1980, p. 31019.

³⁶ Sen. Robert Byrd, "Appointment of the Capitol Architect," Remarks in the Senate, *Congressional Record*, vol. 126, November 24, 1980, p. 31019. The same year, the General Accounting Office Act of 1980 (P.L. 96-226, 31 U.S.C §703) was enacted, creating a commission composed of the congressional leadership to recommend to the President not less than three names to be considered for the Comptroller General position to be appointed for a 15-year term with the advice and consent of the Senate.

Bill	Date of Introduction	Congressional Action (if any)	Process	Term of Office (if specified)
H.R. 6656, 110 th Cong.	July 30, 2008		appointed jointly by 12 Members, including the Speaker of the House, the majority leader of the Senate, the House and Senate minority leaders, and the chair and ranking minority members of the Committee on House Administration, the Senate Committee on Rules and Administration, and the House and Senate Committees on Appropriations	10 years
H.R. 4446, 109 th Cong.	December 6, 2005		appointed jointly by 4 Members, including the Speaker of the House, the Majority Leader of the Senate, and the House and Senate Minority Leaders	10 years
H.R. 1944, 104 th Cong.	June 28, 1995	P.L. 104-19	added chair and ranking minority members from of the House and Senate Appropriations Committees to commission established by P.L. 101-163, increasing the number of Members of the commission to 14.	
H.R. 3014, 101 st Cong.	November 21, 1989	P.L. 101-163	commission of 10 Members (including the Speaker, President pro tempore, Majority and Minority leaders of the House and Senate, and the chair and ranking minority members of the Committee on House Administration and the Senate Committee on Rules and Administration) recommends candidates to the President for nomination with consent of the Senate	10 years
S. 2760, 96 th Cong.	May 22, 1980	Passed Senate 11/24/1980 S. Rept. 96-818	President nominates subject to advice and consent of the Senate	
H.R. 8616, 94 th Cong.	July 14, 1975		commission of 10 Members (including the Speaker, President pro tempore, Majority and Minority leaders of the House and Senate, and the chair and ranking minority members of the Committee on House Administration and the Senate Committee on Rules and Administration) nominate candidates, and the Speaker and President pro tempore, following confirmation by a majority vote in each House, shall appoint	5 years
S. 2205, 94 th Cong.	July 29, 1975		appointed by the Speaker of the House and Majority Leader of the Senate after considering recommendations from the majority and minority leaders ^a	7 years
S. 1278, 93 rd Cong.	March 19, 1973		appointment alternating between Speaker and President pro tempore	

Bill	Date of Introduction	Congressional Action (if any)	Process	Term of Office (if specified)
H.R. 63, 93 rd Cong.	January 3, 1973		appointment alternating between Speaker and President pro tempore	
H.R. 17102, 92 nd Cong.	October 12, 1972		appointment alternating between Speaker and President pro tempore	
S. 1658, 89 th Cong.	April 1, 1965		joint appointment by Speaker and President pro tempore	term expires first day of odd-numbered Congresses
S. 1800, 88 th Cong.	June 26, 1963		joint appointment by Speaker and President pro tempore ^b	term expires first day of odd-numbered Congresses
S. 1847, 86 th Cong.	April 30, 1959		joint appointment by Speaker and President pro tempore	term expires first day of odd-numbered Congresses

Source: CRS survey of legislation.

Notes: This table includes all legislation identified by CRS as of the date of this report. Additional bills will be added if identified. Copies of the bills are available from the author of this report.

- a. S. 2206, 94th Cong., was introduced the same day and addressed the appointment of the Comptroller General and Deputy Comptroller General.
- b. Under S. 1806 (88th Cong.), which was introduced the day after S. 1800, the Architect would be unable to “evaluate, review, give preliminary approval to, or otherwise pass judgment” on construction or renovation of the Capitol buildings and grounds.

Options for Removal Under Proposed Congressional Appointment

The Legislative Branch Appropriations Act, 1990, which established the current appointment procedure, did not address the possibility of the removal of an Architect. The Architect, then, presumably serves at the pleasure of the President.³⁷

The bills introduced in the 111th Congress removing the President from the appointment process do not specifically address removal of the Architect. This power may then reside in the commission responsible for appointing the Architect. The process for such a removal, including how many members of the commission would have to support removal and any formal action or notification required, are unknown.

A few of the bills introduced over the last 50 years providing for appointment by Members of Congress have contained provisions specifically addressing removal. H.R. 8616 (94th Cong.)

³⁷ It has long been recognized that “the power of removal [is] incident to the power of appointment.” *Ex Parte Hennen*, 38 U.S. (13 Pet.) 230, 259 (1839).

proposed that the Architect could be removed by concurrent resolution. S. 2205 (94th Cong.) provided for removal by resolution in either the House or Senate.

Statutes related to the selection of two legislative branch agency heads also address removal. Like the Architect of the Capitol, the Comptroller General (CG) is appointed by the President for a fixed term of office (for the CG, this term is 15 years) with the advice and consent of the Senate. The CG may be removed only by “impeachment; or (B) joint resolution of Congress, after notice and an opportunity for a hearing” and only by reason of permanent disability; inefficiency; neglect of duty; malfeasance; or a felony or conduct involving moral turpitude.³⁸ The Director of the Congressional Budget Office, who is appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, “may be removed by either House by resolution.”³⁹

Discussion Regarding the Qualifications of the Architect

Many of the introduced bills and congressional hearings related to appointment have addressed the fact that not all of those who have held the position of Architect of the Capitol have been trained architects.⁴⁰ Some proposed legislation in the 1950s and 1960s would have required all future nominees to be trained architects.⁴¹ Alternatively, at least one bill—introduced in 1968 during a period of congressional concern over plans for the expansion of the west front of the Capitol—sought to change the title of the office to “Superintendent of the Capitol Buildings and Grounds” to reflect the fact the then-Architect did not have this training.⁴²

When Architect White announced his retirement in 1995, concerns were voiced within Congress, the media, and professional groups about the necessary qualifications for any successor. There was considerable discussion about the necessity of the new Architect being a licensed architect and the type of professional management training and experience needed for the position.

The American Institute of Architects (AIA) expressed its preference for a licensed architect with experience in management, procurement, and historic restoration. In 1995, the AIA sent congressional leaders a list of nine potential Architect nominees for consideration.⁴³ The following year, Raj Barr-Kumar, the president-elect and a fellow of The American Institute of Architects, described the process by which the AIA arrived at these names and qualifications and

³⁸ 31 U.S.C. 703. For additional information, see CRS Report RL30349, *GAO: Government Accountability Office and General Accounting Office*, by (name redacted).

³⁹ 2 U.S.C. 601. For additional information, see CRS Report RL31880, *Congressional Budget Office: Appointment and Tenure of the Director and Deputy Director*, by (name redacted) and Mary Frances Bley.

⁴⁰ For a comparison to statutory qualifications in other positions, see the “Appendix” in CRS Report RL33886, *Statutory Qualifications for Executive Branch Positions*, by (name redacted).

⁴¹ S. 1847 (86th Cong.), S. 1806 (88th Cong.), S. 1658 (89th Cong.).

⁴² H.R. 19127 (90th Cong.). Rep. Kupperman, “Introduction of Bill to Change the Title of the Office of the ‘Architect of the Capitol’ to ‘Superintendent of the Capitol Building and Grounds,’” remarks in the House, *Congressional Record*, vol. 114, July 31, 1968, p. 24430.

⁴³ American Institute of Architects, “Suggested Candidates for Appointment as Architect of the Capitol,” April 2, 1995.

responsibilities it identified in a February 29, 1996, hearing of the Senate Rules and Administration Committee.⁴⁴

To fill the most recent Architect vacancy, the AIA again urged the selection of a licensed architect.⁴⁵ Others, including some Members of Congress, emphasized a background in management because the job responsibilities, particularly with the opening of the Capitol Visitor Center, are broader than building design and construction and include some duties not necessarily associated with typical architectural practice.

⁴⁴ U.S. Congress, Senate Rules and Administration Committee, *FY97 Senate Budget*, 104th Cong., 2nd sess., February 29, 1996 (unpublished), but available from FDCHeMedia, Inc.

⁴⁵ American Institute of Architects, "Tell the President to Choose an Architect," *The Angle*, vol. 5, no. 22, October 11, 2007. American Institute of Architects, "The Architect of the Capitol Should Be An Architect," December 4, 2008; American Institute of Architects, "Make the Next Architect of the Capitol A Licensed Professional Architect," *Issue Brief*, February 2008.

Appendix. Architects of the Capitol Since 1793

Eleven persons have held the position currently known as the Architect of the Capitol.⁴⁶ Each incumbent is listed below.

Name	Dates of Service	Biographical Information
William Thornton	1793	http://www.aoc.gov/aoc/architects/thornton.cfm
Benjamin Latrobe	1803-1811 1815-1817	http://www.aoc.gov/aoc/architects/latrobe.cfm
Charles Bulfinch	1818-1829	http://www.aoc.gov/aoc/architects/bulfinch.cfm
Thomas Walter	1851-1865	http://www.aoc.gov/aoc/architects/walter.cfm
Edward Clark	1865-1902	http://www.aoc.gov/aoc/architects/clark.cfm
Elliott Woods	1902-1923	http://www.aoc.gov/aoc/architects/woods.cfm
David Lynn	1923-1954	http://www.aoc.gov/aoc/architects/lynn.cfm
J. George Stewart	1954-1970	http://www.aoc.gov/aoc/architects/stewart.cfm
George White	1971-1995	http://www.aoc.gov/aoc/architects/white.cfm
Alan Hantman	1997-2007	http://www.aoc.gov/aoc/architects/hantman.cfm
Stephen T. Ayers	2010-present	http://www.aoc.gov/aoc/architects/Stephen-T-Ayers.cfm

Source: U.S. Architect of the Capitol, *Architects of the Capitol since 1793*, <http://www.aoc.gov/aoc/architects/index.cfm>; and William Allen, *History of the United States Capitol* (Washington: GPO, 2001).

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⁴⁶ The term Architect of the Capitol also refers to some of the early occupants of the office who were known as Commissioner, Surveyor of Public Buildings, or Superintendent of the Capitol. For more information, see William Allen, *History of the United States Capitol* (Washington: GPO, 2001), pp. 27, 50-51, 398, and 400-401.

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