

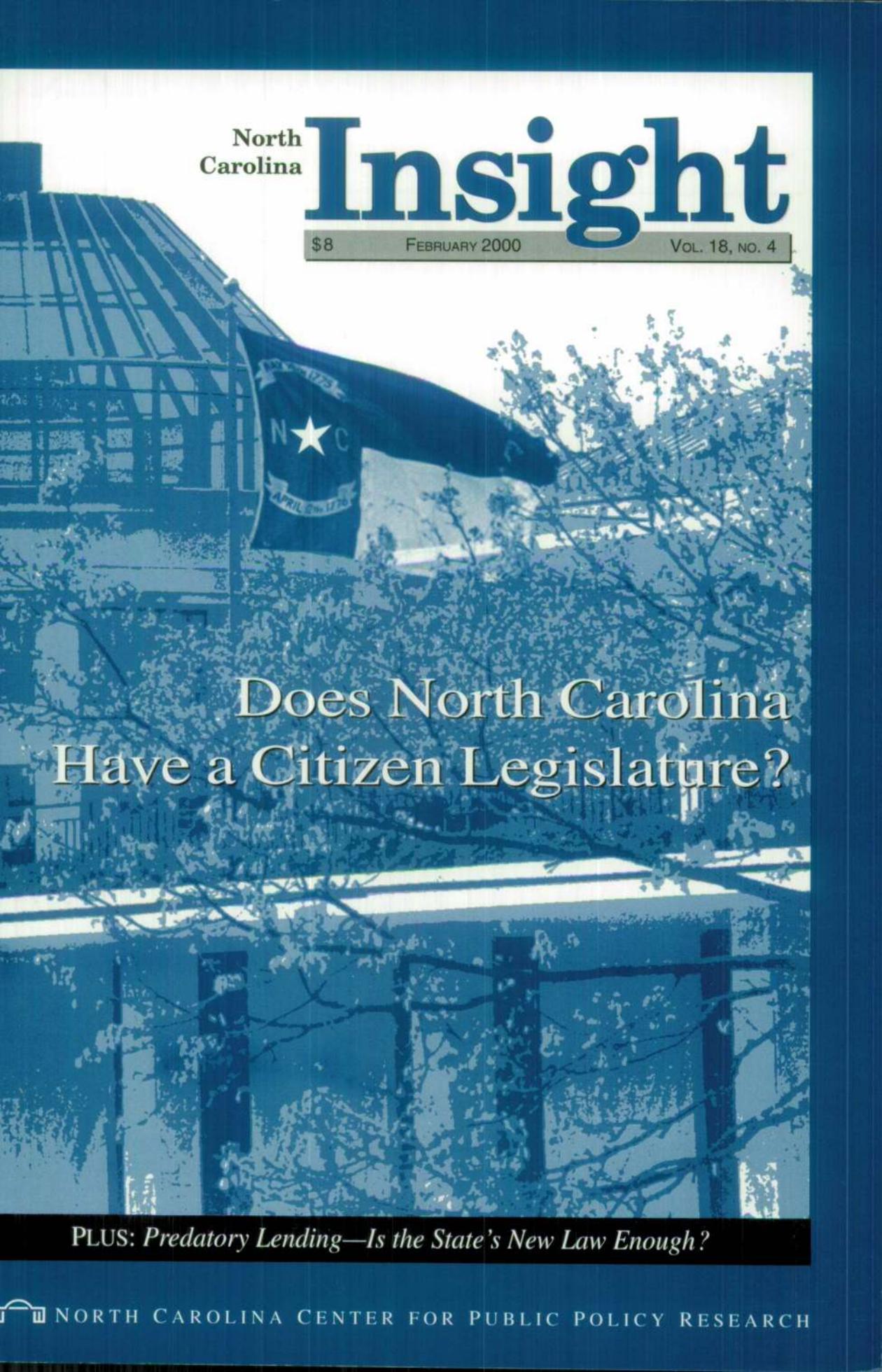
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VOL. 18, NO. 4



Does North Carolina Have a Citizen Legislature?

PLUS: Predatory Lending—Is the State's New Law Enough?



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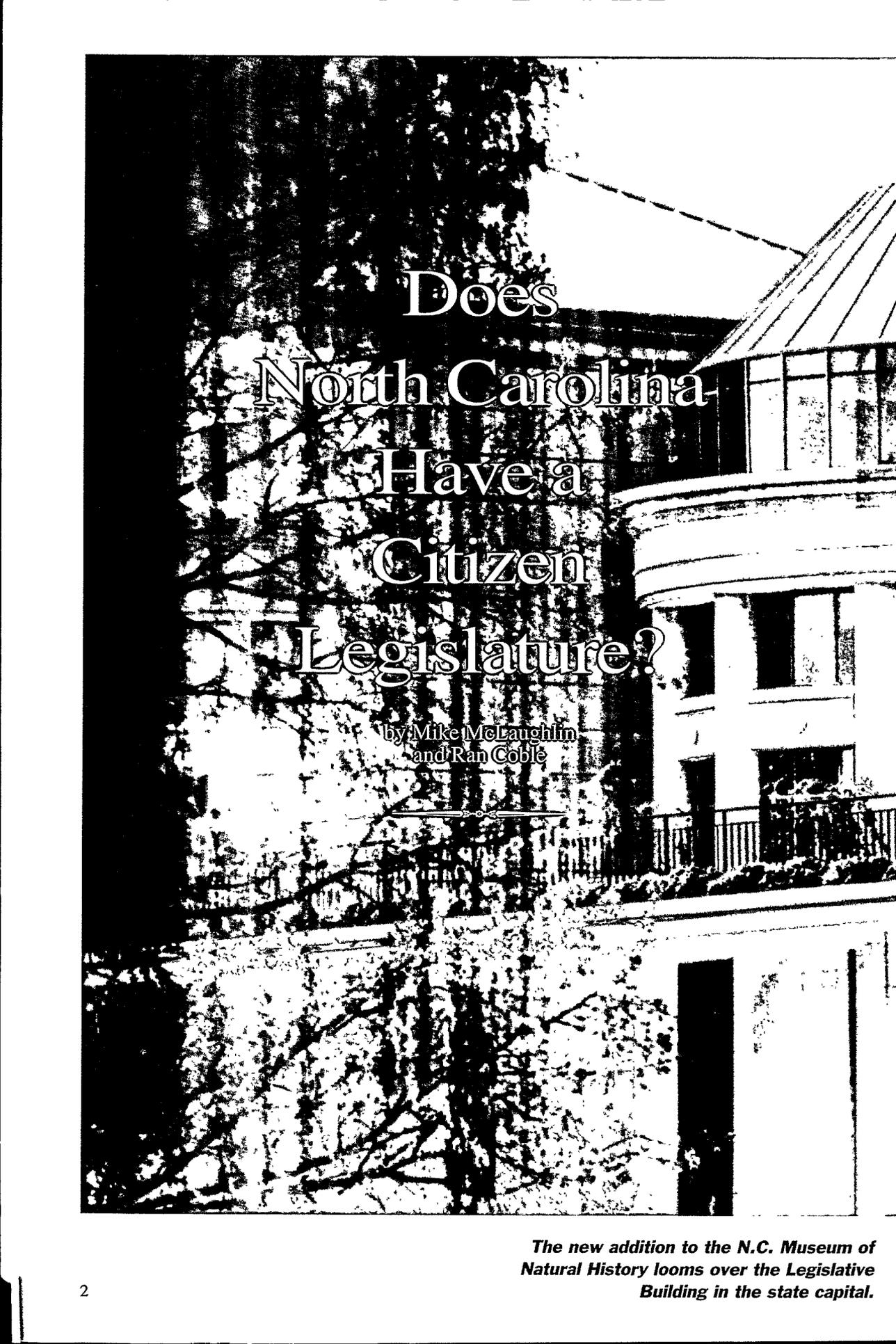
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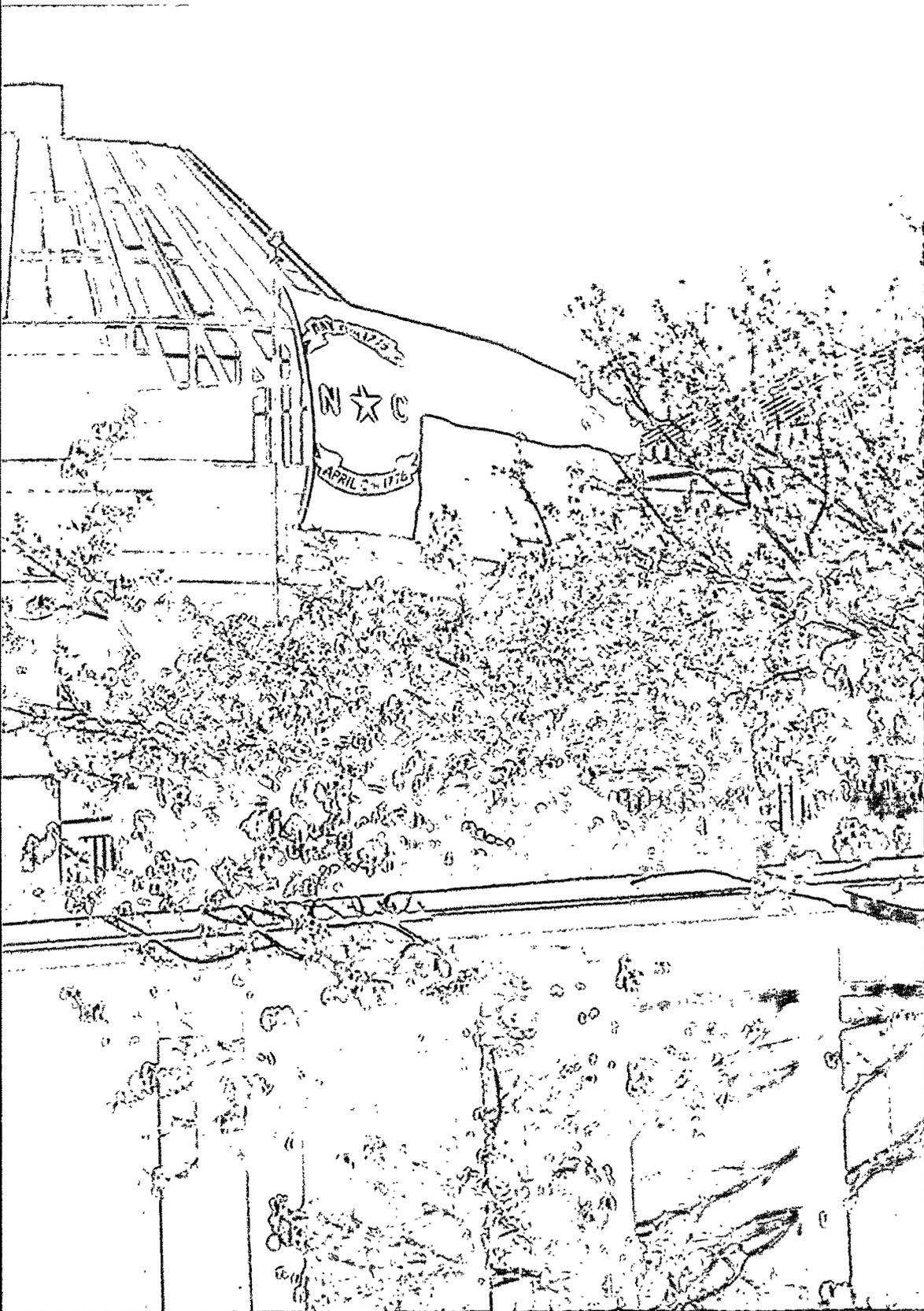
Unlimited



Does North Carolina Have a Citizen Legislature?

by Mike McLaughlin
and Ran Coble

*The new addition to the N.C. Museum of
Natural History looms over the Legislative
Building in the state capital.*



Karen Tam

With increasingly long stays in Raleigh, the building on Jones Street could be likened to legislators' primary habitat.

Summary

North Carolina long has prided itself on its citizen legislature. On paper, here's how it works: legislators serve in a part-time body in which most of the members hold other jobs and gather in Raleigh for legislative sessions each year. In odd-numbered years, they are expected to meet from about January to July to make laws and adopt a budget. This is referred to as the "long session" of the General Assembly. Though the constitution speaks of biennial sessions in odd-numbered years, since 1974 the legislature also has come to Raleigh in even-numbered years for what is called the "short session"—usually from May to June or July. The purpose of this session is to make adjustments to the budget and address a limited agenda, as authorized in the adjournment resolution of the previous year.

That's on paper. The reality is something different. In 1989, the General legislature's long session stretched 214 calendar days (from January 11 to August 12), with one extra session on December 7. In 1997, the legislature came close to that record for a long session with 212 calendar days in Raleigh, meeting from January 29 through August 28. Then in 1998, the so-called year of the "short" session, legislators convened for a 172 calendar-day session to adjust the budget—a record for a short session. They had already been called by the governor for a 38-day extra session to adopt a child health insurance program. The 1999 long session lasted a more manageable 176 days, and the legislature adopted a budget before the start of the July 1 fiscal year—a major accomplishment and key to ending the session in a timely fashion. But the fact that a 176-day session was viewed as a notable accomplishment shows just how far the legislature has strayed from its part-time roots.

The long-term trend toward longer and longer legislative sessions has convinced some legislators that steps need to be taken to preserve the citizen, or part-time, legislature through measures such as stronger enforcement of the rules or constitutional limits on the length of legislative sessions. But the term "citizen legislature" means different things to different people, and how one defines the term dictates different approaches to preserving the citizen legislature or to switching to a full-time legislature.

Traditionally, the citizen legislature has meant a part-time legislature, suggesting controlling session length as a means of preserving it. But some see the citizen legislature as one broadly representative of the populace in terms of race, gender, and work experience. It's hard to imagine how to produce such

a legislature short of the lottery system practiced by the ancient Greeks, but higher pay might attract candidates from more walks of life and move the legislature toward a body that is more representative in terms of race and gender. Still others view a citizen legislature as one in which all citizens can afford to serve—which suggests reforms such as public financing of legislative races or higher legislative pay. Finally, there are those who are convinced that North Carolina's population has grown too large, the budget too big, and the affairs of state too complex to entrust the job of making laws and enacting a budget to a part-time body. These lawmakers believe the best answer is to abandon the notion of a part-time legislature in favor of a professional or full-time legislature. Again, higher pay would be part of the equation.

What is a citizen legislature? Does North Carolina have a citizen legislature? Does it matter? Despite a plethora of opinions on the subject, the General Assembly has engaged in too little intentional deliberation about what it should be and how it should get there. As a result, at least five markers indicate that North Carolina is moving toward a full-time legislature. They are: (1) longer sessions; (2) more special sessions to deal with issues that arise when the legislature is out of session; (3) more study commissions convening between sessions; (4) appropriations committees meeting between the two most recent sessions; and (5) special investigative committees taking on a life of their own both during and between sessions. At present, there is decision by drift, with evolution toward a legislature that is increasingly full-time, but with compensation lagging at the part-time level because raising legislative pay is too difficult politically.

North Carolina is home to 40 endangered species—including the red-cockaded woodpecker and, as western N.C. loggers recently learned to their dismay, the Indiana brown bat. To these may soon be added a 41st such species—the citizen legislator. Once commonly dispersed across North Carolina—from the mountains to the Piedmont to the coastal plain, this creature is increasingly confined to a single three-story structure with pyramids on top in Raleigh, N.C.

Mike McLaughlin is editor of North Carolina Insight. Ran Coble is executive director of the North Carolina Center for Public Policy Research.

Indeed, one could liken the building on Jones Street to the citizen legislator's primary habitat. Whereas both the male and female of this species in the not-so-distant past only migrated to Raleigh biennially to pass a few bills and engage in that awkward mating dance known as the adoption of the state budget, today's legislator hardly ever leaves. In 1997—the long session of the General Assembly—state lawmakers remained in Raleigh 212 calendar days—from January 29 to August 28 (See Table 1, p. 8). Legislators receive per diem pay of \$104 on a calendar basis, even though they typically meet three and a half days per week—convening on Monday nights and adjourning for the week by mid-day on Thursdays. This is a change

Session Lengths

| Biennium | Legislative days |
|----------|------------------|
| 1965-66 | 124 |
| 1967-68 | 128 |
| 1969-70 | 145 |
| 1971-72 | 165 |
| 1973-74 | 161 |
| 1975-76 | 127 |
| 1977-78 | 136 |
| 1979-80 | 123 |
| 1981-82 | 158 |
| 1983-84 | 164 |
| 1985-86 | 149 |
| 1987-88 | 163 |
| 1989-90 | 185 |
| 1991-92 | 155 |
| 1993-94 | 177 |
| 1995-96 | 155 |
| 1997-98 | 246 |

from years past, when the legislature remained in Raleigh all day on Thursdays and met for a half-day on Fridays. The days on which the legislature actually meets are called legislative days, but we report calendar days here since members receive their per diem to apply to living expenses on a calendar basis. In 1998—the even-numbered year referred to in legislative parlance as the “short” session—lawmakers convened for 172 calendar days, from May 11 to October 29. Earlier, at the behest of the governor, the legislature had convened for a 38-calendar-day extra session to enact a new Child Health Insurance Program. So as a practical matter, the legislature met for 210 calendar days in a year that was supposed to feature a short session.

The citizen legislature is defined by some as made up predominantly of people who work at other jobs and serve in the General Assembly part-time. With as much as half the working year consumed by legislative sessions, and many additional days eaten up by other legislative duties—such as answering constituent mail or serving on interim

study commissions—it’s little wonder that many people consider the citizen legislature endangered, or at least threatened.¹

But is a part-time legislature synonymous with a citizen legislature? Does North Carolina have a citizen legislature? Does it matter? These questions become more than philosophical as session lengths draw longer and longer.

What Is a Citizen Legislature?

The term “citizen legislature” means different things to different people. To some, it means a body made up predominantly of people who hold other jobs and consider the legislature to be part-time work. To others, it means a governing body that is representative of the public it represents in terms of race, gender, occupation, and other demographic variables. Still others might consider a citizen legislature to be one in which any citizen can afford to serve. And, some might consider a true citizen legislature to be all of the above.

The citizen legislature in North Carolina *traditionally* has meant citizens who hold other jobs giving part of their year to pass a budget and laws that govern the state. There is a biennial “long session” in odd-numbered years built around passing the state budget but wide open for considering other legislation. And since 1974, North Carolina legislators also have convened for a so-called “short session” to fine-tune the budget and attend to other limited matters. Legislation theoretically is limited to areas authorized in the adjournment resolution from the previous year and typically includes budgetary matters, recommendations from interim study commissions, bills that passed one legislative chamber but not the other in the previous year, and bills important enough that both the House and the Senate agree to suspend the rules through a two-thirds vote of their members. In between come occasional special sessions to deal with other matters the governor or legislature thinks need immediate attention, such as the recent special sessions on redistricting (1991, 1992), crime (1994), child health insurance (1998), and hurricane and flood relief (1999).

Under this scenario, the legislature is a part-time job that provides modest compensation (\$13,951 per year excluding expense allowance and subsistence pay), but the real bread and butter salary is earned back in the home district. The notion is that this gives the average person at least the *opportunity* to serve, although the reality is somewhat different. North Carolina is a large state (543 miles

from Manteo in the northeast to Murphy in the far west) and session lengths have never really suited the average Joe or Josephine with 10 years on the job and three weeks' vacation.

Even in the halcyon days of 1965, the legislature convened for 139 days, so service in the legislature long has required either extreme affluence, extreme flexibility, or extreme sacrifice. That much hasn't changed. But the notion of the General Assembly as a part-time job is getting far-fetched. The 212 calendar day, seven-month session in 1997 (January 29 through August 28) tried legislators' patience with the longest session since a 214-calendar-day behemoth in 1989 (January 11 through August 12, including Fridays, weekends, and other days when the legislature did not meet but legislators received their per diem supplement). Then things got worse. The so-called "short session" in 1998 lasted 172 calendar days (May 11 through October 29). And legislators already had met 38 calendar days (March 24–April 30) for an extra session on uninsured children. That brought

the total for the year to 210 calendar days.

Part of the reason for recent lengthy sessions was split party control between the two chambers. With the state Senate controlled by Democrats and the House in the hands of Republicans, partisan deadlocks over issues such as welfare reform and tax cuts dragged out the sessions. With control of the two chambers in different hands, it's not surprising that issues take longer to resolve. This may be viewed as simply a "price of democracy." However, in 1998, the voters gave control of both the Senate and House to Democrats, so in 1999, House Speaker Jim Black (D-Mecklenburg) vowed that things would be different in terms of session length. Given recent trends, Black's vow was met with skepticism. Nevertheless, Black promised to get the state budget adopted before the start of the next fiscal year and then followed through, all the while holding to a Monday night through Thursday afternoon meeting schedule. In the end, the long session lasted 176 calendar days. The state budget got adopted with bipartisan support, another accomplishment, and in time for the July 1 start of the state fiscal year—the first time that had happened since 1979. But the fact that a 176-day session was viewed as a notable accomplishment shows just how far the legislature has strayed from its part-time roots.

These increasingly long stays in Raleigh for regular legislative business come in addition to legislators' attending more special sessions to deal with problems that arise between sessions, participating in interim study commissions, maintaining a presence in their home districts, and tending to constituent problems that might arise with government. How does that stack up against a full-time job?

An employee with 20 years on the job, four weeks vacation, and 10 paid holidays would log 227 days in the office in the typical year (365 minus 104 weekend days, 20 vacation days, and 10 holidays). By contrast, the legislature convened an average of 184 calendar days during long sessions in the 1990s, excluding any special sessions. That would amount to roughly 26 work weeks, plus 10–15 additional days spent in legislative study commission meetings or other official meetings that

—continued on page 10

House Speaker Jim Black (D-Mecklenburg) helped break the trend toward increasing session length with a 176-calendar-day session in 1999 and adoption of the state budget in time for the July 1 start of the fiscal year.

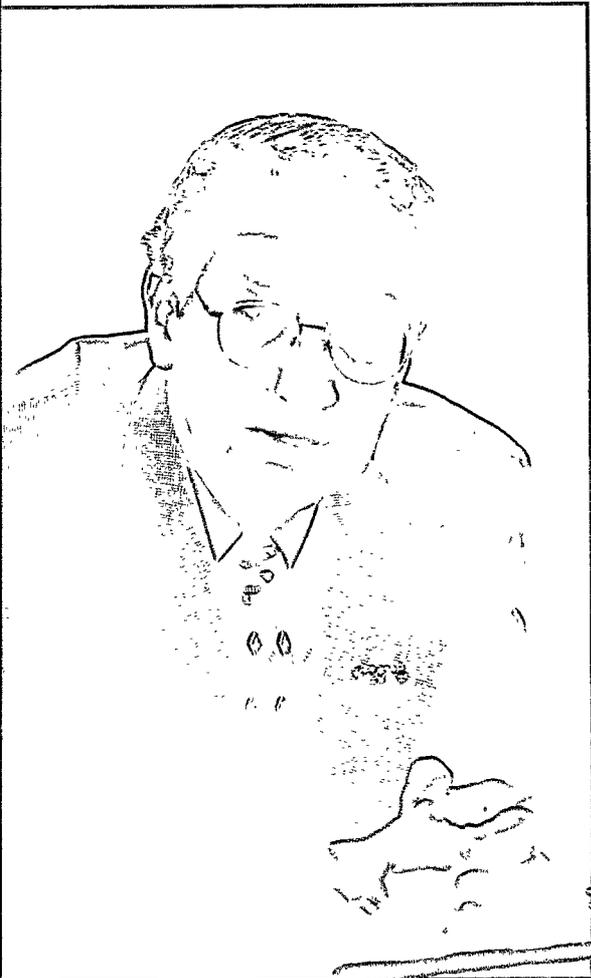


Table 1. Length of Long Legislative Sessions, Short Legislative Sessions, and Extra Legislative Sessions, 1965-99, in Legislative and Calendar Days*

| I. Long Sessions | Start and End Dates | Legislative Days | Calendar Days |
|---------------------------|----------------------------|---------------------------|----------------------|
| 1965 | Feb. 3-June 17 | 116 | 136 |
| 1967 | Feb. 8-July 6 | 128 | 149 |
| 1969 | Jan. 15-July 2 | 145 | 169 |
| 1971 | Jan. 13-July 21 | 160 | 190 |
| 1973 | Jan. 10-May 24 | 97 | 135 |
| 1975 | Jan. 15-June 26 | 117 | 163 |
| 1977 | Jan. 12-July 1 | 123 | 170 |
| 1979 | Jan. 10-June 8 | 108 (House), 107 (Senate) | 150 |
| 1981 | Jan. 14-July 10 | 127 (House), 126 (Senate) | 178 |
| 1983 | Jan. 12-July 22 | 138 (House), 137 (Senate) | 192 |
| 1985 | Feb. 5-July 18 | 118 | 164 |
| 1987 | Feb. 9-Aug. 14 | 134 (House), 135 (Senate) | 187 |
| 1989 | Jan. 11-Aug. 12 | 137 (House), 128 (Senate) | 214 |
| 1991 | Jan. 30-July 16 | 106 (House), 99 (Senate) | 168 |
| 1993 | Jan. 27-July 24 | 110 (House), 109 (Senate) | 179 |
| 1995 | Jan. 25-July 29 | 108 (House), 109 (Senate) | 186 |
| 1997 | Jan. 29-Aug. 28 | 123 | 212 |
| 1999 | Jan. 27-July 21 | 103 (House), 101 (Senate) | 176 |
| II. Short Sessions | | | |
| | Start and End Dates | Legislative Days | Calendar Days |
| 1974 | Jan. 16-April 13 | 64 | 88 |
| 1976 | May 3-May 14 | 10 | 12 |
| 1978 | May 31-June 16 | 13 | 17 |
| 1980 | June 5-June 25 | 15 | 21 |
| 1982 | June 2-June 23 | 17 (House), 15 (Senate) | 22 |
| 1984 | June 7-July 7 | 23 (House), 22 (Senate) | 31 |
| 1986 | June 5-July 16 | 29 (House), 30 (Senate) | 42 |
| 1988 | June 2-July 12 | 28 | 41 |
| 1990 | May 21-July 28 | 46 (House), 42 (Senate) | 69 |
| 1992 | May 26-July 25 | 42 (House), 41 (Senate) | 61 |
| 1994 | May 24-July 17 | 35 | 55 |
| 1996 | May 13-June 21 | 27 (House), 25 (Senate) | 40 |
| 1998 | May 11-Oct. 29 | 100 (House), 101 (Senate) | 176 |

Table 1, continued

III. Special/Extra Sessions**

| | Start and End Dates | Legislative Days | Calendar Days |
|------|--|-------------------------|----------------------|
| 1965 | Nov. 15–Nov. 17 | 3 | 3 |
| 1966 | Jan. 10–Jan. 14 | 5 | 5 |
| 1971 | Oct. 26–Oct. 30 | 5 | 5 |
| 1981 | Oct. 5–Oct. 5 (Amend adjournment resolution) | 1 | 1 |
| | Oct. 5–Oct. 10*** | 6 | 6 |
| | Oct. 29–Oct. 30*** (Redistricting) | 2 | 2 |
| 1982 | Feb. 9–Feb. 11 (Redistricting) | 3 | 3 |
| | April 26–April 27 (Redistricting) | 2 | 2 |
| 1983 | Aug. 26–Aug. 26 | 1 | 1 |
| 1984 | March 7–March 8 | 2 | 2 |
| 1986 | Feb. 18–Feb. 18 | 1 | 1 |
| 1989 | Dec. 7–Dec. 7 | 1 | 1 |
| 1991 | Dec. 30–Dec. 30 (Redistricting) | 1 | 1 |
| 1992 | Jan. 13–Jan. 14 (Redistricting) | 2 | 2 |
| | Jan. 22–Jan. 24 (Redistricting, changes in Employment Security Commission Reserve Fund) | 2 | 2 |
| | Feb. 3–Feb. 3 (Alter 1992 elections timetable) | 1 | 1 |
| 1994 | Feb. 8–March 26 (Crime) | 32 (House), 31 (Senate) | 47 |
| 1996 | Feb. 21–Feb. 21 (Unemployment tax) | 1 | 1 |
| | July 8–Aug. 3 (Budget) | 19 (House), 20 (Senate) | 27 |
| 1998 | March 24–April 30 (Uninsured children) | 23 (House), 22 (Senate) | 38 |
| 1999 | Dec. 15–Dec. 16 (Hurricane Floyd and flood relief) | 2 (House), 2 (Senate) | 2 |

* Legislative days are days the legislature actually meets. Calendar days are the days on the calendar that pass while the legislature is in session. Legislators receive their per diem expense money of \$104 per day on a calendar basis.

** Extra sessions typically are called by the governor to deal with problems or issues that arise while the legislature is out of session and that the governor decides need attention before the next regularly scheduled session. Where indicated by the Office of Legislative Services, the reason for the extra session is provided in this table in parentheses after the start and end dates of each session.

*** While the Oct. 5, 1981, convening of the General Assembly is recorded as an extra session to amend the adjournment resolution, the Oct. 5–Oct. 10 session and the Oct. 29–Oct. 30 session are actually recorded as the second and third regular sessions of 1981.

Source: Office of Legislative Services

bring lawmakers to Raleigh. The remaining chores that come with legislative service must be wedged into the remaining 20–22 weeks of the year: working the home district, serving constituents, and campaigning for re-election every two years. So for all practical purposes, serving in the legislature is not only not a part-time job, it is more than full-time.

Still, plenty of legislators soldier on in the private sector, keeping alive the notion of a citizen legislature in which lawmakers earn money from other work. House Speaker Black, a Matthews optometrist, sees eye patients when the legislature isn't meeting. Senate President Pro Tempore Marc Basnight (D-Dare) operates a coastal area construction business. Rep. Ed McMahan (R-Mecklenburg) until recently served as CEO of a nationally known architectural and development firm. Because of the demands of serving in the General Assembly, he has moved to vice-chairman of the firm. To legislators like these, the fact that they can work and make a living outside government is what distinguishes North Carolina and its citizen legislature from other states with "profes-

Rep. Ed McMahan (R-Mecklenburg) is among those legislators who believe the General Assembly should include a large number of people who hold other jobs.



sional legislatures," such as California, New Jersey, and New York.

Does North Carolina Have a Citizen Legislature?

Karl Kurtz, who tracks state assemblies for the National Conference of State Legislatures, says the North Carolina General Assembly is no longer a part-time citizen legislature. Neither is the state legislature a full-time professional legislature. Instead, he says it's something in between. Kurtz bases his categories on three characteristics: length of session, compensation of legislators, and size of staff.² Kurtz places North Carolina as one of 24 states with legislatures in a hybrid area between citizen and professional. According to Kurtz, a total of 10 states are governed by professional legislatures, and 16 by part-time citizen legislatures. Florida is the only Southern state among the 10 with a professional legislature (See Table 2, p. 11). Ranking highly in state population is the key characteristic shared by the states with professional legislatures, as is having a relatively large operating budget. Of those Kurtz categorizes as part-time legislatures, only Georgia is among the 10 most populous in the nation. Georgia holds to its part-time status through constitutional limits on session length.³ North Carolina ranks 11th among the states in population and ranks 12th in the size of its operating budget. Among the 11 most populous states only North Carolina and Georgia do not have professional legislatures.

1. The Citizen Legislature Defined as a Part-Time Job

Despite Kurtz' characterization of North Carolina, many Tar Heel legislators still cling to the notion of a citizen legislature and scratch and claw to earn a living outside Raleigh. Still, there are clear signs that the citizen legislature—if defined as comprised primarily of persons who work other jobs—is under strain. For example, the number of legislators who have no other job—they are retired—is the fastest growing "occupational" category among N.C. legislators. Statistics maintained by the N.C. Center for Public Policy Research dating back to 1971 on legislators' occupations indicate the number of retired persons serving has increased more than six-fold during a 26-year period, from a low of 6 in 1973 to 38 in 1999.⁴ The number of lawmakers with other occupations that traditionally have provided high numbers of

Table 2. States with Professional, Hybrid, and Part-Time Legislatures, with State Operating Budget Size and Population

| State | Legislative Style* | State Operating Budget Size** (in thousands) | Rank | Population*** | Rank |
|---------------|--------------------|---|------|---------------|------|
| Alabama | hybrid | \$ 7,241,270 | 22 | 4,351,999 | 12 |
| Alaska | hybrid | 3,309,084 | 38 | 614,010 | 48 |
| Arizona | hybrid | 5,480,384 | 27 | 4,668,631 | 21 |
| Arkansas | part-time | 4,224,063 | 32 | 2,538,303 | 33 |
| California | professional | 45,977,063 | 1 | 32,666,550 | 1 |
| Colorado | hybrid | 5,302,956 | 28 | 3,970,971 | 24 |
| Connecticut | hybrid | 7,379,375 | 20 | 3,274,069 | 29 |
| Delaware | hybrid | 1,935,447 | 44 | 743,603 | 45 |
| Florida | professional | 17,817,600 | 5 | 14,915,980 | 4 |
| Georgia | part-time | 11,348,238 | 11 | 7,642,207 | 10 |
| Hawaii | hybrid | 3,902,225 | 33 | 1,193,001 | 41 |
| Idaho | part-time | 1,746,045 | 45 | 1,228,684 | 40 |
| Illinois | professional | 17,059,582 | 6 | 12,045,326 | 5 |
| Indiana | part-time | 8,140,034 | 17 | 5,899,195 | 14 |
| Iowa | hybrid | 4,674,318 | 30 | 2,862,447 | 30 |
| Kansas | hybrid | 3,526,523 | 37 | 2,629,067 | 32 |
| Kentucky | hybrid | 6,885,246 | 25 | 3,936,499 | 25 |
| Louisiana | hybrid | 7,790,851 | 18 | 4,368,967 | 22 |
| Maine | part-time | 2,646,772 | 40 | 1,244,250 | 39 |
| Maryland | hybrid | 8,524,965 | 15 | 5,134,808 | 19 |
| Massachusetts | professional | 12,943,968 | 10 | 6,147,132 | 13 |
| Michigan | professional | 15,462,769 | 7 | 9,817,242 | 8 |
| Minnesota | hybrid | 7,943,828 | 16 | 4,725,419 | 20 |
| Mississippi | hybrid | 4,236,392 | 31 | 2,752,092 | 31 |
| Missouri | hybrid | 6,932,243 | 24 | 5,438,559 | 15 |
| Montana | part-time | 1,596,989 | 46 | 880,453 | 44 |
| Nebraska | hybrid | 2,656,228 | 39 | 1,662,719 | 38 |
| Nevada | part-time | 1,982,203 | 43 | 1,746,898 | 36 |
| New Hampshire | part-time | 2,007,845 | 42 | 1,185,048 | 42 |
| New Jersey | professional | 14,281,256 | 9 | 8,115,011 | 9 |
| New Mexico | part-time | 3,754,132 | 34 | 1,736,931 | 37 |

—continued

Table 2, continued

| State | Legislative Style* | State Operating Budget Size** (in thousands) | Rank | Population*** | Rank |
|----------------|--------------------|---|------|---------------|------|
| New York | professional | 38,115,857 | 2 | 18,175,301 | 3 |
| North Carolina | hybrid | 10,910,123 | 12 | 7,546,493 | 11 |
| North Dakota | part-time | 1,415,772 | 47 | 638,244 | 47 |
| Ohio | professional | 15,427,292 | 8 | 11,209,493 | 7 |
| Oklahoma | hybrid | 4,816,147 | 29 | 3,346,713 | 27 |
| Oregon | hybrid | 5,765,526 | 26 | 3,281,974 | 28 |
| Pennsylvania | professional | 20,237,663 | 4 | 12,001,451 | 6 |
| Rhode Island | part-time | 2,173,040 | 41 | 988,480 | 43 |
| South Carolina | hybrid | 7,332,158 | 21 | 3,835,962 | 26 |
| South Dakota | part-time | 1,107,435 | 49 | 738,171 | 46 |
| Tennessee | hybrid | 7,603,205 | 19 | 5,430,621 | 17 |
| Texas | hybrid | 25,788,698 | 3 | 19,759,614 | 2 |
| Utah | part-time | 3,574,290 | 36 | 2,099,758 | 34 |
| Vermont | part-time | 1,373,997 | 48 | 590,883 | 49 |
| Virginia | hybrid | 9,811,241 | 14 | 6,791,345 | 12 |
| Washington | hybrid | 10,076,673 | 13 | 5,689,263 | 15 |
| West Virginia | part-time | 3,639,386 | 35 | 1,811,156 | 35 |
| Wisconsin | professional | 7,133,735 | 23 | 5,223,500 | 18 |
| Wyoming | part-time | 836,648 | 50 | 480,907 | 50 |

* Karl Kurtz, "Extension of Remarks: Understanding the Diversity of American State Legislatures," National Conference of State Legislatures, unpublished document, summer 1992. Table of legislative styles updated Nov. 1, 1996. Kurtz bases categories on pay, staff support, and length of sessions. Kurtz uses the terms "full-time," "in between or hybrid," and "part-time" to describe his categories.

** U.S. Bureau of the Census, 1997 figures

*** U.S. Bureau of the Census, 1998 projections

legislators—including farmers and lawyers—has declined over two decades.

"I think it's still a citizen legislature, but I see it drifting slowly or even more rapidly now away from that," says Sen. David Hoyle (D-Gaston). "There are still a lot of segments of the population serving, but we're precluding a lot of people and their ability to serve." Adds Hoyle, who himself has stepped down from the day-to-day operation of

his real estate development business, "More and more of our legislators are retired, and they don't have anything else to do, so they don't really care how long they stay down there."

In 1971, there were 68 lawyers in the General Assembly. In 1999, there were 37. "You do need a certain number of lawyers because when you're talking about writing laws, their input is valuable," says McMahan, the Charlotte business executive.

Adds Sen. Roy Cooper (D-Nash), "I think having lawyers in the legislature is important, but the problem doesn't extend just to lawyers. There are business people, school teachers, and others who should be serving in the legislature but cannot because of the erratic and lengthy time commitment involved." The state still has a citizen legislature, Cooper says, but it's "under siege."

McMahan also believes the state should preserve the opportunity for its legislators to work at other occupations and serve in the General Assembly part-time. "I firmly believe the way it should operate would be to include a cross-section of citizens—some with full-time jobs. . . . We should continue to be a citizen legislature and not a full-time legislature." The citizen, or part-time legislature provides a "balance of ideas" and "real-life experience in the business world," McMahan says. Thus, citizen legislators are "better able to determine what should be the public policy than those committed to being full-time politicians."

Controlling the length of sessions is one avenue that has been broadly discussed as a means of achieving the objective of restoring legislative ser-

vice to a part-time job. A total of 39 states limit session length in some fashion (See Table 3, p. 14). There are four avenues for limiting session length. They are: (1) amending the state constitution; (2) adopting a state statute; (3) revising House and Senate rules; and (4) adopting indirect limits on session length.

Limit the length of sessions through a constitutional amendment. Sens. Hoyle and Cooper cosponsored a bill in the 1999 session (SB 8) calling for a constitutional amendment to limit session lengths to 135 days for the long session in odd-numbered years and 90 days for the short session in even-numbered years. "I believe constitutional session limits would add more stability and predictability to the process, and this would make it easier for citizens with jobs to serve," says Cooper. "When I leave my law firm to go to Raleigh, I can't tell them when I'm going to return because we have no cutoff."

Neighboring Virginia has constitutional term limits of 90 days for its long session and 60 days for its short session. The state allows pre-filing of

—continued on page 17

Sen. David Hoyle (D-Gaston) believes the state is drifting away from the concept of a citizen legislature, when defined as comprised primarily of people who hold other jobs.



**Table 3. Term Limits, Legislative Session Length Limits,
and Length of Terms by State**

| State | Term Limits And Number of Years | Session Length Limits And Where They Reside | Length of House And Senate Terms |
|---------------|--|--|---|
| Alabama | None | Yes—Constitution | Four years |
| Alaska | None | Yes—Constitution | Four years Senate, Two years House |
| Arizona | Yes—eight years | Yes—Rules | Two years |
| Arkansas | Yes—six years House, eight years Senate | Yes—Constitution | Four years Senate, Two years House |
| California | Yes—six years House, eight years Senate | Yes—Rules | Four years Senate, Two years House |
| Colorado | Yes—eight years | Yes—Constitution | Four years Senate, Two years House |
| Connecticut | None | Yes—Constitution | Two years |
| Delaware | None | Yes—Constitution | Four years Senate, Two years House |
| Florida | Yes—eight years | Yes—Constitution | Four years Senate, Two years House |
| Georgia | None | Yes—Constitution | Two years |
| Hawaii | None | Yes—Constitution | Four years Senate, Two years House |
| Idaho | Yes—eight years | None | Two years |
| Illinois | None | None | Four years Senate,* Two years House |
| Indiana | None | Yes—Statute | Four years Senate, Two years House |
| Iowa | None | Yes—Indirect** | Four years Senate, Two years House |
| Kansas | None | Yes***—Constitution | Four years Senate, Two years House |
| Kentucky | None | Yes—Constitution | Four years Senate, Two years House |
| Louisiana | Yes—12 years | Yes—Constitution | Four years |
| Maine | Yes—eight years | Yes—Statute | Two years |
| Maryland | None | Yes—Constitution | Four years |
| Massachusetts | None | Yes—Rules | Two years |
| Michigan | Yes—six years House, eight years Senate | None | Four years Senate Two years House |

Table 3, continued

| State | Term Limits And Number of Years | Session Length Limits And Where They Reside | Length of House And Senate Terms |
|-----------------------|--|--|--|
| Minnesota | None | Yes—Constitution | Four years Senate, Two Years House |
| Mississippi | None | Yes—Constitution | Four Years |
| Missouri | Yes—eight years | Yes—Constitution | Four years Senate, Two years House |
| Montana | Yes—eight years in 16-year period | Yes—Constitution | Four years Senate, Two years House**** |
| Nebraska | None | Yes—Constitution | Four years (Nebraska has a unicameral legislature) |
| Nevada | Yes—12 years | Yes—Constitution | Four years Senate, Two years House |
| New Hampshire | None | Yes—Indirect** | Two years |
| New Jersey | None | None | Four years Senate, Two years House |
| New Mexico | None | Yes—Constitution | Four years Senate, Two years House |
| New York | None | None | Two years |
| North Carolina | None | None | Two years |
| North Dakota | None | Yes—Constitution | Four years Senate, Two years House |
| Ohio | Yes—eight years | None | Four years Senate, Two years House |
| Oklahoma | Yes—12 years | Yes—Constitution | Four years Senate, Two years House |
| Oregon | Yes—six years House, eight years Senate | None | Four years Senate, Two years House |
| Pennsylvania | None | None | Four years Senate, Two years House |
| Rhode Island | None | Yes—Indirect** | Two years |
| South Carolina | None | Yes—Statute | Four years Senate, Two years House |
| South Dakota | Yes—eight years | Yes—Constitution | Four years Senate, Two years House |
| Tennessee | None | Yes—Indirect** | Four years Senate, Two years House |

—continued

Table 3, continued

| State | Term Limits And Number of Years | Session Length Limits And Where They Reside | Length of House And Senate Terms |
|---------------|------------------------------------|--|--|
| Texas | None | Yes—Constitution | Four years Senate, Two years House |
| Utah | Yes—12 consecutive years | Yes—Constitution | Four years Senate, Two years House |
| Vermont | None | None | Two years |
| Virginia | None | Yes—Constitution | Four years Senate, Two years House |
| Washington | None | Yes—Constitution | Four years Senate, Two years House |
| West Virginia | None | Yes—Constitution | Four years Senate, Two years House |
| Wisconsin | None | None | Four years Senate, Two years House |
| Wyoming | Yes—12 years | Yes—Constitution | Four years Senate, Two years House |
| Totals: | 18 Yes 32 No | 39 Yes 11 No | 4 Four years 11 Two years 34 Four years Senate, Two years House 1 Unicameral with four-year terms |

* The entire Illinois Senate stands for election every 10 years. Senate Districts are divided into three groups. One selects senators for terms of four years, four years, and two years; the second group selects senators for terms of four years, two years, and four years; and the third selects senators for terms of two years, four years, and four years.

** States with indirect limits on session length use the withholding of various forms of expense reimbursement to encourage legislatures to adjourn. In Iowa, for example, legislators do not receive per diem expense payments after 110 days in odd-numbered years and 100 days in even-numbered years. New Hampshire puts the limit on mileage reimbursement. Rhode Island limits legislative compensation and mileage. Tennessee limits expense reimbursement, including travel.

*** Even-numbered years only

**** After each decennial reapportionment in Montana, lots are drawn for half of the senators to serve additional two-year terms. Subsequent elections are for four-year terms.

Sources: For information on legislative term limits and session length limits, see National Conference of State Legislatures website at www.ncsc.org; for length of legislative terms, *Book of the States 1998-99*, Council of State Governments, Lexington, Ky., Table 3.3, p. 68.

legislation, but once the legislature convenes, lawmakers only have four days to submit legislation for drafting. Legislative services is then given seven days to get bills back to lawmakers for introduction. Certain categories of legislation must be introduced the first day the General Assembly convenes, and all legislation must be introduced in the first 13 days of the session. In 1998, nearly half the bills introduced (1,252 of 2,668) were filed on the final of these 13 days—known as cutoff day.

The pattern of legislators rushing to meet short deadlines is typical of the Virginia General Assembly. Yet another deadline crush occurs about two-thirds of the way through the session when bills must pass one chamber or the other to remain alive for consideration. And most legislation is passed during the final week of the session. "It's pretty brutal, but it works," says E.M. Miller, Virginia's director of legislative services.

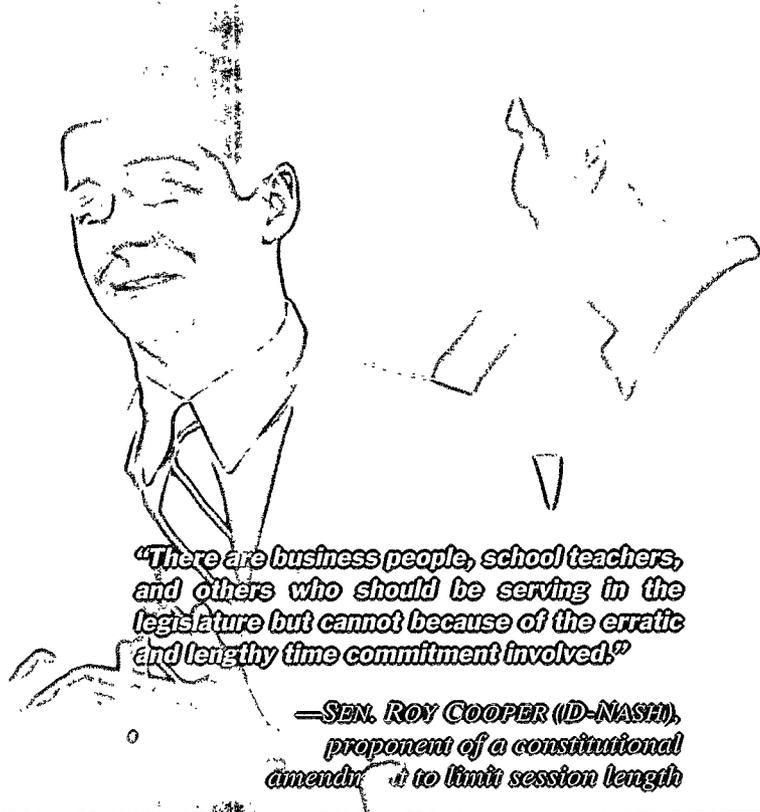
Like Virginia, most states that limit session length do so through their state constitutions (29 of 39). While Cooper and Hoyle believe the Virginia sessions are too short for North Carolina, they also argue that the North Carolina General Assembly could operate well within time constraints that are

somewhat longer. "The legislature seems to operate well on deadlines," notes Cooper.

One example he cites was a federal court's deadline of May 22, 1998, as the date by which the legislature had to complete redrawing congressional districts the court said relied too heavily on race in determining boundaries. "We got it done the day before, even though a lot of people thought that was politically impossible."

Another example Cooper mentions is the special session of the spring of 1998 in which the legislature had to meet a tight deadline in order to qualify for federal matching funds for the Child Health Initiative Program. "We finished it at 11:30 that evening and ran it over to the Governor's Office just before midnight," Cooper says. Still, this special session was expected to last only a few days and lasted 38 instead.

In another example, the General Assembly—in March 1999—scrambled to meet a Wake Superior Court judge's deadline for creating a foundation outlined in a consent decree to receive funds from the state's settlement of a lawsuit with six tobacco companies. Despite fractious debate in the House, the legislature passed the legislation with only a slight time extension from the judge.



"There are business people, school teachers, and others who should be serving in the legislature but cannot because of the erratic and lengthy time commitment involved."

*—SEN. ROY COOPER (ID-NASH),
proponent of a constitutional
amendment to limit session length*

Bill Deadlines

These are the deadlines for Senators and Representatives to introduce bills to the General Assembly. Also included is what is referred to as the crossover deadline—the date by which bills other than appropriations or finance bills must be approved by one chamber and received in the other chamber to be eligible for consideration in the first regular session.

| | To Bill Drafting | Introduction by | Approval by |
|---------------|-------------------------|------------------------|---------------------|
| Senate | 4 p.m. | 3 p.m. | One Chamber* |
| Local | March 24 | March 31 | April 29 |
| Public | April 7 | April 14 | April 29 |
| Resolutions** | April 7 | April 14 | |

| | To Bill Drafting | Introduction by | Approval by |
|-----------------------|-------------------------|------------------------|---------------------|
| House*** | 4 p.m. | 3 p.m. | One Chamber* |
| Study Commissions**** | February 24 | March 3 | April 29 |
| Agency Bills | February 24 | March 3 | April 29 |
| Local Bills | March 24 | March 31 | April 29 |
| Appropriations | April 21 | April 28 | |
| Finance | May 5 | May 12 | |
| Resolutions | None | None | |

* This is known as the crossover deadline. To remain eligible, House bills must be approved by the House and received by the Senate by this date, and Senate bills must be approved by the Senate and received by the House. Exceptions are finance and appropriations bills, which are not subject to the deadline.

** Except adjournment resolution and resolutions memorializing deceased people.

*** House deadlines do not apply to bills redistricting Congress, the General Assembly, or local governments, nor to measures ratifying amendments to the United States Constitution.

**** The study commission bill deadline applies to public bills only. Local bills recommended by study commissions fall under local bill deadlines.

Source: N.C. House and Senate Rules

Besides these surprises, the legislature regularly faces deadlines such as the crossover deadline in which a bill must clear one chamber or the other in order to be alive for the next session of the General Assembly (April 29 for the 1999 session, though the date changes from session to session depending on a range of factors). Cooper believes the ultimate deadline—a constitutionally mandated end to the session—would work well by providing a specific time frame for resolving legislative issues.

As it stands, notes Cooper, the leaders of both chambers spend a great deal of time in stalled negotiations that drag out the session length. "It's the 'wait 'em out' strategy," says Cooper. "Who

will fold first? Having no time limits is like an adversarial court case with no judge and no trial date."

The 1999 bill calling for a public vote on a constitutional amendment to limit the length of legislative sessions passed the Senate and currently rests in the House Committee on Rules, Calendar, and Operations, where it remains alive for consideration in the 2000 short session. At least one committee member likes the idea. "I firmly support session limits to enable people with full-time jobs to serve," says McMahan. "If you knew you were going to adjourn at a date certain, you could do better planning."

Putting session limits in the state constitution

would give the time limits a more firm footing than merely passing a law establishing limits on the length of sessions. That's because the General Assembly can supersede term limits established in legislation simply by passing another overriding law. Still, not everyone believes session limits need to be in the state constitution.

Limit session length by statute rather than by constitutional amendment. Another means of limiting session length is to pass a law that actually sets the limits rather than by putting the question to the voters in the form of a constitutional amendment. Such an approach was advocated as early as 1983 by then Sen. Gerry Hancock (D-Durham). Hancock's bill, entitled the "Citizen-Legislature Act of 1983,"⁵ would have limited sessions by statute to 100 days for each biennium, so that if the legislature met for 80 days in odd-numbered years it would be limited to 20 days in even-numbered years.

Of the 39 states that limit session length, three do so by statute. "I'm in favor of session limits," says Sen. Virginia Foxx (R-Watauga). "I'm not in favor of a constitutional amendment." Foxx notes that advocates of a constitutional amendment argue that unless the limits are in the constitution, the limits will be extended when it's convenient for the leadership. "What does that say to the people of

this state?" asks Foxx. "If we can't hold ourselves accountable [to state laws], how can we hold the people of this state accountable? It's such a weak-kneed approach. We're saying, 'Make me do this.'" Short of a constitutional amendment, other steps should be taken to streamline the sessions, Foxx says. These could include allowing pre-filing of bills, handling administrative chores such as office and committee assignments before the legislature gets to town, and eliminating Monday night sessions to allow a longer work day. "We don't do anything the first month we're there, and that's bad," Foxx says.

Foxx also believes that changing the way legislators are paid would remove an incentive to stay in Raleigh longer and thus obviate the need for constitutional session-length limits. Currently, legislators receive a per diem of \$104, seven days a week, to cover living expenses while they are in session. Boosting legislative pay (currently \$13,951) and eliminating the per diem would remove an incentive to let the sessions drag on and on, Foxx says. An efficiency study might pinpoint further means of streamlining legislative sessions, she says.

Place session limits in House and Senate rules. Yet another approach to session limits would be to place them in House and Senate rules that are adopted at the beginning of each long



***"It's such a weak-kneed approach.
We're saying, 'Make me do this.'"***

***—SEN. VIRGINIA FOXX (R-WATAUGA),
proponent of limiting session length
by statute rather than a
constitutional amendment***

session. At least three states set limits on legislative session length in their chamber rules. In North Carolina, certain legislative deadlines already are found only in the rules, such as the crossover deadline—the deadline by which a bill must pass one chamber to be alive for consideration in the next session (April 29 in the 1999 session). This is the least restrictive place for session-length limits to reside, as either chamber may suspend its rules by a two-thirds vote of its members, and both chambers occasionally do so. However, it should be noted that the current bill deadlines reside only in the rules and carry some force. “I don’t know of any case where those rules were ignored or suspended this year [in 1999],” says Gerry Cohen, head of legislative bill drafting. While the rules have been suspended in the past to allow post-

deadline bill introductions, those episodes have been infrequent, Cohen says.

Indirect limits on session length. Five states attempt to limit session by putting financial pressure on legislators to leave town. This is accomplished through limits on certain forms of compensation and expense reimbursement. In Iowa, for example, legislators receive per diem expense money for no more than 110 days in odd-numbered years and 100 days in even-numbered years. This provides a strong if indirect incentive to end sessions in a timely fashion. New Hampshire, Rhode Island, and Tennessee also limit expense reimbursement in some fashion once a certain deadline is met. North Carolina lawmakers have occasionally attempted to cut off per diem expense money at a date certain but without success. In the

Defining Moments for Legislators

Regular Sessions: Legislators convene biennially for regular sessions in odd-numbered years, then return in even-numbered years to adjust the budget and attend to a limited agenda. The sessions in odd-numbered years are called *long sessions* and the sessions occurring in even-numbered years are called *short sessions*. Language in the state constitution refers to regular sessions as convening every two years and does not make reference to a short session. However, the legislature has reconvened for a short session every even-numbered year in 1974 and after.

Extra Sessions: Both the legislative leadership and the governor may reconvene the General Assembly to deal with issues that may arise between sessions. This is formally known as an extra session.

Special Sessions: Extra sessions of the General Assembly are sometimes called special sessions, though the state constitution speaks to extra sessions. This may be because the session is called to deal with a special issue identified by the governor, or because the language in the gubernatorial proclamation calling the legislature to the capital uses the term “special.” While the leadership of the General Assembly also has the power to call extra sessions with a two-thirds vote of the members, these sessions typically are called by the governor.

Calendar Days: Calendar days are all of the days on the calendar that pass while the legislature is in session, including weekends, holidays, and weekdays when the General Assembly does not convene. Legislators receive their per diem expense money (currently \$104 per day) each calendar day, even though they don’t meet every day.

Legislative Working Days: Legislative working days are days when the legislature actually meets. During session, the General Assembly typically convenes on Monday night and adjourns for the weekend on Thursday afternoon. This is intended to provide time for travel and for working at their regular jobs.

Interim Study Committees: Study committees meet in the time between sessions to hash out controversial issues or issues that simply require further study. Most studies are included in an omnibus study bill that is adopted during the long session. However, some study committees are created in separate legislation such as the budget bill. Legislators receive their per diem expense money and mileage reimbursement when they travel to the capital to participate in study committees between sessions. Many serve on multiple study committees, but some choose not to serve at all.

1997 long session, two bills were filed to cut off the per diem after July 1—Senate Bill 40, sponsored by Sen. Hamilton Horton (R-Forsyth), and Senate Bill 1176, sponsored by Sen. Beverly Perdue (D-Craven). Neither bill was successful, and the session stretched until August 28.

Yet another theme in the evolution of legislatures nationally is better time management both within and between sessions. For example, almost every state now allows prefilings of legislation (44), though North Carolina is not among them.⁶ Fewer than 10 states allowed the practice 30 years ago. Another development is increasing committee work between sessions. And some legislatures also are limiting the number of bills individual lawmakers can introduce, as former House Speaker Harold Brubaker (R-Randolph) did in North Carolina in 1995–96.

2. The Citizen Legislature Defined as Similar to the State Population in Its Demographic Mix

While some may consider a citizen legislature to be one in which the members hold other jobs, Sen. Foxx takes a different tack. She looks at life experience and such demographic variables as gender and race. To her, a citizen legislature includes a component of being broadly representative of the citizenry. In some ways, she says, the legislature is more representative of the citizenry than it was 20 years ago, when fewer blacks and women served.

Foxx also doesn't mind the rising tide of retirees. At least they have plenty of life and work experience. "Despite the criticism that we have too many retired people, I think we have pretty good balance in terms of professions," she says. In other words, it's not so much whether a legislator works at another job during the session; it's whether he or she has had real-world experience outside the halls of government. Many retirees fit this definition nicely, Foxx notes.

Occupations listed by members of the General Assembly in statistics maintained by the Center reflect a wide range of occupations, though neither a butcher, a baker, nor a candlestick-maker is in the mix. Indeed, the General Assembly is not a mirror image of the state's population. For example, only two of 170 legislators in the 1999–2000 General Assembly indicate they earn their living in manufacturing, while statistics maintained by the Employment Security Commission of North Carolina indicate that nearly a quarter of the state's non-ag-

ricultural work force earns their living in this fashion. Still, there is a mix of vocational experience, including two lawmakers who list their occupation as banking, 54 in business and sales, 10 educators, four employed in health care, and 22 employed in real estate (See Table 4, p. 22).

So the argument can be made that a true citizen legislature would reflect the state's diversity in terms of employment and employment history, gender, and race. However, this is not easily achieved. For example, women represent a majority of the population but only 18 percent of the General Assembly's membership (31 of 170 members). Mill workers or, for that matter, blue-collar workers of any stripe, are largely absent. It's hard to envision how the legislature could be truly representative from a demographic standpoint without a rigid quota system. The ancient Greeks maintained a citizen legislature through a lottery system. This is not what the solons have in mind when they talk about putting the lottery question to a vote of the people, but it is a way to preserve a citizen legislature.

Some legislators question whether proportional representation of demographic groups should even be a consideration. "Such categorization fails to take into account that a banker can be a good conservationist, a retired millionaire can be an advocate for the poor, and so forth," says Sen. Hamilton Horton (R-Forsyth). "One can represent a group without being a member of it. The qualifications of a legislator should be wisdom, ability, and fairness—not membership in a defined class."

Yet another idea that might allow more citizens to serve is a constitutional amendment creating term limits. The state Republican Party included a call for term limits in its 1994 Contract with the People of North Carolina, modeled on the national GOP's Contract with America.⁷ Legislation proposing constitutional amendments to institute term limits failed in the 1995 and 1997 sessions. While term limits could perhaps afford more citizens the opportunity to serve, it should be noted that North Carolina already experiences significant turnover among its legislators. Statistics kept by the N.C. Center for Public Policy Research over a 22-year period (1977–1999) indicate average turnover in each election to be one fifth of Senate seats and about one quarter of House seats.⁸ And with term limits in place, voters would in some cases have one less citizen to choose from when they go to the polling places—the one whose time is up due to term limits.

With time, the hue and cry for term limits⁹

Table 4. Trends in Legislators' Occupations

| Occupation | Year and Number of Members per Category | | | | | | | | | | | | | | | |
|----------------|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| | Senate | 1971 | 1973 | 1975 | 1977 | 1979 | 1981 | 1983 | 1985 | 1987 | 1989 | 1991 | 1993 | 1995 | 1997 | 1999 |
| Banking | | 1 | 1 | 2 | 2 | 2 | 3 | 1 | 2 | 1 | 1 | 1 | 2 | 1 | 1 | 0 |
| Business/Sales | | 17 | 13 | 14 | 18 | 13 | 20 | 19 | 21 | 19 | 15 | 16 | 12 | 15 | 14 | 15 |
| Construction | | 1 | 0 | 0 | 0 | 2 | 3 | 3 | 2 | 1 | 4 | 3 | 2 | 2 | 2 | 2 |
| Education | | 1 | 1 | 3 | 5 | 4 | 4 | 4 | 3 | 3 | 3 | 4 | 7 | 5 | 3 | 2 |
| Farming | | 4 | 3 | 2 | 4 | 3 | 5 | 6 | 6 | 6 | 5 | 6 | 7 | 6 | 7 | 8 |
| Health Care | | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 3 | 4 | 3 |
| Homemaker | | 0 | 1 | 1 | 0 | 2 | 0 | 4 | 2 | 0 | 1 | 0 | 1 | 2 | 1 | 1 |
| Insurance | | 2 | 5 | 5 | 5 | 6 | 7 | 6 | 4 | 4 | 2 | 1 | 2 | 2 | 2 | 1 |
| Law | | 22 | 19 | 15 | 14 | 13 | 10 | 14 | 17 | 21 | 20 | 17 | 18 | 16 | 19 | 19 |
| Manufacturing | | 2 | 3 | 4 | 2 | 3 | 3 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minister | | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| Real Estate | | 1 | 2 | 5 | 5 | 7 | 12 | 8 | 8 | 6 | 6 | 6 | 4 | 6 | 7 | 4 |
| Retired | | 4 | 2 | 2 | 0 | 3 | 4 | 6 | 6 | 4 | 6 | 6 | 8 | 7 | 8 | 10 |
| Self-employed | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |

House of Representatives

| | | | | | | | | | | | | | | | | |
|-----------------|--|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Banking | | 3 | 2 | 3 | 3 | 2 | 3 | 3 | 3 | 0 | 0 | 0 | 4 | 2 | 3 | 2 |
| Business/ Sales | | 49 | 28 | 35 | 41 | 37 | 43 | 45 | 45 | 43 | 37 | 33 | 34 | 31 | 39 | 39 |
| Construction | | 2 | 0 | 2 | 2 | 2 | 3 | 1 | 2 | 2 | 3 | 2 | 2 | 5 | 5 | 4 |
| Education | | 6 | 11 | 16 | 16 | 10 | 11 | 10 | 15 | 12 | 7 | 15 | 14 | 14 | 8 | 8 |
| Farming | | 17 | 14 | 20 | 22 | 22 | 18 | 24 | 16 | 12 | 8 | 11 | 12 | 10 | 8 | 8 |
| Health Care | | 0 | 2 | 3 | 3 | 6 | 3 | 5 | 4 | 4 | 4 | 7 | 10 | 5 | 3 | 1 |
| Homemaker | | 1 | 2 | 3 | 4 | 4 | 4 | 4 | 3 | 4 | 4 | 3 | 2 | 1 | 1 | 1 |
| Insurance | | 7 | 7 | 12 | 11 | 13 | 10 | 6 | 10 | 10 | 8 | 12 | 9 | 10 | 8 | 9 |
| Law | | 46 | 37 | 36 | 26 | 25 | 26 | 26 | 24 | 23 | 25 | 18 | 21 | 16 | 17 | 18 |
| Legislator | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 3 | 3 |
| Manufacturing | | 3 | 3 | 1 | 0 | 4 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 2 | 2 | 2 |
| Minister | | 3 | 3 | 1 | 1 | 0 | 1 | 3 | 7 | 4 | 4 | 2 | 2 | 2 | 2 | 1 |
| Real Estate | | 6 | 5 | 9 | 7 | 10 | 15 | 19 | 20 | 15 | 17 | 20 | 17 | 13 | 18 | 18 |
| Retired | | 7 | 4 | 5 | 8 | 6 | 15 | 12 | 13 | 17 | 22 | 28 | 24 | 30 | 23 | 28 |
| Self-employed | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 | 5 | 4 |

Note: Some legislators list more than one occupation; thus, the total number of occupations may be higher than the actual number of members. ©N.C. Center for Public Policy Research.

seems to have faded, though 18 states currently have them in place (See Table 3, p. 14). Rep. Larry Justus (R-Henderson) voted for term limits as he promised he would in his 1994 campaign, but he no longer supports them. Term limits cede too much power to administrative staff by turning out seasoned legislators, Justus notes. "The bureaucracy, who now run most things anyway, would be tickled to death [with term limits] because you never get your feet on the ground until two-thirds of your term is up."

Yet term limits still retain some support. Rep. Gene Arnold (R-Nash) says term limits would allow more legislators to move into leadership positions by breaking up political cliques that develop over time in the General Assembly and prevent qualified legislators from chairing or even serving on powerful committees. "I think term limits are still a good idea," says Arnold. One possible approach would be to extend legislative terms to four years but allow legislators to serve no more than two terms. Terms could be staggered to prevent losing too much experience at any one time. However, Rep. Ronnie Sutton (D-Robeson) simply says the voters should decide how long legislators should serve with no limit on terms.

3. The Citizen Legislature Defined as a Place Where All Citizens Can Afford To Campaign for Office and Serve

One might also look at the citizen legislature as a place where all citizens can afford to run for office and serve. As Arnold puts it, the term "citizen legislator" suggests that the ordinary Joe or Josephine can serve in the General Assembly. And Arnold says that's not the case. He cites the time demands and constraints on earning a living outside of legislative duties. But another factor that may be putting the legislature out of reach for most North Carolina citizens is escalating campaign costs. The average cost of winning a Senate seat in 1998 was \$110,638, compared to \$36,301 in 1993-94, an increase of 205 percent according to the North Carolina Forum for Research & Economic Education (NCFREE), a research group based in Raleigh. The average campaign cost for winning a House seat was \$49,522 in 1998, up from \$25,551 in 1993-94, an increase of 94 percent.

These costs are magnified by the fact that legislators have to run for office every two years. The financial risk inherent in undertaking a competitive campaign is enough to discourage many people of

average means from seeking office. And one of the primary means of raising campaign kitties and retiring campaign debt—fundraisers tapping lobbyists and Political Action Committees for contributions—may breed public cynicism about the legislative process.

One solution proposed to restore the average citizen's ability to run for the legislature is public financing of legislative campaigns.¹⁰ Among the primary advocates of public financing of legislative campaigns is Bob Hall of Democracy South in Durham, N.C., a research and advocacy organization that looks at the influence of money on state politics.

Hall believes that public financing and higher legislative pay are keys to enabling a broader array of citizens to serve in the General Assembly. The 1999 Clean Elections Act (HB 1402 and SB 882) was co-sponsored by 56 legislators and is eligible for consideration in the 2000 legislative session because it is budget-related. The act would provide legislative candidates public financing if they attracted small donations from a given number of registered voters in their districts. Candidates for the House would have to garner 250 contributions. For the Senate, with its larger districts, the trigger would be 500 contributions. "It does provide an alternative to candidates so they can get out of the money chase," says Hall.

Besides legislative races, candidates for statewide Council of State Offices, lieutenant governor, and governor also would be eligible for public financing if they attracted enough small contributions. Funding would be the average of the amount spent by the two top vote-getters in contested races for a particular office in the two most recent elections. Hall estimates the current cost of the program at about \$14 million, or less than a penny a day per voter.

However, no state in the nation currently provides such a program of public financing of legislative races, and there is some question as to whether public financing of state races could win the support of North Carolina citizens. In voluntary contributions on state income tax forms, contributions for the N.C. Non-game and Endangered Wildlife Fund have far outpaced contributions to political candidates.¹¹ Rep. Sutton expresses the sentiment thusly: "I don't want a tax dollar going to any county in this state to elect a legislator. I'm against that." Other legislators have argued that public financing would lessen the ability of challengers to offset the incumbents' advantage in name recognition and thus would hurt the competi-

tiveness of legislative races. In addition, business interests have opposed efforts to restrict campaign contributions as a constraint on their First Amendment rights.

"Public financing of political campaigns in North Carolina is an idea whose time has not come," says Phil Kirk, president of North Carolina Citizens for Business and Industry. "We have too many legitimate uses of tax money for higher priority issues, such as education, transportation, health care, and justice. This is an issue raised by the anti-business, anti-free enterprise crowd. They want to limit the influence of business people while doing nothing to reduce the unions' influence or [that of] other special-interest groups."

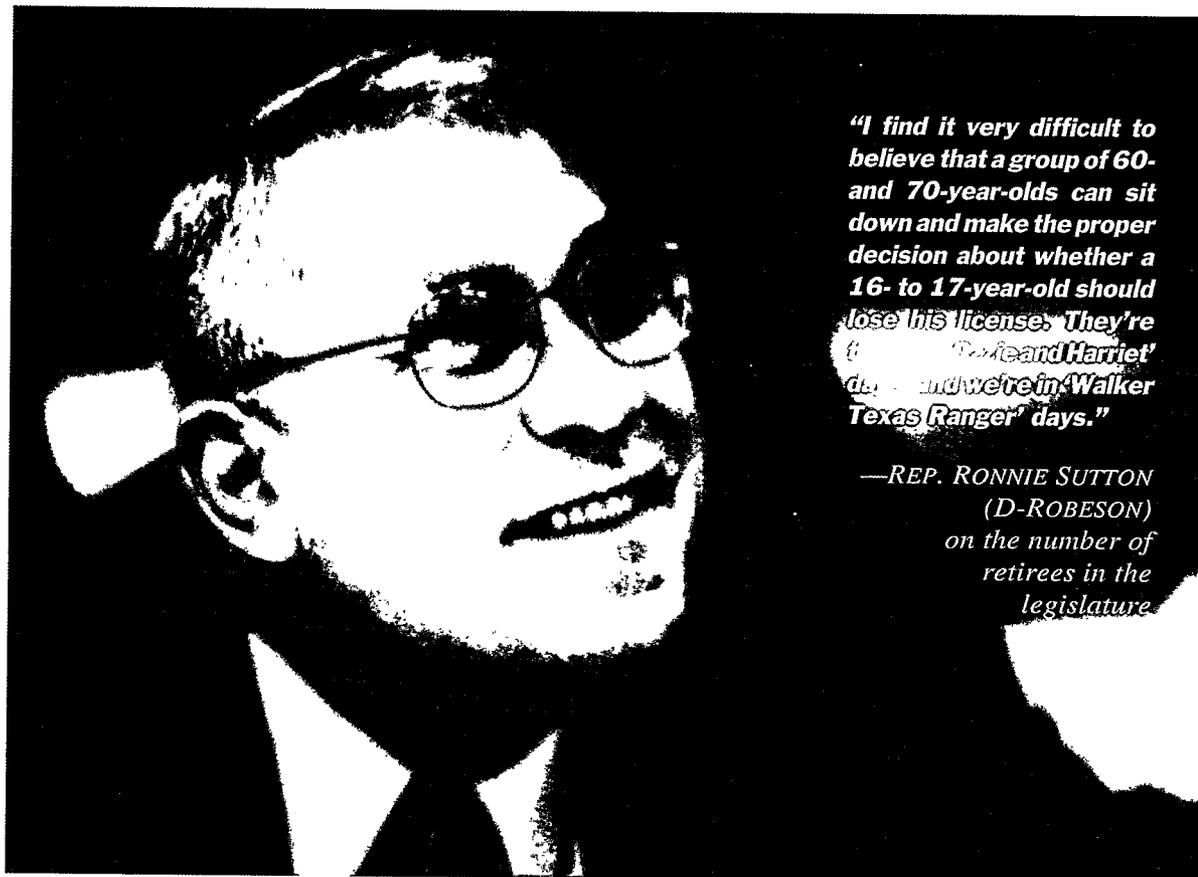
Adds Kirk, "Funds for political campaigns should be given by people who believe in the candidates and particular political parties. We spend more on potato chips in the U.S. than we do on political campaigns. Public financing is a solution for a problem which does not exist."

Another means of cutting the cost of campaigning is four-year terms.¹² Advocates argue that four-year terms would remove some of the pressure to be constantly campaigning and that less frequent campaigns could lower costs. Opponents,

however, contend that legislators might become less responsive to their constituents if they only had to face the voters every four years rather than the current two. Most states (34) have a mix, with two-year terms for House members and four-year terms for members of the Senate (See Table 3, p. 14). Four states have four-year terms for both the House and Senate, and 11 have two-year terms for members of both chambers. Nebraska has a unicameral legislature with four-year terms.

Four-year terms for legislators often get discussed in conjunction with session length limits. The Senate bill calling for a citizen referendum on a constitutional amendment to establish session length limits also includes a separate question on amending the constitution to establish four-year terms for legislators. "We consider that to be a citizen legislature package," says Cooper. "The constant campaign process is also a deterrent [to serving in the General Assembly]. When we're sworn in, we're less than a year away from filing for re-election."

Cooper believes four-year terms would be appropriate for the Senate because of the larger districts senators represent and "maybe for the House." Senate members in single member dis-



"I find it very difficult to believe that a group of 60- and 70-year-olds can sit down and make the proper decision about whether a 16- to 17-year-old should lose his license. They're the kind of people that Harriet de... and we're in 'Walker Texas Ranger' days."

***—REP. RONNIE SUTTON
(D-ROBESON)
on the number of
retirees in the
legislature***

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 97

Short Title: Legislator Pay Tied to State Employees.

(Public)

Sponsors: Representatives Sutton, Yongue, Bonner (Primary Sponsors); Barefoot, Bridgeman, Buchanan, Goodwin, Kiser, Saunders, and Wainwright.

Referred to: Appropriations.

February 17, 1999

A BILL TO BE ENTITLED

1 AN ACT TO RESTORE THE STATUTE PROVIDING FOR LEGISLATORS TO
2 RECEIVE THE SAME ACROSS-THE-BOARD PAY INCREASES AS STATE
3 EMPLOYEES BEGINNING WITH THE 2001 SESSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 120-3(b) reads as rewritten:

6 "(b) Every other member of the General Assembly shall receive increases in
7 annual salary only to the extent of and in the amounts equal to the average increases
8 received by employees of the State, effective upon convening of the next Regular
9 Session of the General Assembly after enactment of these increased amounts, except
10 no such increase is granted upon the convening of the 1997 Regular Session of the
11 General Assembly. amounts. Accordingly, upon convening of the 1997 2001 Regular
12 Session of the General Assembly, every other member of the General Assembly shall
13 be paid an annual salary of thirteen thousand nine hundred fifty-one dollars (\$13,951)
14 payable monthly, and an expense allowance of five hundred fifty-nine dollars
15 (\$559.00) per month."

16 Section 2. This act is effective when it becomes law.
17

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

HOUSE BILL 1060
Committee Substitute Favorable 5/20/99

2

Pay.

(Public)

April 15, 1999

A BILL TO BE ENTITLED
LONGEVITY PAYMENTS FOR MEMBERS OF THE
AND TEMPORARY STAFF OF THE GENERAL

North Carolina enacts:

3 is amended by adding a new subsection to read:
4 General Assembly shall receive as longevity pay an
5 eight-tenths percent (4.8%) of the annual salary set
6 monthly after five years of service, nine and six-tenths
7 percent (14.4%) after ten and four-tenths percent (14.4%)
8 after fifteen years of service, and two-tenths percent (2.0%)
9 after twenty years of service.
10 Services Commission shall provide longevity
11 payments to members of the General Assembly and
12 temporary staff in the same manner as provided for
13 members of the General Assembly.

14 This act becomes effective upon the convening of
15 the next Regular Session of the General Assembly.
16 This act becomes law.

tricts represent 132,649 citizens each, while House members represent less than half as many at an average of 55,270. Of the 34 states that differentiate in term length between House and Senate members, all provide four-year terms for the Senate and two-year terms for the House. Hoyle, however, the principal sponsor of the legislation, says he is more interested in limiting session length and would be willing to let go of four-year terms. "We did it that way to put some debate on the issue, but I would not want session limits not to pass because of people not being happy with four-year terms." Hoyle's concern about citizen support for such a measure may be well placed. North Carolina voters soundly rejected four-year terms for legislators (24 percent for, 76 percent against) when the question was on the ballot in June 1982.

Among the supporters of four-year terms for legislators is North Carolina Citizens for Business and Industry, the statewide chamber of commerce. "NCCBI supports four-year terms for the House

and Senate as a way to reduce campaign costs," says NCCBI President Kirk. "It recognizes the political difficulties in getting this change enacted into law."

4. The Professional Legislature as a Body of Elected Officials Working Full-Time for Adequate Compensation

Yet another means of broadening participation so that a wider variety of citizens could afford to serve would be higher pay. Legislators haven't had a raise since 1994 and raising pay is always politically challenging. Rep. Ronnie Sutton (D-Robeson) could not get a vote on his bill filed in the 1999 session to allow state legislators the same pay raise given to other state employees. "It was not heard and died in session," says Sutton. "There weren't enough people on either side of the aisle who wanted to get into a discussion of a pay raise for legislators. It was too hot an issue." Yet

another bill to raise legislative pay—this one filed by Rep. Monroe Buchanan (R-Mitchell) to grant longevity pay to legislators (House Bill 1060)—also went nowhere fast, despite having 50 co-sponsors. As it stands, it takes a special act of the General Assembly to raise legislative pay, and it's a step nobody seems willing to take, so legislative pay seems stuck in a stalemate.

Meanwhile, legislators such as Sutton, who tries to maintain a law practice in Pembroke, are stuck in a struggle to earn a sufficient living—ergo, the rising tide of retirees mentioned by Sutton and several others. Sutton fears that a legislature that is too old may be out of touch with the times. "I find it very difficult to believe that a group of 60- and 70-year-olds can sit down and make the proper decision about whether a 16- to 17-year-old should lose his license," says Sutton. "They're thinking 'Ozzie and Harriet'

days, and we're in 'Walker Texas Ranger' days."

To Sutton, the notion that North Carolina currently has a citizen legislature is wishful thinking. That's because he envisions a citizen legislature as one in which every citizen can take the opportunity to serve if elected. That currently is not the case due to long hours and low pay, Sutton says. "It is an absolute myth that every citizen can become a legislator," says Sutton.

Rep. Larry Justus (R-Henderson) agrees with that assessment. "I think it's a charade to call us a citizen legislature," says Justus. "I'm one of those people who favor a full-time legislature. North Carolina is too big both in population and the budget we spend not to have continual oversight over that budget."

Although Justus acknowledges that many people would consider the current legislature to be a citizen legislature, he says the job demands "full-

Current Pay for Rank-and-File Legislators

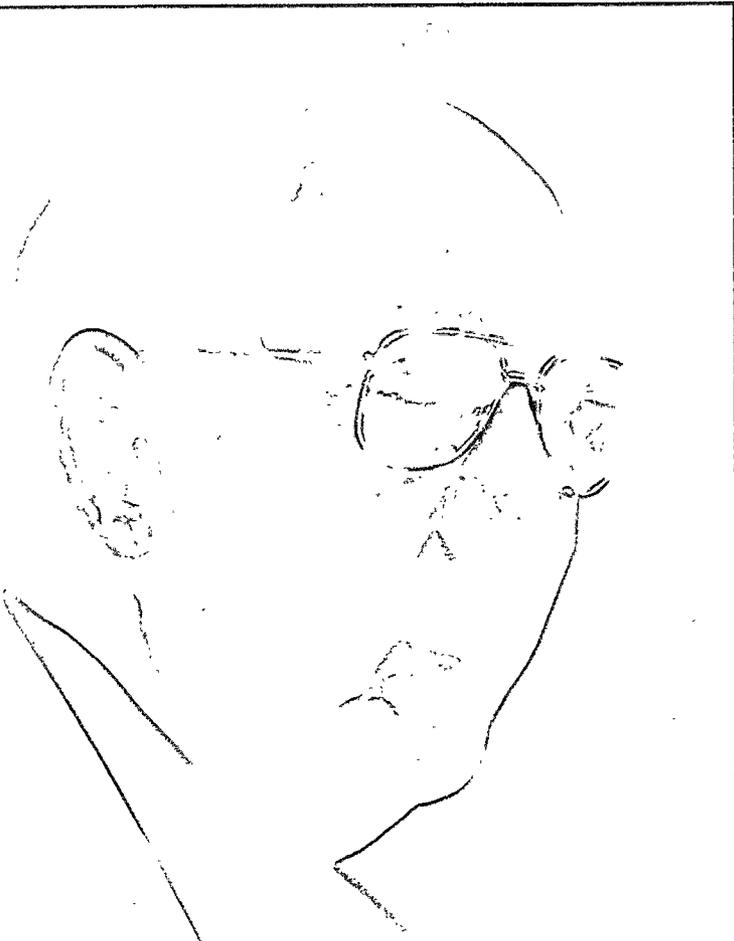
Members of the North Carolina General Assembly draw their compensation from several different sources. These are: salary, \$13,951 per year; subsistence pay, \$104 per calendar day when the legislature is in session or when legislators are on official legislative business; expense allowance, \$6,708 per year; and mileage reimbursement, 29 cents per mile.

One way to look at reimbursement for legislative service is to combine salary, subsistence pay, and expense money for a given year. A caveat is that subsistence pay and expense money generally go to cover real costs of serving in the legislature. For lawmakers who do not live close enough to Raleigh to commute on a daily basis, there is the cost of living in Raleigh while maintaining a residence in the home district. This consumes the subsistence pay. More active legislators usually will draw more subsistence pay because they are carrying out official legislative duties that occur when the General Assembly is out of session—such as participating in legislative study committees. And expense money, which like the per diem subsistence pay is counted as income by the Internal Revenue

Service, is often used to communicate with constituents or provide other constituent services.

In 1997, the latest session year for which figures have been compiled, the highest paid rank-and-file legislators in the Senate were Sen. Fountain Odom (D-Mecklenburg) and Sen. Bob Martin (D-Pitt), at \$45,411, including salary, expense allowance, and per diem supplement. In the House, the highest paid rank-and-file member was Rep. Michael Decker (R-Forsyth) at \$46,555. The figures were driven higher in part by the length of session, which—at 212 days—was the longest on record. That's because legislators receive their per diem supplement of \$104 per day every calendar day that the legislature is in session. An average length long session in the 1990s totaled 184 days, which would have produced nearly \$3,000 less in per diem supplements than did the 1997 session. Legislators have not granted themselves a pay raise since the 1994 session, when they raised legislative salaries across the board and added the expense allowance to the base upon which legislative pension benefits are calculated. The salary increase took effect in 1995.

—Mike McLaughlin



Current legislative duties demand "full-time work for part-time pay."

**—REP. LARRY JUSTUS (R-HENDERSON)
on compensation and service
in the General Assembly**

time work for part-time pay," adding, "That limits the type of legislature you can have." Justus contends that the current General Assembly is tilted toward "the independently wealthy, those subsidized by law firms or insurance companies, or something like that, and retirees like myself."

Rank and file legislators receive a salary of \$13,951 annually, a figure that has not increased since 1994. Added to this is an expense allowance of \$6,708, plus subsistence pay of \$104 per day, seven days a week when the legislature is in session, and travel expense reimbursement at 29 cents per mile. Long sessions have averaged 184 calendar days during the 1990s. At current compensation rates, legislators would have drawn \$33,087 in salary and subsistence pay for an average-length

long session of 184 calendar days, plus mileage reimbursement for one round trip to Raleigh each week.

In addition, legislators receive their per diem subsistence pay and mileage reimbursement for any study commission meetings they attend when the legislature is out of session. Many legislators serve on multiple study commissions. For example, Sen. Fletcher Hartsell (R-Cabarrus) has served on as many as a dozen study commissions in a given year. Legislators do not have to account for how they spend the subsistence pay, nor do they have to account for a \$6,708 per year expense allowance. Both are considered income by the Internal Revenue Service and taxed as such. However, there is a great deal of expense involved in serving in the legislature—particularly for those lawmakers who live too far from Raleigh for the daily commute. Pay for legislative service is clearly part-time.

Sutton believes legislative pay currently is inadequate to attract a broad cross section of the citizenry into legislative service. He believes the compensation should be about \$50,000 with adequate expense money to cover room and board in Raleigh. Sutton predicts that kind of pay would produce a different kind of General Assembly. "You'd get younger members—progressive, thinking members, and the legislation leaving Raleigh

would be much better."

Statistics maintained by the N.C. Center for Public Policy Research do indicate that the make-up of the General Assembly is changing. The number of legislators engaged in farming, for example, has dropped from 30 in 1983 to 16 in 1999.¹³ This is in part due to the fact that North Carolina is shifting from a predominantly rural, agricultural state to one more urban or suburban in character. But that doesn't explain the fact that the number of educators is down by more than half—from 21 in 1977 to 10 in 1999, or the steady, upward trek in the number of retirees. Rep. Richard Moore (D-Cabarrus), for example, had to switch from a job in the classroom to one in the superintendent's office in 1998, when the session extended into the school year and

adjourned on October 29. Moore has since resigned from teaching.

Such drawn out sessions are fueling the call for strict deadlines and session-length limits to be set in the constitution, but Justus and Sutton disagree. Far from thinking that deadlines help, Justus believes the worst laws get rushed onto the books when cutoff dates are looming. Session limits would exacerbate the problem, Justus says. "What's going to happen is, everything the majority party wants is going to be crowded into the last few days," says Justus. "You'll get bad legislation, and good legislation will be left on the table."

Justus envisions a professional model in which legislators meet in a continuous cycle of four- to six-week sessions and four- to six-week breaks to catch up on office work and provide constituent services. While he knows of no other state that operates on such a plan, Justus says this would both improve the legislative process and spread the workload more efficiently. "You wouldn't have all these silly, arbitrary deadlines that are used to kill good legislation and pass some poor legislation," says Justus. As deadlines approach, Justus notes, niceties like reading legislation before you vote sometimes get tossed out the window. "It hasn't been too long since we had our 25½ hour, round-the-clock session, and you know people didn't know what they were voting for," says Justus, "and there were walking zombies on both sides."

Moving to a professional legislature, Justus says, would cost "very little. The only additional cost is the secretaries and a little extra per diem for the [legislators]." As it stands, Justus says North Carolina operates one of the least expensive legislatures in the nation and should probably be spending more to ensure the state has a General Assembly that is representative of its citizenry. Indeed, North Carolina ranks 47th in the nation in per capita spending on its legislature, according to data provided by the National Conference of State Legislatures. The state spent \$3.15 per citizen in 1997, the latest year for which figures are available, above only Ohio, at \$2.78; Tennessee, at \$2.77, and Georgia at \$2.46. "If we really want to do a good job, we're going to have to start paying the General Assembly a good salary," says Justus. "John Q. Public—no matter how well qualified he is—is too busy earning a living to go to Raleigh and do the people's business."

Sutton stops short of using the term "professional" to describe his vision of the legislature. He would raise pay to something resembling full-time and let the sessions run to six to seven months per

year, as they are wont to do. Sutton also would remove the filing deadlines that currently exist. These, he maintains, create artificial bottlenecks and lead to wasted time that could be spent on substantive legislation. "I would rather see longer sessions but have the rules changed to accommodate those longer sessions," notes Sutton. Like Justus, Sutton points to the crush of bills that get forced through the legislature to meet crossover deadlines, often with no time to study them and cast an informed vote. "It's asinine, in my opinion," says Sutton. "We spend one third of our time redoing last year's legislation." Once the deadline passes, new legislation is severely constrained, but the session drags on over three or four issues that rank-and-file legislators can do little about, Sutton says.

Conclusion

While North Carolina has prided itself on its "citizen," or part-time legislature, there is a growing consensus that the General Assembly cannot continue to meet 200-plus days a year and still claim that title. Yet time commitment and workload to the contrary, most of the discussion has been around preserving a citizen legislature rather than continuing to evolve toward a full-time legislature. As Hoyle puts it, "The people don't want us in Raleigh that long." Controlling the length of sessions may be one way to preserve a citizen legislature if that is desirable. Advocates believe it would at least slow the evolution toward a full-time or professional legislature. Other ideas such as an efficiency study or new ways of structuring legislative salary may also be worth exploring if the goal is preservation of the citizen or "part-time" legislature. "Otherwise," notes McMahan, "retired people, people with no full-time employment, and people who do not need to work are going to be members of the General Assembly."

A number of lawmakers see danger in this trend, and the potential for the average North Carolina citizen to get left behind. Hoyle believes that much of what is good about the state and its government flows from a tradition of part-time citizen service in the legislature. "It's part of our heritage and tradition we've had in North Carolina. It's served us really well, and we have a great state. One of the reasons is, we have a true citizen legislature."

But does North Carolina indeed have a "citizen" legislature? It depends on how one defines it. In the sense of a significant number of legislators holding down other jobs, the answer may be

yes, though more and more retirees are serving in the legislature, and three are even listing their occupation as legislator. If one considers a citizen legislature to be a cross-section of the citizenry in terms of occupations, income, and other demographic variables such as gender and race, the answer clearly is no. The legislature is whiter, more male, and certainly more affluent than the population as a whole. As for a legislature in which all citizens can afford to serve, that is less and less the case as campaign costs continue to soar and legislative pay stagnates, strengthening the claim of part-time pay for full-time work.

At least five markers indicate North Carolina is drifting toward a full-time legislature. These are: (1) longer sessions; (2) more special sessions to deal with issues that arise when the General Assembly is out of session; (3) more study commissions convening between sessions; (4) appropriations committees meeting between the two most recent sessions; and (5) special investigative committees such as recent probes into education and possible corruption in the Department of Transportation taking a life of their own both during and between sessions. At present, there is decision by drift, with a march toward full-time work but not full-time pay because the legislature does not want to make a decision one way or the other.

Thus, the case for decline of the citizen legislature is a strong one. What to do to preserve the citizen legislature, and even whether to preserve it, depends on how one defines the term "citizen legislature." If it's a part-time legislature in which members work other jobs, the answer may be limits on session length. If the citizen legislature means a legislature representative of the citizenry, the answer may be higher pay. If a citizen legislature means one in which all citizens can afford to serve, then public financing of legislative campaigns may be part of the answer. Again, higher pay that recognizes full-time work might also enable more people to serve, though absent public finance, the extra pay and benefits could bid campaign costs even higher.

It may be that few legislators would go so far as to label the citizen legislature a myth or a charade. More legislators likely would subscribe to a characterization of the citizen legislator as endangered but not extinct—or in the middle ground described by Kurtz of the National Conference of State Legislatures. And there are those who wish to preserve this species for posterity.

But addressing preservation of a citizen legislature is a three-step process involving: (1) agree-

ing on what a citizen legislature is; (2) deciding whether the citizen legislature is worth preserving, and; (3) determining what it would take to preserve it. Until the legislature comes to agreement on these three questions, it will be stuck in the middle—drifting toward full-time status, but with pay, benefits, and staff support lagging at the part-time level. That will serve neither the North Carolina citizens nor the members of the General Assembly well. A better course would be to engage in some intentional decisionmaking about what the institution should be and then to set about reshaping it. □

FOOTNOTES

¹ For a previous discussion of the disappearing citizen legislator, see Chuck Alston, "In the Legislature: The Citizen Legislature—Fact or Fable?" *North Carolina Insight*, North Carolina Center for Public Policy Research, Raleigh, N.C., Vol. 8, No. 2 (November 1985), pp. 50–52.

² Karl Kurtz, "Understanding the Diversity of American State Legislatures, Extension of Remarks," National Conference of State Legislatures, Summer 1992, p. 1. Table categorizing legislatures updated Nov. 1, 1996.

³ *Ibid.*, p. 3.

⁴ Statistics on legislators' occupations are taken from Carolyn A. Waller, *Article II: A Guide to the 1999–2000 Legislature*, North Carolina Center for Public Policy Research, Raleigh, N.C., March 1999, p. 213. Statistics prior to 1979 are taken from Lori Ann Harris and Marianne M. Kersey, *Article II: A Guide to the 1987–88 N.C. Legislature*, N.C. Center for Public Policy Research, April 1987, p. 216. Additional information is taken from "Length of Sessions Affects Demographics of Legislature, Says Policy Center," a news release by the N.C. Center for Public Policy Research distributed April 1, 1999, pp. 1–2.

⁵ Senate Bill 406 of the 1983 session.

⁶ William T. Pound, "Legislatures: Our Dynamic Institutions," *State Legislatures*, National Conference of State Legislatures, Denver, CO, January 1993, p. 22.

⁷ Danny Lineberry, "In the Legislature: The 1995 Legislature in Retrospect—Republican Lawmakers Work to Deliver on Their Contract," *North Carolina Insight*, Vol. 16, No. 3 (May 1996), pp. 102–118.

⁸ Carolyn A. Waller, *Article II: A Guide to the 1999–2000 N.C. Legislature*, note 4 above, p. 212. Averages calculated by the authors.

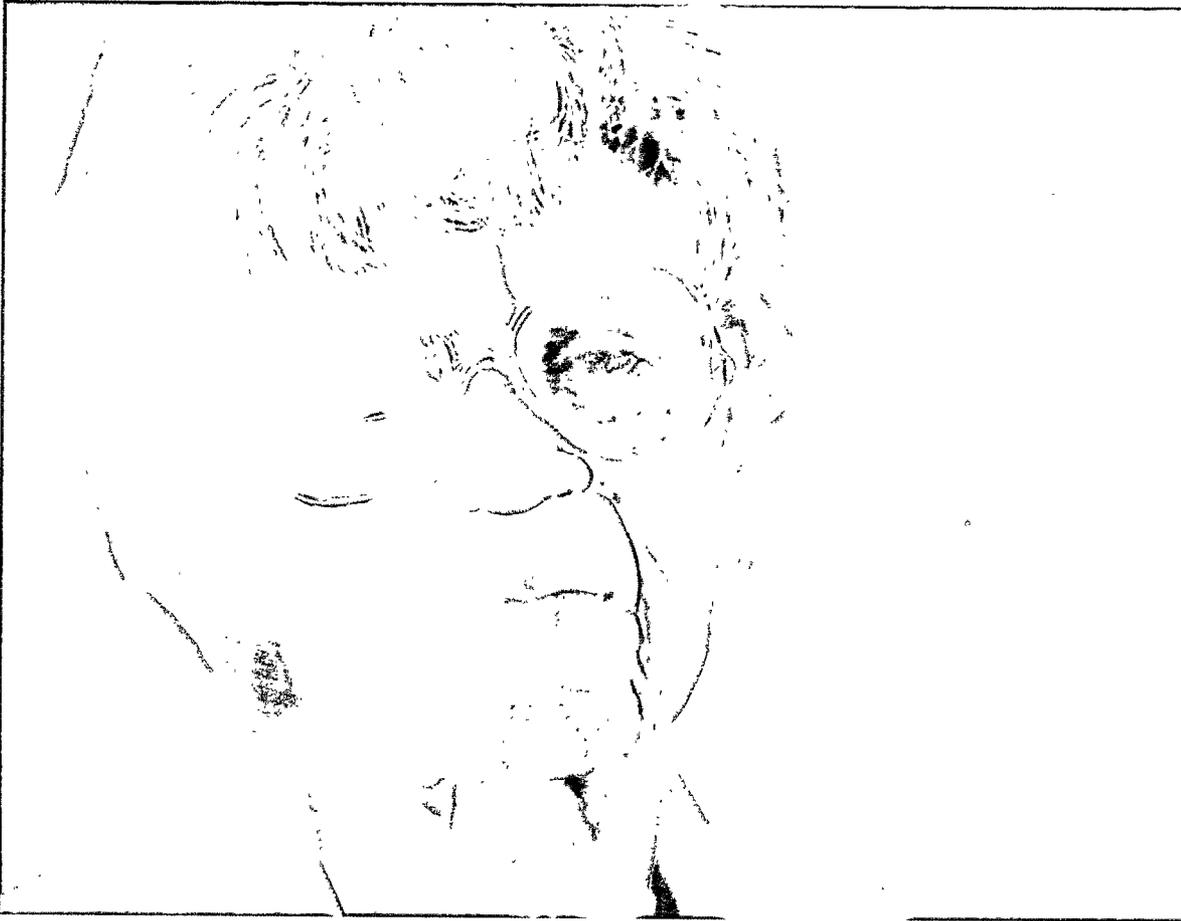
⁹ For more on the pros and cons of term limits for elected officials, see "Term Limits: Needed Reform? Or Populist Ploy?" *North Carolina Focus*, N.C. Center for Public Policy Research, Raleigh, N.C., 1996, pp. 195–197. Article reprinted from the December/January 1996 edition of *Campaigns & Elections* magazine, Washington, D.C., by permission in accordance with their reprint policies.

¹⁰ For more on this topic, see Ann McColl and Lori Ann Harris, *Public Financing of State Political Campaigns: How Well Does It Work?* North Carolina Center for Public Policy Research, Raleigh, N.C., 1990, pp. 7–40.

¹¹ *Ibid.*

¹² For more on the pros and cons of four-year terms for legislators, see the pro-con discussion "Four-Year Terms for Legislators?" *North Carolina Focus*, North Carolina Center for Public Policy Research, Raleigh, N.C., pp. 199–208.

Karen Tam



N.C. Legislature Acts on Predatory Lenders and High-Cost Loans, But Was It Enough?

by Anne Bullard



Summary

The 1999 General Assembly passed a bill regulating “predatory lending”—the practice of lending money for home loans based on unethical lending standards. Some consider the bill to be among the most aggressive in the nation in curbing these kinds of loans. Consumers like Dezell Wiley are the reason state lawmakers acted. Targeted for repeated refinancing—or “flipping” in the industry parlance—this 89-year-old Durham resident now owes more than \$70,000 on a house she purchased for \$13,500 in cash from an insurance settlement in 1967.

A bill enacted overwhelmingly by the 1999 N.C. General Assembly attempts to put the brakes on the type of lending that got Wiley in financial trouble. The new law: (1) defines high-cost loans and declares that lenders cannot make such loans without regard to the borrower’s ability to pay; (2) outlaws the practice of flipping, or repeatedly refinancing loans when the new loan is of no benefit to the buyer; (3) prohibits lenders from financing credit-life, disability, or unemployment insurance policies with a single lump total added to the amount of the loan (these policies must instead be paid on a monthly basis); and (4) outlaws penalties for earlier-than-scheduled payoffs of home loans of \$150,000 or less.

Critics say these changes will dry up available funds for people with less than sterling credit. But advocates say there is still plenty of profit to be made, and some argue that even greater reforms are needed. Additional legislation introduced in the 1999 session would require mortgage brokers and mortgage bankers to be licensed by the State Banking Commissioner and outlaw “yield spread premiums,” which are fees paid to brokers who sign consumers to loans with interest rates that are higher than those for which they might legitimately qualify. This additional bill is eligible for consideration by the 2000 General Assembly.

**Durham homeowner Dezell Wiley—mired in debt from aggressive lenders.
(photo above left)**

For nearly 20 years, Dezell Wiley lived mortgage-free in her tidy brick home on Durham's South Roxboro Street. The three-bedroom house, just down the hill from C.C. Spaulding Elementary School, represented a sad legacy. Wiley bought it with life insurance proceeds a year after the untimely death from cancer of her son, Harold, an Air Force veteran. Wiley paid \$13,500 cash for the house in 1967.

Now, at age 89, Wiley owes more than \$70,000 on the same house, and she must spend almost all of every Social Security check to make the \$742.52 monthly payment. It is a debt the retired American Tobacco Company worker will never be able to repay.

How did she get so far in the red? Repeated refinancings—five of them between 1994 and 1997—each rolled new closing costs and other, questionable fees onto the previous debt. In the shady trade of predatory lending, this practice of serial refinancing is known as “flipping.” “These people were chewing me up and spitting me out, and I didn't even know it,” Wiley says.

Wiley's walk down the long path toward losing the equity in her home started with two legitimate loans from First Union National Bank—first in 1984, when she borrowed \$12,000 against the house, and again in 1989, when she refinanced that loan. After the second loan went through, finance companies began mailing Wiley solicitations, promising cash to help her consolidate her other bills. The money she got out of the refinancings “wasn't all that much, but it would help pay a bill,” she explained.

But at no time when her loan was flipped did Wiley receive more cash than the closing costs of her new loan, says her lawyer, Melinda Lawrence. Wiley entered into the loans without reading the fine print, which at various times included up-front charges for credit life insurance policies,¹ as well as balloon payments (see Glossary) due when the loans matured, and other fees all financed over the

“Basically, she's lost \$40,000 in equity over the last 10 years, and not gotten anything for it.”

—MELINDA LAWRENCE, ATTORNEY FOR
DURHAM HOMEOWNER DEZELL WILEY

life of the loans. The loan balance kept escalating. Over the 15-month period between September 1996 and December 1997, Wiley refinanced her home three times and paid various fees and closing costs totaling more than \$11,000, all of which was tacked onto the loan balance. “Basically, she's lost \$40,000 in equity over the last 10 years, and not gotten anything for it,” says Lawrence, a Raleigh attorney.

***“It sounded pretty good,
especially near Christmas,
when you want to get a little
extra money.”***

—DURHAM HOMEOWNER DEZELL WILEY,
VICTIM OF AGGRESSIVE LENDING

Wiley's current loan came from Associates First Capital Corporation, a Texas-based lender that is the subject of an investigation launched in July 1999 by N.C. Attorney General Mike Easley. The Associates was owned for 80 years by Ford Motor Credit Corporation until it was spun off in 1998. The company began sending Wiley pamphlets within weeks after a previous refinancing, offering her a deal that would allow her to skip her December 1997 house payment. “It sounded pretty good, especially near Christmas, when you want to get a little extra money,” she says.

That \$72,241 loan transaction proved costly: for the privilege of skipping that \$700 payment, Wiley paid \$1,367 in closing costs that were rolled into the amount of the 11.29-percent loan. And her fast-growing indebtedness increased by another \$2,500. After a few months, Wiley says, she began receiving phone calls from the company's Charlotte office, claiming incorrectly that she was “behind” in her house payments and would have to pay additional fees. Wiley argued with the callers, and even got a teller at her bank to verify that she had deposited the money for the bank draft on time. The worrisome phone calls continued each month, stopping only after Wiley consulted a lawyer, “when [the loan officer] found out I had a little more sense than he thought I had,” she says.

After reading a local newspaper article about predatory loan practices that cited a case involving The Associates, Wiley called The Center for

Anne Bullard is a writer and editor living in Raleigh, N.C.

Community Self-Help, a Durham-based organization that also was mentioned in the news story. Officials at the non-profit agency, which tries to help poor people gain a financial footing through home ownership, put her in touch with attorney Lawrence.

Prime Time for 'Subprime'

Unfortunately, Wiley's story is hardly unique, except for the details. Martin Eakes, Self-Help's founder and CEO estimates that 50,000 North Carolina families are victims of predatory lending. The Coalition for Responsible Lending argues in handouts that predatory lenders have "stolen" \$300 million in equity from N.C. homeowners and predicts that borrowers may lose another \$2 billion in equity over the next several years. Burgeoning consumer debt, tax law changes that eliminated the tax deductibility of other types of loans, and the 1981 deregulation of mortgage lending in

North Carolina helped open the door to mortgage brokers and lenders, some of them unscrupulous.

Predatory loans strip cash-poor, equity-rich homeowners of their only form of wealth—the equity in their homes. As in Wiley's case, many of the loans are marketed as second mortgages, or home equity loans, to unsophisticated borrowers living in poor neighborhoods. Elderly homeowners, minorities, or borrowers with low incomes and/or credit problems who might not qualify for a conventional loan are favorite targets. Lenders often extend "subprime" (see Glossary) credit to people with B or C credit ratings at interest rates higher than the rates available to borrowers with preferred A or A- ratings, though they are also happy to lend to people with stronger credit ratings who agree to the terms. While most subprime loans are legitimate, unethical lenders sometimes lure consumers into predatory loans with telephone calls or mail solicitations promising money for a vacation, home repairs, or debt consolidation.



Karen Tam

Borrowers often find themselves trapped in that ruinous cycle of refinancing known as "flipping," each time with high closing costs and other fees that only increase their debt. This cycle frequently throws the borrower into a downward spiral that ends in foreclosure.

"It's a dance that basically crucifies consumers," says Eakes. "It just digs people into a hole so deep they can never get out." Eakes estimates that fully one-fourth of all subprime loans contain predatory provisions.

Predatory loans "are designed to fail," claims the Coalition for Responsible Lending, a group representing almost 3 million North Carolina members of various organizations like the NAACP (National Association for the Advancement of Colored People), AARP (American Association of Retired Persons), and the N.C. Association of Realtors. The coalition reports that the subprime market has grown as much as 600 percent since 1994, according to some estimates.

This year, the N.C. General Assembly took a first step toward curbing unscrupulous lending practices, enacting legislation that state Attorney General Mike Easley hailed as "the toughest bill against predatory lending in the country." Senate Majority Leader Roy Cooper, who hopes to succeed Easley as attorney general in the 2000 elections, sponsored Senate Bill 1149.² It sailed through the Senate on a vote of 48-1 and then passed the House 110-2. Other states monitored the progress of the legislation, as did subprime mortgage lenders across the U.S.

"We're going to be the trend-setter in the nation," says Cooper, a lawyer from Rocky Mount. "I think this bill will go a long way toward cleaning up predatory lending in North Carolina."

Opponents are less sanguine about the legislation's effects. Subprime lenders note that they frequently offer borrowers with marred credit their only chance at home ownership. The loans are riskier, the lenders say, and creditors willing to

"We're going to be the trend-setter in the nation. I think this bill will go a long way toward cleaning up predatory lending in North Carolina."

—SEN. ROY COOPER (D-NASH),
SPONSOR OF LEGISLATION

Glossary of Terms in Predatory Lending

Balloon payment—A larger final payment due at the end of a financing period that is required in order to pay off a loan. A large balloon payment could prevent a borrower from being able to complete scheduled payments and thus force the borrower to refinance, incurring additional fees.

Flipping—The practice of repeated refinancing of loans where there is no benefit to the borrower. Predatory lenders frequently seek to refinance or "flip" their loans only months into the life of a mortgage.

High-cost home loan—A mortgage loan of \$240,000 or less is defined as high-cost if it meets any of the following conditions:

- (1) Origination costs (points or prepaid interest plus fees) total more than 5 percent of the loan amount;
- (2) The interest rate is at least 10 percent higher than the yield on current U.S. Treasury securities;
- (3) It authorizes a prepayment penalty for paying off a loan early of greater than 2 percent or for longer than 30 months.

Legislators attached special conditions to home loans in this category in an effort to discourage lenders from making them.

take the risk deserve higher returns. The new law, they fear, will dry up credit for poor borrowers.

"I think you will see many lenders fearful of making loans," Laura Borrelli, president of the National Home Equity Mortgage Association, told a national trade publication shortly after Senate Bill 1149 received approval. "The potential for litigation, not just for subprime lenders but for all lenders, is staggering."³

Robert E. Lamy, assistant professor at the Babcock Graduate School of Management at Wake Forest University, warned in a reader's perspective column in *The News & Observer* of

Packing—The practice of adding often-unnecessary fees to a home loan contract. These might include insurance premiums, or poorly defined fees for “processing,” “flood certification,” or “tax service.”

Prepayment penalties—Charges assessed by the lender for early payment of a loan or paying a loan in full before it is due.

Subprime lenders—Lenders who extend credit to low-income clients or those with marred credit ratings. Their clients often have B or C credit ratings, not the preferred A or A-. Subprime refers to the credit rating of the borrower, not the interest rate. Subprime lenders believe they are serving a market that might otherwise have too little access to credit, though interest rates charged to borrowers are higher than those charged by traditional banks.

Yield-spread premium—The fee a mortgage broker receives from a lender for signing a borrower to a loan carrying a higher interest rate than the rate for which the borrower might qualify.

Raleigh, N.C., that legislators “may wind up hurting the very citizens they’re trying to help.”⁴ Lamy warns that excessive regulatory oversight and restrictions on interest rates and fees may dry up credit for consumers with cash flow problems who are not being served by traditional banks. He characterizes the subprime mortgage market as “an excellent example of how competitive capital markets successfully evolve” and describes some of the more aggressive lenders as “a few bad apples.”

Cooper discounts the concern about limiting access to capital for cash-strapped consumers. “I

tend to think it will not reduce credit,” he says. “Lenders will make plenty of profit and will still want to make these [subprime] loans.”

Senate Bill 1149 amends state usury laws regulating lending in several ways. It:

- Defines “high-cost home loans” as those of \$240,000 or less where fees and discount points intended to lower the interest rate of the loan exceed 5 percent of the principal amount, or where the annual percentage rate is more than 10 points higher than the yield on current U.S. Treasury securities (about 15.75 percent at the time the bill passed). Lenders cannot make high-cost loans without regard to the borrower’s ability to repay. Up-front fees cannot be financed on these loans, and borrowers must undergo credit counseling through a counselor certified by the N.C. Housing Finance Agency before closing. Also, balloon payments required to pay off a loan after a specified period that total more than twice the amount of a regular payment are prohibited on such loans. Cooper says lawmakers wanted to discourage lenders from making high-cost loans by placing what he describes as “onerous” restrictions on them.
- Outlaws “flipping,” the practice of refinancing when the new loan has no benefit to the borrower. This provision applies to all mortgage loans issued in North Carolina, not just high-cost loans. Many times, predatory lenders refinance their own loans after a matter of months or a few years, adding fees that boost their profits. Many times, they promise lower monthly rates, but the savings are illusory. “This can happen two or three times, and pretty soon the homeowner has no equity in the house,” Cooper says.
- Prohibits lenders from financing single-payment credit life, disability, or unemployment

“I think you will see many lenders fearful of making loans. The potential for litigation . . . is staggering.”

—LAURA BORRELLI, PRESIDENT OF
THE NATIONAL HOME EQUITY
MORTGAGE ASSOCIATION

ment insurance policies. Unethical lenders frequently “pack” their loans with such charges, often unnecessary, driving up the loan amount and thereby increasing monthly payments over the life of the loan. Policies paid on a monthly basis would still be permitted. North Carolina would become the first state to halt the financing of the policies in mortgage loans when this provision takes effect next July 1, 2000. A legislative study commission has been appointed to study the effects of the single-payment policy prohibition.

- Prohibits prepayment penalties—charges for paying off a loan before it is actually due—on home loans of \$150,000 or less. Since 1977, state law has prohibited penalties for early payoff on mortgages of \$100,000 or less. “Why should a poor person be penalized for doing something we tell them is a good thing to do?” asked Eakes,—“trying to get out of debt.”
- Requires a Legislative Research Commission panel to study implementation and enforcement of the act and try to determine whether it is reducing predatory lending practices and whether it is hurting the amount of available credit. The panel may report preliminary findings to the 2001 General Assembly and must report to the 2002 session. In addition, the study commission is to examine whether financing credit life insurance offers any benefit to consumers and report to the 2000 General Assembly on this issue.

Here a Fee, There a Fee

When Eakes’ clients at Self-Help began complaining to him three or four years ago about problems with their mortgage loans, Eakes at first thought there must be a mistake in the documents they brought him. “We looked at these loan papers and said, ‘There’s got to be a typo here,’” he recalled. “What we discovered was this very pervasive practice where lenders were systematically targeting unsuspecting borrowers to strip the wealth, the cash value out of the home.” Eakes began to see a pattern in the loans: points and fees that accounted for as much as 10 or 15 percent of the loan amount, steep penalties for early repayment, and balloon payments that required borrowers to seek a new loan when they came due.

One of the most egregious practices, Eakes thought, was that of requiring borrowers to buy

“What we discovered was this very pervasive practice where lenders were systematically targeting unsuspecting borrowers to strip the wealth, the cash value out of the home.”

—MARTIN EAKES, FOUNDER AND CEO,
CENTER FOR COMMUNITY SELF-HELP

thousands of dollars in credit life insurance, paying for it in a single premium at closing instead of in monthly payments. When borrowers couldn’t come up with the lump sum, the premium was added to the loan amount, financed at the same high rate. “It’s like asking a utility customer to pay five or 10 years’ worth of bills in advance and then pay interest on them,” Eakes says.

Regulatory agencies like the N.C. Banking Commission and the state attorney general’s office also had begun to hear tales of exorbitant rates and fees on mortgage loans. “We were seeing fees that were not common even four or five years ago,” says Philip A. Lehman, assistant state attorney general in the Consumer Protection Section, “fees that were limited only by the lenders’ imagination.” They might include document preparation, underwriting, or “processing” fees, and in some cases even cancer insurance and auto club membership. The “junk fees” could add up to thousands of dollars.

The problem is not that predatory lenders fail to disclose the fees. Usually, Lehman says, the loans spell out even the harshest of terms in black and white. But the lenders don’t talk about them, and unsavvy borrowers don’t realize what they’re agreeing to.

“A lot of people don’t even seem to be aware of it when they’ve made a bad deal,” Lehman says. “You’re not reading and discussing and negotiating” with the lender during a closing, he explained. “You are sitting there signing document after document after document, with no clue of what’s in them.”

Lehman and Cooper, the bill sponsor, hope North Carolina’s law will prompt federal action to give borrowers more protection from unscrupulous lenders. The Homeowners’ Equity Protection Act (HOEPA)—passed by Congress in 1994—was intended to protect consumers against mortgage lending abuses. “But what it’s become is just another

piece of paper, another disclosure that doesn't accomplish its purpose," says Lehman. Cooper calls the federal law "woefully inadequate."

Since 1990, the home equity market in North Carolina has doubled in size and continues to grow at a rate of almost 19 percent per year, according to the Coalition for Responsible Lending. The Federal Reserve Bank estimates that the goal of debt consolidation prompts consumers to take out 68 percent of all home equity loans and 90 percent of subprime loans.

The need for cash can prompt homeowners to refinance even when they already have the best possible loan rate—zero percent—or, like Wiley, when they have paid for their homes. *The News & Observer* of Raleigh, N.C., reported in the spring of 1999 that six of 70 owners of homes built by Habitat for Humanity in Wake County and two of 65 in Durham County refinanced their no-interest loans through subprime lenders to get cash. The result in most cases was that their debt doubled.⁵

Subprime lending is not confined to second-tier finance companies. While traditional banks may be reluctant to extend conventional loans to credit-risky or poor borrowers, they have established their own stake in the booming subprime market. The state's two largest banks have subprime operations: Bank of America owns NationsCredit, which has 33 offices across the state, and several other subprime subsidiaries; First Union operates The Money Store. The reason? Profits and to serve a market. *Forbes* magazine estimates that subprime consumer finance companies enjoy six times the profits of even the most successful banks. However, subprime lenders lend to people who that might not be able to get credit elsewhere, and many are legitimate business operations.

Gathering Momentum

As lending abuses became more widely reported, an unlikely coalition began forming in 1999 to push for legislative action. In the end, it included a wide-ranging assortment of community groups, including the Coalition for Responsible Lending, the Community Reinvestment Act of North Carolina (CRA-NC), the N.C. Fair Housing Center, the NAACP, and Habitat for Humanity; regulatory agencies like the attorney general's office and the state banking commissioner; and trade groups representing banks, mortgage bankers, and brokers themselves, who wanted the predatory lenders stopped.⁶

Jim Lofton, Secretary of Administration under former Governor Jim Martin, served as President of the N.C. Association of Financial Institutions while the predatory lending bill was being debated in the General Assembly. The association's membership was comprised of five of North Carolina's largest banks—Bank of America, BB&T, First Citizens, First Union, and Wachovia. Initially, that association—which has since been folded into the N.C. Bankers Association— withheld support from the bill, voicing concern over the costs that would be associated with changing loan software to use only in their N.C. branches. But by the end of the process, the big banks were on board. "I want North Carolina to be the best state for banking and the worst state for predatory lending," Lofton told a legislative committee. "I think in this legislation we've done that."

Lawyer John McMillan lobbies for the 700-member N.C. Association of Mortgage Brokers, which also backed the bill. He says his group wanted clarification of the law with respect to mortgage fees and supported Cooper's bill from the beginning. "Our members were not doing those things that were labeled predatory lending practices. Cleaning up the industry . . . is beneficial to the overall mortgage lending community," he says.

The state NAACP brought about 50 members to the Legislative Building in June to lobby for the bill's passage. At a press conference, the Rev. George Allison, state executive director, accused predatory lenders of practicing "economic rape" in minority communities and compared them to "hustlers, loan sharks, and drug dealers." He urged legislators to "put [predatory practices] to death once and for all."⁷

At a May rally, a group of about 50 bill supporters had gathered outside the Legislative Building. "If poor people must be charged slightly

"Before the ink even dried on the predatory lending legislation, subprime lenders got a taste of just how difficult the operating and regulatory environment in the Tar Heel State has apparently become."

—INSIDE B&C LENDING,
TRADE PUBLICATION

Public Awareness or Politics?

When the legislature enacted a new law regulating so-called predatory lending in the summer of 1999, North Carolina Attorney General Mike Easley took the offensive, launching a three-pronged plan of legislation, litigation, and education. But critics, noting Easley's high profile appearance in public service ads running in African-American media outlets, argue there is a fourth prong—politics.

As reported in the *Winston-Salem Journal*, it cost \$160,000 for a series of radio ads that featured Easley and former Charlotte mayor Harvey Gantt, a popular black leader and two-time Democratic nominee for the U.S. Senate. An additional \$20,000 went for print advertisements appearing in black-oriented newspapers across the state.¹ The full-page print ads offer a prominent consumer warning about avoiding home equity scams, but they also include a photo of Easley and mention his name five times.

In addition, Easley's office has printed 25,000 copies of a "Consumer Alert" brochure that features a photo of Easley paired in large type with "Attorney General Mike Easley's tips for avoiding home equity scams."

Easley is seeking the Democratic nomination for governor in 2000. Besides educating consumers, critics see the public service advertising campaign as an effort to aid his gubernatorial campaign and particularly to attract black votes. But Easley's office describes the predatory lending campaign as an honest effort to raise public awareness. "He's got extraordinary credibility among consumers," says Alan Hirsch, special deputy attorney general and head of the consumer protection division. Hirsch notes that consumer education and enforcement of consumer protection laws is part of the attorney

general's job. African-Americans have been targeted, Hirsch says, because they are more likely to be the targets of home equity scams.

However, critics point to two ethical lines Easley may have crossed. In 1997, the General Assembly adopted a law barring declared candidates for Council of State offices from appearing in state public service ads during an election year unless there is a state or national emergency.² "No one likes the idea of someone getting an unfair advantage in a statewide race," says Rep. Leo Daughtry (R-Johnston), who pushed for the legislation and is himself a candidate for the GOP gubernatorial nomination.

Hirsch notes that the election year actually began January 1, 2000. No advertisements were scheduled to run after December 31, 1999, so the attorney general was in full compliance with the law, Hirsch says.

In addition, the money from the ads came from settlements won by the attorney general's office in other consumer protection cases. A provision in the state constitution says that fines and penalties for violations of state laws must go to counties to help pay for schools.³ The position of the Attorney General's Office, however, is that the settlement dollars are not fines and penalties as specified in the state constitution, and this area of the law remains in dispute.

—Mike McLaughlin

¹ David Rice, "Critics: So-called public service ads are campaign for Easley," *Winston-Salem Journal*, Winston-Salem, N.C., Sept. 12, 1999, p. B1.

² *Ibid.*

³ N.C. Constitution, Article 9, Section 7.

Mike McLaughlin is editor of North Carolina Insight.

higher interest rates because their loans are higher risk, then so be it," says Eakes, an organizer of the broad-based coalition. "But I refuse to accept that the poor and elderly should be charged fees that middle-class borrowers are never charged, simply because they have been deceived or because they are unsophisticated."⁸

Eakes, a primary force in building support for the bill, also bombarded legislators with information, including a videotape featuring four news reports about predatory lending. The video features network reports by ABC, CBS, and CNN, as well as two news broadcasts by an Atlanta TV station. Several of the interviews focused on loan practices

CONSUMER ALERT



Don't let your home
become a house of cards.

Beware of Home Equity Scams.

A Consumer Alert from
North Carolina Attorney General Mike Easley

of The Associates, the finance company that holds Wiley's mortgage. ABC's "PrimeTime" featured Philip White, a former assistant manager at an Alabama branch of The Associates. He says he quit his job when he became "sick and tired of lying to people."

"Somebody would walk out with a \$40,000

real estate loan at a 15 percent interest rate, paying 5 points, with insurance on it, and we'd say, 'What a sucker. Ch-ching. We just made the company some money.'" White told the network that his branch had a "designated forger" to sign borrowers' names on occasion.⁹ Ford Motor Credit officials say they conducted an investigation and

"found no basis whatsoever" for White's allegations.

Another broadcast report also examined The Associates' loan practices. Howard Rothbloom, an attorney for an Atlanta-area borrower, says the company entered a "win-win situation" with every predatory loan. "If these borrowers pay their notes, then The Associates makes high interest. And if they don't pay their notes, then they get the homes, and the homes have high equity in them."¹⁰

However, Fred Stern, a former senior vice president of The Associates, responded that the company is providing a service for its customers. "We're filling a need for people to have access to credit that they might not be able to get elsewhere," Stern said in a CBS Evening News "Eye on America" segment that aired March 16, 1998.

"Preying on homeowners that have spent a lifetime building equity in their homes is unconscionable."

—N.C. ATTORNEY GENERAL

MIKE EASLEY

In the interview, Stern denies that The Associates has a policy to flip loans and says the company does not take advantage of poor or elderly customers. "It is not our policy to do anything that does not make sense for the customers or for ourselves," Stern says. In May 1999, The Associates responded to lawsuits filed in Massachusetts and California by agreeing to allow interest rate reductions of up to 2.25 percent on their loans and to commit \$100 million to Neighborhood Assistance Corp. of America, a Boston-based program that offers mortgages with no fees and no down payments.

Raleigh lawyer Jerry Hartzell has filed three lawsuits on behalf of clients who believe lenders broke the law in making their loans. Sometimes, Hartzell says, borrowers are driven by desperation, even if they realize that loan terms are unfavorable. He represented George Cantey, a Raleigh floor finisher who bought a house for his family in 1996. According to court documents, United Companies Lending Corp., a Louisiana-based firm, agreed to loan Cantey the \$30,700 to pay for the house. However, the total loan amount came to \$38,400, reflecting the addition of \$7,716 in fees that included

a \$2,200 "broker fee" and a loan origination fee of \$3,064—almost 10 percent. Cantey's furnace failed a year later, and he asked United Companies for a \$3,700 loan to replace it. The company told him he'd have to refinance his home loan to get more money. This time, the mortgage amount came to \$48,500—\$40,662 to pay off the first loan, \$3,717 for the new furnace, and another \$4,121 in origination costs and other fees. Hartzell sued United Companies, but the corporation filed for bankruptcy while the case was pending.

Hartzell praised the new state law. "It doesn't take care of everything, but I think it will do a lot," he says.

Taking Action

Just two weeks after the legislature approved the predatory lending bill, Attorney General Easley launched an investigation into alleged predatory lending practices by The Associates, the company which Assistant AG Lehman described in an interview as the example of aggressive lending that prompted the legislation. Easley ordered the lender to provide copies of documents within 30 days of his July 22, 1999, order. It was the attorney general's second such probe. In February, his office subpoenaed records from Chase Mortgage Co., of Wilmington, N.C.

Easley's actions caught the attention of the trade press. "Before the ink even dried on the predatory lending legislation, subprime lenders got a taste of just how difficult the operating and regulatory environment in the Tar Heel State has apparently become," one bulletin observed.¹¹

In a statement released at the time, Easley vowed "to aggressively target these lenders in the same way they target their victims. Preying on homeowners that have spent a lifetime building equity in their homes is unconscionable."

The attorney general, who is running for governor in 2000, promised a "three-pronged plan" to attack predatory lenders, including legislation, litigation, and education. In August, his office printed 25,000 copies of a full-color "consumer alert" brochure that warns borrowers about "loan sharks" who attract borrowers with promises of lower monthly payments that mire consumers in debt they can never pay off. "Don't let your home become a house of cards," the front cover of the brochure warns. Inside, it lists and explains "Five warning signs of a home equity scam." Though few have questioned the need for this campaign, critics have said Easley's high profile role was too political in

light of his gubernatorial ambitions. (See p. 38 for more on this topic.)

Other states are also taking action. New York lawmakers are considering a proposal to cap brokers' fees at 3 percent. That legislation also would allow borrowers facing foreclosure to argue in their defense that the lender knew or should have known the borrower did not have the ability to repay the loan. In Minnesota, mortgage lenders must subscribe to standards of conduct that took effect July 1, 1999.¹² The new law bars lenders from entering into loans for the purpose of foreclosing on the property and from steering borrowers who would qualify for a lower-rate conventional loan into a subprime contract.

More Legislation Ahead?

Some North Carolina lawmakers believe they have more work to do on the lending issue. Sen. Wib Gulley (D-Durham) introduced a bill in the 1999 session that would require the licensing of mortgage brokers and mortgage bankers, who now negotiate more than half of all home loans in the state.¹³ Such licensing is favored by the Coalition for Responsible Lending. "Broker offices currently are required to *register* with the state, but enforcement authority is limited," says the coalition.¹⁴ "Individual brokers guilty of misconduct can now go from one mortgage company to another without detection. If they were licensed, it would be possible to trace individuals, penalize any misconduct, and hold them to a higher standard of practice."

Brokers would be required to "act exclusively" on the behalf of the borrower, not the lender. The licensing bill also would prohibit brokers from accepting fees known as "yield-spread premiums," which reward brokers for steering borrowers into higher-interest loans and often amount to thousands of dollars. Gulley suggests that such premiums pose "probably the single worst problem we have in mortgage lending in North Carolina right now, and the predatory lending bill didn't stop it."

Gulley calls the yield-spread premiums "kick-backs" and says they encourage brokers to deceive borrowers, who presume that the broker is working as their ally and, therefore, working to get them the best possible interest rate. "It's a real problem, and I think it's one that when it's taken out in the light of day it becomes indefensible," he says. For that reason, Gulley says his bill "may even [offer] more profound help" than Cooper's in the state's efforts to protect borrowers.

Resources

Center for Community Self-Help
301 West Main Street
Durham, NC 27701
Tel: 919-956-4400
website: www.self-help.org

North Carolina Attorney General's Office
Consumer Protection Section
Old Education Building
114 West Edenton Street
Raleigh, NC 27602
Tel: 919-716-6000

North Carolina Banking Commission
702 Oberlin Road
Raleigh, NC 27605
Tel: 919-733-3016

State Banking Commissioner Hal Lingerfelt agrees that his office needs a licensing requirement to give teeth to the predatory lending legislation, and he has helped bring together the parties involved to work on building a consensus in support of Gulley's legislative initiative for the 2000 session of the General Assembly. About 600 mortgage brokers and lenders have registered with Lingerfelt's office. But Lingerfelt estimates that two or three times that many brokers operate in the state. He's not sure how many, because out-of-state firms are exempt from the registration requirement. As the number of brokers has increased, so have complaints to his office, and Lingerfelt says more staff time is absorbed in handling complaints.

"I think overall the consumer will benefit tremendously if we have licensing in the brokerage process."

—STATE BANKING COMMISSIONER
HAL LINGERFELT, PROPONENT OF
LICENSING MORTGAGE BROKERS



Because brokers are not licensed, the state lacks authority to discipline individual employees of brokerage or lending firms. “We’d like more accountability for the individual who’s doing wrong,” Lingerfelt says.

“I think overall the consumer will benefit tremendously if we have licensing in the brokerage process,” Lingerfelt added. “You should have a set of expectations when you talk to a mortgage broker or mortgage banker, no matter who you talk to or where you go.”

Hayes Hyman works as a mortgage broker at Raleigh-based Capital Savings Co. He is immedi-

“They’re [Hiring a mortgage broker is] not like you’re hiring an attorney or a realtor.”

—HAYES HYMAN,
MORTGAGE BROKER AND
OPPONENT OF LICENSING

ate past president of the N.C. Association of Mortgage Brokers, which supported Cooper’s bill. While his organization supports some form of licensing, he thinks Gulley’s bill goes too far. Brokers should represent neither lenders nor borrowers, he argues. “They’re not like you’re hiring an attorney or a realtor,” he says.

Hyman also says his association has reservations about limiting a broker’s right to accept yield-spread premiums. He compares brokers to retailers who sell lenders’ wholesale products to borrowers, and he thinks that they are entitled to profit on the products they sell. Hyman says the market should control the mark-up. “It’s just like selling any product—if you overprice the product, nobody’s going to buy your services,” he says.

Eakes and the coalition of consumer advocates he helped assemble will be ready to go to work on Gulley’s bill when legislators take it up again. But for now, the Self-Help CEO is satisfied that North Carolina has taken a decisive first step toward driving predatory lenders out of the state. Indeed, *Mortgage Banking*, the national trade publication of the residential mortgage industry, describes North Carolina’s predatory lending law as “the most sig-

nificant legislation enacted this year . . .” to regulate the industry.¹⁵ “We can’t solve everything at the state level,” says Eakes, “But we tried in [Cooper’s] bill to do what we could.”

Dezell Wiley, the Durham homeowner who lost \$40,000 in equity in her home, offers some simple advice to others who would mortgage their homes to pay off consumer debts. “Leave it alone,” she warned. “It’s too late now, but that’s what I’m doing.” ☐☐

FOOTNOTES

¹ For more on the issue of credit life insurance, see Bill Finger, “To Your Credit or To Your Debt? Credit Insurance,” *North Carolina Insight*, Vol. 8, No. 2 (November 1985), pp. 28–47.

² Session Law 1999-332 (Senate Bill 1149), which rewrites N.C.G.S. 24-1.1A-10.2.

³ “N.C. Predatory Lending Bill Passes, Sets HOEPA Rules,” author not indicated, *Inside B&C Lending*, IMF Publications Inc., Washington, D.C., July 26, 1999, p. 22.

⁴ Robert E. Lamy, “Point of View: Drying Up Useful Lending,” *The News & Observer*, Raleigh, N.C., June 2, 1999, p. 19A.

⁵ Carol Frey, “Some Habitat clients risk losing equity for cash,” *The News and Observer*, Raleigh, N.C., May 2, 1999, p. 1A.

⁶ Coalition members included the N.C. Bankers Association, representing 128 community banks and thrifts; the N.C. Credit Union Network, representing 180 credit unions; the N.C. Mortgage Bankers Association; the N.C. Association of Financial Institutions, representing Bank of America, First Union, BB&T, First Citizens, and, until July 1, 1999, Wachovia; N.C. Mortgage Brokers; and the Coalition for Responsible Lending,

“Leave it [predatory lending] alone. It’s too late now, but that’s what I’m doing.”

—DEZELL WILEY

whose 73 organizational members included North Carolina members of the NAACP, AARP, and N.C. Association of Realtors, among others.

⁷ Dennis Patterson, Associated Press, “NAACP targets predatory lending,” *The News & Observer*, Raleigh, N.C., June 10, 1999, p. 3A.

⁸ Associated Press (author’s name not published), “Credit Unions Lobby for Predatory Lending Law,” WRAL5 OnLine, Raleigh, N.C., May 7, 1999.

⁹ ABC News, “PrimeTime Live,” April 23, 1997.

¹⁰ “Fox 5 News Investigation,” WAGA-TV, Atlanta, Ga., May 4, 1998.

¹¹ *Inside B & C Lending*, note 3 above.

¹² Chapter 58 of the Minnesota Statutes, “Standards of Conduct.”

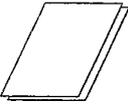
¹³ Senate Bill 866 of the 1999 session.

¹⁴ “Questions & Answers: The N.C. Predatory Lending Law,” Coalition for Responsible Lending, Durham, N.C., August 31, 1999, p. 4.

¹⁵ Robert S. Lotstein and Ray Christian Witter, “Looking Through the Maze,” *Mortgage Banking*, Mortgage Banking Association of America, Washington, D.C., November 1999, p. 16.

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MEMORABLE MEMO

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

1

S

SENATE BILL 900

(Public)

Short Title: State Spider.

Sponsors: Senator Wellons.

Referred to: Agriculture/Environment/Natural Resources.

April 14, 1999

1 A BILL TO BE ENTITLED
 2 AN ACT TO ADOPT THE GREEN GARDEN SPIDER AS THE STATE SPIDER.
 3 Whereas, green garden spiders, also know as orb weavers, are common to
 4 the North American Continent and the State of North Carolina; and
 5 Whereas, green garden spiders construct characteristic circular webs
 6 similar to the spokes of a bicycle wheel; and
 7 Whereas, green garden spiders build some of the most beautiful and
 8 complicated webs of all spiders; and
 9 Whereas, green garden spiders often build webs in between vegetation;
 10 and
 11 Whereas, green garden spiders are beneficial because they feed on insects;
 12 Now, therefore,
 13 The General Assembly of North Carolina enacts:
 14 Section 1. Chapter 145 of the General Statutes is amended by adding a
 15 new section to read:
 16 "**§ 145-18. State spider.**
 17 The green garden spider is adopted as the official spider of the State of North
 18 Carolina."
 19 Section 2. This act is effective when it becomes law.

Whereas North Carolina needs yet another "state thing"; And whereas the shad boat and the Plott hound and the honey bee and the eastern box turtle are clearly not enough "state things"; And whereas we can't think of anything else that hasn't already been named a "state thing"; Therefore be it resolved that the green garden spider may be just the thing to be the next "state thing." And another thing. The Center is in need of memorable memos, whether on state things or anything else. So send us your candidates. As always, anonymity guaranteed. In other words, nobody has to know a thing.

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