The recent legislative session in Richmond was the scene of many proposals to deal with the sorry state of the commonwealth’s finances. There and elsewhere we have even heard some occasional noises about fundamental reform of Virginia’s tax system or of various state government practices. Appointed by Governor Mark Warner, former Governor Doug Wilder is heading a commission to report a few months from now on possible reforms of state government. But there has been no serious effort to examine the root causes of the difficulties the commission is examining, including last year’s historic failure by state government to accomplish any necessary revisions of the state’s budget in the second year of the last biennium. Those causes are embedded in the Constitution of Virginia, which needs a thorough overhaul if Virginia is ever to have a government that is both competent and responsible. Last year’s budget fiasco was a “train wreck” that had been waiting to happen for a long time. The wonder is that it did not occur sooner, and the troubling aspect of the situation is that having happened once, it is more likely to occur again—unless the constitution is repaired.

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“Excellence will be our standard; accountability will be our guide,” Governor Warner said in his inaugural address, referring to the performance of state government employees. But excellence and accountability are exactly what is lacking in the state’s constitutional framework. Several basic problems afflict Virginia government: biennial budgeting, governors limited to one term, and a “citizen legislature.” This article looks at those problems and offers suggestions for addressing them.

Biennial budgeting

Budgeting every other year for the next two years is not mandated by the state constitution, which provides only, in Article X, section 7, that appropriations not be made payable more than 30 months from the end of a legislative session. Consistent with this provision, the General Assembly could adopt a practice of annual appropriations. The practice of appropriating for two years, however, makes possible such a standoff as we witnessed last year. By doing precisely nothing in the second year of the biennium, the legislature ceded to the governor the power of the purse, allowing him to make executive decisions on the budget unchecked by the popular will.

Amending Article X to mandate annual appropriations would deprive governors—and their legislative allies—of much of the leverage over the General Assembly that now comes from running a government that will still be funded and operational if budget amendments can be forestalled or defeated. No governor could successfully bring about the collapse of budget negotiations if it meant that the new fiscal year would begin without the constitutionally necessary appropriations to operate the machinery of state government.

Some would move in the opposite direction, advocating budget planning that anticipates needs for a longer term beyond the next one or two years. But budget planning and actual appropriations are two very different things. Long-range planning is a fine thing. But in a state whose constitution requires a balanced budget (not counting the bonded debt for construction projects) and whose revenues can never be exactly forecast, appropriations will always need annual adjustment, both to avoid deficits when revenues drop and to respond to short-term changes in funding necessities. (In practice, again because revenue estimates are never completely accurate, the requirement to balance the budget usually means erring on the side of fiscal caution, running slight surpluses that are saved in the state’s “rainy day fund.”)

The second year of the biennium is when appropriations are typically adjusted. But because the appropriations bills of the first year remain in force if no action is taken, the leverage of the governor is augmented. If he can hold enough votes in one legislative chamber to prevent second-year adjustments when revenues drop—as Governor Gilmore did in 2001—he can create a crisis that only he can solve, by making his own preferred budget cuts by executive fiat to meet the constitutional requirement of balance. A new practice of annual appropriations—spending bills in effect only for a single fiscal year—would redress this imbalance of power between the executive and legislative branches. As noted above, this practice could be adopted with or without amending the constitution.

One-term governors

The constitution does not prevent governors from serving again, but it does, in Article V, section 1, prohibit them from succeeding themselves, and only once under the current constitution has any governor served two nonconsecutive terms. Only one other state has such a non-succession rule for its governors: Alabama. A scan of the various state constitutions reveals that 19 of them allow continuous gubernatorial tenures, the size of the state does not deter the adoption of the one-term rule. Twenty-nine of the states permit gubernatorial re-election for a second term, and only one other state has such a non-succession rule for its governors: Alabama. A scan of the various state constitutions reveals that 19 of them allow continuous gubernatorial tenures, the size of the state does not deter the adoption of the one-term rule. Twenty-nine of the states permit gubernatorial re-election for a second term, and only one other state has such a non-succession rule for its governors: Alabama. 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They must maintain their interests in their other ongoing businesses.

They meet in sessions too short to effectively accomplish the deliberative business of the commonwealth.

Every year the press reports the frenzy of bills (because of the numbers, many often remain unread by many members) being passed at the end of the session or of committee and floor deliberations being cut short because of the press of time. These situations can occur because our constitution requires members to finish and adjourn the session, whether they have really finished their business properly or not. Even Governor Warner implicitly recognized the problem when he said recently of the enormous budget mess facing the 2002 session, "Whether in a few weeks you can make a real evaluation of the values of each of these programs is questionable in my mind." And former delegate Barnie Day recently opined in one of the state's newspapers that the crisis was too big to handle in a regular session. "Save the budget for a special session," he recommended, and devote the regular session to other matters. What are these comments from a sitting governor and a former legislator but admissions that the current constitutional limits on legislative sessions are inimical to effective decision-making?

The solution is twofold. Amend the constitution to eliminate the limits on the length of annual legislative sessions, and pay members of each house a salary they can live on as their only income. Not only could a "professional" legislature be more truly made up of ordinary citizens than an "amateur" one, but a legislature with indeterminate session lengths could not be stonewalled by a governor or permanently stymied by partisan divisions until the calendar runs out. The legislature would stay in session as long as it took to do the people's business, with no other deadline aside from the start of a fiscal year, which would affect only budget matters—and an annual appropriations rule, as argued above, would help redress the imbalance of power in budget politics between the governor and the legislature. With the fiscal year starting July 1, that would be nearly six months for the legislature's regular annual session to get the state's budgetary business done right, while other business could be taken up in even more deliberative fashion, with no arbitrary and self-defeating deadlines on the introduction of bills, the conclusion of committee work, or the "cross-over" of bills from one chamber to the other.

Some will decry the idea of a living salary for legislators as too costly. But would not a more effective government be worth the cost? We can continue to pay a low salary for just a small portion of each legislator's annual work time and continue to face the difficulties that such a process brings. Or we can have a full-time "professional" legislature, paid well to do its work for as long as it takes and open to all who can get elected—not just those whose professional lives make time off from their regular jobs affordable.

**Conclusion**

Hasty legislation without enough time for consideration; inter-house or inter-branch budget standoffs; politicians who are amateur legislators because the General Assembly is in session only a fraction of the year; governors who do not have to take political responsibility for a number of the decisions they make—the Virginia Constitution could not have been better designed to produce these effects. The last few years in particular have emphasized these defects in our political process and made us aware that, among other problems, the budget standoff we experienced last year could become a regular occurrence.

The constitution is, rightly, not easy to amend or revise (see Article XII), and the changes discussed here could be controversial among many Assembly members. But perhaps our new governor could push a truly bold agenda for the improvement of government in America's oldest commonwealth. **VA**