COMMONWEALTH of VIRGINIA
Joint Legislative Audit and Review Commission
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MEMORANDUM

TO: The Honorable Kevin G. Miller
The Honorable Lacey E. Putney

FROM: Philip A. Leone

SUBJECT: Review of Gubernatorial Separation Authority

At its May 2001 meeting, the Joint Legislative Audit and Review Commission directed staff to complete a study of the Governor's authority to provide separation packages for agency heads and gubernatorial appointees, generally known as "at will" employees. The study mandate resulted from the Governor's provision of a separation package of $49,061.40 to the Director of the Department of Minority Business Enterprise, during a period when the department was being investigated. A report in response to that mandate was provided in June 2001. Subsequently, the Commission directed its staff to report on separation packages through the end of the Gilmore administration. This letter report addresses that mandate. No policy options or conclusions are offered in addition to those proposed in June 2001. This report primarily updates data provided in the 2001 report.

Summary of Findings. Like the 2001 report, this review found the Governor's use of his authority to provide separation packages to be reasonable overall. A total of

226 gubernatorial appointees or “at wills” separated during the administration. The usual package provided during the term was one month’s pay. The average value of a separation package provided was equivalent in value to 1.26 months of pay. Since the release of the 2001 study, the value of separation packages increased slightly. However, no large “outlier” packages were granted after the June 2001 JLARC review.

Gubernatorial Separation Authority

As reported in June 2001, there are no evident restrictions in either the *Constitution of Virginia* or the *Code of Virginia* on separation packages that can be provided by the Governor to agency heads and other gubernatorial appointees. However, most separation packages provided by Governor Gilmore and other Governors appeared to be reasonable. As reported in June 2001, while options to the current system exist, there appears to be no compelling reason to implement a change in this area.

Separation Packages Provided During the Gilmore Administration

As reported in June 2001, the typical severance package provided up to that time was one month’s pay. In the period since the 2001 report, the typical package remained one month’s pay. The average value of a separation package before the 2001 JLARC report was equivalent in value to 1.15 months pay. For the period after the report, the average value of a separation package increased to 1.35 months pay. These amounts generally consisted of one or two month’s salary. In addition, some packages consisted of compensation that included payments toward retirement, life and health insurance, or compensation value in some form of leave. Over the course of the entire administration, 226 appointees or “at will” employees separated, receiving an average separation package of 1.26 months pay in value.

The dollar value of separation packages also increased after the June 2001 report. The average dollar value of packages provided to 102 individuals before the study was $7,534.42. The 124 individuals separating after the study received an average valued package of $8,565. Over the course of the administration, the average value of all separation packages was $8,100.17.

Total Packages During Administration. During the course of the Gilmore administration, 226 appointees and at-will employees departed State service. (Several others died in service (4), retired (2), or went to a classified position (5) and are not included in this review.) Of these 226, 35 employees received no separation benefit, but are included in the analysis. The average value of packages was $8100.17, or 1.26 months pay. Table 1 below summarizes separation packages provided during the Gilmore administration.

Table 1: Comparison of Separation Packages

	Pre-study	Post-study	Total Gilmore
Number	102	124	226
Average total separation (amount)	$7534.42	$8565.54	$8100.17
Average total separation (months)	1.15	1.35	1.26

No “Outlier” Packages Provided Since the 2001 Report. In the period before the 2001 JLARC report, six separating employees received over three months compensation value. Of these six, three received slightly more than three months value, and three received outlier packages -- large separation packages of over six to eight months’ compensation value. During the period since the 2001 report, only two employees received more than three months value and these were only slightly more than three months value.

The largest valued package prior to the 2001 report was $92,661.58, an amount negotiated for severance and contract services to an outgoing Superintendent of Public Education. Since the 2001 report, the largest package received was $21,922.38, which was paid to an agency head and consisted of one month's salary and various categories of leave and other benefits. Several cabinet-level officials received severance of $21,413.16, an amount that represents the value of two months severance pay.

Comparison of Recent Separation Policy to Those in Previous Administrations

According to long-time State employees, most Governors of Virginia have authorized relatively modest separation packages for agency heads and other gubernatorial appointees. There are various rationales for the provision of severance benefits. One rationale for such separation packages is that appointees of the Governor are exempt from the Virginia Personnel Act. Because of this exemption, gubernatorial appointees are not eligible for the separation benefits available to classified employees. According to some executive branch personnel, the ability of the Governor to offer separation packages is valuable both at the beginning and the end of his term.

In 1977, Governor Mills E. Godwin, Jr. authorized "for appointees of the Governor serving on a full-time basis, severance pay upon termination of appointment equivalent to, but not in excess of, one month's salary at the established annual rate." The 1977 Godwin memorandum is reported to have been generally used as a guideline by Governors since that time.

Governor Gilmore's Chief of Staff issued a separation policy to administration agency heads on March 16, 1999 ("Policy for 'At-Will Positions'"). This policy stated that "severance pay is one month's pay, and any variances from this must receive prior approval from the Chief of Staff." As noted earlier, there have been some variances from this policy. While the typical separation payment was one month's pay, the average separation payment was the value of 1.26 months pay.

Separation Policy of the Current Governor

While not requested by the Commission, staff anticipated that members might have an interest in the separation policy of the current Governor. On April 11, 2002, a memo titled "Leave and Severance Policies for 'At Will' Employees" was distributed to the Governor's Secretaries by the Secretary of Administration. This policy provides that one month's salary be provided as severance to cabinet secretaries, deputy secretaries, agency heads, chief deputies in agencies, confidential/policy assistants, and administrative support staff in the Governor's Office and in cabinet offices. The policy also states "The Governor's Chief of Staff must approve any and all exceptions. The policy does not apply to employees in the accrual leave system. Individuals who have served in eligible positions for less than one year will not receive severance pay." The policy was approved by the Chief of Staff on April 9, 2002.

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