

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Special Report:
Severance Benefits
for State Employees**

In Brief

Special Report: Severance Benefits for State Employees

Virginia's severance policy is established by the Workforce Transition Act (WTA). Concerns regarding employees receiving more than was allowable under WTA prompted the Joint Legislative Audit and Review Commission (JLARC) to direct a comprehensive review of the Commonwealth's use of severance agreements.

Agencies generally have properly implemented the WTA, with severance payments rarely exceeding allowable amounts. Since 2002, 12 State entities have entered into a total of 23 employment contracts with senior agency personnel that include separation provisions, and 12 of these agreements have provided for up to a year or more of salary as the severance benefit.

Amendments to WTA by the 2006 General Assembly were intended to bring virtually all gubernatorial as well as other appointed positions under the provisions of the Act, and the law is now clear that most are subject to it. However, some positions are still exempt, and there remains ambiguity as to whether the new statutory language brings certain positions appointed by boards and commissions under WTA. Therefore, the General Assembly may wish to repeal and reenact WTA to clarify which positions are included or exempt.

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June 27, 2006

The Honorable Thomas K. Norment, Jr.
Chairman
Joint Legislative Audit and Review Commission
General Assembly Building
Richmond, Virginia 23219

Dear Senator Norment:

On October 11, 2005, you directed the Joint Legislative Audit and Review Commission staff to review the Commonwealth's use of severance agreements. Specifically, staff were directed to review whether any State officers or employees have received, or have employment contracts to receive, a separation benefit in excess of benefits available under the Workforce Transition Act and whether arrangements to provide such benefits are consistent with Virginia law.

The findings of the staff review were presented to the Commission on June 12, 2006. This special report includes the findings of that review and completes the staff's work on this issue.

On behalf of the Commission staff, I would like to thank the staff at the Department of Human Resources Management, Virginia Retirement System, Office of the Attorney General, Virginia Port Authority, and Virginia Housing Development Authority for their assistance during this study.

Sincerely,

A handwritten signature in black ink that reads "Philip A. Leone".

Philip A. Leone
Director

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Special Report: Severance Benefits for State Employees

In Summary

The severance policy for most State employees is established by the Workforce Transition Act of 1995 (WTA). WTA is designed to lessen the economic impact of being separated from State service as a result of agency downsizing or budget reductions, and provides financial benefits and extends health and life insurance coverage for a fixed time upon separation. Legislation enacted by the 2006 General Assembly apparently intended to bring most appointed positions under WTA and limit severance benefits to amounts permitted by the Act. A review of the payment of separation benefits to State employees was requested by the Joint Legislative Audit and Review Commission and led to the following key findings:

- Some positions still are not covered by WTA, and legal opinion is divided as to whether the Act's eligibility criteria and severance restrictions apply to senior positions appointed by certain boards and commissions.
- Severance benefits provided under WTA since 2002 generally have been consistent with the law. Payments made to appointees who were exempt from WTA during the same period were less, on average, than amounts paid under WTA.
- Twelve State entities have entered into 23 employment contracts since 2002, and 12 of those contracts have severance provisions that provide up to a year or more of salary upon separation. It does not appear that the contracts were improperly restricted from disclosure under the Virginia Freedom of Information Act.
- The General Assembly may wish to consider repealing and reenacting WTA to clarify which positions are included and which are exempt from the Act's provisions.

The payment of severance benefits to employees separating from State service has been a continuing concern of the General Assembly. The issue has gained greater attention as a result of a 2005 Joint Legislative Audit and Review Commission (JLARC) review which found the agreed-upon severance benefit between the former director of the Virginia Retirement System (VRS) and the former chairman of the VRS Board to be excessive and not properly authorized.

The Workforce Transition Act of 1995 (WTA) establishes the Commonwealth's policy for providing severance benefits to employees who are involuntarily separated from State service. Until amendments enacted by the 2006 General Assembly (Senate Bill

364) were made to WTA, the Act covered most State employees, but it did not directly address severance for most appointed positions, leaving the Governor and other appointing bodies substantial discretion to establish severance benefits for their appointees. (The terms "appointees" and "appointed positions" as used in this report do not include persons appointed to boards or commissions.) This discretion, combined with the findings from the VRS review, prompted the Commission to direct this review of severance benefits (see Appendix A for the text of the mandate).

JLARC staff examined whether any State officers or employees have received, or have employment contracts to receive, a separation benefit in excess of the benefits available under WTA and whether arrangements to provide such benefits are consistent with Virginia law. JLARC also examined the implementation of WTA over the last five years and the legislation enacted during the 2006 General Assembly to expand the coverage of WTA and reduce discretion to provide severance benefits beyond WTA's limits.

JLARC staff analyzed the severance benefits provided to more than 900 separated employees, reviewed documents (including the separation provisions in 23 employment contracts), and conducted structured interviews. A more detailed description of the research methods used in this review is provided in Appendix B.

SEVERANCE BENEFITS CAN BE PROVIDED THREE WAYS

Since 1995, State employees have received severance benefits in one of three ways:

- under the provisions of the Workforce Transition Act,
- at the discretion of the Governor or Attorney General, or
- as defined by the separation provisions found in employment contracts.

Legislation enacted by the 2006 General Assembly expands the number of positions covered under WTA and limits benefits to only those established by law. (This review did not address employment dispute settlements.)

Workforce Transition Act Determines Severance Benefits to Most State Employees

The Workforce Transition Act of 1995 created a mechanism for the State to provide severance benefits to State employees covered by the Virginia Personnel Act, commonly referred to as "classified" employees, who have been involuntarily separated from their positions. Prior to 1995, such classified employees were not eligible for

any type of severance benefit. According to the Department of Human Resource Management's (DHRM) policy on severance benefits, WTA benefits are "designed to lessen the impact of involuntary separation by providing some cash payments and continuing key benefits for a period of time." In 2003, the General Assembly revised WTA to include gubernatorial appointees with 15 years or more of continuous State service. As a result of legislation enacted during the 2006 General Assembly Session, all gubernatorial appointees, including cabinet secretaries, agency heads, chief deputies, and confidential assistants are now covered by WTA.

To be eligible for WTA benefits, classified employees must be laid off or terminated due to budget reduction, agency reorganization, workforce downsizing, or other cause not related to job performance or misconduct. The same criteria apply to gubernatorial appointees; however, appointees are also covered if they are not reappointed to their positions. Employees who voluntarily resign their positions are not eligible for WTA severance benefits. All full-time classified employees are covered by WTA, as are certain restricted full-time and part-time employees. A more detailed explanation of the categories of employees who are covered by WTA is provided in Appendix C.

WTA transitional severance benefits include either (1) a severance benefit consisting of cash payments and the State's continued contribution to health and life insurance premiums or (2) an enhanced retirement option. Separating employees must choose between the two. The severance payment provided pursuant to WTA is calculated based on a separating employee's most recent annual salary and years of continuous service with the State. The number of weeks of paid salary to which the employee is entitled ranges from four to 36 weeks. Table 1 summarizes the allowable transitional severance payments.

Certain separating employees may choose the enhanced retirement option in lieu of the cash severance payment. WTA-eligible employees who are age 50 or older and a vested member of VRS, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System may use the value of their severance benefit to purchase years of credit toward either their age or their years of State service. The cost of each year of age or creditable service purchased is equal to 15 percent of the employee's salary at the time of separation.

Table 1: WTA Transitional Severance Payments Are Based on Years of Continuous State Service

Years of Continuous State Service	Weeks of Salary Paid
2 or less	4 weeks
3 through 9	4 weeks plus an additional week for every year of service over 2 years
10 through 14	12 weeks plus 2 additional weeks for every year of service over 9 years
15 or more	2 weeks per year not to exceed 36 weeks

Source: Department of Human Resource Management, Policy 1.57 *Severance Benefits*, p. 4.

Severance Policies of the Governor and Attorney General

Until recently, governors had great latitude in providing severance payments to their departing political appointees and were not limited by the provisions of WTA. They could provide severance benefits on a case-by-case basis. However, the previous and current governors have chosen to implement policies that limit severance payments to one month's salary. The month's severance payment was designed to compensate these employees for their lack of leave accrual. Their potential job loss was assumed to be an expectation when they accepted the positions as political appointees.

The provisions of WTA have been extended over the last few years to cover more categories of gubernatorial appointees. In addition, language in the 2005 Appropriation Act extended WTA provisions to all gubernatorial appointees, regardless of years of service, who were appointed between January 12, 2002, and July 1, 2003. However, the Appropriation Act language will expire on July 1, 2006, just as the statutory changes to WTA take effect. These changes will be discussed in a later section.

Staff of the Office of the Attorney General (OAG) are not covered by the Virginia Personnel Act or WTA. Instead, the Attorney General may authorize severance benefits on a case-by-case basis for OAG staff. In 2006, the Virginia Supreme Court affirmed the Attorney General's authority to control severance decisions.

Employment Contracts May Define the Separation Benefits Allowed

Employment contracts, or agreements, are another avenue for conferring separation benefits to an employee. Employment contracts

are negotiated documents that typically define the employee's responsibilities, salary and benefits, as well as the length of employment. Such contracts may also include a separation provision establishing the benefit available to an employee who is terminated prior to the end of the contract's term.

The *Code of Virginia* identifies only two positions for which an employment contract must be used:

- chief investment officer at the Virginia Retirement System, and
- chief information officer at the Virginia Information Technologies Agency (VITA).

Additionally, §37.2-707 of the *Code of Virginia* provides a director of a State hospital or training center with the option of being employed (1) as a classified employee or (2) under a contract that specifies the terms and conditions of employment, including termination provisions. The *Code of Virginia* does not dictate what should be included in the terms of these contracts and makes no mention of the provision of severance. However, contracts for these positions typically contain separation provisions.

While not specifically authorized under Virginia law to use employment contracts, such agreements have been used by boards, commissions, and councils with the authority to appoint an administrative head. These employment contracts generally have a separation provision for the payment of a specific severance benefit if the employee is terminated without cause. According to some board and commission members, such contracts are used in order to recruit well-qualified candidates to non-classified positions and offer them added financial protection as an incentive for accepting the positions.

2006 General Assembly Action Covers More Positions Under the Workforce Transition Act

As a result of the concerns about the severance package of the former VRS director, the 2006 General Assembly enacted legislation intended to limit the authority of the Governor and appointing bodies to establish the terms of severance for appointed positions. Effective July 1, 2006, all gubernatorial appointees, including cabinet secretaries, agency heads, deputies, and confidential assistants, will be eligible for and limited to severance payments of between four and 36 weeks of salary or an enhanced retirement package. The recent legislation also apparently attempted to bring certain positions that are appointed by the governing boards and

commissions of the entities listed below under WTA's eligibility criteria and severance restrictions:

- Virginia Port Authority
- State Council of Higher Education for Virginia
- Department of Game and Inland Fisheries
- Jamestown-Yorktown Foundation
- Motor Vehicle Dealer Board
- Library of Virginia
- Commonwealth's Attorneys' Services Council
- Virginia Housing Development Authority
- Board of Accountancy
- Virginia Information Technologies Agency
- Virginia Retirement System

However, as discussed later, there is some question as to whether the statute achieves this.

The 2006 legislation also revised the eligibility criteria requiring that employees be involuntarily separated. Previously, language in the Appropriation Act entitled appointees of the Governor who were appointed between January 2002 and July 2003 to the same WTA benefits as classified employees, even if the appointees resigned. Changes to WTA will no longer allow resigning or retiring appointees of the Governor to receive WTA benefits although appointees who are not reappointed will be eligible.

MOST AGENCIES HAVE PROPERLY IMPLEMENTED THE WORKFORCE TRANSITION ACT

For the most part, payments made for transitional severance and enhanced retirements to State employees pursuant to WTA do not exceed the amounts allowable under the Act. In addition, severance payments made to appointees were less, on average, than those made to classified employees.

WTA Severance Payments Rarely Exceed Allowable Amounts

Between January 1, 2002, and April 21, 2006, 49 agencies granted a total of about \$5 million in WTA payments to 596 employees (Table 2). A majority (79 percent) of these employees were involuntarily separated in 2002, primarily because of layoffs related to

Table 2: WTA Transitional Severance Payments Granted to State Employees, 2002 to 2006

Year Separated	Number of Employees	Total Severance Payments	Average Severance Payment
2002	470 ¹	\$ 3,419,073	\$ 7,275
2003	53	556,370	10,498
2004	39	418,413	10,729
2005	21	484,186	23,057
2006 ²	13	243,592	18,738
Total	596	\$ 5,121,634	\$ 8,593

¹ The high number of WTA recipients in 2002 is the result of layoffs resulting from State budget reductions.

² January through April 2006.

Source: JLARC staff analysis of State agency data on transitional severance payments.

State budget reductions. Of the employees that received a transitional severance payment, 92 percent received payments equivalent to or less than what they were eligible to receive under WTA.

Only 47 employees received payments that exceeded the amount allowable under WTA. These employees received, on average, \$1,590 greater than authorized by WTA. This does not appear to be due to agencies' deliberate circumvention of WTA, but rather unintentional miscalculations of allowable benefits.

The average total severance payment provided to State employees increased from \$7,275 in 2002 to \$18,738 for the first four months of 2006. Higher average severance payments during the last two years are the result of separating employees having higher salaries and more years of service.

Forty-one separated Lottery Department employees received WTA payments plus an additional amount as a result of the department's decision to outsource certain functions. In 2004, the State Lottery Department contracted with a private firm to provide warehousing and distribution of tickets services. As a result, staff that had been performing these and related functions were no longer needed, and the positions were eliminated. The executive director of the Lottery supplemented the severance payments of separated employees not hired by the vendor by 15 percent. The value of these supplements ranged from \$3,097 to \$16,329; the average amount was \$6,637.

In most State agencies reviewed, the appropriate severance payments were made to employees. However, despite clear instructions on how to calculate the total amount of severance, six agencies disbursed payments in the wrong amount. Employees were

either overpaid or underpaid due to their agencies' method for calculating the amount of severance payments for each pay period. Although the improper calculation of benefits does not appear to be widespread and the amount of the incorrect payments was relatively small, agencies may benefit from more specific direction by the Department of Accounts on disbursement of WTA payments.

Non-WTA Severance Payments Generally Appear Reasonable

As illustrated by Table 3, between January 1, 2002, and April 21, 2006, 80 State employees received non-WTA severance payments totaling \$579,730. (In 2003, a former director of the State Council of Higher Education for Virginia received a single severance payment of \$264,202. This amount is not included in this figure but is discussed in more detail later in the report. Additionally, the former director of the Virginia Retirement System received a severance payment of \$263,122 in 2005. The State is in the process of trying to recover all but \$15,180 of this amount.) These employees were appointed by the Governor or a State board or commission and were ineligible for WTA benefits. Instead, their severance payments were determined by their appointing authorities. These employees included commissioners, directors, chief deputies, administrative heads, and confidential assistants.

Table 3: Non-WTA Severance Payments Granted to State Employees, 2002 to 2006

Year	Number of Employees	Total Severance Payments	Average Severance Payment
2002	46	\$ 324,229	\$ 7,049
2003 ¹	3	17,406	5,802
2004	10	72,507	7,251
2005 ²	18	118,547	6,586
2006 ³	3	47,040	15,680
Total	80	\$ 579,730	\$ 7,247

¹ The 2003 figures and totals do not reflect the \$264,202 non-WTA severance payment made to the former director of the State Council of Higher Education for Virginia.

² The 2005 figures and totals do not reflect the \$263,122 non-WTA severance payment made to the former director of the Virginia Retirement System.

³ January through April 2006.

Source: JLARC staff analysis of State agency data on transitional severance payments.

On average, recipients of non-WTA payments had salaries more than double those of WTA recipients between 2002 and 2006, but fewer years of State service (Table 4). The average non-WTA severance payment was less than the average WTA severance pay-

Table 4: Comparing Salary and Years of Service for Recipients of WTA and Non-WTA Severance Payments

Year	Average Salary		Average Years of Service	
	WTA	Non-WTA	WTA	Non-WTA
2002	\$ 34,787	\$ 78,165	8	6
2003	41,598	56,546	9	3
2004 ¹	36,445	83,565	10	11
2005	55,868	77,041	13	3
2006 ²	71,146	116,007	7	3
Average	\$ 36,859	\$ 79,140	8	5

¹ Salary and years of service data were not available for one employee.

² January through April 2006.

Source: JLARC staff analysis of State agency data on transitional severance payments.

ment: \$7,247 for non-WTA payments compared to \$8,593 for WTA payments. Their lower average severance payment is likely the result of the Governor's policy limiting at-will positions not covered by WTA to one month of salary. Fifty-eight of the 80 employees who received non-WTA payments would have received a greater payment under WTA based on their years of service and salary.

Only One Enhanced Retirement Benefit Appears To Have Been Provided Improperly

For the 269 employees who received an enhanced retirement pursuant to WTA between 2002 and 2005 instead of cash payments, it appears that in almost all cases the employees were eligible for this benefit. In order to be eligible for an enhanced retirement, WTA requires that an employee meet the following criteria:

- be in a position covered by WTA,
- be involuntarily separated without cause,
- be 50 years of age or older, and
- be vested in either the Commonwealth's Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement system.

VRS requires agencies to certify in writing that an employee is being involuntarily separated for reasons other than job performance. VRS relies on this certification and does not perform any follow-up.

The only instance in which it appears that an employee received an enhanced retirement benefit without meeting the eligibility requirements involved the former executive director of the Department of Game and Inland Fisheries (DGIF). WTA states that in-

voluntary separation does not include separation related to job performance or misconduct of the employee. One week prior to the executive director's retirement date, a report issued by the State's internal auditor indicated that the executive director had "inappropriately purchased items for an unapproved trip," and the report also substantiated other allegations of questionable behavior. Officially, however, the DGIF Board accepted the executive director's resignation and certified that the termination had been without cause, enabling the director to receive an enhanced retirement. Because there was substantial evidence that the director left his position for reasons related to job performance, it is questionable whether he was eligible for the enhanced retirement benefit, which cost the agency approximately \$101,000.

There was also some question as to whether he was eligible for WTA because he served at the pleasure of the Board and was not specifically exempt from the Personnel Act. The issue of whether appointed positions that are not expressly exempt from the Personnel Act are covered by WTA is discussed on page 15.

With few exceptions, the amount of the enhanced retirement benefit provided to employees between 2002 and 2005 was correct. Errors were found in less than one percent of the calculations of the enhanced retirement benefit paid by State agencies. Prior audits of WTA payments conducted by the Auditor of Public Accounts and VRS (for cash payments and enhanced retirements collectively) also found small error rates.

WHILE FEW EMPLOYMENT CONTRACTS HAVE BEEN USED, MORE THAN HALF INCLUDE SEPARATION PROVISIONS FOR A YEAR OR MORE OF SALARY

While there has been limited use of employment contracts by entities of the Commonwealth, 12 of 23 employment contracts provide for up to 12 months or more of salary if the employee is separated without cause, which exceeds the maximum allowed under WTA. For the most part, these separation provisions have not been utilized; however, the potential exists for separated employees to receive substantial payments. These contracts typically have been used to hire agency directors or administrative heads. It appears that the boards and commissions executing these agreements are aware that these are public documents pursuant to the Virginia Freedom of Information Act (FOIA).

Twelve State Entities Have Executed 23 Employment Contracts Since 2002

Since January 1, 2002, 12 State entities have used a total of 23 employment contracts, of which 13 are currently active (Table 5). (A summary of the contracts can be found as Appendix D.) Of the 23 contracts reported to JLARC, 20 provided for severance benefits upon separation.

Three positions with employment contracts are pursuant to express statutory provisions (chief investment officer of VRS, chief information officer of VITA, and the facility directors of DMHMRSAS) and account for nine of the agreements reviewed by JLARC staff. Eighteen of the employment contracts were for positions appointed by commissions or boards.

Twelve Employment Contracts Provide a Year or More of Salary. The separation provisions included in the 23 employment contracts entered since 2002 range from no benefit to almost two years of

Table 5: Entities and Positions With Active Employment Agreements

State Entity	Position(s)
Department of Game and Inland Fisheries	Interim Director
Department of Mental Health, Mental Retardation and Substance Abuse Services	Facility Director, Northern Virginia Training Center
Indigent Defense Commission	Senior Public Defender
Library of Virginia	State Librarian
State Council of Higher Education for Virginia	Director
Virginia College Savings Plan	Executive Director
Virginia Economic Development Partnership Authority	Executive Director
Virginia Housing Development Authority	Executive Director
Virginia Information Technologies Agency	Chief Information Officer
Virginia Port Authority ¹	Executive Director, Deputy Executive Director, and Senior Managing Director - Marketing Services
Virginia Retirement System	Chief Investment Officer

¹ The Port Authority agreements are termed "compensation plans." The executive director's plan is approved by the Board of Commissioners. The other plans are approved by the executive director. All plans are reviewed and updated annually.

Source: JLARC staff analysis of information provided by State entities.

salary. By contrast, employees separated under WTA receive between approximately four and 36 weeks of salary, depending on their years of State service. Eight of the contracts provide between four and six months of salary (Table 6). Separation provisions in 12 contracts give up to 12 months or more of salary.

The eight active employment contracts with separation provisions of up to 12 or more months of salary are shown in Table 7. The case studies on page 13 provide examples of contracts that potentially provide for more than a year's salary.

Table 6: Twelve Employment Contracts Provide for Severance Payments of up to 12 or More Months of Salary

Months of Salary ¹	Number of Contracts
None	3
4 to 6	8
12	6
More than 12	6
Total	23

¹The number of months listed is the maximum the employees potentially could receive, but the actual number of months of salary they would receive depends on the length of time left on the term of their contract at the time of separation.

Source: JLARC staff analysis of information provided by State entities.

Table 7: Eight Active Employment Contracts Provide up to 12 or More Months of Salary

State Entity	Positions	Separation Benefit
Library of Virginia	State Librarian	Receipt of base salary until contract expires plus two weeks salary for every year as State librarian, not to exceed 26 weeks
State Council of Higher Education for Virginia	Director	Annual salary plus 80 percent of annual salary for any remaining time on the contract term
Virginia College Savings Plan	Executive Director	Annual salary plus bonus amount (five percent of annual salary) paid in the year prior to termination
Virginia Information Technologies Agency	Chief Information Officer	Annual salary plus repurchase of prior service credit
Virginia Port Authority	Executive Director	One month's compensation per year of service to a maximum of 12 months
Virginia Port Authority	Deputy Executive Director	One month's compensation per year of service to a maximum of 12 months
Virginia Port Authority	Senior Managing Director - Marketing Services	One month's compensation per year of service to a maximum of 12 months
Virginia Retirement System	Chief Investment Officer	Annual salary or WTA benefits

Source: JLARC staff analysis of information provided by State entities.

Case Studies

In 2002, the Library of Virginia Board entered into a new three-year contract with the State librarian. The term of the new contract was set to expire on June 30, 2005, but was extended after the first year to 2006 and again a year later to 2007. The contract states that if terminated without cause, the librarian's salary will continue to be paid until the term of the contract expires. Therefore, the value of the separation benefit ranges from 36 to zero months of salary. The contract also provides the librarian with two weeks of salary for every year of employment completed, up to 26 weeks, if separated for any reason other than cause, including resignation or retirement. If terminated without cause in June 2006, the librarian would be entitled to 12 months of salary under the first provision and another 20 weeks of salary under the second.

* * *

On June 17, 2004, the State Council of Higher Education for Virginia (SCHEV) hired a new director under a three-year employment contract. The separation provision states that if terminated without cause, the director will be entitled to one year of salary and that if after the one year is over, any additional time is left on the term, the director will be entitled to 80 percent of his salary over the course of that remaining time. If terminated under this agreement with as little as one week left on the term, the director would be entitled to a full year's salary. Moreover, if terminated without cause after serving only 12 of the 36 months of the contract, the director would be entitled to about 22 months of salary.

As the examples also demonstrate, the value of separation provisions often depends on the timing of the termination. While some contracts provide 12 months of salary regardless of when the employee is terminated, others provide a greater benefit the earlier in the contract that the employee is terminated.

One Appointee Received 21 Months of Salary Pursuant to An Employment Contract. SCHEV has used employment contracts with the current director and at least two previous directors. Pursuant to a contract, the former director was paid approximately 21 months of salary upon separation. As the following case study describes, she was paid for the remaining term of the contract upon resigning the position:

Case Study

In September 2001, SCHEV revised its contract with the director, extending the term from July 1, 2002, to June 30, 2005. Under the severance provision, if terminated without

cause, the director would receive one year's salary. The Council and the director entered into an amended employment contract on July 16, 2003, terminating the director's employment. The amended agreement stated that the reason for termination was resignation and that the director "desires to step down." As part of the agreement, the Council decided to pay the director's salary for the remainder of the previous contract's term, which was 21 months of salary, worth more than \$264,000.

Five Employment Contracts Provide Separation Benefits Under Circumstances Other than Termination Without Cause.

The State librarian's contract provides for severance benefits for any separation except for cause, and the former SCHEV director's employment agreement provided for severance benefits upon resignation. In addition, three officers of the Virginia Port Authority had employment agreements approved in May 2005 that provided severance benefits upon separation for any reason. In September 2005, the Authority's Board of Commissioners revised the executive director's compensation plan to specifically state that the severance component is only applicable if the executive director's employment is terminated by the Board without cause. According to the Port Authority human resources director, the Board plans to make the same revisions to the contracts of the deputy director and the director for marketing services this year.

Public Has Access to Employment Contracts Between State Entities and Officers and Employees

The 2005 JLARC report *Special Report: Certain Personnel Issues at the Virginia Retirement System* found that the former VRS director and the board chairman had attempted to keep the terms of the contract from being disclosed; however, this review found no such effort to limit public access to other State employment contracts in violation of the FOIA. While four of the 23 employment contracts were marked as confidential or private, agency staff indicated that it was not the intention of the agency to deny access. For example, the cover letter attached to the employment contract between the Information Technology Investment Board (ITIB) and the chief information officer states that the contents of the agreement are not to be disclosed without approval of the former secretary of technology. However, ITIB members told JLARC staff that they were unsure why that language was associated with the document and that staff at the Virginia Information Technologies Agency knew that the contract was a public document and available under FOIA.

Concern over the extent to which severance payments are improperly kept confidential led to the enactment of legislation (House

Bill 476) by the 2006 General Assembly. This legislation requires that severance benefits provided by an appointing authority to an agency or cabinet head must be publicly announced prior to the officer's departure.

AMENDMENTS TO WORKFORCE TRANSITION ACT HAVE LED TO AMBIGUITIES

Action taken during the 2006 General Assembly Session expands the number of positions covered by WTA and limits the value of the severance benefits State employees can receive. The statutory changes do not cover all positions under WTA, however, and the status of some positions is unclear.

Some Positions Are Still Not Covered

While the intent of the 2006 legislative revisions apparently was to cover all appointed positions in the State, some positions still remain outside of WTA, including the director of the Virginia Office of Protection and Advocacy (VOPA) and the executive director of the Virginia College Savings Plan. Legislative staff indicated that, to their knowledge, the directors of VOPA and the Virginia College Savings Plan had not been deliberately excluded. It also appears that directors of State facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) with employment contracts are not covered although DMHMRSAS reported that currently only one director of a State facility is a contract employee. A complete list of officers and employees not covered by WTA is included in Appendix E.

Status of Some Appointed Positions Not Addressed by WTA Remains Unclear

Some additional positions appointed by boards and commissions may still not be covered by WTA. Generally, employees are considered covered by the Virginia Personnel Act if they are not specifically exempted, and all employees covered by the Personnel Act are covered by WTA. In addition, certain positions exempt from the Personnel Act are expressly covered by WTA, such as employees of the Workers' Compensation Commission, the Virginia Retirement System, and the State Lottery. However, it is not clear whether positions that are not specifically exempted in the Personnel Act and are appointed by boards and commissions are covered. These positions include the director and the public and capital defenders of the Virginia Indigent Defense Commission (IDC) and the director of the Virginia Economic Development Partnership Authority. According to staff of the Attorney General's Office,

whether at-will positions are exempt from the Virginia Personnel Act has not been established by the State's courts.

Status of Positions Referenced in 2006 Legislation May Need Further Clarification

With the 2006 amendments to WTA, the law is now clear that most appointees are subject to the requirements of WTA. However, there is ambiguity as to whether the recent statutory changes subject the administrative heads of certain State entities (entities are listed on page 6) who are appointed by boards or commissions to the eligibility criteria and severance restrictions within the Act.

The ambiguity arises partially because these positions are not mentioned in §2.2-3202(A) of WTA, which identifies the positions eligible for WTA. The positions in question were apparently intended to be made subject to restrictions in WTA pursuant to subsection §2.2-3202(E) enacted in 2006 (Appendix F). This section states:

Persons authorized by §2.2-106 or 51.1-124.22 to appoint a chief administrative officer or the administrative head of an agency shall adhere to the same criteria for eligibility for transitional severance benefits as is required for gubernatorial appointees pursuant to subsection A.

Section 51.1-124.22 of the *Code of Virginia* authorizes the VRS Board of Trustees to appoint the director of VRS; therefore, §2.2-3202(E) of the Act does appear to apply to the Board and its appointment authority. However, the applicability of this section to the appointment of positions listed in §2.2-106 of the *Code of Virginia* is less clear. While §2.2-106 of the *Code of Virginia* lists ten positions that are not currently appointed by the Governor and are appointed by boards and commissions, the only "person" expressly authorized to make appointments in the section is the Governor, and there is no mention of the appointment authority of boards or commissions.

However, even if the first part of Section E is assumed to apply to the boards and commissions pursuant to the reference to §2.2-106 of the *Code of Virginia*, there is also ambiguity in the second part of Section E, which states that appointing authorities shall adhere to WTA eligibility criteria for transitional benefits. It does not expressly state that positions appointed by these boards and commissions shall be eligible for WTA benefits and subject to all of the Act's conditions. This language could be interpreted to mean that the appointing commissions and boards that are arguably subject to WTA pursuant to this section are required to follow the eligibility criteria for WTA (reemployment with the Commonwealth is not

possible and involves involuntary separation due to causes other than job performance or misconduct) and may only provide severance benefits in the amount prescribed by WTA. An alternative interpretation is that this section requires that these appointing authorities must apply WTA criteria for eligibility but does not limit the amount of severance benefits these boards and commissions may offer.

Attorneys in the Office of the Attorney General and the Division of Legislative Services maintain that (1) the General Assembly intended for the recently enacted legislation to bring the boards and commissions and the positions that they appoint within the WTA and subject them to all of its provisions, and (2) the new statutory language achieves this intent. However, counsel for both the Virginia Housing Development Authority (VHDA) and the Virginia Port Authority (VPA), maintain that the positions appointed by the boards of VHDA and VPA remain exempt from WTA even with the recent statutory changes. If VHDA and VPA are exempt, their boards would retain complete discretion to set severance benefits for the executive directors of both authorities. Given the ambiguity in the current law, the General Assembly may wish to amend WTA to clearly indicate which positions appointed by boards and commissions are subject to the eligibility criteria and severance restrictions in WTA and to which restrictions of the Act boards and commissions must adhere.

No Restrictions on Severance Benefits Available to Positions Exempt from Workforce Transition Act

For positions that remain exempt from WTA, the appointing authority maintains unlimited discretion regarding the provision of severance benefits. No statutory provision limits the amount that can be given, and §2.2-2831(ii) of the *Code of Virginia* enacted by the 2006 General Assembly expressly states that the benefits available to such exempt positions are not limited by WTA. As discussed, there are several director positions in addition to the employees of several State entities to whom WTA does not apply.

Based on the legislative changes to WTA made during the 2006 General Assembly Session, it is not clear whether employees, other than administrative heads, of some of the entities listed in §2.2-106 of the *Code of Virginia* were intended to be brought under the Act. In a few cases, their employees were exempt from WTA prior to the 2006 legislation. For example, employees of the Motor Vehicle Dealer Board and VPA were clearly exempt from WTA prior to the 2006 legislation. The new legislation only refers to positions appointed by boards and commissions, which are primarily the administrative heads. If these employees are exempt from WTA,

they are neither entitled to WTA benefits nor limited by the provisions of the Act. Therefore, the entity employing them appears to have complete discretion as to the severance benefit they are provided.

Two Positions Covered by Employment Contracts Are Eligible for Benefits in Contracts and Workforce Transition Act

Some employees with contracts may be eligible for separation benefits under both WTA and the terms of their contracts. The WTA covers at least two administrative officers (the State librarian and the SCHEV director) who also have employment contracts containing severance provisions. The individuals in these two positions are entitled to receive separation benefits under both WTA and their contracts. According to staff at the Office of the Attorney General, if the current contracts are amended for any reason, the separation provisions would also have to be modified to reflect that the value of the benefit would be determined by and limited to only WTA.

Separation Benefits May Be Needed in Employment Contracts for Certain Positions

While it appears to be the intent of the General Assembly to bring all classified and appointed positions under WTA, the General Assembly may wish to consider whether there are any positions that it wants to exempt from the limitations of the Act. Several board members have expressed the concern that without the ability to offer separation packages, the State will be hindered in its efforts to attract highly qualified candidates for certain positions. Members of the Information Technology Investment Board and SCHEV expressed concerns about the positions of chief information officer of the Commonwealth and the SCHEV director, respectively. According to these board members, for positions like these in which Virginia is competing with other states or the private sector for a limited number of qualified individuals, the flexibility to offer a separation benefit may be necessary for the State to successfully compete in hiring strong candidates. While some board members and staff expressed concern about the effect on recruitment, others thought any effect would depend on individual situations. If the General Assembly does wish to permit the Governor or certain boards to provide separation benefits greater than what is available under WTA for certain positions, it may wish to establish a maximum value for the benefit.

CONCLUSION

The Workforce Transition Act appears to be effective in providing State employees who lose their jobs through no fault of their own with economic assistance during their period of transition. Agencies generally have properly implemented WTA, with severance payments rarely exceeding allowable amounts. Generally, individuals in appointed positions, which were exempt from WTA, did not receive severance benefits in excess of what would be available under the Act; however, there were a few instances in which individuals had employment contracts providing severance benefits that substantially exceeded what they would have been eligible for under WTA.

While recently enacted legislation brings positions appointed by the Governor under WTA, some appointed positions appear to still be exempt, and there remains ambiguity about whether certain board- or commission-appointed positions that were apparently intended by the General Assembly to be subject to the eligibility criteria and severance restrictions in WTA are actually covered by the Act. The following recommendation addresses the need to clarify who is covered by the Act. It also addresses the need to consider whether there are certain positions that should remain exempt from WTA so that the State will have the flexibility to offer severance benefits in order to attract qualified candidates.

Recommendation (1). The General Assembly may wish to repeal and reenact the Workforce Transition Act to clarify which positions are covered by and excluded from the Act's provisions. The General Assembly may also wish to consider whether certain positions should be exempted from the Workforce Transition Act so that the appointing authorities will have the flexibility to offer greater separation benefits, not to exceed a legislatively established maximum value, in order to attract qualified candidates.

REVIEW OF SEVERANCE AGREEMENTS IN EMPLOYMENT CONTRACTS

The July 2005 JLARC special report on the severance package for the former director of the Virginia Retirement System identified a potential area of concern across other State agencies. Specifically, the VRS situation raises the question about the extent to which other agencies may have developed similar contractual arrangements with officers and employees. A review of how agencies apply the Workforce Transition Act, and the extent to which agencies may have developed other severance agreements, would address this concern. The JLARC review would focus on seven questions:

- Which officers and employees of State agencies are hired with employment contracts?
- Are any of the employment contracts of officers or employees of State agencies not provided for or required by statute?
- Do any employment contracts provide for the terms of severance, including the amount of any severance for termination pay?
- In any employment contracts specifying the terms of severance, are the terms consistent with the provisions of the Workforce Transition Act?
- Are any of the officers or employees of State agencies with severance terms in employment contracts exempt from the provisions of the Workforce Transition Act?
- Are any additions to or clarifications of the termination and severance provisions of the Workforce Transition Act necessary, including which entities should be included in its scope?
- Have any of the employment contracts of officers and employees been improperly restricted from disclosure under the provisions of the Virginia Freedom of Information Act?

Approved by the Commission, October 11, 2005

Research Activities and Methods

Research activities undertaken as part of this review included an analysis of data collected on the payment of transitional severance payments and enhanced retirement benefits made pursuant to the Workforce Transition Act (WTA), structured interviews, and document reviews.

Data Analysis of Transitional Severance Payments and Enhanced Retirement Benefits

To verify that State entities had accurately calculated transitional severance payments and enhanced retirement benefits under WTA, JLARC staff requested data from 82 State agencies, boards, commissions, councils, and authorities on payments made between January 1, 2002, and April 21, 2006. (A table at the end of this appendix identifies these entities.) JLARC staff did not request information from institutions of higher education, the Virginia Community College System, or entities of the Judicial Branch or the General Assembly.

JLARC staff requested the following information for each employee separated under WTA during the more than four-year period:

- position title;
- status (classified, at-will, or other);
- employed full or part-time;
- age;
- length of continuous State service;
- date of separation;
- reason for separation;
- annual salary upon separation;
- total amount paid in transitional severance benefits;
- total amount paid in enhanced retirement benefits;
- total amount paid in unemployment compensation; and
- amount of non-WTA severance payments made, excluding leave balances.

Using the calculation method described in the Department of Human Resource Management (DHRM) policy, JLARC staff calculated a value for each employee who received a severance payment and compared that value to the amount reported by the agency. Additionally, JLARC staff compared the enhanced retirement data collected from the State entities with data from the Virginia Retirement System (VRS) indicating the amount each entity paid for the benefit. JLARC staff reviewed any discrepancies with the reporting agency for verification.

Methods for Evaluating Accuracy of WTA Payments. Using the DHRM calculation method, JLARC staff calculated the employees' expected amount of WTA transitional severance benefits based on their years of continuous State service and salary at the time of separation for 596 separated employees. This amount was compared to the amount the agencies reported having paid the employee to determine if the payments were accurate. JLARC staff contacted each agency that reported a severance payment that differed from the expected amount.

JLARC staff completed a similar assessment of payments made to 80 gubernatorial appointees. In May 2002, the previous Governor implemented a policy entitling certain executive branch positions to one month's salary upon departure. JLARC staff calculated a month's salary for each separated at-will employee and compared it to the amount reported by the agency. Discrepancies were followed up with phone calls to the reporting agency.

Methods for Evaluating Accuracy of Enhanced Retirements. In order to verify that employees received the appropriate enhanced retirement benefit, JLARC staff collected data from both VRS and State agencies on employees who received an enhanced retirement between January 1, 2002, and January 1, 2005. State agencies reported that a total of 269 employees took an enhanced retirement while VRS data identified a total of 273 employees at these agencies took an enhanced retirement. The difference is attributable to agencies' inability to access or locate former employees' records, and in one case an agency paid VRS for an enhanced retirement which did not occur. A total of 269 of VRS and agencies' records matched. These matched records were checked for errors.

In addition to the information requested by JLARC staff, VRS provided employees' purchase of credits toward age and years of service and the amount State agencies paid VRS. The latter is based on the years of credit purchased multiplied by 15 percent of an employee's final salary. JLARC staff used the aforementioned information to examine employees' eligibility for severance and the calculations of State agencies.

To check employees' eligibility for severance, JLARC staff reviewed age and years of continuous service data, and reviewed whether the employees were covered by WTA based on their positions and agencies under §2.2-3202 and other sections of the *Code of Virginia*. According to §2.2-3204 of the *Code of Virginia*, to be eligible for an enhanced retirement, an employee must be:

- in a position covered by WTA,
- laid off for reasons other than job performance,
- 50 years of age or older, and
- vested in the Commonwealth's Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System.

JLARC staff were able to verify eligibility for all criteria except whether employees had been involuntarily separated as required under WTA or laid off for poor job performance. Instead, JLARC staff had to rely on the reporting agency. VRS also relies on agencies to accurately report that employees have not been laid off for poor job performance.

JLARC staff verified the amounts State agencies reported paying VRS for employees' enhanced retirements by comparing the agencies' reported costs with the costs expected based on data provided by VRS. If there were discrepancies, JLARC contacted the agency and, in some cases, VRS for an explanation.

Review of Other Data. Prior to obtaining data directly from the agencies, JLARC staff collected and reviewed data from the Department of Accounts (DOA) and DHRM. DOA data identified involuntarily separated employees who received a transitional severance payment in fiscal years (FY) 2003, 2004, or 2005. This data was compared to data reported by the agencies to ensure that all severance payments had been reported. DHRM data was reported collectively, not on an individual basis, and was only used to gauge the extent to which WTA had been used for the period under review.

Structured Interviews

JLARC staff conducted structured interviews both in person and by phone with staff at DHRM, Legislative Services, the Office of the Attorney General, individual agencies, and the Office of the Governor. Interviews were also conducted with members of the State Council of Higher Education for Virginia, the Information Technology Investment Board, Library of Virginia Board, and the Board of Trustees at VRS.

Staff at DHRM, Legislative Services, and the Office of the Attorney General were interviewed regarding the Commonwealth's severance policies and for clarification of legislation related to severance issues before the 2006 General Assembly. Contacts with other State agencies, authorities, boards, and commissions included staff at the Virginia Housing Development Authority, Virginia College Savings Plan, and the Virginia Port Authority.

Document Reviews

JLARC staff reviewed employment contracts and agreements to identify the use of separation provisions and compare the benefits, if any, to the benefits available under WTA. A review of the *Code of Virginia* was also undertaken, including the Virginia Personnel Act, WTA, and other agency-specific sections. Legislation intended to revise the State's severance policies developed during the 2006 General Assembly was also reviewed. The policy document developed by DHRM to guide State implementation of WTA, which includes instructions for calculating transitional severance payments, was reviewed and used as a reference when assessing agency calculation methods.

State Entities Responding to JLARC Survey

State Entity	State Entity
Accountancy, Board	Mines, Minerals, and Energy
Accounts	Minority Business Enterprise
Aging	Motor Vehicle Dealer Board
Agriculture and Consumer Services	Motor Vehicles
Alcohol Beverage Commission	Museum of Fine Arts
Aviation	Museum of Natural History
Blind and Vision Impaired	People with Disabilities, Board of
Business Assistance	Planning and Budget
Charitable Gaming	Port Authority
College Savings Plan, Virginia	Professional and Occupational Regulation
Commission for the Arts	Protection and Advocacy, Office for
Commonwealth's Attorneys' Service Council	Racing Commission
Compensation Commission	Rail and Public Transportation
Conservation and Recreation	Rehabilitative Services
Correctional Education	Resources Authority
Corrections	State Council of Higher Education
Criminal Justice Services	School for the Deaf and Blind - Staunton
Deaf and Hard-of-Hearing	School for the Deaf, Blind, and Multi-Disabled--Hampton
DMHMRSAS ¹	Science Museum
DMHMRSAS, Office of Inspector General	Social Services
Economic Development Partnership	State Corporation Commission
Education	State Police
Elections, Board of	Taxation
Emergency Management	Tobacco Indemnification and Community Revitalization Commission
Employment Commission	Tobacco Settlement Foundation
Employment Dispute Resolution	Transportation
Environmental Quality	Treasury
Fire Programs	Veterans Services / Affairs
Forensic Science	Virginia Housing Development Authority
Forestry	Virginia Retirement System
Frontier Culture Museum	Virginia Tourism Authority
Game and Inland Fisheries	Virginia Information Technologies Agency
General Services	War Memorial
Health	Woodrow Wilson Rehabilitation Center
Health Professions	
Historic Resources	
Housing and Community Development	
Human Resource Management	
Human Rights Council	
Indigent Defense Commission	
Information Technology, Center for	
Jamestown / Yorktown Foundation	
Juvenile Justice	
Labor and Industry	
Library of Virginia	
Lottery	
Marine Resources Commission	
Medical Assistance Services	

¹ Department of Mental Health, Mental Retardation and Substance Abuse Services.

Source: JLARC staff survey of State entities.

Appendix **C**

Eligibility for Transitional Severance Benefit

Eligibility for the transitional severance benefits is defined under §2.2-3202(A) of the *Code of Virginia*. According to the Workforce Transition Act, the benefit is conferred to any full-time employee of the Commonwealth:

i.	Whose position is covered by the Virginia Personnel Act (§2.2-2900 et seq.)
ii.	<p>Whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 2, 4 (except those persons specified in subsection C of this section), 7, 15, or 16 of §2.2-2905</p> <ul style="list-style-type: none"> 2. Officers and employees of the Supreme Court and the Court of Appeals 4. Officers elected by popular vote or by the General Assembly of either house thereof 7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf 15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and the Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized training 16. Employees of the State Lottery Department
iii.	Who is employed by the State Corporation Commission
iv.	Who is employed by the Virginia Workers' Compensation Commission
v.	Who is employed by the Virginia Retirement System
vi.	Who is employed by the State Lottery Department
vii.	<p>Who is employed by</p> <ul style="list-style-type: none"> • the Medical College of Virginia Hospitals or • the University of Virginia Medical Center

viii.	Who is employed at a state educational institution as administrative or professional faculty (including presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95,
ix.	<p>Whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 3 or 20 of §2.2-2905 and was employed continuously full time by the Commonwealth for 15 years or more prior to appointment, and</p> <p>3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not</p> <p>20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis.</p> <p>(a) who,</p> <ul style="list-style-type: none"> • on or after January 1, 1995, is involuntarily separated, or • is involuntarily separated on or after July 1, 1994, if at the time of involuntary separation had attained age 50 and had 15 or more years of service, and <p>(b) for whom reemployment with the Commonwealth is not possible because</p> <ul style="list-style-type: none"> • there is no available position for which the employee is qualified or • the position offered the employee requires <ul style="list-style-type: none"> ○ relocation or ○ a reduction in salary

Source: Sections 2.2-3202 and 2.2-2900 of the *Code of Virginia*

Appendix D

Employment Contracts Reported to JLARC Staff

Agency Name	Position	Annual Salary	Severance Program Amount	Reason for Granting of Severance	Contract Current?	Between Board and Employee?	Term of Contract	Contract Initiation Date ¹	Date Contract Expired
Department of Game and Inland Fisheries	Interim Director	\$122,928	None	None	Yes	Yes	2/3 year	09/06/05	--
DMHMRSAS ²	Director, Northern Virginia Training Center	\$120,184	Without cause, not to exceed six months or to be less than three months salary	Without cause	Yes	No	1 year	10/10/03	--
DMHMRSAS ²	Director, Northern Virginia Mental Health Institute	\$125,000	Payment not to exceed six months or until another DMHMRSAS position is found	Without cause	No	No	2 years	08/10/03	08/09/05
DMHMRSAS ²	Director, Southwestern Virginia Mental Health Institute	\$100,000	Payment not to exceed six months or until another DMHMRSAS position is found	Without cause	No	No	2 years	03/25/03	03/24/05
DMHMRSAS ²	Director, Southside Virginia Training Center	\$169,373	Payment not to exceed six months or until another DMHMRSAS position is found	Without cause	No	No	2 years	02/25/02	02/25/04
DMHMRSAS ²	Director, Northern Virginia Mental Health Institute	\$165,756	Without cause, not to exceed six months or until another DMHMRSAS position is found	Without cause	No	No	2 years	06/13/00	06/12/03
DMHMRSAS ²	Director, DeJarrette Center	\$67,442	Payment not to exceed six months or until another DMHMRSAS position is found	Without cause	No	No	2 years	12/10/99	12/10/02
Indigent Defense Commission	Senior Assistant Public Defender, Pulkksi PD Office	\$25 per hour for 20 hours per week	None	NA	Yes	Yes	6 months	12/10/05	--
Indigent Defense Commission	Assistant Public Defender, Winchester PD Office	\$19,346	None	NA	No	Yes	4 months	01/03/05	04/30/05
Library of Virginia	State Librarian	\$111,744 ³	For termination without cause, receipt of base salary until contract term expires. Upon separation for any reason but cause, two weeks base salary for each full year as State Librarian, not to exceed 25 weeks	Without cause and other reasons	Yes	Yes	3 years	07/01/02	--
State Council of Higher Education for Virginia	Director of the Council	\$159,147, Appropriation Act	One year base salary, plus 80 percent of base salary for the remaining amount of the initial or extended term.	Without cause	Yes	Yes	3 years	06/17/04	--
State Council of Higher Education for Virginia	Director of the Council	\$144,804	Payment of remaining years on contract totaling \$264,202	Mutual agreement	No	Yes	Termination	07/16/03	09/17/03
State Council of Higher Education for Virginia	Director of the Council	\$129,091, Appropriation Act	Initial term: 50% of annual salary in year in which contract is terminated. After term: 100% of annual salary in year in which contract is terminated.	Without cause	No	Yes	2 years, 2 months	04/18/00	07/16/03
Virginia College Savings Plan	Executive Director	\$137,350, Appropriation Act	1 times annual salary, plus the bonus amount paid in the year prior to termination	Termination without cause	Yes	Yes	Continuous	10/31/02	--
Virginia Economic Development Partnership	Executive Director	\$200,000	If discharged prior to Sep. 30, 2007, lump sum equal to base salary, up to six months' salary	Discharged	Yes	Yes	2 years	10/01/05	--
Virginia Housing Development Authority	Executive Director	\$173,400 ³	Up to six months	Without cause or failure of the board to renew the contract at the value of the last salary	Yes	Yes	3 years	11/15/04	--
Virginia Information Technologies Agency	Chief Information Officer	\$165,000	12 months salary	Discharged without cause	Yes	Yes	5 years	01/20/04	--
Virginia Museum of Fine Arts	Executive Director and Chief Operating Officer	\$117,746, Appropriation Act and supplemented by Foundation	12 months salary	Termination without cause	No	Yes	5 years	06/30/05	11/30/05
Virginia Port Authority	Executive Director	\$121,491	1 month's total compensation for each year of service up to a maximum of 12 months	Termination without cause	Yes	Yes	1 year	Updated Annually	--
Virginia Port Authority	Deputy Executive Director	\$142,792	1 month's compensation per year of service up to a maximum of 12 months	Unlimited	Yes	Yes	1 year	Updated Annually	--
Virginia Port Authority	Senior Managing Director, Marketing Services	\$112,036	1 month's compensation per year of service up to a maximum of 12 months	Unlimited	Yes	Yes	1 year	Updated Annually	--
Virginia Retirement System	Chief Investment Officer	\$275,000	(1) Cash payment equal to one times annual base salary OR (2) Benefits available under WTA or unreduced retirement benefit.	Involuntary separation from service	Yes	Yes	Continuous	10/25/05	--
Virginia Retirement System	Director	\$125,000	12 months salary, plus salary for the remaining amount of the contract term	Without cause	No	Yes	Continuous	03/13/02	02/02/04
Virginia Retirement System	Chief Investment Officer	\$225,000	Annual salary plus bonus paid in year prior to termination.	Termination without cause	No	Yes	3 years	12/16/98	--

NA - Not applicable
 -- Contract has not expired.

¹ Date contract was initiated or date of most recent amendment.

² Department of Mental Health, Mental Retardation and Substance Abuse Services

³ Salary amount for the State Librarian indicates the amount in the initial 2002 contract, and the salary amount for the executive director of VHDA indicates the amount in the initial 1999 contract.

Source: JLARC staff analysis of information provided by State entities.

Employees Not Covered by WTA

- The Auditor of Public Accounts
- Employees of the Attorney General
- Employees of the Lieutenant Governor
- Members of the Judicial Retirement System
- Persons elected by popular vote
- Members of boards and commissions however selected
- Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public
- Employees at higher education institutions who are not presidents, teaching or research faculty, or covered by the Virginia Personnel Act
- Commissioned officers and enlisted personnel of the National Guard and naval militia
- Student employees in institutions of learning, and patient or inmate help in other State institutions
- Laborers, temporary employees, and employees compensated on an hourly or daily basis
- Production workers for the Virginia Industries for the Blind Sheltered Workshop programs
- Employees of Virginia Correctional Enterprises
- Employees of the Virginia Port Authority
- Director and employees of the Virginia College Savings Plan
- Directors of State facilities operated by DMHMRSAS employed under a contract
- Director of the Virginia Office for Protection and Advocacy
- Employees and the president of the Innovative Technology Authority
- Employees and the executive director of the Virginia Commercial Space Flight Authority
- Employees and the executive director of the Virginia Biotechnology Research Partnership Authority

Appendix
F

Senate Bill 364

Attached is the text of Senate Bill 364.

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 902

An Act to amend and reenact § 2.2-3202 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-109.01 and by adding in Chapter 28 of Title 2.2 a section numbered 2.2-2831, relating to Workforce Transition Act; state severance benefits.

[S 364]

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3202 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-109.01 and by adding in Chapter 28 of Title 2.2 a section numbered 2.2-2831 as follows:

§ 2.2-109.01. Signed statements required from appointees.

For purposes of this section:

"Appointed position" means a position appointed by the Governor or other appointing authority in accordance with law.

"Covered appointee" means any person serving in an appointed position who is eligible for severance benefits under the Workforce Transition Act of 1995 (§ 2.2-3200 et seq.), including but not limited to, any (i) officer, (ii) agency head, or (iii) member of a board, commission, council, or other collegial body.

Upon initial appointment or reappointment, the Governor or other appointing authority, or their designee, shall obtain a signed statement from each covered appointee providing that such person has read and understands the severance benefits for which he is eligible under the Workforce Transition Act of 1995. The Governor or other appointing authority, or their designee shall provide all such statements to the Secretary of the Commonwealth. The Secretary shall provide for such statements to be retained in the records of the Commonwealth.

§ 2.2-2831. Payment of severance benefits; exceptions.

No severance benefit shall be provided to any state officer or employee except as specifically provided by law. The provisions of this section shall not apply to any severance benefit provided to (i) any officers or faculty of a public institution of higher education as defined in § 23-38.89 or (ii) a state officer or employee who is not eligible for a transitional severance benefit pursuant to Chapter 32 (§ 2.2-3200 et seq.) of this title. Nothing in this section shall be construed to prohibit payments in settlement of an employment dispute approved pursuant to § 2.2-514 or payments in satisfaction of a judgment.

§ 2.2-3202. Eligibility for transitional severance benefit.

*A. Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ 2.2-2900 et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 2, 4 (except those persons specified in subsection C of this section), 7, 15 or 16 of § 2.2-2905, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the State Lottery Department, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, (viii) who is employed at a state educational institution as ~~administrative or professional~~ faculty (including, *but not limited to*, presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, or (ix) whose position is exempt from the Virginia Personnel Act pursuant to subdivision 3 or 20 of § 2.2-2905 ~~and was employed continuously full time by the Commonwealth for 15 years or more prior to appointment;~~ and (a) ~~who, on or after January 1, 1995, is involuntarily separated, or is involuntarily separated on or after July 1, 1994, if at the time of involuntary separation had attained age 50 and had 15 or more years of service, and (b) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary;~~ and (b) *whose involuntary separation was due to causes other than job performance or misconduct*, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.*

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ 51.1-300 et seq.) and officers elected by popular

vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

E. Persons authorized by § 2.2-106 or 51.1-124.22 to appoint a chief administrative officer or the administrative head of an agency shall adhere to the same criteria for eligibility for transitional severance benefits as is required for gubernatorial appointees pursuant to subsection A.

2. That the provisions of § 2.2-3202 of this act shall be applicable to involuntary separations occurring on or after July 1, 2006.



JLARC Staff

Executive Staff

Philip A. Leone, Director
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