JEFF SIMON

Position: Director, Mass. Government Land Bank
Salary: $80,743
Termination from state government: Fired in 1995
Age: 45
Pension payments before reaching age 55: $275,000

DAVID PETERS

Position: Commissioner, Department of Fish & Game
Salary: $113,525
Termination from state government: Let go at start of Patrick administration in January 2007
Age: 52
Pension payments before reaching age 55: $93,600

You win, you're fired

Despite "landmark" pension reform, lucrative perk for those fired from state jobs remains in place

BY MICHAEL JONAS

In mid-June last year, Gov. Deval Patrick and legislative leaders seemed to be tripping over each other to heap praise on a pension reform bill that the governor had just signed. "Welcome to a day we've been waiting for for a decade or more," Patrick told a roomful of lawmakers, aides, and reporters, according to the *Boston Globe*. "Today we answer the public's call for real reform to our pension system," said Senate President Therese Murray. House Speaker Robert DeLeo chimed in, calling the bill "a giant step."

But all the self-congratulation may have been a little over the top.

Among the most prominent pieces of the reform bill was the elimination of a provision of state pension law that had allowed elected officials with 20 years in the state system to begin collecting generous pension payments before the standard retirement age of 55 if they were defeated or simply

SIMON: PAT GREENHOUSE; PETERS: BILL GREENE/BOSTON GLOBE/LANDOV

opted not to seek reelection. News coverage of lawmakers seizing on the pension perk was a big factor in the push for reform. But all the attention paid to elimination of the lawmaker perk has obscured the fact that state leaders left in place the broader statute that allows all other state workers to cash in on early pensions if they are fired or if their position is eliminated.

Hundreds of state employees—including cabinet secretaries and other high-paid officials—have done just that over the last decade, cashing in on so-called "termination pensions" that put the state on the hook for millions of dollars in added pension payments, often to professionals still in their 40s who go on to land top-flight private sector jobs while collecting monthly checks from the state. Those turning the little-known pension benefit into a lucrative cash cow include former cabinet secretaries and heads of state departments, one of whom is poised to pocket more than half a million dollars before turning 55.

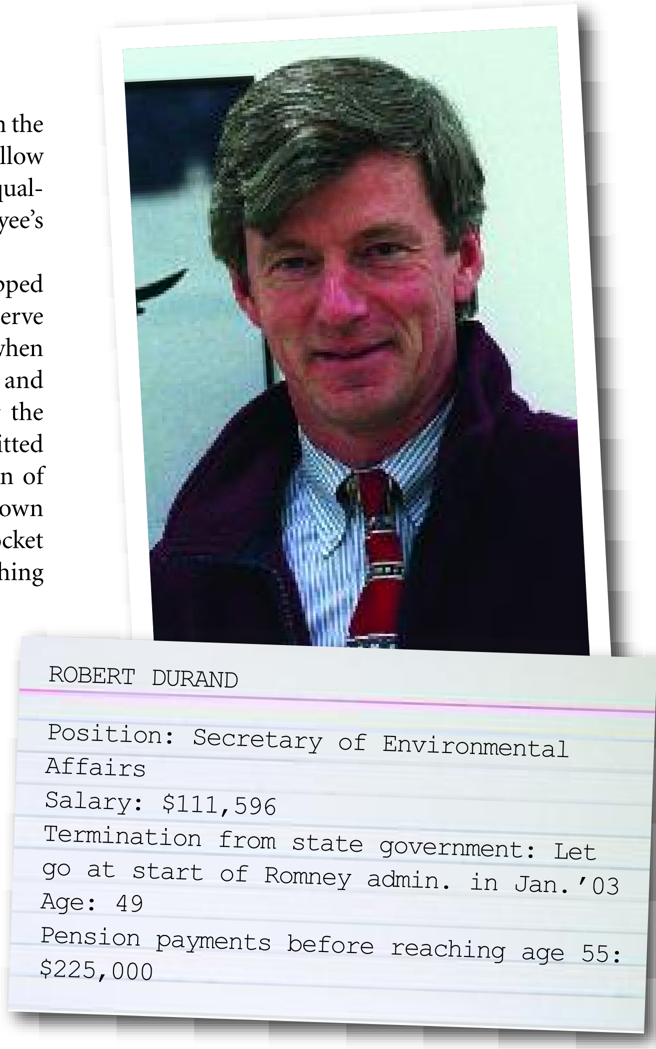
Michael Widmer, president of the Massachusetts Taxpayers Foundation, calls the termination provisions "a total giveaway" and says last year's reform bill failed to get the job done. "All the publicity was focused on the legislative abuses, but the most extensive abuse has been in the executive branch," he says. "The larger problem was totally ignored."

CABINET WINNERS

The termination pensions have been justified over the years as a means of protecting long-term state workers from being pushed out the door in favor of patronage hires when a new administration takes power or a new boss takes over a department in state government. But in practice the pensions have also been going to top-level executive branch officials—some of them former legislators—who rode up the ladder using political connections but then looked to start collecting generous pensions while in their 40s or early 50s, when the same political spoils system they benefited from turned against them.

In two previous reports, in 2002 ("Pension Liabilities," *CW*, Spring '02) and 2004 ("Cahill Says He'll Tackle Early-Pension Reform Challenge, *CW*, Winter '04), *CommonWealth* documented abuse of termination pensions by high-level officials. Along with identifying eight legislators who tapped the pension provision—the one group for which the perk was eliminated by last year's reform bill—the earlier stories reported on a number of prominent executive branch employees who had cashed in on the early pension payments. These enhanced pensions allow state workers who are not yet 55 to receive payments equaling roughly 40 percent to 45 percent of the employee's highest salary in state government.

Robert Durand, a former state senator who was tapped in 1999 by his longtime friend Gov. Paul Cellucci to serve as secretary of environmental affairs, was out of a job when Mitt Romney took office as governor in January 2003 and chose to replace him. But it was a soft landing for the Marlborough Democrat, then age 49, who submitted paperwork to begin collecting a termination pension of $43,229 a year, then left state government to start his own consulting business. The move allowed Durand to pocket more than $225,000 in pension payments before reaching age 55. Without the generous termination pension formula, Durand would have had to wait until 55 to begin drawing a pension. What's more, his annual pension under the standard calculation used for state retirees would have been $33,612, or roughly $10,000 less than he began drawing six years before turning 55.



In the mid-1980s, another former Democratic lawmaker, Timothy Bassett, was appointed by Gov. Michael Dukakis to head the Massachusetts Government Land Bank. When Gov. William Weld chose to replace him in 1996, Bassett, then 47 years old, not only received a $212,000 severance package from the agency, he applied for and was granted a termination pension of $38,419 a year.

Other former lawmakers seizing on termination pensions after working their way into high-paying executive branch jobs include Peter Webber, a one-time Republican state senator, and David Peters, a Republican state representative who served as the House minority leader in the 1980s.

Webber left the Senate in 1991 to become commissioner of the Department of Environmental Management under Weld. When he was let go by Romney in 2004, Webber, then 52, began collecting a pension of $43,998 per year. Peters left the Legislature to become commissioner of the Department of Fish and Game under Cellucci. When he was replaced in January 2007 by incoming Gov. Deval Patrick, Peters, then 52, began collecting $42,860 per year.

The grand-prize winner when it comes to termination pensions may be Andrew Gottlieb, who was also let go when Patrick took office. He had served as chief of commonwealth development, a "super secretary" position that Romney had established to oversee the state's housing, environment, and energy offices. Gottlieb, then just 43 years old, began collecting $44,029 per year. Gottlieb is now working with an energy consulting and venture capital firm founded by Doug Foy, who held the commonwealth development post before him. Gottlieb is in line to collect more than $530,000 in pension payments before reaching age 55. At age 80 he will have collected $860,000 more in pension benefits than would have been the case if he had to wait and begin collecting a standard-formula pension at age 55.

Gottlieb had accrued 20 years and five days of state service, just barely putting him over the 20-year line to qualify for a termination pension. He cobbled together the 20 years by including two years that he served as an elected member of the board of selectmen in Mashpee, a panel that holds Monday evening meetings about twice per month in the Cape Cod town. What's more, using a provision that allowed elected officials to claim credit for a full year of service if they were in office for as little as a single day during a given calendar year, Gottlieb made his 20 years by getting credit for a full year of service in 1987 even though he only took office as a selectman in May of that year. (The one day/one year perk for elected officials was eliminated going forward in the reform bill passed last June.)

Gottlieb did not return a phone call made to Serrafix, the consulting firm where he now works.

PHOTOGRAPH BY JANET KNOTT/BOSTON GLOBE/LANDOV

TIMING IS EVERYTHING

In March of last year, as he was under fire for a controversial patronage appointment that was ultimately withdrawn, Gov. Patrick held an unusual Sunday press conference at the State House to issue a call for pension reform. Reacting to recent news accounts of prominent officials obtaining termination pensions after working the system to their advantage, Patrick decried such "gaming of the public retirement system," which he said undermined the credibility and sustainability of the system for all public workers. "This is unacceptable," Patrick said in a press release put out by his office.

Freshman state Rep. James Arciero says public service should not be a way to "hit the gravy train."

But only a month earlier, Patrick tapped for a prominent state post a real estate developer who gamed the system in just the way the governor was condemning. Jeffrey Simon, selected by Patrick in February as the state's stimulus czar, overseeing the distribution of billions of dollars in federal funds, served as director of the Massachusetts Government Land Bank until he was let go in the mid-1990s. The *Globe* reported in February that Simon began collecting a termination pension in December 1995, when he was 45 years old. Simon had collected just over $400,000 in pension payments when he was brought back into state government last year, according to the *Globe*.

As with Gottlieb, Simon seized on a state law allowing him to count a limited-duty, part-time municipal post in order to hit the 20-year qualifying mark. In Simon's case it was five years he spent as a $150-a-year member of the Ipswich School Committee. The Essex County retirement board refused his request to include this part-time service, but Simon appealed the decision to a state administrative law judge who ruled in his favor.

CommonWealth's 2002 report found that more than 1,000 termination pensions had been granted over the prior 12 years. Of these, fully one-third went to employees who had passed the 20-year qualifying mark by less than a year. In 10 percent of all cases, the employee had cleared 20 years by less than a month. The timing of these cases raised questions about whether some employees were not actually terminated but instead had asked to be turned loose after hitting the 20-year mark.

One example was Susan Costello, a rising Republican Party activist, whose post as an assistant secretary of human services was said to have been eliminated in 1996 by the Weld administration just two days after she passed the 20-year mark in the state system. Costello was just 42 years old when she began collecting a $27,483 a year pension. Costello hardly looked like a victim of political purge, however, as she went to work for the lobbying firm headed by then-Gov. Weld's former chief secretary, John Moffit.

State supervisors are sometimes willing to put off a firing so that an employee qualifies for a termination pension.

In the seven years since 2002, an additional 431 termination pensions have been granted by the state retirement board, with more than one-quarter of them going to workers who had cleared the 20-year mark by less than a year. Even in cases where there is no suggestion that the employee sought their own exit, state supervisors are sometimes willing to put off a firing so that an employee qualifies for a termination pension.

In 2003, as part of a wholesale reorganization of the Massachusetts Convention Center Authority, Alan Reid was fired from his position as chief financial officer. But

PHOTOGRAPH BY CONNOR GLEASON

Reid remained on the payroll until 2004. At his retirement date in June 2004, Reid, then 48 years old, had accrued 20 years and one day of state service, and he started collecting an annual pension of $42,429. Mac Daniel, a spokesman for the convention center authority, says Reid aided with the transition to a new CFO, but he acknowledges that the unusual arrangement was driven by Reid's wish to qualify for a termination pension. James Rooney, the convention center authority executive director, knew that Reid "needed to hit this pension milestone, and he was allowed to do so," says Daniel.

A similar situation occurred after Michael O'Keefe was elected district attorney for the Cape and Islands in 2002. When he took office in January 2003, O'Keefe opted to bring on someone new to run the office's victim/witness assistance program. But rather than terminate Virginia Bein, who had run the program for several years under his predecessor, the new DA appointed her to a "one-year, temporary position created in order for her to assist with the ensuing program transition," as O'Keefe wrote in a letter to the state retirement board supporting her application for a termination pension.

The retirement board initially balked at approving the pension for Bein, whose one-year appointment gave her 20 years and 21 days in the state retirement system. In a letter to O'Keefe, the retirement board's director, Nicola Favorito, asked him to outline Bein's duties in her temporary position, how her termination came about and "whether her appointment [to the temporary post] was done in contemplation of her retirement." In his reply, O'Keefe outlined her duties and the circumstances surrounding her termination, but he did not address the question of whether the temporary appointment was made with consideration toward her retirement benefits. The retirement board nonetheless approved her pension.

In an interview, O'Keefe acknowledges that Bein, whose temporary post paid less than half what she had been earning, was eager to stay on the office payroll for another year. "I know she wanted to stay on a little longer, and we [decided we] could use her to help the new director and to fill a spot at a lower level," says O'Keefe. "If there's something wrong with that, I would like somebody to point out what that is."

BAY STATE STANDS ALONE

Although it's not hard to see why people like Bein and Reid would do all they could to get to the magical 20-year mark, a bigger question is why the state maintains the termination retirement pension at all. In March, when he issued his call for sweeping pension reform, Patrick called for termination pensions to be eliminated for all new state employees. But when he testified two weeks later before the Legislature's Joint Committee on Public Service, Patrick backpedaled considerably, supporting elimination of termination pensions for elected officials but saying only that lawmakers should "tighten up the rules" for all other state workers.

Asked at the time about the reversal, Patrick administration officials said they concluded that termination pensions were important to offer protection for middle-level managers. But if the early pensions are a sensible public-sector policy, the wisdom of such a provision has escaped virtually every other large public pension system in the country. A state commission on pension reform, formed in March in the wake of reports of abuses of the Bay State system, looked at the rules governing the 107 largest state retirement systems outside Massachusetts. The commission found only two—those covering Montana state employees and District of Columbia teachers—that provided broad termination benefits of any kind, and the benefits in these two systems are far more modest than those here. Montana allows terminated workers to "buy" up to three additional years of service, and D.C. teachers who are over age 55 when terminated receive pension payments calculated as if they were 60.

"It tells me that this is just even more of an outrageous anomaly than I already believed," says state Sen. Robert Hedlund, a Weymouth Republican who unsuccessfully pushed a budget amendment last year to eliminate termination pensions.

The pension commission issued a list of 32 possible further reforms to be considered by state lawmakers. Among them is eliminating the current termination pension provision and in its place granting a terminated employee credit for two additional years of service at the time they begin receiving regular pension benefits. The existing termination pension is "bad public policy," says Alicia Munnell, the director of the Center for Retirement Research at Boston College, who chaired the pension reform commission.

State Sen. Thomas McGee, the co-chairman of the Legislature's public service committee, which plans to propose new pension reform legislation this year, says he's unsure how far such a bill will go in addressing termination pensions. But he acknowledges something must be done about cabinet members and other high-level officials seizing on the pension perk. "Those are the ones that make us say, 'we absolutely have to take a look at this,'" says McGee, who served on the pension reform commission.

The House chairman of the public service committee, Rep. Robert Spellane of Worcester, who also served on the commission, did not respond to repeated phone calls.

In 2004, responding to *CommonWealth*'s earlier investigation, state Treasurer Timothy Cahill, who oversees the state retirement board, vowed to propose changes to rein in termination pensions. But he acknowledged last spring that he had not followed through on that, arguing that resistance in the Legislature would have made any such effort pointless.

"We backed off," he told *CommonWealth* last May. "We got a lot of pushback from the Legislature. I wasn't interested in getting on everyone's bad side just to file something that wasn't going anywhere." After the Legislature passed the reform bill eliminating the perk for elected officials, Cahill, who is mounting an independent campaign for governor this year, told *CommonWealth* he favors getting rid of termination pensions altogether.

'I wasn't interested in getting on everyone's bad side' with a doomed bill, says Cahill.

The governor's office announced in November that Patrick plans to file new pension reform legislation in late January, when he submits his proposed budget for the next fiscal year. However, a spokeswoman for Patrick says it is not clear whether his bill will address termination pensions.

Freshman state Rep. James Arciero says it's time to clear the abuse-plagued pension provision from the books once and for all. Arciero, who has filed a bill to end all termination pensions, says public service should not be a way to "hit the gravy train" at an age when most people are in the middle of their working years. "We shouldn't be handing out these pensions before people are 55 at all," says the Westford Democrat. "It's ridiculous, and it's hemorrhaging the state. It's another one of these issues we need to tackle to get our financial house in order." CW