

2002 SESSION

INTRODUCED

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HOUSE BILL NO. 1107

Offered January 9, 2002

Prefiled January 9, 2002

A BILL for the relief of Mary E. Ferguson.

Patron—Christian

Referred to Committee on Appropriations

Whereas, Mary E. Ferguson (Ms. Ferguson) is a resident of Hampton, Virginia; and
Whereas, Ms. Ferguson was employed by the Virginia Department of Transportation (VDOT) as a Bridge Tunnel Patroller for the Hampton Tunnel; and
Whereas, on June 19, 1991, Ms. Ferguson was injured when the patrolman's truck she was driving was involved in an accident; and
Whereas, the injuries sustained by Ms. Ferguson as a result of the accident prevented her from working for an extended period of time; and
Whereas, beginning in July 1992 Ms. Ferguson was placed on leave without pay status (LWOP); and
Whereas, in June 1993 Ms. Ferguson attempted to return to work subject to certain physical limitations as required by her doctors; and
Whereas, VDOT determined that the limitations on her physical activities prevented her from returning to work as a Bridge Tunnel Patroller at that time; and
Whereas, Ms. Ferguson continued in the LWOP status and VDOT continued to hold her position open through June 1994; and
Whereas, VDOT informed Ms. Ferguson on June 2, 1994, that her position would be filled on July 1, 1994, unless she returned to work on that date without physical limitations; and
Whereas, Ms. Ferguson decided to return to work; and
Whereas, Ms. Ferguson arrived prepared to work on July 1, 1994, and provided VDOT with letters from two of her doctors, Dr. Robert L. Solomon and Dr. James L. Phillips; and
Whereas, Dr. Solomon indicated in his letter that Ms Ferguson was still receiving rehabilitation three days a week and was on certain medication while the letter from Dr. Phillips indicated that she could return to work on full duty with unrestricted activities; and
Whereas, in an attempt to clarify Ms. Ferguson's status, the Human Resources Manager contacted Dr. Solomon and determined that in fact Ms. Ferguson should not have been released to return to work on full duty with unrestricted activities; and
Whereas, after waiting for over five hours, Ms. Ferguson was not allowed to work but instead was sent home; and
Whereas, Ms. Ferguson subsequently decided to apply for disability retirement benefits; and
Whereas, the Virginia Retirement System (VRS) denied her application for disability retirement benefits citing § 51.1-156 G, which precludes such benefits to individuals who have been on LWOP status for a period exceeding twenty-four months; and
Whereas, on May 9, 1995, Ms. Ferguson requested an informal fact finding hearing on the issue; and
Whereas, an informal fact finding hearing was conducted before a hearing officer, with Ms. Ferguson being represented by an attorney; and
Whereas, in a report dated September 15, 1995, the hearing officer concluded that Ms. Ferguson was entitled to apply for disability retirement benefits; and
Whereas, the VRS rejected the decision of the hearing officer and maintained its position that Ms. Ferguson could not apply for disability retirement benefits; and
Whereas, pursuant to the Administrative Process Act, in order to appeal the decision of the VRS, Ms. Ferguson had to file a notice of appeal with the VRS within 30 days of its decision and a petition for appeal with the Hampton Circuit Court 30 days thereafter; and
Whereas, while Ms. Ferguson was timely in filing a notice of appeal with the VRS on November 14, 1995, the petition for appeal was never filed; and
Whereas, Ms. Ferguson believed that her attorney had in fact filed the petition for appeal; and
Whereas, the VRS informed Ms. Ferguson by letter dated February 7, 1996, that according to the clerk of the Hampton Circuit Court, no petition for appeal was ever filed and there would be no further action on her application for disability benefits; and
Whereas, as a result Ms. Ferguson has lost the opportunity to contest the decision of the VRS regarding her disability application; and
Whereas, Ms. Ferguson has no other means to obtain relief except by action of this body; now,

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59 therefore,

60 **Be it enacted by the General Assembly of Virginia:**

61 1. § 1. *That the Virginia Retirement System (VRS) is directed to compute the monthly disability*
62 *retirement benefit for Mary E. Ferguson and determine from this computation the lump sum amount that*
63 *would have been received by Ms. Ferguson from the period July 26, 1994, through July 1, 2001.*

64 § 2. *That there is hereby appropriated for the relief of Mary E. Ferguson from the funds appropriated to*
65 *the VRS a lump sum payment in the amount equal to what Ms. Ferguson would have received from the*
66 *period July 26, 1994, through July 1, 2001, and monthly amounts equal to the full disability retirement*
67 *benefit as computed by the VRS, to be paid by checks issued by the State Treasurer on warrant of the*
68 *Comptroller upon (i) execution of a release of all claims Mary E. Ferguson may have against the*
69 *Commonwealth or any agency, instrumentality, office, employee or political subdivision in connection*
70 *with the aforesaid occurrence and (ii) a determination by the Virginia Retirement System Medical Board*
71 *that Mary E. Ferguson is disabled as defined in § 51.1-1100.*