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HOUSE BILL NO. 1107**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 6, 2002)

(Patron Prior to Substitute—Delegate Christian)

A BILL for the relief of Mary E. Ferguson.

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, VDOT's 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 at her place of employment for more than 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 subsection G of § 51.1-156, which precludes such benefits to individuals who have been on LWOP status for a period exceeding 24 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 (§ 2.2-4000 et seq.), 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 of such inaction, 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, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Virginia Retirement System (VRS) is directed to allow Mary E. Ferguson to apply for

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60 *disability, based on an effective date of July 1, 1994, upon the execution of a release of all claims Mary*
61 *E. Ferguson may have against the Commonwealth or any agency, instrumentality, office, employee or*
62 *political subdivision in connection with the aforesaid occurrence.*
63 **2. That an emergency exists and this act is in force from its passage.**