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SENATE BILL NO. 41**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 8, 2012)

(Patrons Prior to Substitute—Senators Marsh and McEachin [649])

A BILL for the relief of Thomas Edward Haynesworth.

Whereas, on July 12, 1984, Thomas Edward Haynesworth (Mr. Haynesworth) was convicted of rape in the Circuit Court for the City of Richmond and sentenced to serve 10 years; and

Whereas, on August 10, 1984, Mr. Haynesworth was convicted of rape, sodomy, abduction with intent to defile, and two counts of use of a firearm in the commission of a felony in the Circuit Court for the County of Henrico and sentenced to serve 36 years; and

Whereas, on October 11, 1984, Mr. Haynesworth was convicted of attempted robbery, abduction with intent to defile, and two counts of use of a firearm in the commission of a felony in the Circuit Court for the City of Richmond and sentenced to serve 28 years; and

Whereas, Mr. Haynesworth filed a Petition for Appeal with the Virginia Supreme Court for the convictions in the second case and on May 9, 1985, the Virginia Supreme Court entered an Order refusing the Petition; and

Whereas, Mr. Haynesworth filed a Petition for Appeal with the Virginia Supreme Court for the convictions in the third case, and on March 11, 1986, the Virginia Supreme Court entered an Order refusing the Petition; and

Whereas, in 2009, DNA evidence exonerated Mr. Haynesworth of the July 12, 1984, rape conviction and implicated another individual; and

Whereas, Mr. Haynesworth and the other individual resembled one another at the time the crimes were committed; and

Whereas, Mr. Haynesworth and the other individual lived in close proximity to each other when the crimes were committed; and

Whereas, the crimes for which Mr. Haynesworth was convicted included elements strikingly similar to elements of other crimes for which the other individual was convicted; and

Whereas, DNA evidence established that Mr. Haynesworth was misidentified by two victims of attacks; and

Whereas, Mr. Haynesworth filed a Petition for Writ of Actual Innocence with the Virginia Supreme Court for the July 12, 1984, conviction of rape; and

Whereas, on September 18, 2009, based on DNA evidence, the Virginia Supreme Court issued a Writ of Actual Innocence for the July 12, 1984, rape conviction; and

Whereas, Mr. Haynesworth was released from prison on March 21, 2011; and

Whereas, Mr. Haynesworth filed a Petition for a Writ of Actual Innocence with the Virginia Court of Appeals for the convictions in the second and third cases; and

Whereas, the Virginia Court of Appeals issued a Writ of Actual Innocence on December 6, 2011, for the convictions in the second and third cases; and

Whereas, Mr. Haynesworth has been granted writs of actual innocence for all convictions in all cases; and

Whereas, Mr. Haynesworth has always maintained his innocence; and

Whereas, Mr. Haynesworth was incarcerated for 27 years for crimes he did not commit; and

Whereas, Mr. Haynesworth had no convictions prior to July 12, 1984; and

Whereas, Mr. Haynesworth has also suffered severe physical, emotional, and psychological damage as a result of this wrongful incarceration and has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *That there is hereby appropriated from the balance of the general fund compensation in the amount of \$1,075,178 for the relief of Thomas Edward Haynesworth (Mr. Haynesworth) upon execution of a release by Mr. Haynesworth from any present or future claims he may have in connection with the aforesaid occurrence against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof and any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia.*

The compensation, subject to the execution of the release described herein, shall be paid as follows: (i) an initial lump sum of \$215,036 to be paid to Mr. Haynesworth by check issued by the State Treasurer on warrant of the Comptroller within the 60 days immediately following the execution of such release; (ii) the sum of \$759,232 to purchase an annuity no later than September 30, 2012, for the primary benefit of Mr. Haynesworth with the terms of such annuity structured in Mr. Haynesworth's best

60 interests based on consultation between Mr. Haynesworth or his representatives, the State Treasurer,
61 and other necessary parties; and (iii) the sum of \$100,910, for an annuity, pursuant to § 4 of this act,.

62 The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated
63 company authorized to sell annuities in the Commonwealth, including any A+ rated company from
64 which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not
65 be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however,
66 contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr.
67 Haynesworth's death.

68 § 2. That Mr. Haynesworth shall be entitled to receive career and technical training within the
69 Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for
70 the tuition benefit shall be paid by the community college at which the career or technical training is
71 provided. The tuition benefit provided by this section shall expire on January 1, 2017.

72 § 3. That Mr. Haynesworth shall immediately be ineligible to receive any unpaid amounts from the
73 compensation and his beneficiaries shall be ineligible to receive any payments under the annuities
74 purchased pursuant to §§ 1 and 4 of this act upon any conviction on or after January 1, 2012, of Mr.
75 Haynesworth for any felony. Any unpaid amounts remaining under the annuity purchased pursuant to
76 § 1 of this act shall become the property of the Commonwealth and shall be deposited into the general
77 fund of the state treasury. Any unpaid amounts remaining under the annuity purchased pursuant to § 4
78 of this act shall become the property of the Virginia Retirement System. In addition, Mr. Haynesworth
79 shall be ineligible to receive any unused portion of the tuition for career and technical training provided
80 within the Virginia Community College System pursuant to § 2 of this act.

81 § 4. That a payment in the amount of \$100,910 shall be made to the Virginia Retirement System,
82 pursuant to § 1 of this act, for the purpose of providing Mr. Haynesworth a single life annuity that will
83 provide a monthly income stream of \$1,516, provided that (i) the income stream will not begin until Mr.
84 Haynesworth reaches age 60 or until Mr. Haynesworth commences a retirement allowance from the
85 Virginia Retirement System, whichever is later, and (ii) once it commences, the monthly payment shall
86 be increased by cost of living adjustments determined and paid on the same basis as post-retirement
87 supplements under § 51.1-166 for a person who becomes a member on or after July 1, 2010, as that
88 statute may be amended from time to time. The annuity shall contain beneficiary provisions providing
89 for the annuity's continued disbursement in the event of Mr. Haynesworth's death.