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HOUSE BILL NO. 700**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 8, 2016)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL for the relief of Michael Kenneth McAlister.

Whereas, on September 24, 1986, Michael Kenneth McAlister (Mr. McAlister) was convicted of attempted rape and abduction with the intent to defile in the Circuit Court for the City of Richmond and on December 1, 1986, Mr. McAlister was sentenced to serve 10 years for attempted rape and 40 years for abduction with the intent to defile; and

Whereas, on the night of February 23, 1986, in the laundry room of the Town & Country apartment complex in Richmond, a female resident of the complex was attacked by a white male approximately six feet tall wearing a plaid shirt and a stocking mask over his face and brandishing a knife; and

Whereas, during the investigation of the attack on February, 23, 1986, a picture of Mr. McAlister in a plaid shirt was shown to the victim and the victim positively identified Mr. McAlister; and

Whereas, in the year prior to and directly after this attack, a white male approximately six feet tall wearing a stocking mask over his face and carrying a knife attacked women five other times in four other apartment complex laundry rooms; two such attacks occurred while Mr. McAlister was held in the Richmond City jail; and

Whereas, as a result of such attacks a special action police force (SAF) including several police jurisdictions, including the Henrico County Police Department, began following a man named Norman Bruce Derr (Derr), whom they suspected of being a serial rapist and who bore a striking resemblance to Mr. McAlister and who police investigators had followed to a laundry room at the same Town & Country apartment complex and witnessed him prepare to attack a female police decoy in that laundry room; and

Whereas, the lead detective on the investigation only learned about the SAF investigation of Derr and of his striking resemblance to Mr. McAlister after the victim had identified Mr. McAlister in the photo line-up; and

Whereas, Derr was convicted of numerous other rapes, including a 1984 rape, forcible sodomy, and armed burglary of a Hanover county woman; the 1984 rape of a Charles County, Maryland, woman; the 1985 robbery of a Spotsylvania County woman; and the 1988 rape, forcible sodomy, burglary, and abduction of a Fredericksburg woman; and

Whereas, Mr. McAlister was scheduled to be released on January 15, 2015, but was held in prison beyond that date as part of the Commonwealth's civil commitment process; and

Whereas, Mr. McAlister's indefinite detention as well as the accumulation of evidence of Derr's criminal history over the years and other indications of Mr. McAlister's innocence led the Richmond Attorney for the Commonwealth, Michael Herring, to support Mr. McAlister's efforts to obtain an absolute pardon from Governor McAuliffe, and on April 8, 2015, Mr. McAlister, together with Mr. Herring, submitted his Joint Petition for Absolute Pardon to Governor McAuliffe; and

Whereas, on April 29, 2015, Derr confessed to the February 23, 1986, attempted rape and abduction with intent to defile; and

Whereas, on May 13, 2015, Governor McAuliffe granted Mr. McAlister's request for an absolute pardon; and

Whereas, Mr. McAlister 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 general fund of the state treasury the sum of \$1,268,694 for the relief of Mr. McAlister, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Mr. McAlister may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia, and (iii) all other parties of interest in connection with the aforesaid occurrence.*

The compensation, subject to the execution of the release described herein, shall be paid as follows:
(a) *an initial lump sum of \$253,740 to be paid to Mr. McAlister by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and*
(b) *the sum of \$1,014,954 to purchase an annuity no later than September 30, 2016, for the primary benefit of Mr. McAlister, the terms of such annuity structured in Mr. McAlister's best interests based on consultation among Mr. McAlister or his representatives, the State Treasurer, and other necessary parties.*

60 *The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated*
61 *company authorized to sell annuities in the Commonwealth, including any A+ rated company from*
62 *which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not*
63 *be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however,*
64 *contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr.*
65 *McAlister's death.*
66 **2. That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation**
67 **awarded under this act.**