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## SENATE BILL NO. 649

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 3, 2016)

(Patron Prior to Substitute—Senator Surovell)

*A BILL for the relief of Davey Reedy.*

Whereas, on February 10, 1988, Davey Reedy (Mr. Reedy) was convicted of first degree murder for the deaths of his two children and arson in the daytime and was subsequently sentenced to serve a life sentence for each of the murder counts and 10 years for arson in the daytime; and

Whereas, on August 10, 1987, the Roanoke City Fire Department responded to a fire at the home of Mr. Reedy; and

Whereas, Mr. Reedy and his two children, Michael Reedy, age two, and Tina Marie Reedy, age four, were inside the home at the time of the fire; and

Whereas, Michael and Tina Reedy died from monoxide poisoning and severe smoke inhalation as a result of the fire, and Mr. Reedy was treated for severe smoke inhalation, burns to his hands, and blistering to his abdomen; and

Whereas, the cause of the fire was investigated by the Roanoke City Fire Marshal's Office and the Roanoke City Police Department, and during the investigation authorities interviewed Mr. Reedy and collected evidence from the home; and

Whereas, Mr. Reedy denied setting the fire; and

Whereas, on September 8, 1987, Mr. Reedy was charged with two counts of capital murder in the deaths of his children, Michael and Tina, and one count of arson; and

Whereas, on the basis of the forensic evidence presented at trial that the fire was intentionally caused through the use of petroleum products, Mr. Reedy was convicted of first degree murder for the deaths of his children and convicted of arson and sentenced as described above; and

Whereas, at Mr. Reedy's trial, the former Roanoke City Deputy Fire Marshal (Deputy Fire Marshal) testified concerning the relationship between the depth of char at a fire scene and the length of time a fire burns and testified concerning burn patterns and their relationship to where a fire started; the Deputy Fire Marshal also testified that some flammable liquid was poured over Mr. Reedy's kitchen floor that the forensic laboratory later determined was gasoline and testified that sections of the floor were cut out that testified positive for gasoline; and

Whereas, the Deputy Fire Marshal testified that only a fire set with the use of an accelerant could reach a temperature high enough to melt aluminum; and

Whereas, during Mr. Reedy's trial, an analyst from the Virginia Department of Forensic Science (the Department) testified that gas chromatography results revealed the presence of petroleum distillates of the gasoline type on Mr. Reedy's shirt and on the kitchen floor, this being the only evidence of petroleum products found during the investigation; and

Whereas, following Mr. Reedy's conviction and subsequent appeals, questions were raised by fire and forensic experts that began to cast doubt on the validity of the science presented during his trial; and

Whereas, in 2002, Richard J. McGarry (Mr. McGarry), a former forensic toxicologist for the Commonwealth from 1967 to 1991, reviewed the laboratory reports, chromatograms, and testimony presented at trial by the Department analyst and questioned the methodology used by the analyst in reaching her conclusions and the handling of the evidence; and

Whereas, in August 2005, a report by Combustion Science and Engineering, Inc., (CSEI) analyzing the cause of the fire and its origins refuted each of the bases for the Deputy Fire Marshal's assertions that the fire was caused by an accelerant; and

Whereas, specifically, CSEI noted that the very patterns and melted structures that the Deputy Fire Marshal testified were the result of a fire caused by an accelerant would also result from a slow burn fire where no accelerant was used; and

Whereas, CSEI also questioned the validity of the Department analyst's conclusions using gas chromatography with flame ionization detection where the request for examination sent to the analyst labeled the fire as being caused by arson; and

Whereas, sufficient questions were raised over the validity of the forensic evidence and testimony to encourage former Parole Board Chair Helen Fahey to request that the Department reexamine its notes in October 2005; and

Whereas, the Department forwarded the request to the original examiner, who found no grounds for changing her original analysis; and

Whereas, other experts also voiced concerns over the techniques surrounding the use of gas chromatography with flame ionization detection utilized in Mr. Reedy's case; in 2006, John Lentini (Mr.

60 Lentini) also reviewed the analysis; and

61 Whereas, Mr. Lentini, a contributor to the NFPA 921 (Guide for Fire and Explosion Investigations),  
62 observed the many changes in the standard for gasoline identification since 1987 and challenged the  
63 positive identification of gasoline in the two samples in Mr. Reedy's case; and

64 Whereas, in March 2013, Parole Board Investigator Trudy Harris requested that Linda Jackson,  
65 Director of the Department, have the notes in the case reexamined; and

66 Whereas, the request was again sent to the original Department analyst, who again indicated that  
67 there was no change to her analysis of Mr. Reedy's shirt showing identifying evidence of gasoline;  
68 however, with respect to her original finding of petroleum distillates of the gasoline type on the kitchen  
69 floor, she concluded that current reporting language would only lead to a report showing "characteristics  
70 of gasoline today"; and

71 Whereas, on the basis of advances in the techniques utilized in fire investigations, in January 2014,  
72 former Governor Robert McDonnell requested that the Department again review the 1987 trace evidence  
73 analysis; and

74 Whereas, the test was conducted by a different analyst knowledgeable in the methodology used in  
75 1987 and without any knowledge of the original results or analyst; as a result of the new examiner's  
76 review of the prior evidence, it was determined that "current reporting criteria would preclude the  
77 identification of gasoline" on Mr. Reedy's shirt or the kitchen floor; and

78 Whereas, the latest review by the Department's laboratory was consistent with questions raised by  
79 other experts challenging the previous assertion that the fire that resulted in the deaths of Michael and  
80 Tina Marie Reedy was caused by an accelerant; and

81 Whereas, Mr. Reedy was released from custody and placed on parole on May 1, 2009; and

82 Whereas, Mr. Reedy spent over 21 years in prison; and

83 Whereas, it is clear from the multiple reports disputing the cause of the fire that led to Mr. Reedy's  
84 conviction, the conflicting reports within the Commonwealth's own Department of Forensic Science on  
85 the presence of gasoline, and the testimony presented at trial that Mr. Reedy's convictions on two counts  
86 of first degree murder and one count of arson are not supported by the forensic evidence relied upon;  
87 and

88 Whereas, Governor Terry McAuliffe on December 21, 2015, granted an absolute pardon to Mr.  
89 Reedy from the convictions handed down by the Roanoke City Circuit Court on February 10, 1988,  
90 such pardon stating that it reflected Mr. Reedy's innocence of the charges of which he was convicted;  
91 and

92 Whereas, Mr. Reedy has no other means to obtain adequate relief except by action of this body;  
93 now, therefore,

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

95 **1. § 1.** *That there is hereby appropriated from the general fund of the state treasury the sum of*  
96 *\$961,489 for the relief of Mr. Reedy, to be paid by check issued by the State Treasurer on warrant of*  
97 *the Comptroller upon execution of a release of any present or future claims Mr. Reedy may have*  
98 *against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision*  
99 *thereof, (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia, and (iii) all*  
100 *other parties of interest in connection with the aforesaid occurrence.*

101 *The compensation, subject to the execution of the release described herein, shall be paid as follows:*  
102 *(a) an initial lump sum of \$192,298 to be paid to Mr. Reedy by check issued by the State Treasurer on*  
103 *warrant of the Comptroller within 60 days immediately following the execution of such release and (b)*  
104 *the sum of \$769,191 to purchase an annuity no later than September 30, 2016, for the primary benefit*  
105 *of Mr. Reedy, the terms of such annuity structured in Mr. Reedy's best interests based on consultation*  
106 *among Mr. Reedy or his representatives, the State Treasurer, and other necessary parties.*

107 *The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated*  
108 *company authorized to sell annuities in the Commonwealth, including any A+ rated company from*  
109 *which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not*  
110 *be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however,*  
111 *contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr.*  
112 *Reedy's death.*

113 **§ 2.** *That Mr. Reedy shall be entitled to receive career and technical training within the Virginia*  
114 *Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition*  
115 *benefit shall be paid by the community college at which the career or technical training is provided.*  
116 *The tuition benefit provided by this section shall expire on January 1, 2021.*

117 **2.** *That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation*  
118 *awarded under this act.*