

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act for the relief of Mary E. Ferguson.*

3 [H 1107]

4 Approved

5 Whereas, Mary E. Ferguson (Ms. Ferguson) is a resident of Hampton, Virginia; and
 6 Whereas, Ms. Ferguson was employed by the Virginia Department of Transportation (VDOT) as a
 7 Bridge Tunnel Patroller for the Hampton Tunnel; and

8 Whereas, on June 19, 1991, Ms. Ferguson was injured when the patrolman's truck she was driving
 9 was involved in an accident; and

10 Whereas, the injuries sustained by Ms. Ferguson as a result of the accident prevented her from
 11 working for an extended period of time; and

12 Whereas, beginning in July, 1992, Ms. Ferguson was placed on leave without pay status (LWOP);
 13 and

14 Whereas, in June 1993, Ms. Ferguson attempted to return to work subject to certain physical
 15 limitations as required by her doctors; and

16 Whereas, VDOT determined that the limitations on her physical activities prevented her from
 17 returning to work as a Bridge Tunnel Patroller at that time; and

18 Whereas, Ms. Ferguson continued in the LWOP status and VDOT continued to hold her position
 19 open through June 1994; and

20 Whereas, VDOT informed Ms. Ferguson on June 2, 1994, that her position would be filled on July
 21 1, 1994, unless she returned to work on that date without physical limitations; and

22 Whereas, Ms. Ferguson decided to return to work; and

23 Whereas, Ms. Ferguson arrived prepared to work on July 1, 1994, and provided VDOT with letters
 24 from two of her doctors, Dr. Robert L. Solomon and Dr. James L. Phillips; and

25 Whereas, Dr. Solomon indicated in his letter that Ms. Ferguson was still receiving rehabilitation three
 26 days a week and was on certain medication while the letter from Dr. Phillips indicated that she could
 27 return to work on full duty with unrestricted activities; and

28 Whereas, in an attempt to clarify Ms. Ferguson's status, VDOT's human resources manager contacted
 29 Dr. Solomon and determined that in fact Ms. Ferguson should not have been released to return to work
 30 on full duty with unrestricted activities; and

31 Whereas, after waiting at her place of employment for more than five hours, Ms. Ferguson was not
 32 allowed to work but instead was sent home; and

33 Whereas, Ms. Ferguson subsequently decided to apply for disability retirement benefits; and

34 Whereas, the Virginia Retirement System (VRS) denied her application for disability retirement
 35 benefits citing subsection G of § 51.1-156, which precludes such benefits to individuals who have been
 36 on LWOP status for a period exceeding 24 months; and

37 Whereas, on May 9, 1995, Ms. Ferguson requested an informal fact-finding hearing on the issue; and

38 Whereas, an informal fact-finding hearing was conducted before a hearing officer, with Ms. Ferguson
 39 being represented by an attorney; and

40 Whereas, in a report dated September 15, 1995, the hearing officer concluded that Ms. Ferguson was
 41 entitled to apply for disability retirement benefits; and

42 Whereas, the VRS rejected the decision of the hearing officer and maintained its position that Ms.
 43 Ferguson could not apply for disability retirement benefits; and

44 Whereas, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), in order to appeal the
 45 decision of the VRS, Ms. Ferguson had to file a notice of appeal with the VRS within 30 days of its
 46 decision and a petition for appeal with the Hampton Circuit Court 30 days thereafter; and

47 Whereas, while Ms. Ferguson was timely in filing a notice of appeal with the VRS on November 14,
 48 1995, the petition for appeal was never filed; and

49 Whereas, Ms. Ferguson believed that her attorney had in fact filed the petition for appeal; and

50 Whereas, the VRS informed Ms. Ferguson by letter dated February 7, 1996, that according to the
 51 clerk of the Hampton Circuit Court, no petition for appeal was ever filed and there would be no further
 52 action on her application for disability benefits; and

53 Whereas, as a result of such inaction, Ms. Ferguson has lost the opportunity to contest the decision
 54 of the VRS regarding her disability application; and

55 Whereas, Ms. Ferguson has no other means to obtain relief except by action of this body; now,
 56 therefore,

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

58 **1.** *§ 1. That the Virginia Retirement System (VRS) is directed to allow Mary E. Ferguson to apply for*
59 *disability, based on an effective date of July 1, 1994, upon the execution of a release of all claims Mary*
60 *E. Ferguson may have against the Commonwealth or any agency, instrumentality, office, employee or*
61 *political subdivision in connection with the aforesaid occurrence.*

62 **2. That an emergency exists and this act is in force from its passage.**