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HOUSE BILL NO. 394

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on March 2, 2022)

(Patron Prior to Substitute—Delegate Sullivan)

A *BILL for the relief of Emerson Eugene Stevens, relating to claims; compensation for wrongful incarceration.*

WHEREAS, Emerson Eugene Stevens was convicted in the Circuit Court of the County of Lancaster on July 12, 1986, of the abduction with intent to defile and first-degree murder of Mary Harding; and

WHEREAS, Mr. Stevens was sentenced by a jury to 65 years in prison for the abduction with intent to defile conviction and 99 years and one day in prison for the first-degree murder conviction; and

WHEREAS, Mr. Stevens served 32 years in the Virginia Department of Corrections before being released on parole in 2017; and

WHEREAS, the only physical evidence purportedly linking Mr. Stevens to the crime was a hair; the FBI now states that the type of microscopic hair comparison used in his case is scientifically unreliable and should never serve as a basis upon which to convict a defendant. The other physical link between Mr. Stevens and the crime was a type of fishing knife that Mr. Stevens might once have had and that had supposedly caused wounds on the victim's back. The Commonwealth's expert on this piece of evidence years later reviewed the case and signed an affidavit swearing that the wounds were, in fact, more consistent with a postmortem encounter with a propeller than a knife; and

WHEREAS, several of the Commonwealth's critical witnesses lied during their testimony. For example, an "eyewitness" who placed Mr. Stevens' car outside of the victim's house was later prosecuted and convicted of obstruction of justice for his false testimony against Emerson Stevens; and

WHEREAS, the Commonwealth presented false testimony from a marine scientist regarding the location where the victim's body was dumped in relation to where she ultimately was found. This testimony was later characterized by the scientist as "eyewash" (nonsense), and it was also inconsistent with the investigative findings of an FBI Task Force; and

WHEREAS, the lead investigator on Mr. Stevens' case, Virginia State Police Special Agent David Riley, has a documented history of misconduct. His improper conduct in the case of Beverly Anne Monroe, who was wrongfully convicted of murder, in part led a federal court to grant Ms. Monroe a writ of habeas corpus; and

WHEREAS, Mr. Stevens was released on parole in 2017, after serving 32 years in prison for this crime. Still, the University of Virginia School of Law Innocence Project (UVAIP) continued his habeas corpus litigation in an effort to exonerate Mr. Stevens and clear his name and record; and

WHEREAS, in April 2020, the United States Court of Appeals for the Fourth Circuit encouraged the Governor to exercise his pardon power, noting that "the executive's power and responsibility both before and after conviction remain fundamental in our system of divided powers." In re Stevens, 936 F.3d 229, 234 (4th Cir. April 15, 2020). In his concurring opinion, Judge Thacker found that "the evidence as a whole overwhelmingly supports a conclusion that no reasonable jury would have convicted Stevens." Stevens, 936, F.3d at 237; and

WHEREAS, during the course of the subsequent federal habeas corpus litigation, the District Court Judge overseeing the proceedings wrote, "The Court reminds the Parties, as did the Fourth Circuit, that seeking a pardon from the Governor may be the more expeditious pursuit given the length of time it requires to obtain habeas relief in federal court and the limiting parameters the [statute] imposes on review"; and

WHEREAS, Mr. Stevens, through the UVAIP, submitted a petition for clemency seeking an absolute pardon based on the circumstances surrounding his innocence; and

WHEREAS, on August 13, 2021, Governor Ralph Northam granted Mr. Stevens an absolute pardon. In so doing, Governor Northam noted that the pardon "reflects Mr. Stevens' innocence"; and

WHEREAS, since his release on parole, Mr. Stevens has had no new arrests; and

WHEREAS, during the course of Mr. Stevens' wrongful incarceration, he and his wife divorced, his three children lost decades with their father, and both of his parents and one of his children died; and

WHEREAS, Mr. Stevens, as a result of his wrongful incarceration, lost 32 years of his freedom and countless life experiences and opportunities, including family relations, the opportunity to further his education, and the opportunity to earn potential income from gainful employment during his years of incarceration; and

WHEREAS, Mr. Stevens 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:

SENATE SUBSTITUTE

HB394S1

60 1. § 1. That there is hereby appropriated from the general fund of the state treasury the sum of
61 \$2,603,263.89 for the relief of Emerson Eugene Stevens, to be paid by check issued by the State
62 Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Stevens may
63 have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision
64 in connection with the aforesaid occurrence.

65 The compensation, subject to the execution of the release described herein, shall be paid in one lump
66 sum of \$2,603,263.89 by check issued by the State Treasurer on warrant of the Comptroller within 60
67 days immediately following the execution of such release.

68 § 2. That Mr. Stevens shall be entitled to receive reimbursement up to \$10,000 for tuition for career
69 and technical training within the Virginia Community College System contingent upon successful
70 completion of the training. Reimbursement for tuition shall be provided by the comprehensive community
71 college at which the career or technical training was completed. The tuition benefit provided by this
72 section shall expire on January 1, 2027.

73 § 3. That any amount already paid to Mr. Stevens as a transition assistance grant pursuant to
74 subsection C of § 8.01-195.11 of the Code of Virginia shall be deducted from any award received
75 pursuant to § 1 of this act.

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