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HOUSE BILL NO. 617

House Amendments in [] — February 9, 2002

A BILL for the relief of Ricki A. Vick, Michele S. Vick and Caroline E. Vick.

Patron Prior to Engrossment—Delegate Devolites

Referred to Committee on Appropriations

Whereas, Ricki A. Vick and Michele S. Vick and their daughter, Caroline E. Vick, reside in the Town of Vienna in Fairfax County, Virginia; and

Whereas, in the course of her birth on December 25, 1998, Caroline Vick was deprived of an adequate supply of oxygen; and

Whereas, as a result of the oxygen deprivation during the birth, Caroline Vick suffers from spastic quadriplegia and cerebral palsy, and is permanently physically and mentally disabled; and

Whereas, such disability causes Caroline to be permanently in need of assistance in all activities of daily living; and

Whereas, Ricki and Michele Vick filed a claim on Caroline's behalf with the Virginia Worker's Compensation Commission (the Commission) under the Virginia Birth-Related Neurological Injury Compensation Act; and

Whereas, the Commission determined that Caroline's injury was a birth-related neurological injury, ruled that she was entitled to compensation from the Birth-Related Neurological Injury Compensation Fund; and

Whereas, the Commission's award provides Caroline with compensation for the (i) actual medically necessary and reasonable expenses of hospital, rehabilitative, residential and custodial care and service, special equipment or facilities, and related travel to be paid as the expenses are incurred, (ii) loss of earnings beginning on Caroline's eighteenth birthday, and (iii) reasonable expenses incurred in connection with filing their claim; and

Whereas, on January 1, 2000, the Birth-Related Neurological Injury Compensation Program (the Program) reduced the housing benefit to provide one-time funds for an accessible bedroom and bathroom if such modifications prove feasible and reasonable; and

Whereas, it has been determined that a different residence with extensive accommodations is medically necessary for Caroline to (i) be suitable for her severe physical disabilities and total needs, (ii) provide her an optimal environment conducive to family life, and (iii) provide a safe, covered parking garage equipped with a wheelchair ramp; and

Whereas, by letter dated January 2, 2001, the Vicks requested the board of directors of the Program to provide a home in trust for Caroline, as their current home cannot be fully and properly modified to provide the medically necessary residence in which Caroline can be safely and responsibly cared for; and

Whereas, by letter dated January 23, 2001, the chair of the board of directors of the Program summarily denied their request; and

Whereas, Caroline will have reached her third birthday, on December 25, 2001, an actuarially significant milestone indicating that her risk of premature death is now much less than that of claimants less than three years of age; and

Whereas, Caroline continues to grow and thrive, creating physical handling problems for her caregivers at risk for injury during exchanges from her bed, changing station, bathtub, wheelchair, etc.; and

Whereas, pursuant to subsection F of § 38.2-5016 of the Code of Virginia, the board of directors of the Program has the power, in the course of administering the Fund, to purchase, hold, sell or transfer real property; and

Whereas, until this issue is resolved, the Vicks continue to (i) carry Caroline up and down one flight of stairs, thereby incurring risk of injury to them and to Caroline, (ii) transport Caroline in inclement weather conditions because there is no covered parking garage with a wheelchair ramp, and (iii) suffer emotional distress and uncertainty; and

Whereas, the board, by denying the Vicks' request to provide a home in trust for Caroline is denying Caroline a medically necessary residence that accommodates her physical disabilities and is in violation of the Commission's award of actual medically necessary and reasonable expenses for residential and custodial care and service, special equipment or facilities; and

Whereas, Ricki A. Vick, Michele S. Vick and Caroline E. Vick have no other means to obtain adequate relief except by action of this body; now, therefore,

ENGROSSED

HB617E

59 Be it enacted by the General Assembly of Virginia:

60 1. § 1. *That the Birth-Related Neurological Injury Compensation Program is directed to provide,*
61 *from funds in the Birth-Related Neurological Injury Compensation Fund, a trust for Caroline E. Vick.*
62 *Such Trust shall be provided within sixty days of the effective date of this act for the exclusive purpose*
63 *of [residence purchase, or lot to build a residence purchasing a residence or purchasing a lot and all*
64 *expenses of constructing a residence on such lot] , with accommodations for Caroline E. Vick's*
65 *disabilities. The funds that will be made available in the trust shall (i) be sufficient for a residence in a*
66 *comparable neighborhood to that in which the Vicks now reside, (ii) be commensurate with the real*
67 *estate market conditions, and (iii) fully accommodate the special needs of Caroline E. Vick. [The*
68 *establishment of the trust shall occur upon execution of a release of all claims Ricki A. Vick, Michele S.*
69 *Vick and Caroline E. Vick may have against the Commonwealth or any agency, instrumentality, office,*
70 *employee or political subdivision in connection with the aforesaid occurrence. The Fund shall pay all*
71 *attorney fees and administrative fees or costs related to establishing the trust for Caroline E. Vick.]*