

2005 SESSION

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HOUSE BILL NO. 2619

Offered January 12, 2005

Prefiled January 12, 2005

A BILL for the relief of Timothy Q. Johnson, Sr., Karen Johnson and Timothy Q. Johnson, Jr.

Patron—Ingram

Referred to Committee on Appropriations

Whereas, Timothy Q. Johnson, Sr. and Karen Johnson (the Johnsons) are residents of Prince William County; and

Whereas, the Johnsons are the parents of Timothy Q. Johnson, Jr. (Timothy); and

Whereas, on or about July 27, 1999 the Johnsons registered Timothy for a summer camp program operated by the Prince William County Park Authority (Park Authority) at the Dale City Recreation Center (Center), which was scheduled to begin on August 2, 1999; and

Whereas, Karen Johnson informed the employee counselors of the Park Authority that Timothy was mentally retarded and gave the counselors a booklet of sign language to use as an aid when communicating with him; and

Whereas, Timothy was accepted by the Park Authority into the summer camp program with the knowledge that he was mentally retarded, had limited ability to communicate, and otherwise would be a camp participant with special needs; and

Whereas, on or about August 2, 1999, the first day of the camp, Timothy Johnson, Sr. dropped Timothy off at the camp but was later called by camp counselors to return to pick up Timothy due to the counselors' having difficulty in handling him; and

Whereas, when Timothy Johnson, Sr. arrived at the Center, he was assured by a Park Authority counselor that he was capable of direct supervision of Timothy and that due to Timothy's special needs, he would provide direct one-on-one supervision for him; and

Whereas, on August 3, 1999, the second day of the camp, when Timothy Johnson, Sr. dropped Timothy off at the Center, he informed the Park Authority counselors that Timothy did not know how to swim and required direct supervision in the pool area; and

Whereas, the Park Authority counselors took Timothy to the pool located at the Center knowing that he could not swim and was disabled due to his mental retardation, including his inability to communicate any distress he might undergo while in the water; and

Whereas, at approximately 3:30 p.m. on August 3, 1999, Timothy was found lying face down in the pool by another child at the camp; and

Whereas, Timothy had been submerged for a long period of time prior to any response by the lifeguards on duty at the time; and

Whereas, prior to becoming submerged, Timothy had exhibited signs of distress which went unheeded by the camp counselors and by the lifeguards on duty; and

Whereas, by the time one of the lifeguards pulled Timothy from the pool he was unconscious and had no pulse and was not breathing; and

Whereas, Timothy regained breathing and pulse upon arrival of the rescue squad, but remained unconscious; and

Whereas, Timothy was transported by ambulance to Potomac Hospital and remained unresponsive and unconscious while at the emergency room there; and

Whereas, he was transferred by helicopter to Fairfax Hospital and remained unconscious during the transport and upon arrival there; and

Whereas, Timothy subsequently regained consciousness but as direct result of his near drowning suffered brain injury and post-traumatic stress disorder; and

Whereas, the Johnsons filed a civil action in the Circuit Court of Prince William County alleging gross negligence on the part of the Park Authority for the acts and omissions of (i) the counselors for failing to adequately supervise Timothy, taking into consideration the disabilities he was under including his mental retardation and inability to swim, and (ii) the lifeguards for failing to timely recognize and react to a swimmer in distress, among other things; and

Whereas, on August 16, 2002, an evidentiary hearing was held before the circuit court; and

Whereas, on November 25, 2002, the circuit court issued a final order finding that the Park Authority was entitled to sovereign immunity and dismissing the Johnsons' case with prejudice; and

Whereas, the Johnsons subsequently filed appeals to the Virginia Supreme Court, but the appeals were denied; and

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59 Whereas, Timothy has suffered permanent injury and permanent disability, and will continue to suffer
60 severe pain and mental anguish as a result of the event; and

61 Whereas, Timothy Johnson, Sr. and Karen Johnson have been caused to incur substantial medical and
62 hospital bills in an effort to cure Timothy's injuries and will continue to do so; and

63 Whereas, Timothy Q. Johnson, Sr., Karen Johnson and Timothy Q. Johnson, Jr. have no other means
64 to obtain adequate relief except by this body; now, therefore,

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

66 1.§ 1. *That there is hereby appropriated from the general fund of the state treasury the sum of \$50,000*
67 *for the relief of Timothy Q. Johnson, Sr., Karen Johnson and Timothy Q. Johnson, Jr., to be paid by*
68 *check issued by the State Treasurer on warrant of the Comptroller upon execution by Timothy Q.*
69 *Johnson, Sr., Karen Johnson and Timothy Q. Johnson, Jr. of a release and waiver forever releasing (i)*
70 *the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii)*
71 *any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia; and (iii) all other parties of*
72 *interest from any present or future claims they may have against such enumerated parties in connection*
73 *with the aforesaid occurrence.*