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SENATE BILL NO. 5

Offered January 11, 2012

Prefiled December 5, 2011

A BILL for the relief of Kenneth and Leslie VanAuken (the VanAukens).

Patron—Martin

Referred to Committee on Finance

Whereas, on or about October 23, 2008, a family member of the VanAukens' household (the wrongly accused family member) was accused of abusing another member of the household; and

Whereas, the accusation was made by a person outside of the household; and

Whereas, on or about October 23, 2008, based upon the accusation, the Chesterfield-Colonial Heights Department of Social Services (Chesterfield-Colonial Heights DSS) began an investigation pursuant to § 63.2-1505 of the Code of Virginia to determine whether the alleged abuse occurred; and

Whereas, in accordance with a safety plan devised by the Chesterfield-Colonial Heights DSS on or about October 23, 2008, the wrongly accused family member was required to move out of the VanAukens' home to be separated from the member of the household who was allegedly being abused; and

Whereas, the wrongly accused family member did move out of the home; and

Whereas, at the time of the accusation, the wrongly accused family member was unable to work because he was ill and he was preparing for back surgery; and

Whereas, in March 2009 the wrongly accused family member was diagnosed with depression due to the extreme emotional duress he suffered because of the accusation; and

Whereas, the wrongly accused family member did not have the financial means to support himself; and

Whereas, the wrongly accused family member still suffers from post-traumatic stress disorder as a result of the accusation and investigation; and

Whereas, it was left to the VanAukens to provide financial, emotional, and other support to the wrongly accused family member; and

Whereas, during the investigation the VanAukens incurred rent and utility expenses to provide housing for the wrongly accused family member as well as additional expenses for food and other miscellaneous costs; and

Whereas, such expenses were directly related to carrying out the Chesterfield-Colonial Heights DSS safety plan; and

Whereas, the VanAukens incurred legal expenses relating to the accusation and investigation; and

Whereas, § 63.2-1505 of the Code of Virginia requires the investigation to be completed within 45 days; and

Whereas, pursuant to subdivision B 5 of § 63.2-1505 of the Code of Virginia such 45-day period to complete the investigation may be extended an additional 15 days (for a maximum of 60 days) upon written justification by the local social services agency; and

Whereas, neither the VanAukens nor the wrongly accused family member received written notice of a need or justification to extend the investigation beyond such 45-day period; and

Whereas, the accusation against the wrongly accused family member was determined to be unfounded by the Chesterfield-Colonial Heights DSS on April 2, 2009, which was approximately 162 days after the investigation began or approximately 102 days more than the maximum number of days allowed under § 63.2-1505 of the Code of Virginia to complete the investigation; and

Whereas, Mrs. VanAuken and the wrongly accused family member were forced to delay medical treatment due to the expenses incurred relating to the unfounded accusation; and

Whereas, Mrs. VanAuken was forced to use annual leave time to defend the wrongly accused family member against the accusation; to meet with therapists for treatment of severe emotional distress suffered by her and the wrongly accused family member as a result of the accusation and investigation; and to obtain housing for the wrongly accused family member; and

Whereas, Mrs. VanAuken and the wrongly accused family member have suffered extreme emotional distress necessitating treatment by professional therapists; and

Whereas, the expenses delineated herein have been exacerbated and only increased because the investigation was not completed within the time frame allowed by subdivision B 5 of § 63.2-1505 of the Code of Virginia; and

Whereas, some of the expenses described herein, including but not limited to approximately 102 days

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59 of rent and utility expenses paid by the VanAukens on behalf of the wrongly accused family member,
60 could have been altogether avoided had the investigation been completed within the time frame allowed
61 by subdivision B 5 of § 63.2-1505 of the Code of Virginia; and

62 Whereas, in 2010 the VanAukens and the wrongly accused family member filed a claim for damages
63 with the Chesterfield-Colonial Heights DSS relating to the expenses incurred by the VanAukens; and

64 Whereas, the claim was for reimbursement of expenses relating to the investigation in the amount of
65 \$6,476; and

66 Whereas, on February 24, 2010, the Chesterfield-Colonial Heights DSS denied the claim for
67 reimbursement of expenses incurred by the VanAukens relating to the investigation because "the law
68 does not require or provide for the Department to reimburse for expenses incurred during abuse
69 investigations even when an unfounded determination results"; and

70 Whereas, on March 26, 2010, the Chesterfield-Colonial Heights DSS referred the VanAukens' claim
71 for reimbursement to the Department of Risk Management of Chesterfield County; and

72 Whereas, on May 17, 2010, the Department of Risk Management of Chesterfield County provided
73 written notice to Mrs. VanAuken that the claim was being denied; and

74 Whereas, internal documents of Chesterfield County employees disclose that the investigation was
75 not completed within the time frame allowed by subdivision B 5 of § 63.2-1505 of the Code of Virginia
76 and that the County determined that there was no legal remedy for the failure to complete the
77 investigation within the statutory period allowed; and

78 Whereas, the VanAukens and the wrongly accused family member have no other means to obtain
79 adequate relief except by action of this body and have suffered unimaginable emotional distress, trauma,
80 and humiliation and were forced to pay certain expenses that could have been altogether avoided or
81 mitigated had the investigation been completed within the statutory time frame provided for the same;
82 now, therefore,

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

84 **1. § 1.** *That there is hereby appropriated from the balance of the general fund a compensation award*
85 *in the amount of \$6,476 for the relief of Mr. and Mrs. Kenneth and Leslie VanAuken upon the execution*
86 *of a release by the VanAukens and the wrongly accused family member from any present or future*
87 *claims they may have in connection with the aforesaid occurrence against the Commonwealth or any*
88 *agency, instrumentality, officer, employee, or political subdivision thereof. The award shall be paid by*
89 *check issued by the State Treasurer on warrant of the Comptroller within the 60 days immediately*
90 *following the execution of such release.*