

hbd-27

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

Representative(s) Rubio offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause

and insert:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Delray Beach is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw warrants in the total amount of \$1,305,000 payable to Jesner Exanor individually, to Jesner Exanor as legal guardian of minor child Taisha Exanor, and to Gertha Desir as legal guardian of minor child Orlens Poulard, in the ratios of 40 percent, 30 percent, and 30 percent respectively, as compensation for the death of Nancy Mervil, wife of Jesner Exanor and mother of the minor children, due to the negligence of an employee of the City of Delray Beach. After payment of statutory attorney's fees and costs and authorized expenses, the proceeds recovered under this act shall be used to purchase appropriate structured settlement

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1 annuities for the benefit of Jesner Exanor and the minor  
2 children, Taisha Exanor and Orlens Poulard. Appropriate  
3 structured settlement annuities for the benefit of the minor  
4 children must be purchased no later than January 1, 2003.  
5 Amounts payable under this act on behalf of a minor child, as  
6 well as proceeds from appropriate structured settlement  
7 annuities purchased under this act on behalf of a minor child  
8 which are paid while the child is a minor, must be placed in  
9 the guardianship account of the minor child, to be expended  
10 under supervision of the circuit court as long as the child is  
11 a minor.

12 Section 3. This act shall take effect upon becoming a  
13 law.

14  
15  
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 remove: the entire title

19  
20 and insert:

21 A bill to be entitled  
22 An act relating to the City of Delray Beach;  
23 providing for the relief of Jesner Exanor, as  
24 personal representative of the Estate of Nancy  
25 Mervil, on behalf of himself and the two minor  
26 children of his deceased wife, Nancy Mervil;  
27 authorizing and directing the City of Delray  
28 Beach to compensate them for the death of Nancy  
29 Mervil due to the negligence of an employee of  
30 the city; providing terms and conditions  
31 regarding the payment and use of such

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1           compensation; providing an effective date.

2

3           WHEREAS, at approximately 9:38 p.m. on July 27, 2000,  
4 when she was en route to pick up her minor child, Taisha,  
5 Nancy Mervil was stopped at the intersection of Linton  
6 Boulevard and Catherine Drive in Delray Beach, waiting to turn  
7 left, and

8           WHEREAS, an on-duty police officer employed by the City  
9 of Delray Beach, while responding to a call regarding a  
10 domestic disturbance, was traveling eastbound in the outside  
11 lane of Linton Boulevard, and

12           WHEREAS, the officer had turned on his vehicle's  
13 emergency lights, but failed to turn on his sirens and, while  
14 driving his vehicle at a speed of between 85 and 90 mph in a  
15 45-mph zone, lost control of his vehicle, struck the rear of  
16 Nancy Mervil's vehicle, and caused her vehicle to roll over,  
17 become airborne, and crash into the hood of another vehicle,  
18 and

19           WHEREAS, Nancy Mervil was killed in the accident, and

20           WHEREAS, at the time of her death, Nancy Mervil was 24  
21 years old, was married to Jesner Exanor, and was the mother of  
22 two minor children, Taisha Exanor, born December 2, 1999, and  
23 Orlens Poulard, born November 2, 1993, and

24           WHEREAS, according to the investigative homicide report  
25 completed by a law enforcement investigator with the Florida  
26 Highway Patrol, the officer who was involved in the accident  
27 violated s. 316.072(5)(c), Florida Statutes, by failing to  
28 drive with due regard for the safety of others, and

29           WHEREAS, the investigation also suggested that the City  
30 of Delray Beach had failed to properly maintain the police  
31 officer's vehicle at the time of the collision in question,

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1 thereby contributing to this unfortunate accident, and

2 WHEREAS, Jesner Exanor, individually, on behalf of the  
3 two minor children, and as personal representative of his  
4 wife's estate, filed suit against the City of Delray Beach,  
5 and

6 WHEREAS, in its answer to the complaint, the city  
7 admitted that the police officer negligently caused Nancy  
8 Mervil's death, and

9 WHEREAS, the economic damages in this case are  
10 substantial, having been assessed at \$823,000, based on the  
11 assumption that Nancy Mervil would have been employed as a  
12 home health aide, and, alternatively, having been assessed at  
13 \$1,101,000, based on the assumption that she would have  
14 completed training as a nursing assistant and would have been  
15 employed as a nursing assistant, as she had planned, and

16 WHEREAS, subsequent to the filing of the complaint in  
17 this matter, the parties agreed to and conducted a mediation  
18 that resulted in an agreement to settle with the City of  
19 Delray Beach for a cash payment of \$195,000 plus \$1,305,000,  
20 part of which would be used to purchase annuities, and

21 WHEREAS, the City of Delray Beach has made the cash  
22 payment of \$195,000 in accordance with the terms of the  
23 settlement agreement, and

24 WHEREAS, it has been stated that 40 percent of the  
25 settlement proceeds will be distributed to Jesner Exanor and  
26 30 percent to each minor child, with other terms of the  
27 annuities to be determined at the time of passage of a claim  
28 bill allowing the city to reimburse the claimants in an amount  
29 greater than that allowed by section 768.28, Florida Statutes,  
30 NOW, THEREFORE,

31