

By Senator Klein

28-129B-02

1                                   A bill to be entitled  
2           An act relating to the City of Delray Beach;  
3           providing for the relief of Jesnor Exanor, as  
4           personal representative of the Estate of Nancy  
5           Mervil, on behalf of himself and the two minor  
6           children of Mr. Exanor and his deceased wife,  
7           Nancy Mervil; authorizing and directing the  
8           City of Delray Beach to compensate them for the  
9           death of Mrs. Mervil due to the negligence of  
10          an employee of the city; providing an effective  
11          date.

12  
13           WHEREAS, at approximately 9:38 p.m. on July 27, 2000,  
14          when she was en route to pick up her minor child, Taisha,  
15          Nancy Mervil was stopped at the intersection of Linton  
16          Boulevard and Catherine Drive in Delray Beach, waiting to turn  
17          left, and

18           WHEREAS, an on-duty police officer employed by the City  
19          of Delray Beach, while traveling eastbound on the outside lane  
20          of Linton Boulevard, received a call for backup to a domestic  
21          violence call, and

22           WHEREAS, in response to the call, the officer turned on  
23          his vehicle's emergency lights, but failed to turn on his  
24          sirens and, while recklessly driving his vehicle at a speed of  
25          between 85 and 90 mph in a 45-mph zone, lost control of his  
26          vehicle, struck the rear of Mrs. Mervil's vehicle, and caused  
27          her vehicle to roll over, become airborne, and crash into the  
28          hood of another vehicle, and

29           WHEREAS, Mrs. Mervil was killed in the accident, and

30           WHEREAS, at the time of her death, Nancy Mervil was 24  
31          years old, and she and her husband, Jesnor Exanor, had two

1 minor children, Taisha Exanor, born December 2, 1999, and  
2 Orlena Poulard, born November 2, 1993, and

3 WHEREAS, according to the investigative homicide report  
4 completed by a law enforcement investigator with the Florida  
5 Highway Patrol, the officer who was involved in the accident  
6 violated section 316.072(5)(c), Florida Statutes, by failing  
7 to drive with due regard for the safety of others, and

8 WHEREAS, the investigation also suggested that the City  
9 of Delray Beach had failed to properly maintain the police  
10 officer's vehicle at the time of the collision in question,  
11 thereby contributing to this unfortunate accident, and

12 WHEREAS, Mr. Exanor, individually, on behalf of the two  
13 minor children, and as personal representative of his wife's  
14 estate, filed suit against the City of Delray Beach, and

15 WHEREAS, in its answer to the complaint, the city  
16 admitted that the police officer negligently caused Nancy  
17 Mervil's death, and

18 WHEREAS, the economic damages in this case are  
19 substantial, having been assessed at \$823,000, based on the  
20 assumption that Mrs. Mervil would have continued to be  
21 employed as a nurse's aide, and, alternatively, having been  
22 assessed at \$1,100,000, based on the assumption that she would  
23 have completed nurse's training and would have been employed  
24 as a nurse, as she had planned, and

25 WHEREAS, subsequent to the filing of the complaint in  
26 this matter, the parties agreed to and conducted a mediation  
27 that resulted in an agreement to settle with the City of  
28 Delray Beach for a cash payment of \$195,000 plus the purchase  
29 of annuities totaling \$1,305,000, and

30 WHEREAS, it has been suggested that 50 percent of the  
31 settlement proceeds be distributed to Mr. Exanor and 25

1 percent to each minor child, with other terms of the annuities  
2 to be determined at the time of passage of a claim bill  
3 allowing the city to reimburse the claimants in an amount  
4 greater than that allowed by section 768.28, Florida Statutes,  
5 providing for waiver of sovereign immunity, NOW, THEREFORE,

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. The facts stated in the preamble to this  
10 act are found and declared to be true.

11 Section 2. The City of Delray Beach is authorized and  
12 directed to appropriate from funds of the city not otherwise  
13 appropriated and to draw warrants in the total amount of \$1.5  
14 million to Jesnor Exanor and his minor children, Taisha Exanor  
15 and Orlena Poulard, as compensation for the death of Nancy  
16 Mervil, wife of Mr. Exanor and mother of the minor children,  
17 due to the negligence of a city employee. After payment of  
18 statutory attorney's fees and costs and authorized expenses,  
19 the proceeds recovered under this act shall be disbursed as  
20 follows: \$195,000 to be paid to Jesnor Exanor and the  
21 remainder to purchase annuities for the benefit of Jesnor  
22 Exanor and his minor children, Taisha Exanor and Orlena  
23 Poulard.

24 Section 3. This act shall take effect upon becoming a  
25 law.