

By the Committee on Finance and Taxation; and Senator Klein

314-2057-02

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

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

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

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

30 WHEREAS, Nancy Mervil was killed in the accident, and
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1 WHEREAS, at the time of her death, Nancy Mervil was 24
2 years old, was married to Jesner Exanor, and was the mother of
3 two minor children, Taisha Exanor, born December 2, 1999, and
4 Orlens Poulard, born November 2, 1993, and

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

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

14 WHEREAS, Jesner Exanor, individually, on behalf of the
15 two minor children, and as personal representative of his
16 wife's estate, filed suit against the City of Delray Beach,
17 and

18 WHEREAS, in its answer to the complaint, the city
19 admitted that the police officer negligently caused Nancy
20 Mervil's death, and

21 WHEREAS, the economic damages in this case are
22 substantial, having been assessed at \$823,000, based on the
23 assumption that Nancy Mervil would have been employed as a
24 home health aide, and, alternatively, having been assessed at
25 \$1,101,000, based on the assumption that she would have
26 completed training as a nursing assistant and would have been
27 employed as a nursing assistant, as she had planned, and

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

3 WHEREAS, the City of Delray Beach has made the cash
4 payment of \$195,000 in accordance with the terms of the
5 settlement agreement, and

6 WHEREAS, it has been stated that 40 percent of the
7 settlement proceeds will be distributed to Jesner Exanor and
8 30 percent to each minor child, with other terms of the
9 annuities to be determined at the time of passage of a claim
10 bill allowing the city to reimburse the claimants in an amount
11 greater than that allowed by section 768.28, Florida Statutes,
12 NOW, THEREFORE,

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14 Be It Enacted by the Legislature of the State of Florida:

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

18 Section 2. The City of Delray Beach is authorized and
19 directed to appropriate from funds of the city not otherwise
20 appropriated and to draw warrants in the total amount of
21 \$1,305,000 payable to Jesner Exanor individually, to Jesner
22 Exanor as legal guardian of minor child Taisha Exanor, and to
23 Gertha Desir as legal guardian of minor child Orlens Poulard,
24 in the ratios of 40 percent, 30 percent, and 30 percent
25 respectively, as compensation for the death of Nancy Mervil,
26 wife of Jesner Exanor and mother of the minor children, due to
27 the negligence of an employee of the City of Delray Beach.
28 After payment of statutory attorney's fees and costs and
29 authorized expenses, the proceeds recovered under this act
30 shall be used to purchase appropriate structured settlement
31 annuities for the benefit of Jesner Exanor and the minor

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

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

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 SB 64

17 This committee substitute provides authority for the payment
18 of the balance of the settlement amount (\$1,305,000), and
19 reflects the ratios for which the claimant sought court
20 approval (40 percent to Mr. Exanor and 30 percent on behalf of
21 each of the children). It also corrects errors in the claim
22 bill relating to the facts (e.g., suggesting that Mr. Exanor
23 is the father of both minor children) and conclusions of this
24 case. The committee substitute specifies a deadline for the
25 purchase of annuities benefiting the children, and specifies
26 that funds on behalf of the children be paid into the
27 guardianship accounts and be expended under supervision of the
28 circuit court.
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