

By Senator Hill

1-00135-09

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1 A bill to be entitled
2 An act for the relief of Jose Pena, as Personal
3 Representative of the Estate of Carmen Pena, deceased,
4 and individually, as surviving father of Katherine
5 Pena and Richard Pena, deceased minor children of
6 Carmen Pena and Jose Pena, and Johannes Pena,
7 surviving son of Carmen Pena and Jose Pena, by the
8 City of Hialeah; providing for an appropriation to
9 compensate them for the death of Carmen Pena,
10 Katherine Pena, and Richard Pena as a result of the
11 negligence of the City of Hialeah; providing a
12 limitation on the payment of fees and costs; providing
13 an effective date.

14
15 WHEREAS, on October 21, 1990, Carmen Pena was driving her
16 family car on West 68th Street, near West 26th Drive in the City
17 of Hialeah, and

18 WHEREAS, riding as passengers in Carmen Pena's car on
19 October 21, 1990, were 6-year-old Katherine Pena, minor child of
20 Carmen Pena and Jose Pena, 12-year-old Richard Pena, minor child
21 of Carmen Pena and Jose Pena, 16-year-old Johannes Pena, minor
22 child of Carmen Pena and Jose Pena, and Jose Pena, ex-husband of
23 Carmen Pena and father of minor children Katherine Pena, Richard
24 Pena, and Johannes Pena, and

25 WHEREAS, on October 21, 1990, the vehicle being driven by
26 Carmen Pena left the roadway on which she was traveling and hit
27 a dangerously large drop-off as she was attempting to return to
28 the road, which caused Carmen Pena to lose control of her
29 vehicle and veer into a canal, and

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30 WHEREAS, as a result of the accident, Carmen Pena,
31 Katherine Pena, and Richard Pena were killed, and

32 WHEREAS, on July 15, 1991, a complaint was filed on behalf
33 of the Estates of Carmen Pena, Katherine Pena, and Richard Pena,
34 and on behalf of the surviving father, Jose Pena, and on behalf
35 of the surviving son, Johannes Pena, and

36 WHEREAS, in the complaint, the City of Hialeah was charged
37 with failing to properly inspect and maintain the roadway and
38 shoulder of the roadway, allowing a large and dangerous drop-off
39 to occur on the shoulder, and

40 WHEREAS, on October 28, 1994, the jury returned a verdict
41 against the City of Hialeah finding the City of Hialeah to be 75
42 percent negligent and Carmen Pena to be 25 percent negligent,
43 and

44 WHEREAS, final judgments were entered for Johannes Pena in
45 the amount of \$187,500 for the loss of his mother, Carmen Pena;
46 for Jose Pena in the amount of \$78,395.84 for the loss of his
47 daughter, Katherine Pena; for Jose Pena in the amount of
48 \$242,199.65 for the loss of his son, Richard Pena; and for Jose
49 Pena in the amount of \$784,570.04 for the Estate of Carmen Pena,
50 and

51 WHEREAS, the total amount of the final judgments is
52 \$1,292,665.53, and

53 WHEREAS, costs were awarded in the amount of \$8,395.61, and

54 WHEREAS, the total amount of the net final judgment is
55 \$1,301,061.14, and

56 WHEREAS, the City of Hialeah has paid \$200,000 in
57 accordance with the limits set forth in s. 768.28, Florida
58 Statutes, leaving an unpaid judgment in the amount of

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59 \$1,101,061.14, NOW, THEREFORE,

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

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

65 Section 2. The City of Hialeah is authorized and directed
66 to appropriate from funds of the city not otherwise appropriated
67 and to draw a warrant payable to Jose Pena, as Personal
68 Representative of the Estate of Carmen Pena, for the total
69 amount of \$592,965.65, for injuries and damages sustained as a
70 result of the death of Carmen Pena.

71 Section 3. The City of Hialeah is authorized and directed
72 to appropriate from funds of the city not otherwise appropriated
73 and to draw a warrant payable to Jose Pena, individually, for
74 the total amount of \$320,595.49 for injuries and damages
75 sustained as the result of the death of his daughter, Katherine
76 Pena, a minor, and his son, Richard Pena, a minor.

77 Section 4. The City of Hialeah is authorized and directed
78 to appropriate from funds of the city not otherwise appropriated
79 and to draw a warrant payable to Johammes Pena, surviving son of
80 Carmen Pena, for the total amount of \$187,500 for injuries and
81 damages sustained as a result of the death of his mother, Carmen
82 Pena, due to the negligence of the City of Hialeah.

83 Section 5. The amounts awarded under this act are intended
84 to provide the sole compensation for all present and future
85 claims arising out of the factual situation described in this
86 act which resulted in the death of Carmen Pena, Katherine Pena,
87 and Richard Pena. The total amount paid for attorney's fees,

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88 lobbying fees, costs, and other similar expenses relating to
89 this claim may not exceed 25 percent of the total amount awarded
90 under this act.

91 Section 6. This act shall take effect upon becoming a law.