

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Communications and Public Utilities Committee

BILL: SB 1790

SPONSOR: Judiciary Committee

SUBJECT: Street Lighting

DATE: April 15, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	Favorable
2.	<u>Halloran/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
3.	_____	_____	<u>RC</u>	Withdrawn
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides immunity from lawsuits to the state, local governments, and electric utilities as the result of accidents caused by the failure to provide, operate, or maintain streetlights, security lights, or similar illumination. Liability for the failure to provide, operate, or maintain lighting, however, may be assumed by written contract.

This bill creates section 768.1382, Florida Statutes.

II. Present Situation:

In *Clay Electric Cooperative, Inc., v. Johnson*, 873 So. 2d 1182 (Fla. 2003), the Florida Supreme Court examined whether Clay Electric Cooperative, Inc. (Clay Electric), owed a legal duty to the public to maintain streetlights.¹ The majority of the Court ultimately held that Clay Electric owed a duty to the public to maintain streetlights with reasonable care.² As a result of the opinion, those responsible for streetlight maintenance may be sued for damages due to accidents caused by inoperative streetlights.

Clay Electric Facts

The facts surrounding the case involved a 14-year-old boy who was struck and killed by a delivery truck in the early morning darkness as he walked along the edge of a road to his school

¹ The implications of the *Clay Electric* opinion and potential legislative responses were examined in detail in THE FLORIDA SENATE, COMMITTEE ON JUDICIARY, DUTY TO MAINTAIN STREETLIGHTS, INTERIM PROJECT REPORT 2005-148 (November 2004).

² *Clay Electric Cooperative, Inc., v. Johnson*, 873 So. 2d 1182, 1191 (Fla. 2003).

bus stop. The streetlight nearest the accident had not been illuminated for “some time.”³ Clay Electric was contractually obligated to maintain the inoperative light.⁴

Competing Tests for the Recognition of a Duty

The majority of the Court relied upon the undertaker’s doctrine to find the existence of a duty to maintain streetlights. The undertaker’s doctrine provides that:

Whenever one undertakes to provide a service to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service-- i.e., the “undertaker”--thereby assumes a duty to act carefully and to not put others at an undue risk of harm.⁵

Clay Electric and the dissenting opinion, however, argued that the test for determining whether utility conduct imposes a duty to the public was described in *H.R. Moch Co. v. Rensselaer Water Co.*, 159 N.E. 896 (N.Y. 1928).⁶ The following test was articulated in that case:

*If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward. . . . The query always is whether the putative wrongdoer has advanced to such a point as to have launched a force or instrument of harm, or has stopped where inaction is at most a refusal to become an instrument for good.*⁷

Policy Arguments

The opinion also discussed the policy arguments for and against recognizing a duty to maintain streetlights. Clay Electric and the dissent argued that the existence of a duty to maintain streetlights would have the following negative impacts:

- the floodgates would be opened to similar lawsuits against utilities;
- utilities’ maintenance costs and liability insurance premiums would increase sharply;
- consumer rates for electricity, water, and other basic services would rise; and
- streets would not become safer because utilities and municipalities may decline to increase their liability by installing additional streetlights.⁸

Clay Electric further argued that the adverse impact of consumer rate hikes outweighs the benefits of lawsuits for failure to maintain streetlights. Lastly, Clay Electric argued that losses resulting from accidents in the vicinity of inoperative streetlights are covered by automobile insurance.

³ *Id.* at 1184.

⁴ *Id.* at 1187.

⁵ *Id.* at 1186.

⁶ *Id.* at 1188 and 1196-1197.

⁷ *Id.* at 1197 (emphasis in original).

⁸ *Id.* at 1189 and 1202-1204.

The majority, however, declined to evaluate Clay Electric's policy arguments for two reasons.⁹ First, the Court cited a lack of record evidence supporting the policy arguments. Second, the Court stated that the evaluation of matters that may have an impact on utility rates is best left to the legislative branch. The Court, however, did speculate that if utility insurance costs increase as the result of the opinion, auto insurance costs may decline.¹⁰ Additionally, the Court supported its decision with the policy argument that liability for negligent streetlight maintenance acts as an incentive for utilities to perform maintenance that will prevent large losses.¹¹

Unanswered Questions

The dissenting opinion stated that the majority's holding that utilities have a duty to maintain streetlights with reasonable care left the following questions unresolved:

- Does a utility--or a municipality--have a duty to place streetlights where none exist?
- Can a utility be negligent in its arrangement of the streetlights, by leaving some areas dark?
- Can a utility be negligent in the amount of light provided?
- Must a utility immediately replace bulbs that go out or be subject to liability?
- Does a utility now have a duty to patrol an entire municipality to ensure that its lights work properly?
- Does the duty to maintain lights forever extend to a property owner whose porch lamp illuminates an adjacent roadway?¹²

Comparative Negligence

The Legislature partially abrogated the common law doctrine of joint and several liabilities when it adopted the comparative negligence statute, s. 768.81.¹³ Under that doctrine, a negligent defendant may be held liable for all of a plaintiff's damages regardless of the amount of fault for the accident by other defendants.¹⁴ Under the comparative negligence statute, a defendant, with some exceptions, is responsible only for the percentage of fault determined by the jury.¹⁵ As a consequence of the comparative negligence statute, a jury may attribute fault for an accident to nonparty tort-feasors.¹⁶

In *Clay Electric*, Clay Electric was made a party to the case after the driver of the vehicle that struck the victim alleged that Clay Electric's failure to repair the streetlight caused the accident.¹⁷

⁹ *Id.* at 1189-1190.

¹⁰ *Id.* at 1194.

¹¹ See *id.* at 1190.

¹² *Id.* at 1204-1205.

¹³ *Gouty v. Schnepel*, 795 So. 2d 959 (Fla. 2001).

¹⁴ *Id.* at 961.

¹⁵ *Id.*

¹⁶ *Bellsouth Human Resources Admin., Inc. v. Colatarci*, 641 So. 2d 427 (Fla. 4th DCA 1994)

¹⁷ See THE FLORIDA SENATE, COMMITTEE ON JUDICIARY, *supra* note 1, at 2.

The plaintiff sought to avoid a situation in which the jury could attribute fault to Clay Electric that would be uncollectible if Clay Electric was not a party.¹⁸

III. Effect of Proposed Changes:

Immunity

This bill provides immunity from lawsuits to the state, local governments, and electric utilities (entities) as the result of accidents caused by the failure to provide, operate, or maintain streetlights, security lights, or similar illumination. Liability for the failure to provide, operate, or maintain lighting, however, may be assumed by written contract.

Contributory Negligence

The bill also includes a provision that would prohibit a jury from attributing fault in an accident to an entity responsible for streetlight maintenance if the entity is not a party to the case. As such, a plaintiff's judgment will not be diminished by fault, assuming any exists, by an entity responsible for streetlight maintenance.

The provision of the bill prohibiting the attribution of fault to an entity responsible for streetlight maintenance, however, may be unnecessary. Under the bill, an entity has no duty to provide, operate, or maintain streetlights. The existence of a duty is an essential element of negligence.¹⁹ If no duty exists, then there is no actionable negligence.²⁰ Fault or liability may only be attributed to negligent persons.²¹

Severability

Lastly, the bill contains a severability clause that requires courts to uphold the valid portions of the bill if any portions are found to be invalid.

Effective Date

The bill takes effect upon becoming a law and applies to causes of action that accrue on or after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ *Id.*

¹⁹ *Bondu v. Gurvich*, 473 So. 2d 1307, 1312 (Fla. 3rd DCA 1984).

²⁰ *Id.*

²¹ *See Grobman v. Posey*, 863 So. 2d 1230, 1235 (Fla. 4th DCA 2003).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill likely will not violate the access to courts provision of s. 21, Art. I, State Const., which states:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The test to determine whether a statute violates the access to courts provision of the State Constitution is as follows:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.²²

No statute or common law right to a cause of action for failure to maintain streetlights with due care was recognized before the adoption of the State Constitution. As such, the Legislature does not appear to be required to provide a reasonable alternative to the cause of action or show a necessity for the abolishment of the cause of action. Additionally, the *Clay Electric* majority acknowledged legislative authority to balance the interests of utilities, ratepayers, and accident victims.²³ After declining to consider the policy arguments against the existence of a duty raised by Clay Electric, the Court stated:

such matters [affecting utility rates] fall squarely within the purview of the legislative, not judicial, branch.²⁴

²² *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

²³ *Clay Electric*, 873 So. 2d at 1189-1190 and note 14.

²⁴ *Id.* at 1189-1190.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Electric utilities will be immune from lawsuits seeking damages for accidents caused by the failure to provide, operate, or maintain lighting. Plaintiffs will have to seek damages from other persons involved in the accident. Additionally, streetlight-maintenance liability will not be a factor that causes utility rates to increase.

C. Government Sector Impact:

State and local government entities will be immune from lawsuits seeking damages for accidents caused by the failure to provide, operate, or maintain lighting. Plaintiffs will have to seek damages from other persons involved in the accident. Additionally, streetlight-maintenance liability will not be a factor that causes utility rates to increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The first part of section 1 of the bill provides immunity for the failure to provide, operate, or maintain several different types of lighting. The last part of section 1, concerning contributory negligence, only mentions streetlights. The Legislature may wish to amend the bill to provide that the contributory negligence provision applies to the same variety of lights as the immunity provision.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
