

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education Pre-K - 12

BILL: SB 154

INTRODUCER: Senator Hays

SUBJECT: Hazardous Walking Conditions

DATE: February 17, 2015 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Scott	Klebacha	ED	Pre-meeting
2.		CA	
3.		AED	
4.		FP	

I. Summary:

SB 154 requires that district school boards, in cooperation with the applicable governmental entities, inspect and identify hazardous conditions along routes that students must take while walking to or from school. Also, the bill requires that the applicable governmental entities correct any hazardous walking conditions within a reasonable period of time.

Furthermore, the bill:

- Revises the conditions for identifying walkways parallel to a road as hazardous.
- Creates criteria for identifying conditions at uncontrolled crossing sites as hazardous.
- Revises the process for inspecting, identifying, and correcting hazardous walking conditions.
- Authorizes a district school board to initiate an administrative proceeding if, after inspection, the governmental representatives are unable to reach a consensus on whether a hazardous condition exists.
- Provides that the designation of a road as a hazardous walking condition is inadmissible as evidence in a civil action for damages against a governmental entity.

The bill takes effect on July 1, 2015.

II. Present Situation:

Transportation of Public K-12 Students

Each district school superintendent is responsible for determining which students to transport and for making recommendations to the district school board regarding transportation plans and procedures, including the routing and scheduling of school buses.¹ Based on the district school

¹ Sections 1006.21 and 1006.22, F.S.

superintendent's recommendations, the district school board is required to provide transportation for students in grades 6 and below, and may provide transportation to students in grades 7 through 12, if the students are subjected to hazardous walking conditions while en route to or from school.²

Hazardous Walking Conditions

Section 1006.23, F.S., provides legislative intent for a district school board to provide transportation to students³ who live within 2 miles of a school in that district and who would be subjected to hazardous walking conditions.⁴ Furthermore, the law intends for district school boards and state or local governmental entities having jurisdiction to cooperate in identifying hazardous walking conditions and, if a hazardous condition exists, for the applicable governmental entities to correct it within a reasonable time.⁵

Criteria for Identifying Hazardous Conditions

State law delineates the criteria for identifying hazardous walking conditions associated with walking parallel to a road or perpendicular to road for the purpose of crossing.⁶

- A hazardous condition exists if a walkway parallel to a road is:
 - Less than a four-foot wide area adjacent to the road that requires the student to walk on the road surface; or
 - Uncurbed with a posted speed limit of 55 miles per hour and a walking surface less than three feet from the road.⁷
- However, a road along which a student must walk may not be identified as a hazardous walking condition if:
 - Located in a residential area that has little to no transient traffic;
 - The total traffic volume⁸ is less than 180 vehicles per hour, per direction, during a time that a student walks to or from school; or
 - Located in a residential area that has a posted speed limit of 30 miles per hour or less.⁹

² Section 1006.21(3)(b), F.S.

³ A "student" is defined as "any public elementary school student whose grade level does not exceed grade 6." s. 1006.23(1), F.S.

⁴ Section 1006.23(2) and (3), F.S. Florida Department of Education, School Transportation Management Section, *available at Quality Link—Florida School District Transportation Profiles* (2012-2013), contains statewide and school district data on the total number of students subjected to hazardous walking conditions (last visited February 4, 2015). Additional school transportation information is *available at* <http://www.fl doe.org/schools/safe-healthy-schools/transportation/index.shtml> (last visited February 4, 2015).

⁵ Section 1006.23(2)(a), F.S.

⁶ Section 1006.23(4), F.S.

⁷ Section 1006.23(4)(a)1., F.S.

⁸ Traffic volume is determined by the most recent state or local government agency traffic engineering study. Section 1006.23(4)(b), F.S.

⁹ Section 1006.23(4)(a)2., F.S.

- A hazardous walking condition exists on a walkway perpendicular to a road if:
 - The total traffic volume exceeds 360 vehicles per hour, per direction, during a time that a student walks to or from school, and the crossing area is an “uncontrolled crossing site”¹⁰; or
 - The total traffic volume of a road exceeds 4,000 vehicles per hour, during which time a student would be walking to or from school, through an intersection or crossing area controlled by a stop sign or other traffic signal, unless a crossing guard or traffic enforcement officer is present during a time that a student walks to or from school.¹¹

Inspection, Determination, and Correction

After a superintendent requests review of a perceived hazardous walking condition, the district school superintendent, or his or her designee, and representatives of the governmental entities must inspect and reach a mutually agreed-upon determination as to whether a hazardous walking condition exists.¹² The superintendent, or his or her designee, is required to report the determination to the Department of Education.¹³

If a hazardous condition is determined to exist, the district school board must request that the governmental entity determine whether it will correct the hazardous condition and the projected completion date.¹⁴ The state is required to allocate funds to the school district for transporting students affected by the hazardous walking condition; however, funding ceases upon correction of the condition or upon the projected completion date, whichever occurs first.¹⁵

III. Effect of Proposed Changes:

SB 154 removes the intent language in s. 1006.23(2)(a), F.S., and requires that district school boards and state or local governmental entities jointly inspect and identify hazardous conditions along routes that students must take while walking to or from school. The bill also requires the applicable governmental entities to correct hazardous conditions within a reasonable period of time. Current law merely intends for district school boards and governmental entities to inspect and identify and for governmental entities to correct such conditions within a reasonable period of time. By removing the intent language, the bill conforms the paragraph to the remainder of the section and s. 1006.21(3)(b), F.S., which requires that district school boards provide transportation to students who are subjected to hazardous walking conditions.

¹⁰ An “uncontrolled crossing site” is defined as “an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign, or other traffic control signal is present during the times students walk to and from school.” s. 1006.23(b)1., F.S.

¹¹ Section 1006.23(4)(b), F.S.

¹² Section 1006.23(3), F.S.

¹³ *Id.*

¹⁴ Section 1006.23(2)(b), F.S.

¹⁵ *Id.* See Florida Department of Education, *Student Transportation General Instructions 2014-2015*, available at <http://www.fl DOE.org/core/fileparse.php/7507/urll/0077152-1415studenttransgeneralinstructions.pdf> (last visited January 4, 2015).

Criteria for Identifying Hazardous Conditions

Walkways Parallel to the Road

The bill revises the criteria for identifying walkways parallel to the road as hazardous by:

- Excluding drainage ditches, sluiceways, swales, or channels from inclusion in the required, minimum four-foot wide area for safely walking parallel to the road;
- Reducing the posted speed limit from 55 miles per hour to 50 miles per hour or greater; and
- Removing an exception that hazardous walking conditions do not apply to residential areas with little or no transient traffic.

In effect, the bill will likely increase the number of roads designated as hazardous and needing correction.

Crossings over the Road

The bill creates criteria for identifying hazardous walking conditions on roads over which a student must cross while walking to or from school. The bill requires that any road with an uncontrolled crossing site is hazardous if it has:

- A posted speed limit of 50 miles per hour or greater; or
- Six lanes or more, not including turn lanes, regardless of the speed limit.

Current law does not provide criteria for identifying roads with uncontrolled crossing sites as hazardous. Any existing uncontrolled crossing site that meets the criteria under the bill will be deemed hazardous and require the applicable governmental entity to correct the hazardous condition.

Inspecting, Identifying, and Correcting Hazardous Conditions

Request for Review

The bill requires, upon the district school superintendent's request for review, that a joint inspection of a perceived hazardous condition be conducted on a road within a state or local government's jurisdiction.

Current law is unclear as to who is required to make the request and states that when a request for review is made to the district school superintendent, or his or her designee, the perceived hazardous condition must be inspected. The bill clarifies this ambiguity by replacing the word "to" with "by" and requiring that the request for review be made by the superintendent to the applicable governmental entity.

The bill removes the superintendent's designee as a party authorized to request review of a hazardous condition and places the authority to initiate an inspection solely with the superintendent.

Inspection

The bill specifically identifies the following governmental representatives who must participate in inspecting the affected road if it is located within the applicable governmental jurisdiction:

- For a municipal road, a representative from the municipal police department;
- For a county road, a representative from the sheriff's department; and
- For a state road, a representative from the Department of Transportation.

Furthermore, the bill provides for the inclusion of a representative of a metropolitan planning organization (MPO), if the jurisdiction is within an area where there is an MPO.

The bill requires that the appropriate governmental entity, most familiar with the affected road and its surrounding location, participate in the entire process, *e.g.*, inspecting, determining, and correcting the hazardous condition.

Determination of a Hazardous Condition

The bill revises the process for making a final determination on whether a hazardous walking condition exists. Current law requires that a governmental entity, or its representative, and the district school superintendent, or his or her designee, reach a mutually agreed-upon final determination that is reported to the Department of Education (DOE). The bill removes the district school superintendent, or his or her designee, from participating in the determination of a hazardous walking condition and does not require that the determination be reported to DOE. The bill requires the applicable governmental entity to report its determination to the district school superintendent.

Administrative Proceeding

If unable to reach consensus, the bill requires the governmental representatives to report their reasons for the impasse to the district school superintendent. Subsequently, the superintendent must provide a report and recommendation to the district school board regarding the lack of consensus. The bill authorizes a district school board to initiate an administrative proceeding to seek a determination on whether the condition at issue is hazardous. If the district school board prevails, the superintendent must report the outcome to DOE and formally request correction of the hazardous condition.

Existing law does not provide a formal process or remedy for a lack of consensus in making a determination.

Request for Correction

The bill revises the process by which a correction is requested and, unlike current law, requires that the applicable governmental entity submit a position statement informing the superintendent whether the correction will be included in its next annual 5-year capital improvements program and when the correction will be completed.

Current law does not contemplate circumstances under which a governmental entity declines to correct a hazardous condition. Under the bill, if a governmental entity informs the superintendent

that the correction will not be included in its next 5-year plan, it must justify its decision in a written statement to DOE.

Admissibility of Evidence in Civil Action

The bill adds a provision that designation of a hazardous walking condition is not admissible in evidence in a civil action for damages brought against a governmental entity under s. 768.28, F.S., relating to waiver of sovereign immunity.

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses that provide student transportation services and contractors hired to correct hazardous walking conditions may experience an increase in revenues until such conditions are corrected; any incurred costs would be commensurate with revenues.¹⁶

C. Government Sector Impact:

At this time, the increase in the number of students who would qualify for transportation and the revenues or expenditures that state or local governmental entities would accrue or incur are indeterminate.¹⁷

¹⁶ Florida Department of Education, 2015 Agency Legislative Bill Analysis, p. 6, received January 27, 2015 (on file with the Committee on Education Pre-K – 12).

¹⁷ *Id.* at 5.

Under the provisions of the bill, school districts would accrue revenue on a per-student basis and incur costs as a result of the increase in the number of students who would qualify for transportation.¹⁸

The increase in costs that would be incurred by local governmental entities having jurisdiction over the roads designated as hazardous, which would require correcting, cannot be estimated until such conditions are identified.¹⁹ Furthermore, the increase in the number of students qualifying for transportation statewide would require additional funding under the Florida Education Finance Program (FEFP).²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.23 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* See also, s. 1011.68, F.S., relating to the annual allocation of student transportation funds for each school district.