

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 Community Affairs

BILL: SB 1382

INTRODUCER: Senator Hays

SUBJECT: Hazardous Walking Conditions

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1382 requires district school boards and other governmental entities to work cooperatively to identify and correct hazardous conditions along student walking routes to school. The bill updates the procedures for identifying and reporting hazardous walking conditions. The bill provides that a hazardous condition must be fixed within three years, rather than “a reasonable period,” as current law provides. Under some circumstances, the bill allows repairs to take five years. The bill provides a penalty for local governmental entities that do not repair a hazardous condition within the specified time frames. The bill creates a new hazardous walking condition category related to “crossings over the road.” The bill provides that the determination that a hazardous walking condition exists may not be used as evidence in a civil action for damages against a governmental entity.

II. Present Situation:

Section 1006.23, F.S., states that the Legislature intends for district school boards and other governmental entities to work cooperatively to identify and correct hazardous conditions along student walking routes to school. Until 1981, state funds were prohibited from paying for the transportation of students whose homes were less than two miles from the nearest school. In 1981, the law was amended to provide that state funds would be paid for transportation of students within two miles of the nearest school if those students were subjected to “hazardous walking conditions” on their route to school.¹ State funding would be provided until the hazardous condition was corrected.

The law provided procedures and criteria for identifying hazardous walking conditions.² Since 1981, district school boards and state or local government entities have been required to work

¹ Section 234.01, F.S. (1981); s. 1, ch. 81-254, L.O.F.

² Section 234.021, F.S. (1981); ss. 2 and 3, ch. 81-254, L.O.F.

cooperatively to identify potential hazardous walking conditions within a two-mile radius of a school and make final determinations on the condition. The state or local governmental entity with jurisdiction over the area has been required to correct such hazardous conditions within a reasonable period of time.³

Hazardous Walking Conditions

Hazardous walking conditions are identified under s. 1006.23, F.S. The hazardous conditions are broken down into dangers associated with walking parallel to a road and dangers associated with walkways that are perpendicular to a road.

A hazardous walking condition exists regarding walkways *parallel* to a road when:

- There is less than a four-foot wide area adjacent to the road surface on a student's walking route to and from school;⁴ or
- A road that a student walks along is "uncurbed and has a posted speed limit of 55 miles per hour" and the area the student walks in is less than three feet from the road.⁵

However, the above scenarios are not considered hazardous walking conditions if:

- The area is residential and has little or no transient traffic;⁶
- The traffic volume⁷ of the road is less than 180 vehicles per hour, per direction at the time that a student would be walking to and from school;⁸ or
- The road is in a residential area that has a posted speed limit of 30 miles per hour or less.⁹

A hazardous walking condition exists regarding walkways *perpendicular* to a road when:

- The traffic volume exceeds 360 vehicles per hour, per direction on a road that a student uses to walk to and 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 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 at the time a student would be walking to and from school.¹¹

When a request to review a perceived hazardous walking condition within a two-mile radius of a school is made to the district school superintendent (or the district school superintendent's designee), the condition must be inspected by a school district representative and a representative of the appropriate state or local governmental entity.¹² The school district superintendent, or

³ Section 1006.23(2)(a), F.S. (2013); s. 2, ch. 81-254, L.O.F.

⁴ Section 1006.23(4)(a)1., F.S.

⁵ *Id.*

⁶ Section 1006.23(4)(a)2.a., F.S.

⁷ Section 1006.23, F.S. Traffic volume is determined by the most recent state or local government agency traffic engineering study.

⁸ Section 1006.23(4)(a)2.b., F.S.

⁹ Section 1006.23(4)(a)2.c., F.S.

¹⁰ Section 1006.23(4)(b)1., F.S. 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." *Id.*

¹¹ Section 1006.23(4)(b)2., F.S.

¹² Section 1006.23(3), F.S.

designee, and the representative of the state or local governmental entity make the final determination as to whether the condition is a hazardous walking condition and report that determination to the Department of Education.¹³

Upon a determination that a hazardous walking condition exists, the district school board must ask the state or local governmental entity if the condition will be corrected and, if so, the estimated completion date.¹⁴ State funds must be provided to transport students who would encounter the hazardous walking condition until the condition is corrected or the projected completion date arrives, whichever is sooner.¹⁵

III. Effect of Proposed Changes:

Section 1 requires district school boards and other governmental entities to work cooperatively to identify and correct hazardous conditions along student walking routes to school. The bill creates a new hazardous walking condition category regarding “crossings over the road” and provides that the determination that a hazardous walking condition exists may not be used as evidence in a civil action for damages against a governmental entity.

Correction of Hazards and Transportation Funding

The bill requires the state or local governmental entity with jurisdiction over the hazardous condition to correct the condition within three years after it is identified unless a longer period is reasonably required to acquire additional right-of-way needed to correct the condition. Correction may not take longer than five years. Current law requires the condition be corrected within a “reasonable period of time.”

The bill requires the district superintendent (rather than the board) to request a position statement regarding correction of the condition from the state or local governmental entity with jurisdiction. The state or local entity must respond within 90 days. If the condition will not be included in the entity’s next annual five-year capital improvements program, the response must include the factors justifying that decision.

The bill requires state funds pay for the transportation of students during the determination and correction process. State funding ceases upon correction of the problem, or, if a local governmental entity has jurisdiction over the area, upon the expiration of the time provided for correction. If the condition is not corrected beyond the time that state funding is provided, then the local governmental entity must reimburse the district school board for the costs of providing transportation until the condition is corrected.

¹³ *Id.* The school district is required to file the Hazardous Walking Conditions Report for Elementary Students within 2 Miles of Assigned School with the Deputy Commissioner for Finance and Operations. Rule 6A-3.0171(9)(b)2., F.A.C. The Hazardous Walking Conditions Report is required to be filed no later than the end of the full-time equivalent student survey period to claim hazardous walking funding. Florida Department of Education, *Student Transportation General Instructions 2013-2014*, available at, <http://www.fldoe.org/fehp/pdf/1314TransIns.pdf> (last visited March 28, 2014).

¹⁴ Section 1006.23(2)(b), F.S.

¹⁵ *Id.*

Identification of Hazardous Conditions

The bill requires a third party to join the representative of the school district and the representative of the state or local governmental entity in making the determination that a hazardous condition exists. The identity of the third party depends on the nature of the road. In the case of:

- A municipal road, a representative of the municipal police department must attend;
- A county road, a representative of the sheriff's office must attend; or
- A state road, a representative of the Department of Transportation must attend.

If the jurisdiction is within an area covered by a metropolitan planning organization, a representative of the organization must be included as well.

If the representatives concur that a hazardous condition exists, they must report that determination to the district superintendent who shall initiate a formal request for correction.

If the representatives cannot agree, they must report the reasons for the lack of consensus to the district superintendent who shall provide a report and recommendation to the district school board. After providing at least 30 days' notice to the local governmental entities with jurisdiction over the area, the school board may initiate an administrative proceeding under ch. 120, F.S., to determine whether a hazardous walking condition exists. The school board has the burden of proving the condition exists by the greater weight of the evidence. If the school board prevails, the superintendent shall report the outcome to the Department of Education and request the condition be corrected.

Types of Hazardous Walking Conditions

Walkways Parallel to the Road

Current law requires there to be an area that is at least four feet wide adjacent to the road for students to walk on. The bill provides that drainage ditches, sluiceways, swales, or channels do not count toward the required four-foot walkway.

The bill reduces the posted speed limit at which an uncurbed road must include a buffer area of 3 feet or greater between the road and walkway or else be determined to constitute a hazardous walking condition from 55 miles per hour to 50 miles per hour or greater.

The bill removes the provision that roads in residential areas with little or no transient traffic need not comply with the walkway provisions described above.

Crossings Over the Road

The bill creates a new type of hazardous walking condition for "crossings over the road." Any road with an uncontrolled crossing site will be considered a hazardous walking condition if:

- The road has a posted speed limit of 50 miles per hour or greater; or
- The road has six lanes or more, not including turn lanes, regardless of the speed limit.

Civil Liability

The bill states that a 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.

Section 2 provides an effective date of July 1, 2014.

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:

None.

C. Government Sector Impact:

Current law states that governmental entities with jurisdiction over a road with a hazardous walking condition are intended to correct the condition within a reasonable time. State funding is to be provided to the district school board until the hazard is corrected or the projected correction date, whichever comes sooner.

The bill provides that, in the case of a road that is under the jurisdiction of a local governmental entity, the entity must reimburse the school district for transportation costs if the condition is not corrected within the time frames provided by the bill. Current law does not explicitly require the local governmental entity to repay the school district in the event that it does not correct a condition by the projected correction date, although such a requirement may have been intended.

Therefore, some local governmental entities may experience a negative fiscal impact if they do not correct a hazardous condition within the time frames provided. Conversely, some school districts may realize a fiscal benefit under such circumstances.

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.