

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

BILL: SB 1382

INTRODUCER: Senator Hays

SUBJECT: Hazardous Walking Conditions

DATE: March 17, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Letarte	Klebacha	ED	Favorable
2. _____	_____	CA	_____
3. _____	_____	AP	_____

I. Summary:

SB 1382 requires school boards to address, correct, and plan for all public schools in the district to comply with safety requirements that address hazardous walking conditions for students. 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.

Specifically, the bill:

- Requires a district school board and other governmental entities to identify and correct hazardous walking conditions within a two-mile radius of a school.
- Requires correction of a hazardous condition within three years of the determination that such a hazard exists or within five years if more time is necessary to remedy the condition.
- Requires the state or local government with jurisdiction over the road containing the hazardous condition to state whether the correction of the condition will be included in the next five-year capital improvement program within 90 days of receiving the district school superintendent’s request for a position statement and written justification if the correction is not included in the improvement program.
- Requires the state or local entity responsible for correcting such a hazard to reimburse the district school board, until the hazard is corrected, for the cost of student transportation services if the hazard is not remedied by the expected completion date and state funds are not available for continued transportation services for students.
- Requires specific governmental representatives to participate in the determination of whether a hazardous walking condition exists based upon which entity has jurisdiction over the affected road.
- Allows the district school board to initiate an administrative hearing to determine whether a hazardous walking condition exists.

- Adds certain conditions relating to “crossings over the road” as being hazardous walking conditions.
- Provides that the determination of a hazardous walking condition cannot be admitted as evidence in a negligence claim against a governmental entity under s. 768.28, F.S.

The bill takes effect on July 1, 2014.

II. Present Situation:

Section 1006.23, F.S., states legislative intent language requiring district school boards to provide transportation to students¹ who would be subjected to hazardous walking conditions along a student’s route to school.² In 1981, the law was amended to require district school boards to provide transportation services to students subjected to hazardous walking conditions within two miles from the nearest appropriate school.³ The “hazardous walking conditions” section of law used to identify such conditions, and students within two miles of a school who may need transportation, was created in 1981.⁴ Since 1981, district school boards and state or local government entities have been required to work cooperatively to identify potential hazardous walking conditions within a two-mile radius of a school, make final determinations on the condition, and the state or local governmental entity with jurisdiction has been, and is currently required, to correct such hazardous conditions within a reasonable period of time.⁵

Hazardous Walking Conditions

Hazardous walking conditions are identified under s. 1006.23, F.S. Specifically, the hazardous conditions are broken down into dangers associated with walking parallel to a road and dangers associated with having to cross, and walk perpendicular to, a road in certain circumstances.

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.⁶
- 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.⁷

However, the aforementioned scenarios are not hazardous walking conditions if:

- The area is residential and has little to no transient traffic.⁸

¹ Section 1006.23(1), F.S. (defining a “student” as “any public elementary school student whose grade level does not exceed grade 6”).

² School districts are also responsible for providing transportation to other students under s. 1006.21(3), F.S.

³ Section 234.01, F.S. (1981); s. 1, ch. 81-254, L.O.F.

⁴ Section 234.021, F.S. (1981); s. 2, ch. 81-254, L.O.F.

⁵ Section 1006.23(2)(a), F.S. (2013); s. 2, ch. 81-254, L.O.F.

⁶ Section 1006.23, (4)(a)1., F.S.

⁷ *Id.*

⁸ Section 1006.23(4)(a)2.a., F.S.

- The traffic volume⁹ 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.¹⁰
- The road is in a residential area that has a posted speed limit of 30 miles per hour or less.¹¹

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 has to walk to and from school and the crossing area is an uncontrolled crossing site.¹²
- 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.¹³

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 state or local governmental entity representative.¹⁴ The school district superintendent, or designee, and the state or local governmental entity representative make the final determination as to whether the condition is a hazardous walking condition and makes a report to the Department of Education.¹⁵

Upon 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.¹⁶ 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.¹⁷

III. Effect of Proposed Changes:

SB 1382 requires school boards to address, correct, and plan for all public schools in the district to comply with safety requirements that address hazardous walking conditions for students. 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.

⁹ Traffic volume is determined by the most recent state or local government agency traffic engineering study. Section 1006.23, F.S.

¹⁰ Section 1006.23(4)(a)2.b., F.S.

¹¹ Section 1006.23(4)(a)2.c., F.S.

¹² 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.*

¹³ Section 1006.23(4)(b)2., F.S.

¹⁴ Section 1006.23(3), F.S.

¹⁵ *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/fefp/pdf/1314TransIns.pdf>.

¹⁶ Section 1006.23(2)(b), F.S.

¹⁷ *Id.*

In contrast to current law, which requires that a hazardous condition be corrected within a reasonable period of time,¹⁸ the bill requires a district school board and local governmental entity to correct a hazardous walking condition within three years after it is determined that such a condition exists. If a longer period of time is reasonably necessary to correct the condition, the time period for correction may be increased to five years from the determination that a hazardous walking condition exists.

Current law requires that a district school board request a determination from the applicable governmental entity as to whether the hazardous condition will be corrected and, if so, the anticipated completion date for the correction.¹⁹ The bill requires that the superintendent (as opposed to the district school board in current law) request a position statement from the applicable governmental entity. The bill creates a new requirement that, within 90 days of receiving the request, the applicable governmental entity must inform the superintendent as to whether the hazardous walking condition is in its next annual five-year capital improvements program and when the condition will be corrected. Current law does not provide requirements for a situation where a hazardous condition will not be corrected, however, the bill addresses such a situation. The bill states that if correction of a hazardous walking condition is not included in the governmental entity's next five-year capital improvements plan, the entity must provide written justification for the decision to the district school superintendent and the Department of Education (DOE), which allows the superintendent and DOE to know that the condition will not be remedied and the reasons for not correcting the condition.

The bill requires that transportation funds for students affected by the hazardous walking conditions be provided during the determination and correction of the hazardous condition or, in the case of a local governmental entity, expiration of the anticipated date of correction – whichever occurs first. Current law provides for funding to cease at the same time as the bill, but does not specifically provide that funding is available during the period of time when a determination is made as to whether a hazard exists.²⁰

The bill adds a new provision that, in the event a local government entity with jurisdiction of the affected road does not correct a hazardous walking condition by the estimated correction date and state funding for transportation of affected students is no longer available, the local government entity must reimburse the district school board for the operational cost of transporting students who would be subjected to the hazardous walking condition.

The bill mandates actions of the district school superintendent when a request for review of a potentially hazardous condition is made, and removes language regarding a request being made to the superintendent's designee, which holds the superintendent accountable for taking the statutorily required steps to address a potential hazardous walking condition.

Under current law, when a request for a review is made, a representative of the school district and a representative of the local or governmental entity with jurisdiction over the affected road

¹⁸ Section 1006.23(2)(a), F.S.

¹⁹ Section 1006.23(2)(b), F.S.

²⁰ *Id.*

are required to inspect a potentially hazardous walking condition.²¹ The bill specifically describes, and adds, a third party who must inspect the condition by stating that: if the affected road is a municipal road, a representative from the municipal police department is required; for a county road, a representative from the sheriff's department is required; and for a state road, a representative from the Department of Transportation is required. The bill also adds the requirement that if the jurisdiction is within an area where there is a metropolitan planning organization, a representative of that organization must be included.

Upon determination by the representatives that a hazardous walking condition exists as described in s. 1006.23, F.S., the bill states that representatives must provide a report to the district school superintendent who is required to make a formal request for correction. Current law requires that the superintendent, or his or her designee, make the determination with the local governmental entity or its representative and that the superintendent report the determination to DOE.

The bill adds new requirements in the event that the representatives are unable to reach a consensus on the determination of whether a hazardous walking condition exists. If there is no consensus, the representatives must provide this information to the district school superintendent who will make a report and recommendation to the district school board. The bill also provides language allowing the district school board to initiate an administrative proceeding, after providing 30 days' notice to the governmental entity, under the Administrative Procedure Act in Chapter 120 of the Florida Statutes to determine if a hazardous walking condition exists. Under this new provision, the district school board has the burden of proving (by the greater weight of the evidence) that a hazardous walking condition exists. Additionally, if the district school board prevails, the district school superintendent must report the outcome to DOE and formally request correction of the hazard.

The bill excludes drainage ditches, sluiceways, swales, or channels from being included in the four-foot area required for walking parallel to a road and lowers the posted speed limit that makes for a hazardous walking condition from 55 miles per hour to 50 miles per hour or greater.

Additionally, the bill allows for a residential area with little or no transient traffic to be the location of a hazardous condition where a student would be walking alongside the road, which the current statute refers to as a "parallel walkway."

The bill adds a third category of hazardous walking conditions – crossings over the road. A hazardous walking condition exists at any road and uncontrolled crossing site if the posted speed limit is 50 miles per hour or greater, or the road has six lanes of traffic or more, regardless of the speed limit.

Lastly, the bill provides a new provision relating to a civil action for damages brought against a governmental entity under s. 768.28, F.S. for negligence, and states that the determination of a hazardous walking condition under s. 1006.23, F.S. is not admissible as evidence.

The bill takes effect on July 1, 2014.

²¹ Section 1006.23(3), F.S.

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:

The governmental entity with jurisdiction over the road with an identified hazardous walking condition may incur the cost of correcting the hazardous condition and, potentially, the cost of reimbursement from a local governmental entity to a district school board for the transportation services provided to students until a hazard is corrected if it is not remedied by the specified completion date.

No agency bill analysis was available from the Florida Department of Education at the time of this analysis.

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.
