

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 Appropriations

BILL: CS/CS/SB 154

INTRODUCER: Community Affairs Committee; Education Pre-K - 12 Committee; and Senator Hays

SUBJECT: Hazardous Walking Conditions

DATE: April 15, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|------------|--------------------|
| 1. | <u>Scott</u> | <u>Klebacha</u> | <u>ED</u> | <u>Fav/CS</u> |
| 2. | <u>Stearns</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/CS</u> |
| 3. | <u>Sikes</u> | <u>Elwell</u> | <u>AED</u> | <u>Favorable</u> |
| 4. | <u>Sikes</u> | <u>Kynoch</u> | <u>AP</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 154 requires that district school boards, in cooperation with the relevant governmental entities, inspect and identify hazardous conditions along routes that students must take while walking to or from school. The bill also requires that the relevant 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 a proceeding to obtain a declaratory judgment if, after inspection, the governmental representatives are unable to reach a consensus on whether a hazardous walking 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 additional hazardous walking criteria provided in the bill likely will increase the number of students that can be counted for state transportation funding in the Florida Education Finance Program. However, the number of such students is not known. This increase in the number of funded student riders would cause a reallocation of student transportation funds towards districts that have a relatively greater number of students subject to the additional hazardous walking

conditions identified in the bill and, dependent on the total level of the appropriation, may reduce the statewide funds per transported student for all districts.

The bill takes effect 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 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 in 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

¹ Sections 1006.21 and 1006.22, F.S.

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." Section 1006.23(1), F.S.

⁴ Section 1006.23(2) and (3), F.S. *See generally* Florida Department of Education, School Transportation Management Section, available at <http://www.fldoe.org/core/fileparse.php/7585/urlt/0085491-profiles1213.pdf> (*The 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 24, 2015). Additional school transportation information is available at <http://www.fldoe.org/schools/safe-healthy-schools/transportation/index.shtml> (last visited February 24, 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.

However, a road along which a student must walk may not be identified as a hazardous walking condition if:

- It is 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
- It is located in a residential area that has a posted speed limit of 30 miles per hour or less.⁹

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 request for review of a perceived hazardous walking condition is made to a district school superintendent, or his or her designee, a school district representative and a representative of the state or local governmental entity having jurisdiction must inspect the perceived hazardous condition.¹² The superintendent or designee and the applicable governmental entity or its representative must reach a mutually agreed-upon final determination as to whether the hazardous condition meets the state criteria in s. 1006.23(4), F.S.¹³ Subsequently, the superintendent or designee reports the final determination to the Department of Education.¹⁴

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.¹⁵ 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.¹⁶

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.

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.” Section 1006.23(b)1., F.S.

¹¹ Section 1006.23(4)(b), F.S.

¹² Section 1006.23(3), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 1006.23(2)(b), F.S.

¹⁶ *Id.* See Florida Department of Education, *Student Transportation General Instructions 2014-2015*, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/0077152-1415studenttransgeneralinstructions.pdf> (last visited February 24, 2015).

III. Effect of Proposed Changes:

The bill removes the intent language in existing 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; that district school boards provide transportation to such students; and that the applicable governmental entity either correct the designated hazardous conditions or justify in writing to the district school superintendent and the Department of Education (DOE) why it will not correct the hazardous condition. Current law may imply an expectation that district school boards and state or local governmental entities will exercise their discretion in inspecting, identifying, and correcting such conditions. By removing the intent language in paragraph (2)(a), the bill would resolve any uncertainty that the collaborative process relating to hazardous walking conditions is discretionary and would make that paragraph consistent with the other provisions in ss. 1006.23 and 1006.21(3)(b), F.S.

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 or provide justification in writing for not correcting the hazardous condition to the district school superintendent and the DOE.

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 the road 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, identifying, and correcting the hazardous condition.

Final 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 the applicable state or local governmental entity, or its representative, and the district school superintendent, or his or her designee, reach a mutually agreed-upon final determination that must be reported to the DOE. The bill removes the requirements that a district school superintendent, or his or her designee, participate in and report the final determination to the DOE. The bill requires that the governing entity with jurisdiction over the area report their determination in writing to the district school superintendent.

Declaratory Judgment

If unable to reach consensus, the bill requires the governmental representatives to report the 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. Under these circumstances, the bill authorizes a district school board to initiate a proceeding under ch. 86, F.S., to obtain a declaratory judgment as to whether the condition at issue is hazardous. If it is found that a hazardous walking condition exists, the superintendent must report the finding to DOE and formally request correction of the hazardous condition.

Existing law does not provide for a formal process or remedy if the governmental representatives are unable to agree on the existence of a hazardous walking condition.

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 transportation work 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 will not include correction of the hazardous condition in its next 5-year plan, it must justify its decision in a written statement to the district school superintendent and the 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.

Effective Date

Section 2 provides an effective date of 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:

Under CS/CS/SB 154, 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.¹⁷

C. Government Sector Impact:

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.¹⁸

Student transportation is funded by a categorical allocation within the Florida Education Finance Program (FEFP). The funding is based primarily on the number of transported students, identified through school district surveys, who live more than two miles from the school, are disabled, or who are subject to hazardous walking conditions.

Under the provisions of the bill, it is likely that the number of students that can be counted for state transportation funding will increase.¹⁹ This increase in the number of funded student riders could cause a reallocation of student transportation funds towards districts that have a relatively greater number of students subject to the additional hazardous walking conditions identified in the bill and, dependent on the total level of the appropriation, may reduce the statewide funds per transported student for all districts.²⁰

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.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.23 of the Florida Statutes.

¹⁷ 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).

¹⁸ *Id.* at 5.

¹⁹ *Id.*

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

²¹ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on March 4, 2015:

Changes the words “capital improvement” to “transportation work.” Changes the entity responsible for reporting the determination of a hazardous walking condition to the district school superintendent from all of the government entities examining the area (“they” in text) to the singular government entity with jurisdiction over the area.

CS by Education Pre-K – 12 on February 18, 2015:

The committee substitute maintains the original substance of SB 154 with the following modifications:

- Removes a provision requiring that a district school board correct hazardous walking conditions.
- Authorizes a district school board to obtain a declaratory judgment under ch. 86, F.S., if a consensus cannot be reached on the existence of a hazardous walking condition.

- B. **Amendments:**

None.