

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41 Hazardous Walking Conditions

SPONSOR(S): Metz

TIED BILLS: **IDEN./SIM. BILLS:** SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Zaborske	Miller
2) Education Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

HB 41 relates to identifying, inspecting, and correcting hazardous walking conditions on roads students walk along or cross in order to walk to school. The current statute applies to elementary school students through grade 6 living within a 2 mile radius of a school. Currently, the law states the intent is for the condition to be corrected within a reasonable time, but does not require entities with jurisdiction over a road with an identified hazardous walking condition to correct the condition. The bill:

- Requires district school boards and other governmental entities to cooperate to identify and correct hazardous walking conditions;
- Requires the entity with jurisdiction over the road to correct the hazardous condition within a reasonable time;
- Requires the entity with jurisdiction over the road to include correction of a hazardous condition in its next annual 5-year capital improvements program or provide a statement of the factors justifying why a correction is not so included;
- Revises the criteria identifying hazardous walking conditions for walkways parallel to the road;
- Creates a new hazardous walking condition category, "crossings over the road";
- Requires additional parties to participate with the representatives of the school district and entity with jurisdiction over the road in inspecting the walking condition and determining whether it is hazardous;
- Allows the district school board, after notice, to initiate an administrative proceeding if the local governmental entities cannot agree whether the condition is hazardous; and
- Provides a hazardous walking condition determination may not be used as evidence in a civil action for damages against a governmental entity.

The bill has an indeterminate fiscal impact on state or local government revenues and expenditures (see Fiscal Analysis Section).

The bill is effective on July 1, 2015.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0041.LGAS

DATE: 2/2/2015

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Generally, school districts do not receive state funding to transport students in grades K-12 living 2 miles or less from the schools they attend.¹ However, state funds must be allocated to transport any public elementary school student whose grade level does not exceed grade 6² and who is subjected to a “hazardous walking condition” until the sooner of correcting the hazard or the projected completion date of correcting the hazard.³ The intent of the law is for district school boards to cooperate with the state or local governmental entities with responsibility for roads to identify and correct hazardous walking conditions within a reasonable period of time.⁴

Hazardous Walking Condition

Hazardous walking conditions currently are classified according to walkways either parallel or perpendicular to a road along which students must walk to and from school.

For walkways *parallel* to a road, a hazardous walking condition exists if there is less than a 4-foot wide surface for students to walk adjacent to the road.⁵ Not only must the walking surface be at least 4-feet wide, but if the road is uncurbed with a posted speed limit of 55 miles per hour, the walking surface adjacent to the road also must be at least 3-feet from the edge of the road or it will be a hazardous walking condition.⁶

Even if the above criteria are met for walkways *parallel* to the road, a walking condition nevertheless will *not* be considered hazardous if:

- The road is in a residential area with little or no transient traffic;⁷
- The volume of traffic⁸ on the road is less than 180 vehicles per hour, per direction, during the time when students walk to and from school;⁹ or
- The road is located in a residential area with a posted speed limit of 30 miles per hour or less.¹⁰

For walkways *perpendicular* to a road, a hazardous walking condition exists if:

- Traffic volume on the road exceeds the rate of 360 vehicles per hour, per direction, during the time when students walk to and from school *and* the crossing site is uncontrolled, meaning it is an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, stop sign, or other traffic control signal is present when students walk to and from school;¹¹ or
- Total traffic volume on the road exceeds 4,000 vehicles per hour through an intersection or other crossing site controlled by a stop sign or other traffic control signal *and* no crossing

¹ S. 1011.68(1), F.S.; FLA. ADMIN. CODE R. 6A-3.001(3) (“A reasonable walking distance for any student who is not otherwise eligible for transportation pursuant to Section 1011.68, F.S., is any distance not more than two (2) miles between the home and school or one and one-half (1 1/2) miles between the home and the assigned bus stop.”).

² S. 1006.23(1), F.S.

³ S. 1006.23(1), F.S.; s. 1011.68(1)(e), F.S.

⁴ S. 106.23(2)(a), F.S. Current law does not define what is a reasonable period of time.

⁵ S. 1006.23(4)(a)1., F.S.

⁶ *Id.*

⁷ S. 1006.23(4)(a)2.a., F.S.

⁸ “Traffic volume [is] determined by the most current traffic engineering study conducted by a state or local governmental agency.” S.1006.23(4), F.S.

⁹ S. 1006.23(4)(a)2.b., F.S.

¹⁰ S. 1006.23(4)(a)2.c., F.S.

¹¹ S. 1006.23(4)(b)1., F.S.

guards or other traffic enforcement officers are present during the time when students walk to and from school.¹²

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Identification of hazardous walking conditions begins when the district school superintendent or that person's designee receives a request to review a condition perceived to be hazardous to students in the district living within the 2-mile radius of a school and who walk to school.¹³

After the request for review is received, the perceived hazardous walking condition is inspected by the district school superintendent, or designee, and the state or local governmental entity with jurisdiction over the road.¹⁴

Current law requires the district school superintendent, or designee, and the governmental entity having jurisdiction over the road, or its representative, to mutually determine whether the walking condition is hazardous to students.

The district school superintendent or designee must report to the Department of Education the final determination whether the walking condition is hazardous to students.¹⁵

The statute does not provide a process for resolving a dispute between the district school officials and the government entity with jurisdiction over the subject road as to whether a hazardous walking condition exists.

Correcting Hazardous Walking Conditions

Upon determining that a condition is hazardous to students, the district school board must request the entity having jurisdiction over the road for a determination whether the hazard will be corrected and a projected completion date for any correction.¹⁶ Current law, however, does not require the entity with jurisdiction over the road having a hazardous walking condition to correct the condition.

Effect of Proposed Changes

The bill changes the current law's intent language to make mandatory the cooperation between school districts and governmental entities to identify hazardous walking conditions, and adds a requirement that those entities also cooperate in correcting such hazards. The bill also requires the governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time.

Hazardous Walking Condition

For walkways *parallel* to a road, the bill:

- Retains the requirement for an area at least 4 feet wide adjacent to the road upon which students may walk but excludes drainage ditches, sluiceways, swales, or channels, from any calculation of that 4 foot area;
- By changing the posted speed limit from 55 miles per hour to 50 miles per hour or greater, the bill expands the number of uncurbed roads required to have at least a 3 foot buffer from the edge of the road to the required 4 foot area on which students may walk; and
- Removes the exception for roads students walk along in residential areas with little or no transient traffic.

¹² S. 1006.23(4)(b)2., F.S.

¹³ S. 1006.23(3), F.S.

¹⁴ S. 1006.23(2), F.S.

¹⁵ S. 1006.23(3), F.S.

¹⁶ S. 1006.23(2)(b), F.S.

The bill does not change the criteria for hazardous walking conditions for walkways *perpendicular* to the road.

The bill adds a new subsection for “crossings over the road.” Under this subsection any *uncontrolled crossing site*¹⁷ which students must use when walking to and from school will be considered a hazardous walking condition if the road has:

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

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Under the bill, inspection of a perceived hazardous walking condition will be initiated by request for review from the district school superintendent. The alleged hazardous condition will be inspected jointly by:

- A representative of the school district;
- A representative of the state or local governmental entity with jurisdiction over the perceived hazardous location;
- A representative of the municipal police department for a municipal road, a representative of the sheriff’s office of a county road, *or* a representative of the Department of Transportation for a State road; and
- If the jurisdiction is within an area for which there is a metropolitan planning organization, a representative of that organization.

The bill changes the procedure for determining whether a walking condition is hazardous. If all representatives concur the condition constitutes a hazardous walking condition, they must report that determination in writing to the district school superintendent. The district school superintendent then must request a position statement from the state or local governmental entity with jurisdiction over the road regarding correcting the condition.

If the governmental representatives are unable to reach a consensus, then the reasons for lack of consensus must be reported to the district school superintendent, who shall provide a report and recommendation to the district school board. The bill does not state who must submit a report to the district school superintendent when the governmental representatives are unable to reach a consensus, which could result in multiple reports, nor does it state what must be included in the report and recommendation.

Administrative Procedure Act (APA) Review of Determination

Further, if the governmental representatives cannot reach a consensus, the bill allows the district school board to initiate an administrative proceeding under the Administrative Procedure Act¹⁸ (APA) to determine whether the condition constitutes a hazardous walking condition.

The APA provides the uniform procedures¹⁹ for agencies to administer substantive programs, including rulemaking,²⁰ taking final action affecting the substantial interests of a party,²¹ and issuing declaratory

¹⁷ An uncontrolled crossing site, as stated in the discussion of the present situation, means 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 time students walk to and from school. S. 1006.23(4)(b)1., F.S.

¹⁸ Ch. 120, F.S.

¹⁹ S. 120.515, F.S.

²⁰ S. 120.54, F.S.

²¹ S. 120.569, F.S.

statements.²² Pertinent to the bill are the APA's definition of "agency"²³ and hearing process on agency final action.²⁴

The bill authorizes the district school board to initiate an administrative proceeding but does not state which agency action would be subject to the administrative proceeding. Because the entity with jurisdiction over the road has the duty of correcting the hazardous condition, the bill context appears to suggest the petition for hearing would be from the decision of that entity, which typically would be the State, a county, or a municipality. Generally, local governmental officers and entities are not considered "agencies" under the APA.²⁵ However, certain local officers and governmental entities, excluding municipalities or metropolitan planning organizations,²⁶ can be "expressly made subject to [the APA] by general or special law."²⁷

Under the APA, a party must petition for a hearing within 21 days from notice of the agency's intended action.²⁸ The bill requires that before initiating the administrative proceeding the district school board gives the local governmental entities with jurisdiction over the road at least 30 days written notice of its intent to file.²⁹ Additionally, the bill prohibits initiating an administrative proceeding if during the 30-day period the local governmental entities concur in writing that the condition is a hazardous walking condition and provide a position statement to the district school superintendent. Under the APA, the petition for hearing is filed with the agency proposing to take final action;³⁰ in this case, the agency would be the entity with jurisdiction over the road. If the petition is filed and the hearing proceeds, the bill provides the district school board has the burden of proving by the greater weight of the evidence that the walking condition is hazardous.³¹ Under the APA, if no material facts are in dispute, the agency may choose not to refer the petition to the Division of Administrative Hearings and instead conduct its own hearing.³² Once the hearing is concluded, the agency issues a final order.³³

In addition to the existing requirements of the APA, if the district school board prevails in the administrative proceeding, the bill will require the district school superintendent to report the outcome to the Department of Education and initiate a formal request for correction of the hazardous walking condition by requesting from the entity with jurisdiction over the road a position statement regarding correction.

Correcting Hazardous Walking Conditions

The bill revises the process for correcting a hazardous walking condition. Within 90 days after receiving a request to correct the hazardous walking condition, the state or local governmental entity must inform the district school superintendent whether the entity will include correction of the hazardous walking condition in its next annual 5-year capital improvements program and, if so, when the correction will be completed.

²² S. 120.565, F.S.

²³ The definition of "[a]gency" includes all executive branch agencies with statewide jurisdiction, officers and governmental entities with jurisdiction in more than one county, educational units such as school districts, and local entities made subject to the APA by general or special law; the definition excludes municipalities and metropolitan planning organizations. S. 120.52(1), F.S.

²⁴ S. 120.569, F.S.

²⁵ See n. 23.

²⁶ S. 120.52(1), F.S. ("'Agency' . . . does not include a municipality or legal entity created solely by a municipality; . . . a metropolitan planning organization created pursuant to s. 339.175. . . .").

²⁷ S. 120.52(1)(c), F.S.

²⁸ Rule 28-106.111(4), F.A.C.

²⁹ The 30-day notice requirement appears to conflict with Rule 28-106.111(4), F.A.C., which provides: Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters."

³⁰ S. 120.569(2)(a), F.S.

³¹ The APA provides findings of fact shall be based upon a preponderance, or the greater weight, of evidence. S. 120.57(1)(j), F.S. As the petitioning party, under present law the school board has the burden of proving the hazardous condition. *Florida Dept. of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

³² S. 120.57(2), F.S.

³³ S. 120.569(2)(l), F.S.

If the next annual 5-year capital improvements program will not include correction of the condition, then the governmental entity must state the factors justifying such conclusion in writing to the district school superintendent and the Department of Education. The interaction between this requirement and the bill's statement that the entity with jurisdiction over the road shall repair the hazardous condition within a reasonable time is unclear.

Evidence in Civil Action

The bill makes the designation of a hazardous walking condition inadmissible as evidence in a civil action for damages against a governmental entity under s. 768.28, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 1006.23, F.S., by revising criteria for determining hazardous walking conditions for public school students; revises procedures for inspection and identification of hazardous conditions; authorizes district school superintendents to initiate formal requests for correction of hazardous conditions; requires district school boards to provide transportation to students who would be subjected to hazardous conditions; requires state or local entities with jurisdiction over roads with hazardous conditions to correct condition; provides requirements for governmental entities relating to capital improvement programs; and makes the designation of hazardous walking conditions inadmissible as evidence in civil actions for damages against a governmental entity.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more roads under consideration by expanding the applicable speed limit. The more expansive criteria may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a local governmental entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more

roads under consideration by expanding the applicable speed limit. The more expansive criteria may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a state entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not compel counties or municipalities with jurisdiction over particular roads having hazardous walking conditions to correct such conditions within a specific time or subject to a specific consequence. Thus, the bill does not mandate local governments take any corrective action or expend funds beyond such amounts as called for under the present law. To the extent requiring the correction of hazardous walking conditions “within a reasonable time” may operate to increase expenditures in a shorter time frame, the bill could operate as a mandate under Art. VII, s. 18(a), Fla. Const. If so, the legislation would still bind county and city governments if:

- a. The Legislature expressly determines the proposed law fulfills an important state interest; and either
- b. The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- c. The bill is approved by a two-thirds vote of the membership in each chamber.³⁴

A bill interpreted as requiring expenditures by counties and municipalities is exempt from the constitutional mandate provision if the bill would have an insignificant fiscal impact.³⁵

If the fiscal impact of the bill is calculated not to exceed \$1.9 million, the impact is insignificant and there is no mandate. However, if the potential cost exceeds 1.9 million, to meet the terms of the constitutional provision the bill would require an express determination by the Legislature that the bill fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, the bill requires the district school board to work cooperatively not only to identify, but also to correct a hazardous walking condition, even though the provisions regarding correcting a hazardous walking condition seem to put that responsibility on the entity with jurisdiction over the road.

³⁴ Art. VII, s. 18(a), Fla. Const.

³⁵ Long standing policy of the legislature has deemed “insignificant fiscal impact” to be an amount equal to 10 cents per capita. Since Florida’s population was estimated to be approximately 19 million people in 2009, a fiscal impact of less than \$1.9 million statewide on cities and counties is deemed “insignificant” for purposes of Art. VII, s. 18(d), Fla. Const.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES