

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 41 Hazardous Walking Conditions
SPONSOR(S): Local Government Affairs Subcommittee; Metz
TIED BILLS: **IDEN./SIM. BILLS:** SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Zaborske	Miller
2) Education Appropriations Subcommittee	12 Y, 0 N, As CS	Seifert	Heflin
3) Education Committee		Brink	Mizereck

SUMMARY ANALYSIS

CS/CS/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 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;
- Provides the district school board, after notice, may initiate a declaratory judgment proceeding if the local governmental entities cannot agree whether the condition is hazardous;
- Provides a hazardous walking condition determination may not be used as evidence in a civil action for damages against a governmental entity; and
- Provides that interlocal agreements may be used to identify and correct hazardous walking conditions.

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: h0041d.EDC

DATE: 3/30/2015

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 Conditions

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 Section 1011.68(1), F.S.; rule 6A-3.001(3), F.A.C. (“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 Section 1006.23(1), F.S.

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

⁴ Section 1006.23(2)(a), F.S. Current law does not define what is a reasonable period of time.

⁵ Section. 1006.23(4)(a)1., F.S.

⁶ *Id.*

⁷ Section 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.” Section 1006.23(4), F.S.

⁹ Section 1006.23(4)(a)2.b., F.S.

¹⁰ Section 1006.23(4)(a)2.c., F.S.

¹¹ Section 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 the superintendent'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. The bill requires the governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time. In addition, the bill expressly requires the district school board to provide transportation to students who would be subjected to a hazardous walking condition.

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, 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 Section 1006.23(4)(b)2., F.S.

¹³ Section 1006.23(3), F.S.

¹⁴ Section 1006.23(2), F.S.

¹⁵ Section 1006.23(3), F.S.

¹⁶ Section 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 a request for review from the district school superintendent. The alleged hazardous condition must 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 must 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.

Declaratory Judgment Action

Chapter 86, F.S., relates to declaratory judgment actions and provides that a declaratory judgment action may be brought in circuit or county court, depending on the jurisdictional amounts involved, “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”¹⁸ The bill provides that if there is no consensus whether the walking condition is hazardous, the district school board may initiate a declaratory judgment action.

The bill also provides that if the district school board prevails in the declaratory action, the district school superintendent is 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

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. Section 1006.23(4)(b)1., F.S.

¹⁸ Section 86.011, F.S.

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.

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.

Interlocal Agreements

The bill allows interlocal agreements to be used to identify and correct hazardous walking conditions as long as the agreement establishes the same or higher standards for the safety of the students walking to school.

B. SECTION DIRECTORY:

Section 1: Amends s. 1006.23, F.S.; revising criteria for determining hazardous walking conditions for public school students; revising procedures for inspection and identification of hazardous conditions; authorizing district school superintendents to initiate formal requests for correction of hazardous conditions; requiring district school boards to provide transportation to students who would be subjected to hazardous conditions; requiring state or local entities with jurisdiction over roads with hazardous conditions to correct condition; providing requirements for governmental entities relating to capital improvement programs; and making 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:

The bill requires correction of hazardous walking conditions within a reasonable period of time. However, because the bill does not set any time frame by which a hazardous walking condition must be corrected nor penalize a state or local governmental entity for failing to correct the condition, it is unlikely that there is an associated fiscal impact.

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.¹⁹

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.²⁰

¹⁹ Art. VII, s. 18(a), Fla. Const.
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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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies the type of proceeding the district school board may bring to resolve a dispute as to whether a hazardous walking condition exists on a particular road. The bill provided for an administrative hearing under ch. 120, F.S. The amendment instead provides for resolution by a declaratory judgment action under ch. 86, F.S. The amendment also makes a technical correction. This analysis is drafted to the committee substitute as passed by the Local Government Affairs Subcommittee.

On March 24, 2015, the Education Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment makes technical changes and clarifications to terminology. The amendment also clarifies that interlocal agreements meet specified criteria in the bill. The bill analysis is drafted to the committee substitute.

²⁰ 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.