

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1121 Hazardous Walking Conditions

**SPONSOR(S):** K-12 Subcommittee; Metz

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	11 Y, 1 N, As CS	Brink	Ahearn
2) Education Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

A hazardous walking condition is a condition on a road students must walk along or cross in order to walk to school and that is determined to be hazardous to students who live within a two-mile radius of the school. Currently, there is no provision in law that requires a state or local governmental entity with jurisdiction over a road with an identified hazardous walking condition to correct the condition.

The bill requires district school boards and state and local governmental entities to work cooperatively to identify and correct hazardous walking conditions. In addition, a state or local government with jurisdiction over a road containing a hazardous walking condition must state whether the correction of the condition will be included in its next five-year capital improvement program within 90 days of receiving a district school superintendent's request for a position statement. If the correction will not be included, the bill requires the governmental entity to provide written justification for the omission.

The bill requires certain law enforcement agency representatives to participate in the inspection of a perceived hazardous walking condition depending on whether the road is under the jurisdiction of the state, a county, or a municipality. The bill also creates a new hazardous walking condition category for "crossings over the road."

The bill allows a district school board to initiate an administrative hearing to determine whether a hazardous walking condition exists. In addition, 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.

The bill has no fiscal impact on state or local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Current law provides for the identification of hazardous walking conditions along roads students must walk in order to walk to school.<sup>1</sup> These provisions apply when conditions are perceived to be hazardous to students who live within a two-mile radius of a school and who walk to the school.<sup>2</sup>

Criteria established in state law are used to determine whether a walking condition is hazardous. A walkway that is parallel to a road is hazardous if:

- There is no area at least four feet wide adjacent to the road that has a surface upon which students may walk without being required to walk on the road surface; or
- The road is uncurbed, has a posted speed limit of 55 miles per hour, and the adjacent four-foot walkway, if any, is not set off the road by at least three feet from the road's edge.<sup>3</sup>

However, even if these criteria are met, a hazardous walking condition does not exist if the road is in a residential area that has little or no transient traffic; the volume of traffic on the road is less than 180 vehicles per hour, per direction, during the time students walk to and from school; or the road is located in a residential area and has a posted speed limit of 30 miles per hour or less.<sup>4</sup>

A walkway that is perpendicular to the road is a hazardous walking condition with respect to any road across which students must walk if:

- The traffic volume on the road exceeds 360 vehicles per hour, per direction, during the time students walk to and from school and if the crossing site is uncontrolled,<sup>5</sup> or
- The 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 during the times students walk to and from school.<sup>6</sup>

When a district school superintendent or the superintendent's designee receives a request for review of a condition perceived to be hazardous to students who live within the two-mile limit and who walk to school, the condition must be inspected by a representative of the school district and a representative of the state or local governmental entity with jurisdiction over the perceived hazardous location.<sup>7</sup> The superintendent or designee and the state or local governmental entity or its representative must make a mutually agreed upon final determination as to whether the condition meets the criteria for being hazardous. This determination must be reported to the Department of Education (DOE).<sup>8</sup>

Once a walking condition is determined to be hazardous, the district school board must request a determination from the state or local governmental entity with jurisdiction over the road regarding whether the hazard will be corrected and, if so, the projected completion date.<sup>9</sup> State funds must be

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<sup>1</sup> Section 1006.23, F.S. "Student" is defined to mean any public elementary school student whose grade level does not exceed grade 6. Section 1006.23(1), F.S.

<sup>2</sup> Section 1006.23(3), F.S.

<sup>3</sup> Section 1006.23(4)(a)1., F.S.

<sup>4</sup> Section 1006.23(4)(a)2., F.S.

<sup>5</sup> An "uncontrolled crossing site" is 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(4)(b)1., F.S.

<sup>6</sup> Section 1006.23(4)(b), F.S. Traffic volume is determined by the most current traffic engineering survey conducted by a state or local governmental agency. *Id.*

<sup>7</sup> Section 1006.23(3), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 1006.23(2)(b), F.S.

allocated for the transportation of students who are subjected to a hazardous walking condition. The funding must cease upon correction of the hazard or upon the projected completion date, whichever occurs first.<sup>10</sup>

The current law's stated intent is that state and local governmental entities with jurisdiction over a hazardous walking condition correct the condition within a reasonable period of time. However, current law does not require the state or local governmental entity with jurisdiction over the road to correct a hazardous walking condition.

### Effect of Proposed Changes

Whereas current law provides intent language that school boards and state and local governmental entities work to identify and correct hazardous walking conditions within a reasonable period of time, the bill requires correction of hazardous walking conditions within a reasonable period of time. Neither the current law nor the bill define a reasonable period of time. In addition, the bill requires the district school board to provide transportation to students who would be subjected to hazardous walking conditions.

The bill requires the district school superintendent, as opposed to the district school board, to request a position statement from the state or local governmental entity with jurisdiction over the road as to whether the hazardous condition will be corrected and, if so, the anticipated completion date for the correction. The applicable governmental entity, within 90 days of receiving the request from the superintendent, must inform the superintendent whether the hazardous condition will be included in its next annual five-year capital improvements program<sup>11</sup> and, if so, when the correction will be completed. If the hazardous walking condition will not be included in the applicable governmental entity's next annual five-year capital improvements program, the entity must state in writing to the superintendent and the DOE the factors justifying the exclusion.

For purposes of inspecting perceived hazardous walking conditions, the bill requires a representative from the municipal police department for a municipal road, a representative from the sheriff's department for a county road, or a representative from the Department of Transportation for a state road, in addition to the school district and applicable governmental entity representatives, to participate in the inspection. If the jurisdiction falls within an area for which there is a metropolitan planning organization, a representative of that organization must also participate in the inspection.

If the representatives determine that the condition meets the criteria for a hazardous walking condition, they must report the determination in writing to the district school superintendent. If the representatives do not reach a consensus, the bill requires them to report the reasons why to the district school superintendent, who must then provide a report and recommendation to the district school board.

The bill authorizes district school boards to initiate a proceeding under the Administrative Procedures Act<sup>12</sup> to determine whether a condition constitutes a hazardous walking condition. The bill requires at least 30 days' written notice of the administrative proceeding be given to the local governmental entities with jurisdiction over the road. During this period, the local governmental agencies may avoid the administrative procedure by concurring in writing that a hazardous walking condition exists and by providing a position statement to the district school superintendent. The bill places the burden of proof, by a preponderance of evidence, on the district school board for purposes of the administrative proceeding. If the district school board prevails, the district school superintendent must report the outcome to the DOE and formally request correction of the hazardous walking condition.

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<sup>10</sup> *Id.*

<sup>11</sup> Each local government must maintain a comprehensive plan to guide future development and growth. *See* section 163.3167, F.S. Each comprehensive plan must include a capital improvements element, covering five years, designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities. *See* section 163.3177, F.S. The five-year capital improvements element must be reviewed by the local government on an annual basis. Section 163.3177(3)(b), F.S.

<sup>12</sup> Chapter 120, F.S.

With respect to walkways parallel to the road, the bill provides that if the four-foot walking area adjacent to the road consists of a drainage ditch, sluiceway, swale, or channel, a hazardous walking condition exists. The bill also lowers the posted speed limit that makes for a hazardous walking condition from 55 miles per hour to 50 miles per hour or greater. Furthermore, the bill eliminates the exception from hazardous walking condition criteria for parallel walkways in residential areas with little or no transient traffic.

The bill creates a new hazardous walking condition category for "crossings over the road," in which 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, regardless of the speed limit.

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 under s. 768.28, F.S.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 1006.23, F.S., revising criteria that determine a hazardous walking condition for public school students; revising procedures for inspection and identification of hazardous walking conditions; authorizing an administrative proceeding in certain instances; authorizing a district school superintendent to initiate a formal request for correction of a hazardous walking condition under certain circumstances; requiring a district school board to provide transportation to students who would be subjected to hazardous walking conditions; requiring state or local governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a specified period of time; providing requirements for a governmental entity relating to its capital improvements program; revising provisions relating to funding for the transportation of students subjected to a hazardous walking condition; providing requirements relating to a civil action for damages.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

Current law provides intent language that school boards and state and local governmental entities work to identify and correct hazardous walking conditions within a reasonable period of time. The bill

eliminates the intent language and instead 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:

None.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2014, the K-12 Subcommittee reported the PCS for HB 1121 favorably. The original bill required a state or local governmental entity with jurisdiction over a road with a hazardous walking condition to correct the condition within three years, or no later than five years under certain circumstances, after a condition is determined to be hazardous. In addition, the bill required the local governmental entity with jurisdiction over the road to reimburse the school district for the operation cost of transportation of students subjected to the hazardous walking condition.

To avoid potential fiscal impacts, the PCS, instead, requires state and local governmental entities to correct a hazardous walking condition within a reasonable time. In addition, the PCS eliminates the provision requiring a local governmental entity to reimburse the school district.