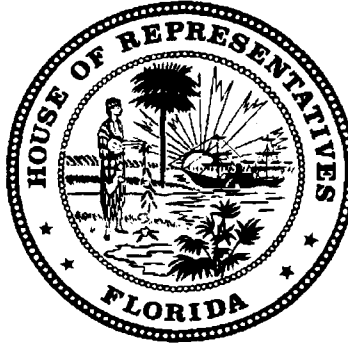


K - 12
Subcommittee
Tuesday, March 25, 2014
12:30 p.m. – 1:30 p.m.
17 HOB

Meeting Packet

Will Weatherford
Speaker

Janet H. Adkins
Chair



AGENDA

K-12 Subcommittee
Tuesday, March 25, 2014
12:30 p.m. – 1:30 p.m.
17 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following proposed committee substitute:

PCS for HB 1121 Hazardous Walking Conditions
- IV. Closing Remarks and Adjournment

1 A bill to be entitled
2 An act relating to hazardous walking conditions;
3 amending s. 1006.23, F.S.; revising criteria that
4 determine a hazardous walking condition for public
5 school students; revising procedures for inspection
6 and identification of hazardous walking conditions;
7 authorizing a district school superintendent to
8 initiate a formal request for correction of a
9 hazardous walking condition; authorizing a district
10 school board to initiate an administrative proceeding
11 under certain circumstances and providing requirements
12 therefor; requiring a district school board to provide
13 transportation to students who would be subjected to
14 hazardous walking conditions; requiring state or local
15 governmental entities with jurisdiction over a road
16 with a hazardous walking condition to correct the
17 condition within a reasonable period of time;
18 providing requirements for a governmental entity
19 relating to its capital improvements program;
20 providing requirements relating to a civil action for
21 damages; providing an effective date.
22

23 Be It Enacted by the Legislature of the State of Florida:
24

25 Section 1. Section 1006.23, Florida Statutes, is reordered
26 and amended to read:

27 1006.23 Hazardous walking conditions.-

28 (1) DEFINITION.-As used in this section, "student" means
 29 any public elementary school student whose grade level does not
 30 exceed grade 6.

31 ~~(2) (4) STATE CRITERIA FOR DETERMINING HAZARDOUS WALKING~~
 32 ~~CONDITIONS.-~~

33 (a) Walkways parallel to the road.-

34 1. It shall be considered a hazardous walking condition
 35 with respect to any road along which students must walk in order
 36 to walk to and from school if there is not an area at least 4
 37 feet wide adjacent to the road, not including drainage ditches,
 38 sluiceways, swales, or channels, having a surface upon which
 39 students may walk without being required to walk on the road
 40 surface. In addition, whenever the road along which students
 41 must walk is uncurbed and has a posted speed limit of 50 ~~55~~
 42 miles per hour or greater, the area as described above for
 43 students to walk upon shall be set off the road by no less than
 44 3 feet from the edge of the road.

45 2. The provisions of subparagraph 1. do not apply when the
 46 road along which students must walk:

47 ~~a. Is in a residential area which has little or no~~
 48 ~~transient traffic;~~

49 ~~a.b.~~ Is a road on which the volume of traffic is less than
 50 180 vehicles per hour, per direction, during the time students
 51 walk to and from school; or

52 ~~b.c.~~ Is located in a residential area and has a posted

53 speed limit of 30 miles per hour or less.

54 (b) Walkways perpendicular to the road.—It shall be
 55 considered a hazardous walking condition with respect to any
 56 road across which students must walk in order to walk to and
 57 from school if:

58 1. ~~If~~ The traffic volume on the road exceeds the rate of
 59 360 vehicles per hour, per direction (including all lanes),
 60 during the time students walk to and from school and if the
 61 crossing site is uncontrolled. For purposes of this subsection,
 62 an "uncontrolled crossing site" is an intersection or other
 63 designated crossing site where no crossing guard, traffic
 64 enforcement officer, or stop sign or other traffic control
 65 signal is present during the times students walk to and from
 66 school.

67 2. ~~If~~ The total traffic volume on the road exceeds 4,000
 68 vehicles per hour through an intersection or other crossing site
 69 controlled by a stop sign or other traffic control signal,
 70 unless crossing guards or other traffic enforcement officers are
 71 also present during the times students walk to and from school.

72
 73 Traffic volume shall be determined by the most current traffic
 74 engineering study conducted by a state or local governmental
 75 agency.

76 (c) Crossings over the road.—It shall be considered a
 77 hazardous walking condition with respect to any road at any
 78 uncontrolled crossing site if:

79 | 1. The road has a posted speed limit of 50 miles per hour
80 | or greater; or

81 | 2. The road has six lanes or more, not including turn
82 | lanes, regardless of the speed limit.

83 | (3) IDENTIFICATION OF HAZARDOUS CONDITIONS.—

84 | (a) When a request for review is made by ~~to~~ the district
85 | school superintendent with respect to a road over which a state
86 | or local governmental entity has jurisdiction ~~or the district~~
87 | ~~school superintendent's designee~~ concerning a condition
88 | perceived to be hazardous to students in that district who live
89 | within the 2-mile limit and who walk to school, such condition
90 | shall be inspected jointly by a representative of the school
91 | district, ~~and~~ a representative of the state or local
92 | governmental entity with ~~that~~ has jurisdiction over the
93 | perceived hazardous location, and a representative of the
94 | municipal police department for a municipal road, a
95 | representative of the sheriff's office for a county road, or a
96 | representative of the Department of Transportation for a state
97 | road. If the jurisdiction is within an area for which there is a
98 | metropolitan planning organization, a representative of that
99 | organization shall also be included. The governmental
100 | representatives shall determine whether the condition
101 | constitutes a hazardous walking condition as provided in
102 | subsection (2). If the governmental representatives concur that
103 | a condition constitutes a hazardous walking condition as
104 | provided in subsection (2), they shall report that determination

105 in writing to the district school superintendent who shall
106 initiate a formal request for correction as provided in
107 subsection (4).

108 (b) If the governmental representatives are unable to
109 reach a consensus, the reasons for lack of consensus shall be
110 reported to the district school superintendent who shall provide
111 a report and recommendation to the district school board. The
112 district school board may initiate an administrative proceeding
113 under chapter 120 seeking a determination as to whether the
114 condition constitutes a hazardous walking condition as provided
115 in subsection (2) after providing at least 30 days' notice in
116 writing to the local governmental entities having jurisdiction
117 over the road of its intent to do so unless, within 30 days
118 after such notice is provided, the local governmental entities
119 concur in writing that the condition is a hazardous walking
120 condition as provided in subsection (2) and provide the position
121 statement pursuant to subsection (4). If an administrative
122 proceeding is initiated under this paragraph, the district
123 school board has the burden of proving such condition by the
124 greater weight of evidence. If the district school board
125 prevails, the district school superintendent shall report the
126 outcome to the Department of Education and initiate a formal
127 request for correction of the hazardous walking condition as
128 provided in subsection (4). ~~The district school superintendent~~
129 ~~or his or her designee and the state or local governmental~~
130 ~~entity or its representative shall then make a final~~

PCS for HB 1121

ORIGINAL

2014

131 ~~determination that is mutually agreed upon regarding whether the~~
132 ~~hazardous condition meets the state criteria pursuant to this~~
133 ~~section. The district school superintendent or his or her~~
134 ~~designee shall report this final determination to the~~
135 ~~Department.~~

136 (4) ~~(2)~~ TRANSPORTATION; CORRECTION OF HAZARDS.—

137 (a) A district school board ~~It is intended that district~~
138 ~~school boards~~ and other governmental entities shall work
139 cooperatively to identify and correct conditions that are
140 hazardous along student walking routes to school, and a district
141 school board shall ~~that district school boards~~ provide
142 transportation to students who would be subjected to such
143 conditions. Additionally, ~~It is further intended that~~ state or
144 local governmental entities with having jurisdiction over a road
145 along which a hazardous walking condition is determined to exist
146 shall correct the condition ~~such hazardous conditions~~ within a
147 reasonable period of time.

148 (b) Upon a determination pursuant to subsection (3) ~~this~~
149 ~~section~~ that a hazardous walking condition exists ~~is hazardous~~
150 ~~to students~~, the district school superintendent ~~board~~ shall
151 request a position statement with respect to correction of such
152 condition determination from the state or local governmental
153 entity with having jurisdiction over the road. Within 90 days
154 after receiving such request, the state or local governmental
155 entity shall inform the district school superintendent ~~regarding~~
156 whether the entity will include correction of the hazardous

157 walking condition in its next annual 5-year capital improvements
158 program ~~hazard will be corrected~~ and, if so, when correction of
159 the condition will be completed. If the hazardous walking
160 condition will not be included in the state or local
161 governmental entity's next annual 5-year capital improvements
162 program, the factors justifying such conclusion must be stated
163 in writing to the district school superintendent and the
164 Department of Education ~~regarding a projected completion date.~~

165 (c) State funds shall be allocated for the transportation
166 of students subjected to a hazardous walking condition. However,
167 such hazards, ~~provided that~~ such funding shall cease upon
168 correction of the hazardous walking condition ~~hazard~~ or upon the
169 projected completion date, whichever occurs first.

170 (5) CIVIL ACTION.—In a civil action for damages brought
171 against a governmental entity under s. 768.28, the designation
172 of a hazardous walking condition under this section is not
173 admissible in evidence.

174 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1121 Hazardous Walking Conditions
SPONSOR(S): K-12 Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-12 Subcommittee		Brink	Ahearn

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 PCS 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 PCS requires the governmental entity to provide written justification for the omission.

The PCS 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 PCS also creates a new hazardous walking condition category for "crossings over the road."

The PCS allows a district school board to initiate an administrative hearing to determine whether a hazardous walking condition exists. In addition, the PCS 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 PCS has no fiscal impact on state or local governments. See Fiscal Comments.

The PCS 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.¹ 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.²

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.³

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.⁴

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;⁵ 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.⁶

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.⁷ 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).⁸

¹ 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.

² Section 1006.23(3), F.S.

³ Section 1006.23(4)(a)1., F.S.

⁴ Section 1006.23(4)(a)2., F.S.

⁵ 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.

⁶ 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.*

⁷ Section 1006.23(3), F.S.

⁸ *Id.*

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.⁹ State funds must be 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.¹⁰

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 PCS requires correction of hazardous walking conditions within a reasonable period of time. Neither the current law nor the PCS define a reasonable period of time. In addition, the PCS requires the district school board to provide transportation to students who would be subjected to hazardous walking conditions.

The PCS 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 program¹¹ 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 PCS 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 PCS 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 PCS authorizes district school boards to initiate a proceeding under the Administrative Procedures Act¹² to determine whether a condition constitutes a hazardous walking condition. The PCS 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

⁹ Section 1006.23(2)(b), F.S.

¹⁰ *Id.*

¹¹ 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.

¹² Chapter 120, F.S.

providing a position statement to the district school superintendent. The PCS 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.

With respect to walkways parallel to the road, the PCS 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 PCS 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 PCS eliminates the exception from hazardous walking condition criteria for parallel walkways in residential areas with little or no transient traffic.

The PCS 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 PCS 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 PCS eliminates the intent language and instead requires correction of hazardous walking conditions within a reasonable period of time. However, because the PCS 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

Not applicable.

