



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

The bill expands government and limits personal freedom by requiring school districts and private schools to test student athletes for performance enhancing drugs in order to be eligible for membership in the Florida High School Athletic Association.

#### B. EFFECT OF PROPOSED CHANGES:

Section 1001.43, F.S., provides supplemental powers and duties of district school boards, authorizing “a district school board to adopt programs and policies that ensure the safety and welfare of individuals, the student body, and school personnel.” Nothing in current statute explicitly authorizes school boards to require students to submit to drug testing.

This bill adds the provision that district school boards may choose to require random drug testing of student athletes for use of performance enhancing drugs. If such a program is implemented, a district school board must test 5 percent of the student-athlete population of a school.

Section 1006.20 (2), F.S., provides the bylaws for the Florida High School Athletic Association. These bylaws establish eligibility requirements for all students who participate in high school athletic competition in its member schools.

This bill adds the provision that the Florida High School Athletic Association must adopt bylaws specifying that in order to qualify for membership in the organization, a school must provide for random drug testing of its student athletes for the use of performance enhancing drugs.

#### **Practices by School Districts**

In 2002, the Florida Department of Education conducted an informal telephone survey of Safe and Drug-Free Schools Coordinators in all school districts and found:

- Six school districts conducted random drug testing of athletes.
- Five school districts were considering adopting a policy concerning random drug testing.
- Four school districts had voluntary testing programs.
- One school district reported random drug testing of students participating in extracurricular activities and student drivers.

Some of these random drug testing policies have been in place for several years. The authorization to permit random drug testing is implied because district school boards are authorized by law to:

- Provide for the proper accounting for all children of school age, for the attendance and control of students at school, and for proper attendance to health, safety, and other matters relating to the welfare of children (s. 1001.42(6), F.S.).

- Adopt programs and policies to ensure the safety and welfare of individuals, the student body, and school personnel which prohibit the possession of weapons and drugs on campus (s. 1001.43(1)(a), F.S.).
- Adopt a policy of zero tolerance for crime and substance abuse (s. 1006.13(1)(a), F.S.).
- Provide for the proper accounting of all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students (s. 1006.07(1), F.S.).
- Adopt a Code of Student Conduct that includes notice that illegal use, possession, or sale of controlled substances by any student while the student is on school property is grounds for disciplinary action and may also result in criminal penalties being imposed (s. 1006.07(2)(d), F.S.).

### **Performance Enhancing Drugs**

Performance enhancing drugs include any drug that increases the ability of an athlete to perform at a higher level of competition. By taking performance enhancing drugs, athletes are creating an unlevel playing field and, more importantly, are increasing their potential health risk. Due to the potential health risk of using performance enhancing drugs, many athletic organizations, like the NCAA, have banned most types.

Performance enhancing drugs encompass a wide range of drugs that are used to:

- *Build muscle/bone and strength*—anabolic steroids, beta-2 agonists, human chronic gonadotropin (hCG), Luteinizing hormone (LH), human growth hormone (hGH), insulin-like growth factor (IGF-1), and insulin.
- *Increase oxygen delivery in tissues*—protein hormones (EPO), blood doping, and artificial oxygen carriers.
- *Mask Pain*—narcotics, protein hormones (ACTH), cortisone, and local anesthetics.
- *Relaxants*—alcohol, beta-blockers, and cannabinoids.
- *Stimulants*—caffeine, amphetamines, and cocaine.
- *Reduce weight*—diuretics.
- *Mask drug use*—diuretics, epitestosterone, plasma expanders, and secretion inhibitors.

Within each of these categories there are a number of drugs, resulting in a large number of performance enhancing drugs that could be tested for in student-athletes. The majority of drugs that can be used by athletes can be detected in samples of urine, but for some substances blood samples may be required.

The NCAA bans performance enhancing drugs that include specific types of:

- Stimulants,
- Anabolic agents,
- Substances banned for specific sports,
- Diuretics,
- Street drugs, and
- Peptide Hormones and analogues.

### **Testing**

According to Quest Diagnostics and Lab Corporation of America, two companies that have labs in specific parts of the country that do steroid testing, steroids screens or panels are set up to test for at least 20 different steroid drugs or their metabolites. The lab must know what specific types of steroids they are screening for to be able to know what type of test to use. Either a school district or the Florida High School Athletic Association would need to determine what types of performance enhancing drugs they will test for in their student-athletes in order to know what type of tests need to be done. Some types of performance enhancing drugs are too expensive and not readily available for student-athletes. A study of what types are more prevalent in high school students would narrow down the list for testing purposes.

These types of tests require sophisticated equipment that is expensive to buy; therefore, many labs do not have the equipment. Quest Diagnostics has a lab in California that does this type of testing and Lab Corporation of America sends their samples for testing to North Carolina. It may be possible that testing could be contracted out to one of these providers at a subsidized rate.

Additionally, the state of Florida has a facility at the University of Florida Veterinary School that tests race horses and greyhounds for steroids after a race. The tests are done by contract with the Division of Pari-Mutuel Wagering pursuant to its authority under Chapter 550, F.S. The same urinalysis test and testing equipment used at this facility can be used for steroid testing humans. This could be a possible in-state facility for sending drug testing samples of Florida's student-athletes, possibly alleviate some of the cost of the testing.

C. SECTION DIRECTORY:

Section 1: Amends s. 1001.43, F.S., to authorize district school boards to provide for random drug testing of student athletes for performance enhancing drugs.

Section 2: Amends s. 1006.20(2), F.S., requiring the Florida High School Athletic Association to include mandatory random drug testing of student athletes to qualify for membership in the organization.

Section 3: Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

Please see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the bill requires private schools to bear the cost of testing, it will have a fiscal impact on these schools.

D. FISCAL COMMENTS:

This bill appears to have a fiscal impact on school districts because it conditions membership in the Florida High School Athletic Association on drug testing student athletes. School districts would have to provide funding to pay for the test or require students to pay for their own test, as some school districts do for the required medical evaluation.

Steroid testing is done in the form of a urinalysis test, but is a more extensive test that requires sophisticated equipment that many labs do not have; therefore, the test must be sent to the few labs in the United States that do this type of testing. This results in the test being more expensive compared to testing for drugs such as marijuana or cocaine. Steroid testing costs an average of \$110 per test.<sup>2</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

##### 2. Other:

Drug testing policies adopted by district school boards should be reasonable and reasonably unintrusive, in accordance with the guidance offered regarding such policies by the U.S. Supreme Court.

Federal Constitutional Law: Fourth Amendment Analysis: The Fourth Amendment to the U.S. Constitution, which is applicable to the state by incorporation from the Fourteenth Amendment to the U.S. Constitution, protects the “right of people to be secure in their persons...against unreasonable searches and seizures.” Searches by public school officials, such as the collection of urine or saliva samples, implicate Fourth Amendment interests<sup>3</sup>, and therefore must be “reasonable” in order to be constitutional.

Drug testing, such as authorized by HB 861, has been upheld by the Supreme Court in a number of different contexts, including with respect to the testing of high school student athletes in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995). The constitutional authority for such testing policies was expanded in *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822 (2002), in which the Court upheld a school district policy that provided for random drug testing of middle and high school students who participate in any extracurricular activity, not just athletics.

The *Earls* court held that students who participate in extracurricular activities have a limited expectation of privacy, and relied heavily on the principles established in the *Vernonia* case in evaluating the constitutionality of the drug testing policy at issue in *Earls*. Effectively, the *Vernonia* court conducted a fact-specific balancing of the intrusion on the students’ Fourth Amendment rights against the promotion of a legitimate government interest (the need to prevent and deter the harm of childhood drug use) in evaluating the district’s policy in that case.

Important elements of the *Vernonia* school district’s policy that related to reasonableness included the fact that the test only looked for drugs, and not for other physical conditions of students such as pregnancy or illness. The drugs for which the samples were screened were standard and did not vary according to identity of the student. In addition, the results were disclosed only to a limited number of school personnel and were not turned over to law enforcement authorities or used for any internal disciplinary function.<sup>4</sup>

Additionally, in both *Vernonia* and *Earls*, the Court reviewed the procedures used to collect samples from students for their degree of “intrusiveness;” accordingly, procedures that are substantially more intrusive than those employed by school districts in those cases could potentially be found

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<sup>2</sup> Telephone conference with Al Parker, Tallahassee Memorial Hospital, March 18, 2004.

<sup>3</sup> *Vernonia School Dis. 47J v. Acton*, 515 U.S. 646, 652 (1995).

<sup>4</sup> The searches undertaken in *Vernonia* were taken for prophylactic and nonpunitive purposes (protecting student athletes from injury and deterring drug use in the student population).

unconstitutional. Finally, while a “demonstrated problem of drug use... [is] not in all cases necessary to the validity of a testing regime,”<sup>5</sup> the *Earls* Court does note that a demonstrated problem of drug abuse in a district might, “shore up an assertion” of the need for such testing. Accordingly, the imposition of a drug testing program in a school district with little or no evidence of student drug use could perhaps be successfully challenged on Fourth Amendment grounds.

Florida Constitutional Law: Article 1, Section 12 of the Florida Constitution provides for the “right of people to be secure in their persons...against unreasonable searches and seizures,” and provides that that right must be construed in conformity with the Fourth Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court. As a result, an analysis under Florida Constitutional law will be identical to the analysis set forth above.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

If the bill specified which drugs were tested for, it would provide increased guidance to school districts.

According to the Florida High School Athletic Association (FHSAA), membership in the organization is open to private schools. By requiring member schools to test for performance enhancing drugs as a condition of membership in the FHSAA, the bill will apply state regulation to private schools who are FHSAA members.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Pre-K through 12 recommended one amendment to the bill on March 22, 2004.

The amendment clarifies what percentage of student athletes need to be tested for membership into the Florida High School Athletic Association and provides consistency with the percentage used in s. 1001.43(1)(g), F.S.

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<sup>5</sup> *Bd. of Educ. Of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559, 2567 (2002), quoting *Chandler v. Miller*, 520 U.S. 305, 319 (1997).