

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill does not support a reduction in government, nor does it expand individual freedom because it authorizes district school boards to adopt programs and policies to permit random drug testing of high school student athletes.

B. EFFECT OF PROPOSED CHANGES:

HB 871 amends s. 1001.43, F.S., which 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, which programs may ...*permit random drug testing of high school student athletes.*" (Amendatory language is italicized.)

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 currently conduct random drug testing of athletes.
- Five school districts are considering adopting a policy concerning random drug testing.
- Four school districts have voluntary testing programs.
- One school district reported random drug testing of students participating in extracurricular activities and student drivers.

Some random drug testing policies were recently adopted, and others have been in place for several years. While random drug testing is not explicitly authorized in current law, an argument could be made that the authorization *to permit random drug testing* is implied because district school boards are authorized in the following statutes 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 (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.).

HB 871 provides explicit statutory authority for school boards to adopt programs and policies concerning drug testing of student athletes. Adoption of HB 871 would clarify questions that may arise

under the current law as to whether there is statutory authority for testing policies and make clear that such authority exists.

Random drug testing of student athletes is generally permissible under applicable Constitutional law if the policies adopted by district school boards are reasonable and reasonably unintrusive (Please see Drafting Issues or Other Comments section for a full explanation).

C. SECTION DIRECTORY:

Section 1: Amends s. 1001.43, F.S., to authorize district school boards to adopt programs and policies to permit random drug testing of high school student athletes.

Section 2: Provides an effective date of July 1, 2003.

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:

Please see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill does not appear to have a fiscal impact because the bill only provides authority for drug testing and does not mandate that it be done.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Random drug testing of student athletes is generally permissible under applicable Constitutional Law. HB 871, which authorizes the adoption of policies and programs concerning such testing, will not pose any constitutional problems, but 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 reasonable searches and seizures.” Searches by public school officials, such as the collection of urine or saliva samples, implicate Fourth Amendment interests,¹ and therefore must be “reasonable” in order to be constitutional.

Suspicionless, or random, drug testing such as authorized by HB 871 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 recently 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).

Important elements of the Vernonia school district’s policy that related to reasonableness included the fact that the tests 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.²

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on General Education considered HB 871 and reported the bill favorably by a vote of 7 Yeas to 0 Nays.

¹ Vernonia School Dis. 47J v. Acton, 515 U.S. 646, 652(1995).

² 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).