

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 871 CS                      District School Board/Powers & Duties  
**SPONSOR(S):** Representative Homan  
**TIED BILLS:**                                      **IDEN./SIM. BILLS:** SB 2306

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>General Education</u>	<u>7 Y, 0 N</u>	<u>Rogers</u>	<u>Bohannon</u>
2) <u>Education K-20</u>	<u>24 Y, 0 N w/ CS</u>	<u>Ashworth</u>	<u>Bohannon</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 871 CS authorizes district school boards to adopt programs and policies to require drug testing of middle and high school students as a condition of participation in extracurricular activity. If a district school board chooses to adopt such a policy, students participating in extracurricular activities will be required to consent to urinalysis testing for the presence of any drug that may pose a threat to the health or safety of the student.

The drug testing allowed in HB 871 CS is in accordance with the guidance offered regarding such policies by the U.S. Supreme Court.<sup>1</sup> Refer to the Other Comments section of this analysis for a more detailed explanation.

HB 871 CS gives the State Board of Education rulemaking authority to establish procedures for implementing the drug testing provisions.

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.

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<sup>1</sup> *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995). and *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822 (2002).

## 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:

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.” HB 871 CS adds the provision that district school boards may choose to require drug testing of middle and high school students before they are allowed to participate in extracurricular activities. If the district school board chooses to implement this policy, students wishing to participate in extracurricular activities will be required to consent to urinalysis testing for the presence of any drug that may pose a threat to the health or safety of the student.

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

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. 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 CS provides explicit statutory authority for school boards to adopt programs and policies concerning drug testing of student athletes. HB 871 CS clarifies statutory authority for testing policies and makes clear that such authority exists.

C. SECTION DIRECTORY:

Section 1: Amends s. 1001.43, F.S., to authorize district school boards to provide for drug testing in certain circumstances.

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:

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 reasonable searches and seizures.” Searches by public school officials, such as the collection of urine or saliva samples, implicate Fourth Amendment interests,<sup>2</sup> and therefore must be “reasonable” in order to be constitutional.

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.<sup>3</sup>

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 Education K-20 adopted one amendment on April 23, 2003, which allows the district to require drug testing for middle and high school students as a condition of participation in any extracurricular activity. The amendment language specifies that the urinalysis testing is for the presence of any drug that may pose a threat to the health or safety of the student. Additionally, the amendment gives rulemaking authority to the State Board of Education for rules to implement the provisions.

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<sup>2</sup> *Vernonia School Dis. 47J v. Acton*, 515 U.S. 646, 652(1995).

<sup>3</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).