

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"/> |

The bill may marginally expand government and limit personal freedom by allowing school districts to test students for harmful drugs.

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 drug testing of middle and high schools 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 controlled substance listed in s. 893.03, F.S. This includes such drugs as cannabis, opiates, lysergic acid diethylamide (LSD), cocaine, amphetamines, and phencyclidine (PCP). Controlled substances also include anabolic steroids.

The bill also provides that procedures for implementing the bill’s provisions must be prescribed by rules of the State Board of Education pursuant to ss. 120.536(1) and 120.54, F.S.

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.).

This bill provides explicit statutory authority for school boards to adopt programs and policies concerning drug testing of students who participate in extracurricular activities. It also 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, 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:

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 it only provides authority for drug testing and does not mandate that it be done. However, drug testing general costs from \$15-\$56 per test and would be the responsibility of the district school board to fund.

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 reasonable searches and seizures.” Searches by public school officials, such as the collection of urine or saliva samples, implicate Fourth Amendment interests², and therefore must be “reasonable” in order to be constitutional.

Drug testing such as authorized by HB 113 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.³

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 unconstitutional. Finally, while a “demonstrated problem of drug use... [is] not in all cases necessary to the validity of a testing regime,”⁴ 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

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

³ 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).

⁴ *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).

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:

Gives State Board of Education rulemaking authority to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Education K-20 adopted two amendments to the bill on March 8, 2004.

The first amendment removed the reference to "any drug that may pose a threat to the health or safety of the student" and replaced it with "any controlled substance listed in s. 893.03, F.S." The amendment was offered to give a more specific classification, keeping it from being overly vague in its application.⁵

The second amendment required a school district to use funds other than those for student instruction to pay for drug testing authorized by the bill and provided that no student may be prevented from participating in any extracurricular activity because of his or her inability to pay for the test (if a district requires students to pay for their tests).

⁵ Cf. *U.S. v. Marte* 356 F.3d 1336 (11th Cir. 2004).