

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/SB 2262

SPONSOR: Education Committee and Senator Haridopolous

SUBJECT: Student Athletes/Drug Testing

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HE</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill relates to steroid drug use by students and requires the Florida High School Athletic Association to adopt specific bylaws. As a condition of membership in the association, schools must abide by district school board or private school requirements for instruction to students on the dangers of steroid use and a prohibition against steroid use in the code of student conduct. Also, the association must adopt bylaws requiring members to adhere to a Florida Coaches Code of Ethics, as well as the penalties for failure to comply with the code. Finally, the association must make recommendations to the Legislature (by October 1, 2005) for a pilot statewide random drug testing program for student athletes in a selected sport.

This bill substantially amends s. 1006.20, F.S., and creates an undesignated section of law.

The bill takes effect September 1, 2005.

II. Present Situation:

During recent Congressional hearings, concerns have been raised about the use of performance enhancing drugs by professional and amateur athletes in a wide range of competitive sports (e.g., baseball, football, basketball, hockey, soccer, tennis, track and field, and cycling),¹ as well as the dangers of steroid use by college, high school and middle school athletes.²

¹ U.S. House of Representatives, Committee on Government Reform, April 2005, See <http://reform.house.gov/GovReform/News/DocumentSingle.aspx?DocumentID=7474>

² U.S. House of Representatives, Committee on Judiciary, Hearing on H.R. 3866, the "Anabolic Steroid Control Act of 2004." March 2004. See http://commdocs.house.gov/committees/judiciary/hju92567.000/hju92567_0.HTM

Performance-enhancing drugs are used to boost athletic performance, ward off fatigue, enhance physical appearance, and increase muscle mass and energy. They include anabolic steroids, which are taken orally or by injection.³

Steroid use is relatively low among students both nationally and in Florida.⁴ Most of the adolescents who use anabolic-androgenic steroids participate in sports, and a primary reason for taking these agents is reportedly to improve athletic performance.⁵ The use of steroids remains a concern because of the potential serious long-term damage that these substances can cause.

Abusers of androgenic-anabolic steroids take these agents by "stacking" (taking more than one androgenic-anabolic steroid at a time, including both oral and injectable forms) and "cycling" (taking them for periods of time, usually 6-12 weeks, and then stopping for a similar period of time), and they take high doses (as much as 10-100 times the normal therapeutic dose); and they combine this with intense physical workouts and high-protein diets.⁶

The long-term health risks associated with steroid abuse can be very serious and potentially life threatening. Younger steroid abusers, both male and female, are at risk of permanently halting their bone growth. Adverse effects for both genders include liver and heart disease, stroke, drug dependence, and increased aggression. For individuals who inject steroids with shared needles, there is a risk of contracting or transmitting hepatitis or HIV/AIDS.⁷

Some school districts in Florida have already implemented random drug testing policies.⁸

III. Effect of Proposed Changes:

The bill amends s. 1006.20, F.S., relating to athletics in public K-12 schools, to require the Florida High School Athletic Association to adopt specific bylaws. As a condition for membership in the organization, schools must abide by the district school board or private school requirements for the following: instruction on the dangers of steroid use; a provision in the code of student conduct prohibiting steroid use; and a provision including the effects of steroid use in drug suspicion criteria. The bylaws must be developed with the assistance of the Florida School Boards Association and the Florida Association of District School Superintendents. The Florida High School Athletic Association must also adopt bylaws requiring members to adhere to the Florida Coaches Code of Ethics and the penalties for failure to comply with the code. A code must be developed no later than September 1, 2005.

³ Federal law relating to controlled substances (21 U.S.C. 802) defines an anabolic steroid as any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone).

⁴ OPPAGA Information Brief, Report No. 04-72, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*. October, 2004.

⁵ *Drug Use in Sports: A Veritable Arena for Pharmacists*, Journal of the American Pharmacists Association 44(4):501-516, 2004.

⁶ Ibid.

⁷ *Consequences of the Abuse of Anabolic Steroids*, Nora D. Volkow, M.D., Director, National Institute on Drug Abuse. Testimony before the Committee on Government Reform, U.S. House of Representatives, March 17, 2005.

⁸ OPPAGA Information Brief, Report No. 04-72, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*. October, 2004. None of these districts test for steroids.

The Florida High School Athletic Association is also tasked with making recommendations to the Legislature for a pilot program to test for performance-enhancing drugs. The pilot program must involve statewide testing of a random sample of student athletes in a selected sport.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Random drug testing of student athletes is generally permissible under applicable Constitutional law. However, policies adopted by school districts 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 the 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,⁹ and therefore must be “reasonable” in order to be constitutional.

Suspicionless or random drug testing such as that authorized by SB 2262 has been upheld by the Supreme Court in a number of different contexts, including the testing of high school student athletes in *Vernonia School District 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386 (1995). The constitutional authority for such testing policies was recently expanded in *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559 (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 its reasonableness included the fact that the tests only looked for drugs, and not for other physical conditions of the student (e.g., pregnancy or illness); the drugs for which the samples were screened were standard, and did not vary according to the identity of the student; and the results of the tests were disclosed only to a limited number of school

⁹ *Vernonia School Dis. 47J v. Acton*, 515 U.S. 646, 652 (1995).

personnel and were not turned over to law enforcement authorities or used for any internal disciplinary function.¹⁰ The *Vernonia* court was not clear, however, as to whether requiring students to identify prescription medications that they were taking prior to the test administration would be overreaching; this requirement could be impermissible if required by policy or practice. 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. While suspicionless drug testing has been upheld by the Supreme Court, the *Earls* court does note that a demonstrated problem of drug abuse in the district might “shore up an assertion” of the need for suspicionless testing.

Neither *Vernonia* nor *Pottawatomie* involved private school students.

Florida Constitutional Law. Art. I, §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.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be some costs for Florida High School Athletic Association to develop bylaws.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The phrase “*drug suspicion criteria*” on page 2, lines 1 and 2, is ambiguous.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹⁰ 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).

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
