

# 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.)

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Prepared By: Health Care Committee

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BILL: CS/SB 2262

SPONSOR: Education Committee and Senator Haridopolos

SUBJECT: Drug Testing Student Athletes

DATE: April 26, 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>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute requires the Florida High School Athletic Association to adopt specific bylaws relating to steroid drug use by students. 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. The association must adopt bylaws requiring members to adhere to a Florida Coaches Code of Ethics, which shall be developed by September 1, 2005, as well as the penalties for failure to comply with the code. The committee substitute also requires the association to make recommendations to the Legislature for a pilot statewide random drug-testing program for student athletes in a selected sport by October 1, 2005.

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

## II. Present Situation:

During recent Congressional hearings, concerns were 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),<sup>1</sup> as well as the dangers of steroid use by college, high school and middle school athletes.<sup>2</sup>

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

<sup>2</sup> 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](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. These drugs include anabolic-androgenic steroids, which are taken orally or by injection.<sup>3</sup>

### **Use of Steroids in Student (K-12) Populations**

Steroid use is relatively low among students both nationally and in Florida. Less than 2 percent of students in national surveys and 1.4 percent in Florida surveys report using steroids.<sup>4</sup> Most of the adolescents who use anabolic-androgenic steroids are males and participate in sports. A primary reason for taking these agents is reportedly to improve athletic performance.<sup>5</sup>

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). Steroid abusers often take high doses of these drugs (as much as 10-100 times the normal therapeutic dose) and combine their use with intense physical workouts and high-protein diets.<sup>6</sup>

The use of steroids remains a concern because of the potential serious long-term health damage that these substances can cause. 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.<sup>7</sup>

### **Drug Testing in Florida School Districts**

In 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) surveyed Florida school districts regarding their drug-testing policies.<sup>8</sup> OPPAGA found that 11 of 67 school districts currently have student drug testing programs. These districts use urinalysis to test for illicit drugs as defined by federal and state statutes; eight also test for alcohol. None of the districts currently tests for steroids.

The 11 Florida districts with testing programs vary in the student populations tested. All of these districts conduct drug testing for student athletes. Three districts also test students involved in extracurricular activities and two test student drivers. Eight of the 11 districts apply the program

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<sup>3</sup> 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).

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

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

<sup>6</sup> *Ibid.*

<sup>7</sup> *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.

<sup>8</sup> OPPAGA Information Brief, Report No. 04-72, *Though the Option Is Available, School Districts Do Not Test Students for Steroids*. October 2004.

district-wide, while in three districts testing is in only one high school. The districts do not test all students in the targeted groups but only a sample of students. Most (nine) of the districts have structured their testing policy to allow for two options, testing an entire team or testing on an individual basis, although in practice none of the districts test entire athletic teams because of cost. Instead, the districts test a percentage of athletes during the year and randomly thereafter. The remaining two districts test students strictly on a random, lottery draw basis.

In addition to testing certain groups of students on a random basis as discussed above, some Florida school districts have a provision in their student codes of conduct to drug test individual students based on reasonable suspicion; however, districts reported that this provision is only occasionally used. These policies authorize testing when students exhibit behaviors that give rise to reasonable suspicion that they are using illicit drugs. Some districts define reasonable suspicion as observable phenomena; abnormal conduct or erratic behavior; significant deterioration in athletic performance; report of use by a credible source; evidence that an athlete tampered with a drug test; and evidence that an athlete has used, possessed, sold, solicited, or transferred drugs. Several districts also reported policies in place to drug test students as a condition of attending alternative school to avoid expulsion for drug-related offenses. Districts with these policy provisions also reported that they are only occasionally used and few students are tested overall.

### **III. Effect of Proposed Changes:**

**Section 1.** 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, including penalties for failure to comply with the code. The Florida Coaches Code of Ethics must be developed no later than September 1, 2005.

**Section 2.** Creates an undesignated section of law requiring the Florida High School Athletic Association to make recommendations to the Legislature for a pilot program to test for performance-enhancing drugs by October 1, 2005. The pilot program must involve statewide testing of a random sample of student athletes in a selected sport.

**Section 3.** Provides an effective date of September 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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,<sup>9</sup> and therefore must be “reasonable” in order to be constitutional.

Suspicionless or random drug testing such as that authorized by CS/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 personnel and were not turned over to law enforcement authorities or used for any internal disciplinary function.<sup>10</sup> 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

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

<sup>10</sup> The searches undertaken in *Vernonia* were taken for prophylactic and non-punitive purposes (protecting student athletes from injury and deterring drug use in the student population).

“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.

The effective date of the law (September 1, 2005) may conflict with the date that the Florida High School Athletic Association must create and adopt the Florida Coaches Code of Ethics (September 1, 2005).

## **VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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