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.)

BILL: SB 2306

SPONSOR: Senator Crist

SUBJECT: Random Drug Testing of Public School Student Athletes

DATE: March 21, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Favorable
2.			JU	
3.			CJ	
4.			AED	
5.			AP	
6.				

I. Summary:

SB 2306 authorizes district school boards to adopt programs and policies to permit random drug testing of high school student athletes.

This bill amends s. 1001.43 of the Florida Statutes.

The bill takes effect July 1, 2003.

II. Present Situation:

According to an informal telephone survey of district school boards conducted in the summer of 2002 by the Department of Education:

- 6 school districts currently perform random drug tests on students;
- 5 school districts are considering adopting a policy concerning random drug testing;
- 4 have voluntary testing programs; and,
- 1 school district performed random drug tests on all students participating in extracurricular activities and student drivers, with one additional school district planning to add band members to their existing testing policy, which covered athletes, in fall, 2003.

Some of these policies were recently adopted, and some have been in place for several years.

Random drug testing of student athletes is generally permissible under applicable Constitutional law, as is detailed below.

III. Effect of Proposed Changes:

SB 2306 amends s. 1001.43(1), F.S., which details supplemental powers and duties of district school boards, to provide that a "district school board may adopt programs and policies to ensure the safety and welfare of individuals, the student body, and school personnel, which programs and policies may…*permit random drug testing of high school student athletes*." (Amendatory language is italicized.)

As noted above, some school districts have already implemented random drug testing policies. It is not clear what statutory authority such policies have been adopted under, but an argument may be made that general authority for such policies exists under s. 1001.42, F.S., concerning Powers and Duties of District School Boards. Section 1001.42(6), for example, which covers child welfare, provides that district school boards may "provide for…the attendance and control of students at school and for proper attention to health, safety and other matters relating to the welfare of children."

SB 2306, by contrast, would provide explicit statutory authority for school boards to adopt programs and policies concerning drug testing of student athletes. Adoption of SB 2306 would clarify any questions that may arise under the current statutory framework as to whether there is statutory authority for testing policies and make clear that such authority exists.

Adoption of the bill could also call into question the statutory authority for adoption of policies permitting the testing of non-athletes participating in extracurricular activities, which some districts' policies now permit. Such testing is currently permissible as a Constitutional matter under *Board of Education of Pottawatomie County v. Earls*, 2002 WL 1378649, as noted below. Because it is not specifically authorized by this bill, however, and the bill does authorize testing of student athletes, an argument could be formed that the legislature by this exclusion desired to withhold authority for the testing of non-athletes.

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, as discussed below. SB 2306, which authorizes the adoption of policies and programs concerning such testing, will not pose any constitutional problems,

but 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,[1] and therefore must be "reasonable" in order to be constitutional.

Suspicionless, or random, drug testing such as that authorized by SB 2306 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, 1115 S.Ct. 2386 (1995). The constitutional authority for such testing policies was recently expanded in *Board of Education of Pottawatomie County v. Earls*, 2002 WL 1378649, 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.[2] 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.

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.

[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).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None. Drug testing is costly, generally costing from $15-$56 per test; however, the bill only provides authority for such testing and does not mandate that it be done.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.