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 1838

SPONSOR: Senator Crist

SUBJECT: Random Drug Testing of Public School Student Athletes

DATE: March 2, 2004 REVISED: _____ _____ _____ _____

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

I. Summary:

SB 1838 authorizes district school boards to adopt programs and policies to require middle school and high school students to consent to urinalysis drug testing as a condition of participation in any extracurricular activity. The bill provides that procedures for implementing the testing provisions must be prescribed by rules of the State Board of Education.

This bill amends s. 1001.43 of the Florida Statutes.

The bill takes effect July 1, 2004.

II. Present Situation:

According to an informal telephone survey of district school boards conducted in the summer of 2002[1] by the Department of Education:

- 6 school districts performed random drug tests on students;
- 5 school districts were considering adopting a policy regarding random drug testing;
- 4 had 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 for student athletes.

[1] The most recent date that this information was gathered.

Some of these policies were recently adopted, and some have been in place for several years. 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., regarding 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." Nothing in current state statute explicitly authorizes school boards to require students to submit to drug testing, however.

Random, or suspicionless, drug testing of students who participate in extracurricular activities is generally permissible under applicable constitutional law, as further detailed below.

III. Effect of Proposed Changes:

Section 1001.43(1), F.S., details certain supplemental powers and duties of district school boards. SB 1838 amends this subsection 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…

(b) Require middle and high school students, as a condition of participation in any extracurricular activity, to consent to urinalysis testing for the presence of any drug that may pose a threat to the health or safety of the student." (Amendatory language is italicized.)

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.

SB 1838 provides explicit statutory authority for school boards to adopt programs and policies regarding drug testing of students participating in extracurricular activities. The bill's provisions would clarify any questions that may arise regarding such authority under the current statutory framework and make clear that authority for district-ordered drug testing exists, at least as a matter of state law.

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 students who choose to participate in extracurricular school activities is generally permissible under applicable Constitutional law. SB 1838, which authorizes the adoption of policies and programs concerning such testing, should not pose any constitutional problems, but procedures adopted by the State Board of Education and district school boards to implement drug testing should comply with applicable requirements regarding such testing set forth in federal case law, as further detailed below.

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

Suspicionless, or random, drug testing[3] has been upheld by the U.S. 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, 115 S.Ct. 2386 (1995). Additionally, in *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559 (2002), the U.S. Supreme 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 school 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 had conducted a highly 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 drug testing policy that supported its reasonableness included the facts 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.[4]

---

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

[3] While the provisions of SB 1838 do not specifically state that *random* drug testing is being authorized, the bill's language is not inconsistent with the imposition of random testing only. Any procedures adopted by the State Board of Education to implement the law should ensure that all testing conducted by school districts complies with constitutional requirements.

[4] 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).

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 abuse ... [is] not in all cases necessary to the validity of a testing regime,"[5] 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. 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:

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.

[5] *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S.Ct. 2559, 2567 (2002), quoting *Chandler v. Miller*, 520 U.S. 305, 319, 117 S.Ct. 1295, 137 L.Ed.2d 513 (1997).