

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 452

48th Legislature, 2nd Session, 2008

Short Title: High School Athlete Steroid Testing

Sponsor(s): Representatives Thomas A. Anderson and W.C. “Dub” Williams

Analyst: James Ball

Date: January 25, 2008

Bill Summary:

HB 452 enacts a new section of the *Public School Code* authorizing random drug testing for anabolic steroids among students who participate in high school varsity athletes in public schools. The bill requires that by August 1, 2008, all local school boards implement rules and procedures and begin random drug testing for anabolic steroid use. The rules and procedures must include protocols for addressing positive steroid test results.

HB 452 further requires that as a condition of student participation in a varsity-level athletic program, the student, parent, custodian, legal representative, or guardian of the student must provide written consent to be tested for anabolic steroids.

HB 452 also defines “varsity-level athletic program” to be an extracurricular athletic program offering the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.

HB 452 makes an appropriation to implement the random drug testing program statewide.

Fiscal Impact:

\$1.0 million is appropriated from the General Fund to the Public Education Department (PED) for expenditure in FY 09 and FY 10. The bill contains a reversion clause at the end of FY 10.

Issues:

According to the Health Policy Commission (HPC), Texas recently signed into law the nation’s most ambitious attempt to keep illegal performance-enhancing drugs out of high school sports. Florida legislation still awaits the signature of Governor. Programs in New Jersey, Texas, and Florida each mandate different penalties. Athletes who test positive would get a 90-day suspension from sports in Florida, a one-year suspension in New Jersey and, in Texas, a 30-day suspension for a first offense, a one-year suspension for a second offense, and a permanent ban for a third offense. The Texas program will be the most expansive, including 20,000 to 25,000 of students in all sports, or approximately 3.0 percent of all the state’s high school athletes.

The Texas Legislature has allotted \$3.0 million a year for testing. Florida’s one-year pilot program calls for testing almost 59,000 high school athletes in football, baseball, and weightlifting, for which the Legislature has allotted \$100,000. New Jersey tests only during state

championship tournaments, sampling 5.0 percent of the approximately 10,000 student-athletes. In the first year of the program, New Jersey reports that every test for the fall sports season came back negative for steroids.

HPC also cites a recent report by the University of Michigan, which indicates that approximately 2.7 percent of high school seniors across the nation have used steroids at some point; 1.8 percent in the past year. PED reports that in 2005, a statewide Steroid Task Force recommended a pilot study, which PED conducted in four New Mexico school districts. Each of those districts had a drug testing policy. The only positive test result was from a female student who was not involved in any athletic activity.

PED's analysis of the identical HB 452 cites the following concerns:

- the cost of steroid testing can be very expensive ranging from \$150 to \$450 per test. With approximately 14,000 students being eligible for random drug testing plus additional administrative costs, \$1.0 million might be insufficient to establish an effective statewide drug testing program;
- school districts would not be authorized to use funds under this appropriation to test for other controlled substances even if they had reasonable suspicion that students had consumed drugs other than anabolic steroids;
- the drug testing requirements would become effective on July 1, 2008, including the provision that rules and procedures be adopted, and that random drug testing begin by August 1, 2008, one month after enactment. It might be unrealistic to require school boards to adopt such policies just one month after the enabling law is enacted since statute requires that when local school boards establish school discipline policies, they must hold public hearings and involve parents, school personnel and students in the development of these policies; and
- the definition of "varsity-level athletic program" might conflict with the New Mexico Activities Association's (NMAA) definition of *Varsity*.

PED's analysis also indicates the following critical issues are not addressed in the bill and that should be resolved:

- can or must drug test results be turned over to law enforcement authority;
- can or must test results and related documents be kept confidential and who can access them;
- can test results be transferred to another school or school district if the student changes schools;
- can test results be transferred to a college that the student enters after leaving secondary school;
- can test results can be placed in students' other educational records, which would raise privacy concerns under the federal *Family Educational Rights and Privacy Act* (FERPA); and
- do the testing requirements apply to charter schools since they are governed by local governing bodies rather than by school boards.

Related Bill:

SB 202 *Mandatory High School Athlete Steroid Testing* (identical)