

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Gutierrez DATE TYPED 02/21/05 HB 912  
 SHORT TITLE Prohibit Student Use of Steroids SB \_\_\_\_\_  
 ANALYST Chabot

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$300.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 843

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)  
 Health Policy Commission (HPC)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 912 appropriates \$300 thousand from the general fund to PED for the purpose of administrative and testing costs related to random testing for anabolic steroids. The bill amends Section 22-5-4.3 NMSA on school discipline policies to require school districts to adopt and maintain a policy prohibiting use of anabolic steroids of students participating in interscholastic athletics governed by the New Mexico Activities Association (NMAA). Random testing will be included, results will be confidential and not disclosable to any other district. The results may only be used to disqualify a student from continued athletic participation after two prior incidents that included a warning and then a temporary suspension. PED is to promulgate rules to implement the provisions of the bill including guidelines for random testing.

#### Significant Issues

The AG raises the following issues:

1. The bill requires adoption of a policy that prohibits the use of anabolic steroids by all students but provides for random testing only of students participating in interscholastic

tic athletics. We question whether that was the intent of the drafter or whether the intent was that the policy be limited to application to athletes.

2. In Board of Education of Ind. School District No. 92 v. Earls, 536 U.S. 822, 122 S.Ct. 2559 (2002), the Supreme Court upheld the constitutionality of random drug tests of middle and high school students participating in interscholastic athletic activities. The facts in that case were limited to interscholastic athletics, urine testing, limited use of test results and access to test results on a need to know basis. This bill provides for limited use of test results but does not specifically provide for the other limitations. While it does provide for the department to adopt rules, the failure to contain such limitations in the text of the bill may render it susceptible to constitutional challenge as an unreasonable search.

HPC reports the National Institute of Drug Abuse estimates in 2003 anabolic steroid use by young men was 1.8 percent of 8<sup>th</sup> graders, 2.3 percent of 10<sup>th</sup> grades, and 3.2 percent of 12<sup>th</sup> graders. In a survey on boys using steroids, New Mexico ranked 4<sup>th</sup> out of 9 states that have the highest percentage of boys using steroids (7.2 percent). The average cost of steroid testing is estimated at \$138.

PED states the confidential clauses are “essential in order to avoid the stigmatization of a student and to ensure there is no impediment to parents exercising their right of school choice over their child.”

### **FISCAL IMPLICATIONS**

The appropriation of \$300 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund. PED estimates its cost at \$75.8 thousand of that amount.

### **TECHNICAL ISSUES**

PED assesses the requirement on page 2, lines 11 through 14 requires testing of students participating in interscholastic athletics governed by NMAA which would include grades 7 through 12. The department suggests the following amendments:

1. Page 2, line 11, after “by” insert “high school”.
2. Page 2, line 12, after “of” insert “high school”.

AG suggests amending the bill to include the limitation contained in SB 843 and articulated by the Supreme Court.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

There will be no statewide standards governing testing of students for possible steroid use.

### **POSSIBLE QUESTIONS**

1. Should testing be limited to high school students?

**GAC/lg**