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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/08

SPONSOR Carraro LAST UPDATED _____ HB _____

SHORT TITLE Mandatory High School Athlete steroid Testing SB 202

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$1,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$11.8	\$11.8	\$11.8	\$35.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Health Policy Commission (HPC)

New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of Bill

Senate Bill 202 appropriates \$1 million from the general fund to Public Education Department for the purpose of implementing and operating a random drug testing program for varsity high school athletic participants.

Senate Bill 202 provides for the random drug testing for anabolic steroids among high school varsity athletes throughout New Mexico.

The bill requires that by August 1, 2008, all local school boards must implement rules and procedures and begin random drug testing for anabolic steroid use among varsity high school athletes. The rules and procedures are to include protocols for addressing positive steroid test results.

SB 202 requires that as a condition of a student participating in a varsity-level athletic program, the student, or the parent, custodian, legal representative or guardian of the student must provide written consent to be tested for anabolic steroids.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year shall revert to the general fund.

A review of drug testing costs indicates a low end cost of \$150 dollars to as high as \$450 dollars per test. The cost of steroid testing can be expensive. The New Mexico Activities Association estimates that there are 42,000 student high school athletes in New Mexico. If one-third of this number plays at the varsity level, approximately 14,000 students will be required to submit to random drug testing at some point in time. Depending on how many random tests are done, and what other administrative costs are associated with a school district's testing program, \$1 million may be a limited amount to establish effective drug testing statewide. Depending on future appropriations, this may become an unfunded mandate for schools.

SIGNIFICANT ISSUES

The bill includes a mandatory consent requirement where parents or the student (presumably age 18 or above) must provide consent as a condition of participation. This provision may have constitutional issues related to protections against unreasonable search and seizure, however it should be noted that while the right to privacy applies to students in public schools in many cases, students have diminished rights.

PED notes that a collective reading of applicable U.S. Supreme Court cases permits a conclusion that at least under the federal Constitution, random urinalysis drug testing of public school students who are involved in extracurricular activities may be permissible. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Vernonia School District v. Acton*, 515 U.S. 646 (1995); *Board of Education [..] Pottawatomie v. Earls*, 536 822 (2002).

PED further notes that given the controversy in the area of mandatory drug testing of public school students, there is likely to be a challenge to this program. It should be noted that in a choice between testing for drugs on the basis of reasonable suspicion or randomly based only upon a student's participation in a high school varsity athletic program, SB 202 opts for random drug testing.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department (PED) would have to designate staff to develop a rule requiring local boards to have steroid testing policies, conduct a public hearing, and file the rule. In addition, staff would be required to flow money (either through a contract or flowing money

to school districts) for the implementation and operation of the random steroid testing program and monitoring of the expenditure of monies.

TECHNICAL ISSUES

While the bill provides for individual districts to come up with a drug testing program, it is silent on consequences for positive drug tests. Differences in consequences between districts may be problematic with regard to enforcement.

Charter schools are not provided for in the bill. Current statute provides these students may participate in varsity athletics if they choose.

PED notes that because the drug testing implementation funds are appropriated to the PED, the PED would have the fiduciary responsibilities of seeing that the funds are properly accounted for and expended consistent with the law. Given that the bill would go into effect on July 1, 2008 and the program commences on August 1, 2008, it is highly unlikely the PED could disseminate the funds in an equitable manner by August 1st. Whether budgets would be set up to move the money as between the Department of Finance and Administration and the PED in July of 2008 is also questionable. The Legislature may wish to attach an emergency clause to allow provisions of the bill to and funding to flow as quickly as possible.

The bill's definition of "varsity-level athletic program" conflicts with the New Mexico Activities Association's (NMAA) definition of *Varsity*, which is "The highest level or principal team which represents its school in Interscholastic Activities. (Each school is allowed only one team per gender, where applicable, at the varsity level). In neither of the definitions is "high school" mentioned.

PA/nt