

LFC Requester:	Rachel Gudgel
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date February 23, 2015
Bill No: HB 523

Sponsor: Rep. Eliseo Lee Alcon
Short Title: School Athlete Drug Testing

Agency Code: Attorney General's Office
Person Writing: Patricia Padrino Tucker, AAG
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Bill 523 requires every person who is hired as a coach of a public school athletic activity to be tested for illicit and prescription drug abuse.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

There may be 4th Amendment implications to the random drug testing and drug testing without any individualized suspicion proposed by House Bill 523. While this issue is not settled, several federal courts have ruled that in the context of each case, random drug testing of teachers violates their 4th Amendment right to be free of unreasonable searches and seizures. *American Federation of Teachers – West Virginia, AFL-CIO, et al v. Kanawha County Board of Education*, 592 F.Supp.2d 883 (S.D. W.Virginia 2009); *Smith County Educ. Ass’n v. Smith County Bd. Of Educ.*, 781 F.Supp.2d 604 (M.D. Tenn. 2011). In *American Federation of Teachers v. Kanawha*, the Court rejected the argument that all teachers were in “safety-sensitive” positions, something that would have justified lowering the level of protection for drug testing.

However, mandatory pre-employment drug testing of teacher-applicants has been upheld by the 6th Circuit in *Knox County Education Association v. Knox County Board of Education*, 158 F.3d 361 (1998).

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A