

19.1139.01000

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. SB 2337

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

2019 SENATE EDUCATION

SB 2337

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2337
1/29/2019
31633

- Subcommittee
 Conference Committee

Committee Clerk Signature Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to requiring school districts to develop a drug testing policy.

Minutes:

Att. #1-Clemens; Att. #2-DeKok; Att. #3-Feldner

Chairman Schaible: Senator Clemens.

Senator Clemens, Dist. 16: *See Attachment #1.*

Chairman Schaible: Senator Clemens, we heard testimony this morning on a bill similar to the and were told this random drug testing would be unconstitutional. What would you say to that?

Senator Clemens: It is not unconstitutional, there are many companies and entities in ND that do that. ND is one of the states that does not have restrictions to random drug testing.

Chairman Schaible: A part of this bill is not an avenue to fire them, but to get the individual help. Who is going to pay for that help?

Senator Clemens: When it comes to drug testing, I am going to venture to say the help would be the responsibility of the school district.

Chairman Schaible: You mentioned it is a policy that it is to be enacted by thour schools, yet the bill says the school districts shall adopt the policy. It seems to me it will be a mandate.

Senator Clemens: That is correct – this would be the minimum.

Senator Oban: Do you know how much one drug test costs from beginning to end?

Senator Clemens: They are very simple tests - \$50-60.

Senator Oban: When you think about the cost to the larger school districts, it is a significant cost.

Senator Clemens: If you take 10% of 2,500, it would be 250 random tests. At \$50 a test, we are looking at \$12,500 to \$15,000.

Senator Oban: We learned in the last bill presentation that what makes it constitutional is the government would be requiring it. Private employers can do this. This would be a government forcing a government entity to do it. That is the constitutional question.

Senator Clemens: The federal government mandates all companies with CDL drivers to conduct random tests.

(9:57) **Senator Rust:** **I am going to ask you the same question I asked the previous presenter. Currently** we test safety sensitive positions. Do we really want to go beyond that, that seems really intrusive to go beyond that.

Senator Clemens: I worked in corporate prior to retiring. There was random drug testing going on in that CNH corporation. We on Human Services are trying to everything we can to address the drug problem with our youth. I would find it contradictory if someone wasn't going to allow the school board to conduct drug testing within their own entity. There was already an incident – in Bismarck a couple of weeks ago, where a school teacher had broken into a home looking for drugs. All staff would be subject to this. If we can prevent a few school employees with continuing on with drugs, which, who knows how big the problem is – if there is a problem. We are putting in another safeguard to eliminate drugs from our schools.

Senator Rust: I appreciate your desire for a drug free workplace. With the random testing, a person could go for five or ten years without being selected for the testing. My problem with the bill is that I think it is unconstitutional. I don't think it should go beyond safety sensitive, but you would like it to go beyond safety sensitive.

Senator Clemens: It is pretty hard to if there would never be a safety issue with a teacher – a shop teacher, someone taking care of the grounds with lawn equipment. If we are talking safety on the school grounds, if under the influence of drugs could injure a child. Is that a possibility?

Chairman Schaible: Thank you. Other testimony.

(17:08) **Amy DeKok, Council for the ND School Boards Association: See Attachment #2.**

Senator Marcellais: What you are saying is that schools that are doing random testing it is unconstitutional.

Amy DeKok: Only if it is outside of the safety sensitive positions.

Senator Marcellais: Do you know of any testing that aren't doing drug testing currently?

Amy DeKok: I am not aware of any school districts that are doing random testing outside of the safety sensitive positions. I am not personally aware of that.

Senate Education Committee

2337

1/29/2019

Page 3

(25:17) Lisa Feldner, ND Council of School Administrators: See *Attachment #3*.

Hearing for SB 2337 is closed.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2337
1/30/2019
31790 (Starts at 12:11)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to requiring school districts to develop a drug testing policy.

Minutes:

No Amendments.

Senator Rust: I move a Do Not Pass on SB 2337.

Senator Elkin: Second.

Roll Call Vote: 6 Yeas; 1 Nay; 0 Absent.

Motion Carries.

Senator Rust will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2337: Education Committee (Sen. Schaible, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2337 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

SB 2337

SIB 2337
1-29-19
Att. #1
p1 of 1

SENATE EDUCATION COMMITTEE

SENATE BILL 2337

INTRODUCED BY SEN DAVID CLEMENS

January 28, 2019

MR CHAIR, OF THE SENATE EDUCATION COMMITTEE, AND COMMITTEE MEMBERS, MY NAME IS DAVID CLEMENS, SENATOR FROM DISTRICT 16 OF WEST FARGO/FARGO.

I AM HERE TODAY TO INTRODUCE SENATE BILL 2337. A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 15.1-09 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO REQUIRING SCHOOL DISTRICTS TO DEVELOP A DRUG TESTING POLICY.

THE PURPOSE OF THE BILL IS TO INSURE EMPLOYEES OF THE SCHOOL DISTRICT ARE DRUG FREE THROUGH A RANDOM DRUG TESTING POLICY. MANY ENTITIES IN NORTH DAKOTA ALREADY HAVE REQUIRED RANDOM DRUG TESTING; ALL COMPANIES USING CDL DRIVERS, MANUFACTURING COMPANIES, ATHLETIC TEAMS, ETC.

NORTH DAKOTA IS SPENDING MILLIONS ON SUBSTANCE USE DISORDER TREATMENT AND EXTENSIVE EDUCATION METHODS TO TRY AND ELIMINATE DRUG USE AMONG OUR YOUTH. DRUG USE IS BECOMING MORE COMMON WITH OUR YOUTH AND ADULTS, THE AGE OF DRUG USE BECOMING YOUNGER AND YOUNGER. THE USE OF DRUGS IN OUR SCHOOLS IS CERTAINLY NOT UNHEARD OF. PARENTS OF SCHOOL AGE CHILDREN ARE KNOWN TO ENGAGE DRUGS WITH THEIR CHILDREN, LEAVING CHILDREN TO ACTUALLY SEEK OUT TREATMENT ON THEIR OWN. MANY CHILDREN ARE FINDING THEIR SCHOOL AS A SANCTUARY COMPARED TO THEIR OWN HOMES.

NORTH DAKOTA HAS DRUG FREE ZONES AROUND OUR SCHOOLS. IT IS ONLY FITTING THAT WE MAKE EVERY ATTEMPT TO PROVIDE A DRUG FREE ZONE WITHIN OUR SCHOOLS. I FIRMLY BELIEVE THAT WE HAVE DEDICATED AND CARING ADMINISTRATORS, TEACHERS AND SUPPORT EMPLOYEES IN OUR SCHOOLS. HOWEVER, IN ORDER TO DISCOURAGE OR ELIMINATE ANY OPPORTUNITY FOR DRUG USE AMONG THE SCHOOL DISTRICT EMPLOYEES, WE NEED A RANDOM DRUG TEST POLICY AND THE RESULTING TREATMENT IF NECESSARY. IT WILL BE THE RESPONSIBILITY OF THE LOCAL SCHOOL BOARD TO IMPLEMENT THE REQUIRED POLICY.

THANK YOU FOR ALLOWING ME TO BRING THIS TESTIMONY TODAY AND I ENCOURAGE YOU TO HELP PROTECT OUR YOUTH BY SUPPORTING THIS BILL.

RESPECTFULLY SUBMITTED,



SEN DAVID CLEMENS

DISTRICT 16, WEST FARGO/FARGO

SB 2337
1-29-19
Att. # 2
p. 1 of 3



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

SB 2337
Testimony of Amy De Kok
Senate Education Committee
January 29, 2019

Chairman Schaible and members of the Senate Education Committee, my name is Amy De Kok. I am Legal Counsel for the North Dakota School Boards Association. NDSBA represents all operating North Dakota school districts and their boards. I am here today testifying in opposition to SB 2337.

Unlike private sector employers, public employers, such as school districts, that wish to implement drug testing policies must avoid infringing on their employees' constitutional rights, namely the Fourth Amendment's protection against unreasonable governmental searches and seizures. It is well established law that a governmental entity's collection of blood, breath, hair, or urine constitutes a search under the Fourth Amendment. Typically, an individual cannot be subject to search or seizure without a validly issued warrant. However, with respect to workplace drug testing, the U.S. Supreme Court has created two exceptions to the requirement that all searches be conducted pursuant to a warrant: if (1) the government can show a "special need" to conduct the drug test; or (2) there is "reasonable suspicion" of drug use by an employee.

In terms of the first exception, a "special need" arises when the position is one that is safety-sensitive, and the government's interest in conducting the test outweighs the individual's interests in being free from such testing. For employees in safety-sensitive positions, testing may be done randomly, across-the-board, or otherwise without individualized suspicion of drug use. A safety-sensitive position is defined as one "fraught with such risks of injury to others that even a momentary lapse of attention [could] have disastrous consequences." Some examples of such safety-sensitive positions for which courts have upheld suspicionless testing are an elementary school custodian working with dangerous chemicals, a public works department employee who operates heavy equipment, or city sanitation workers operating heavy machinery. Another common safety-sensitive position in the education world are bus drivers or employees whose positions require a commercial driver's license. However, simply because a position requires the operation of a specialized vehicle or working with children does not make it subject to suspicionless testing. Simply put, across-the-board, suspicionless drug testing is unconstitutional,



SB 2337
1-29-19
Att. #2
P. 2053

unless the subject positions meet the special needs exception. This includes drug testing in the pre-employment context. In the absence of meeting the special needs exception, a government employer may legally test employees only if it has a reasonable suspicion that an employee is engaging in drug use or abuse while on the job.

NDSBA strongly opposes SB 2337 because the drug testing policy it requires schools to adopt and implement runs afoul of Fourth Amendment protections. SB 2337 requires the board of each public school district to adopt and implement a random, suspicionless drug testing program for all school district employees regardless of the nature of the position. In other words, the policy would require no “special need” for the drug testing of employees. Again, just because an employee works at a school with children does not in and of itself make him or her lawfully subject to suspicionless testing. In addition, even for those position that are safety-sensitive, suspicionless drug testing should still be conducted in a particular way. For example, pre-employment drug testing should be done post-offer and prior to the start of employment. SB 2337 requires every individual seeking employment with the school district (again, regardless of position) during the hiring process. A drug testing program for safety-sensitive positions should still be carefully crafted to account for not only pre-employment testing, but also reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and drug testing. SB 2337 does not cover any of these important elements.

In addition to the constitutional concerns, SB 2337 also raises other issues. Line 18 states that such a policy must “allow the board of the school district to review all drug test results.” This is problematic because in certain circumstances it is important that the board not be aware of misconduct or performance issues of an employee until the matter comes before them for action. For example, a board member who reviews information in a teacher’s personnel file outside of a discharge due process hearing could jeopardize the finality of the board’s subsequent decision on the question of discharge. Indeed, our ND Supreme Court has reversed a decision of a school board to discharge an employee on this basis. Having access to employee drug test results at an inappropriate time could lead to claims of board member bias and partiality in making nonrenewal or discharge decisions. Another concern with SB 2337 is the significant expense that school districts will incur if required to implement the drug testing policy outlined in the bill. SB 2337 not only requires pre-employment testing of each and every employee, including administrators, teachers, coaches, ancillary staff, and any other individual who receives remuneration for services provided to the school district, but it also requires random testing of at least 10% of all employees in each twelve-month period. Such a program will likely come with a high price tag.

SB 2337
1-29-19
A#.#2
p.3 of 3

This is a heavy burden to place on districts already dealing with tight budgets, and SB 2337 contains no corresponding appropriation or funding source.

Finally, SB 2337 is unnecessary. NDSBA is not aware of any widespread, growing concern with drug abuse among school district personnel in the State of North Dakota. SB 2337 is likely meant to be a statement that North Dakota does not condone drug abuse, and such a symbolic statement has been found to be insufficient justification for suspicionless testing. SB 2337 is also unnecessary because most districts already have policies in place regarding drug testing of safety-sensitive positions. NDSBA has long been assisting school districts in adopting and implementing appropriate and lawful drug testing policies.

For all of these reasons, NDSBA urges the Committee to issue a do not pass recommendation on SB 2337. Thank you for your time and I'd be happy to answer any questions from the Committee.



SB 2337
1-29-19
Att. #3
p10f1

SB 2337 Schools required to have drug testing policy

Testimony in Opposition

Good afternoon Chair Schaible and members of the Senate Education Committee, I stand before you on behalf of NDCEL which is the organization that serves our school Superintendents, Principals, CTE Directors, Technology Directors, AD's, County Superintendents, Business Officials and truly every school leader with the exception of teachers and school board members. We stand before you today in opposition to SB 2337.

We are in opposition to this legislation because of the unfunded mandate that it places on school districts. The amount of money each school would be required to spend are funds that are currently being budgeted and expended in other areas. Add on to that the data from a Time article. In that article it states that public educators are ranked 18 out of 19 in professionals who use illicit drugs. It states that only four percent of teachers have reported using illegal drugs. With the cost of drug testing 10% of the districts employees and knowing the fact that illicit drug use is low for educators, is that a wise use of tax dollars?

This could easily cost large school districts thousands of dollars each year and this money would have to be taken from other education spending areas at a time when budgets are tight throughout the state.

Because of the unfunded mandate and the lack of data stating the drug use among educators is high we respectfully request a Do Not Pass on SB 2337.