

**2019 SENATE EDUCATION**

**SB 2310**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

SB 2310  
1/29/2019  
31621

- Subcommittee  
 Conference Committee

Committee Clerk Signature Lynn Wolf

## **Explanation or reason for introduction of bill/resolution:**

A bill relating to the drug testing of school board members.

## **Minutes:**

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

**Chairman Schaible:** The hearing into SB 2310 is open.

(0:35) **Senator Marcellais:** Attachment #1. Senator Marcellais introduced the bill.

**Chairman Schaible:** Does the school pay for the tests?

**Senator Marcellais:** They can.

**Chairman Schaible:** What happens if the test shows the use of drugs?

**Senator Marcellais:** In the programs I have been involved with, there is a treatment program. The individual can go to treatment for 30 days and become drug free or they can resign.

**Chairman Schaible:** If they don't do either one of these?

**Senator Marcellais:** Then they are terminated.

**Chairman Schaible:** It doesn't say that in the bill, so...

**Senator Marcellais:** No, it doesn't, so we can amend to say that.

**Chairman Schaible:** Who would pay for the drug treatment?

**Senator Marcellais:** The individual pays for it.

**Senator Rust:** Currently we test only individuals in safety sensitive positions. Do we really want to go here? The question that a school board member would say, "I think it is a really good idea. I think we should do the same for legislators."

**Senator Marcellais:** That's fine.

**Senator Rust:** Do we really want to go beyond safety sensitive positions? Isn't that quite an intrusion into people's lives?

**Senator Marcellais:** I have worked in a lot of installations where there is drug testing and they are government installations. There are signs outside these government installations that say, "We are drug free." Why not drug test them to make sure we are drug free?

**Senator Oban:** I had a similar question and I want to include the caveat I have a lot of sympathy with what is happening in the school in your district. They are elected as are we, city commissioners, county commissioners. If we are going to require this of elected officials, shouldn't we require it of all elected officials?

**Senator Marcellais:** I agree with you. Let's all get drug tested.

**Chairman Schaible:** If these are elected officials, in theory, you would have to test them before the election so that the people would have the results of the test so that if they were shown to have a use of drugs; following that line of thought, we'd have to test them before they got voted in and then what happens if they still got voted in?

**Senator Marcellais:** There would be random drug testing after they get voted in at least once a year.

**Chairman Schaible:** The idea is that we don't want board members that are using drugs. I think it would make more sense to drug test them and let the people decide.

**Senator Marcellais:** I agree with you that they should be drug tested before they get on the ballot.

**Chairman Schaible:** And if they are tested and have drug presence and still elected. What then?

**Senator Marcellais:** Well, they wouldn't get on the ballot if they failed the test.

**Chairman Schaible:** Thank you. Other testimony in favor of the bill. Agency. Opposed to the bill.

(6:39) **Amy DeKok, ND School Boards Association: See Attachment # 2.**

**Chairman Schaible:** Randomly testing of teachers and administrators would fall into the same category – and would not meet the muster of being in a special category?

**Amy DeKok:** Yes, you are correct, the same standard applies.

(12:55) **Lisa Feldner, ND Council of School Leaders: See Attachment # 3.**

**Chairman Schaible:** Hearing closed.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

SB 2310  
1/30/2019  
31790

- Subcommittee  
 Conference Committee

Committee Clerk Signature Lynn Wolf

## **Explanation or reason for introduction of bill/resolution:**

A bill relating to the drug testing of school board members.

## **Minutes:**

Discussion of the bill.

**Motion by Rust to Do Not Pass on SB 2310.**

**Second by Davison.**

**Yeas: 6; Nays: 1; Absent: 0.**

**Motion Carried.**

**Senator Rust will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2310**

Senate Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rust Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:		✓
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen Rust

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2310: Education Committee (Sen. Schaible, Chairman) recommends DO NOT PASS**  
(6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2310 was placed on the  
Eleventh order on the calendar.

**2019 TESTIMONY**

**SB 2310**



## NORTH DAKOTA SENATE

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### COMMITTEES:

Education  
Government and Veterans Affairs

*Good Morning Chairman Schaible and the Senate Education Committee. For the record, my name is Richard Marcellais, Senator from District 9, Rolette County I am here today to introduce Senate Bill 2310.*

*Senate Bill 2310 relating to the drug testing of school board members.*

*Currently, bus drivers are the only district employees subject to random testing for drugs and alcohol.*

*SB 23<sup>10</sup>~~37~~ Drug testing policy that is intended to advance an alcohol and drug-free environments for school districts.*

*With the large amount of drugs in North Dakota why not test our school board members to ensure their drug free.*

*Thank You very much for the opportunity to appear in support of SB 2310.  
If there are any questions, I will try and answer them.*



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Att #2  
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**NDSBA**  
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**SB 2310**  
**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 2310. SB 2310 requires an individual elected or appointed as a member to a school board to undergo random drug testing for the presence of illicit substances at least once every twelve months during the individual's term as a school board member. NDSBA opposes SB 2310 because it is unnecessary and likely violates the Fourth Amendment of the Constitution.

The Fourth Amendment protects citizens from 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. To be reasonable under the Fourth Amendment, a search must ordinarily be based on individualized suspicion of wrongdoing. However, the U.S. Supreme Court has held that particularized exceptions to the main rule are sometimes warranted based on special needs, beyond the normal need for law enforcement. In terms of drug testing, a "special need" arises when the government's interest in conducting the test outweighs the individual's interests in being free from such testing.

In *Chandler v. Miller*, 520 U.S. 305 (1997), the U.S. Supreme Court struck down a very similar Georgia state statute that required drug testing for all state office candidates. In short, the Court determined that no special need existed that permitted such suspicionless searches of political candidates for office. The Court found that the law was not in response to any previous drug problems, and the officials covered under the law typically did not perform high-risk, safety-sensitive tasks. Rather, it was simply meant to be a statement that Georgia did not condone drug abuse, and a symbolic statement was found to be insufficient justification for suspicionless testing. Like the Georgia statute, there is no articulable "special need" to drug test elected or appointed school board members in the State of North Dakota. NDSBA is not aware of any widespread, growing concern with illicit drug abuse among school

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board members in the State of North Dakota. Indeed, this bill appears to be a response to isolated incidents in a particular district. Without such a “special need”, suspicionless drug testing by school districts is unconstitutional.

SB 2310 is unnecessary. There are already mechanisms within state law to address illegal behavior by elected officials. An elected official can be subject to recall upon the filing of a petition with a nominal amount of signatures required. In addition, there is a process set forth in NDCC chapter 44-11 that permits removal of an elected official by the governor. Also, conviction of a felony or other offense involving moral turpitude cause an office to become vacant. Finally, there is no reason to suppose that normal law enforcement methods could not deal with any problem of illegal drug use by school board members.

Finally, setting aside the constitutional concerns, SB 2310 leaves many questions unanswered. First, who decides and how is it decided when the random drug testing should occur. These decisions are fraught with potential legal pitfalls. Second, who conducts the drug testing and who pays for it? Does the individual board member pay for it? Does the school district? If so, this could lead to significant expense for the school district. Third, what happens to the drug test results? Are they open records? Who is responsible for maintaining or destroying the test results? Finally, what happens if a school board member tests positive for an illegal substance? Even if such suspicionless testing could pass constitutional muster, all of these important questions remain.

For all of these reasons, NDSBA urges the Committee to issue a do not pass recommendation on SB 2310. Thank you for your time and I’d be happy to answer any questions from the Committee.



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Att #3  
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SB 2310 Drug testing of school board members

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 2310.

We are in opposition to this bill because it creates an unfunded mandate that is placed on the school. We also have other concerns about drug testing school board members, one of these would be what the steps are if a school board member fails a drug test? The proposed legislation does not indicate if the member would be removed, would they go through treatment? If they are sent through treatment is that a cost that would be placed on the district? There are a lot of unanswered questions.

We respectfully request a Do Not Pass on SB 2310