

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5301 PCB HCA 23-01 Trust Funds/Opioid Settlement Trust Fund/DCF

SPONSOR(S): Health Care Appropriations Subcommittee, Garrison

TIED BILLS: IDEN./SIM. **BILLS:** SB 7030

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|------------|---------------------------------------|
| Orig. Comm.: Health Care Appropriations Subcommittee | 13 Y, 0 N | Guy-Hudson | Clark |
| 1) Appropriations Committee | 27 Y, 0 N | Guy-Hudson | Pridgeon |

SUMMARY ANALYSIS

Article III, s. 19(f) of the State Constitution governs the creation of trust funds and provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

Opioid misuse is among the top public health concerns nationally and in Florida opioid usage and overdose is increasing. According to the Centers for Disease Control and Prevention, expanding access to evidence-based treatment is integral to mitigating adverse health impacts and death for people struggling with opioid misuse and substance use disorders.

To fund resources for opioid remediation and abatement efforts in the state, Attorney General Ashley Moody concluded Florida opioid-related litigation by entering into settlement agreements with several manufacturers, distributors and dispensers (pharmacies) of opioids. The state of Florida, counties and certain cities will receive approximately \$3.1 billion over the next 17 years. The settlements and state-subdivision agreement with local governments provide a distribution scheme and calculation methodology for settlement funds.

The bill creates the Opioid Settlement Trust Fund in the Department of Children and Families. The bill provides that funds credited to the trust fund shall consist of funds disbursed from the Department of Financial Services Opioid Settlement Clearing Trust Fund. On September 30 each year, any unencumbered balance remaining undisbursed in the trust fund shall revert to the Department of Financial Services Opioid Settlement Clearing Trust Fund.

The bill specifies that monies from the trust fund must be used according to an annual appropriation to fund programs and services related to substance use disorder treatment, prevention and recovery, as well as mental health treatment.

The trust fund must be terminated by July 1, 2027, in accordance with art. III, s. 19(f)(2) of the State Constitution. Before scheduled termination, it must be reviewed as provided in s. 215.3206, Florida Statutes.

Article III, s. 19(f) of the State Constitution requires every trust fund to be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. The bill creates a trust fund; thus, it requires a three-fifths vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trust Funds

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only.¹ Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:²

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.

Pursuant to art. III, s. 19(f)(2) of the State Constitution, state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. However, the Legislature may set a shorter period for which any trust fund is authorized and exceptions to the termination provision apply. For example, trust funds created as clearing funds are exempt from the termination provisions in art. III, s. 19(f)(3) of the State Constitution.³

If a trust fund is terminated, all cash balances and income of the trust fund are deposited into the General Revenue Fund.⁴ The agency or Chief Justice pays the outstanding debts of the trust fund, and the Chief Financial Officer closes out and removes the trust fund from the state financial systems.⁵

Opioid Litigation Settlements

Attorney General Ashley Moody concluded Florida opioid-related litigation by settling with several manufacturers, distributors and dispensers (pharmacies) of opioids.⁶ The state of Florida, counties and certain cities will receive approximately \$3.1 billion over the next 17 years.⁷ Because of the large number of counties and cities that sued as defendants, the settlements were contingent upon a formal participation agreement (agreement) that allocates settlement funds received.⁸ The agreement also provides for oversight and use of settlement funds as well as a distribution scheme and calculation methodology.

The Legislature will annually appropriate funds for the “State Fund” to be used for statewide opioid remediation programs and services. The initial distribution is 45 percent of total settlement funds,

¹ Article III, s. 19(f)(1) of the State Constitution.

² Section 215.3207, F.S.

³ Article III, s. 19(f)(3) of the State Constitution.

⁴ Section 215.3206(2), F.S.

⁵ *Id.*

⁶ Settlement was reached with: Johnson & Johnson; Allergan; Teva Pharmaceuticals; Cardinal Health; McKesson; AmerisourceBergen; CVS; Walmart; and Walgreens.

⁷ John Guard, Chief Deputy Attorney General, Office of Attorney General Ashley Moody, *Opioid Settlements*, presentation before the Senate Appropriations Committee on Health and Human Services, (Feb. 22, 2023), at 2, available at:

https://flsenate.gov/Committees/Show/AHS/MeetingPacket/5688/10137_MeetingPacket_5688_2.pdf (last visited March 20, 2023).

See also Florida Opioid Settlements Information Portal, available at:

<https://app.smartsheet.com/b/publish?EOBCT=415e64f86a0c4df39302ed3f371915d9> (last visited March 15, 2023).

⁸ Florida Opioid Allocation and Statewide Response Agreement, dated November 15, 2021, available at:

<https://www.dropbox.com/s/0f69chz6u7vey9h/FL%20Opioids%20Allocation%20%20BSW%20Resp%20Agreement%20with%20Exhibits.pdf?dl=0> (last visited March 20, 2023).

increasing to 55 percent over the life of the settlement.⁹ The agreement requires funds be spent on substance use disorder treatment, prevention and recovery as well as mental health treatment. Specifically, the funds should be spent on “Approved Purposes” in furtherance of “Core Strategies” as delineated in the agreement.¹⁰ Core strategies include: naloxone distribution and use; medication-assisted treatment; warm handoff and recovery services; prevention programs; and syringe service programs. The agreement requires programming and services specific for unique populations, including pregnant and post-partum women, neonatal abstinence syndrome infants, and inmates. Approved uses include, but are not limited to: evidence-based programs for opioid use disorder; crisis stabilization; recovery services, including peer-support and residential treatment programs and housing; and, relapse prevention.

Opioid abatement funds for local governments are directed to the “Regional Fund.” The initial distribution is 40 percent of total settlement funds, decreasing to 30 percent over the life of the settlement.¹¹ According to the agreement, the state will calculate the annual distribution. Distributions from the Regional Fund are calculated for “Qualified Counties,” those counties with a population greater than 300,000; and “Non-qualified Counties,” for all others. Funds for Qualified Counties will be paid directly to each county. Funds for Non-qualified Counties will be disbursed through the managing entities according to contracts with the Department of Children and Families.¹²

A third fund, “The City/County Fund,” is composed of payments directly to individual counties and cities according to a calculation included in the agreement. The distribution is 15 percent of settlement proceeds and must also be utilized for Approved Purposes.¹³

Effect of the Bill

The bill creates the Opioid Settlement Trust Fund in the Department of Children and Families. The bill provides that funds credited to the trust fund shall consist of funds disbursed from the Department of Financial Services Opioid Settlement Clearing Trust Fund. The bill specifies that monies from the trust fund must be used according to an annual appropriation to fund programs and services related to substance use disorder treatment, prevention and recovery, as well as mental health treatment.

Funds deposited into the trust fund are exempt from the service charge. Any unencumbered balance remaining undisbursed in the trust fund on September 30 shall revert to the Department of Financial Services Opioid Settlement Clearing Trust Fund.

The trust fund must be terminated by July 1, 2027, in accordance with art. III, s. 19(f)(2) of the State Constitution. Before scheduled termination, it must be reviewed as provided in s. 215.3206, Florida Statutes.

B. SECTION DIRECTORY:

Section 1: Creating s. 20.507, F.S., creating the Opioid Settlement Trust Fund within the Department of Children and Families; providing the purpose of such trust fund; providing for the future review and termination of such trust fund.

Section 2: Amending s. 20.195, F.S., providing for the administration of the Opioid Settlement Trust Fund by the department; providing an exemption from a certain service charge; requiring funds to revert under certain conditions.

Section 3: Providing an effective date of July 1, 2023.

⁹ Guard, *supra* note 7, at 7.

¹⁰ Agreement, *supra* note 8. See Exhibit B and Exhibit A, respectively.

¹¹ Guard, *supra* note 7, at 10.

¹² *Id.*

¹³ Agreement, *supra* note 8, at 5.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

Creation and administration of a new trust fund will have insignificant costs to the Department of Children and Families that can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The manufacturers, distributors and dispensers (pharmacies) of opioids with which the Attorney General settled will collectively pay Florida approximately \$3.1 billion over the next 17 years. The settlements and state-subdivision agreement with local governments provide a distribution scheme and calculation methodology for settlement funds with the largest share to be disbursed by the Legislature through the General Appropriations Act. The terms of the settlements require funds to be used for opioid remediation and abatement, including substance use disorder treatment, prevention and recovery, as well as mental health treatment. As such, the state and local governments will see an increase in funds for opioid abatement as a result of these settlements once funds are disbursed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Article III, section 19(f)(2) of the State Constitution requires all newly created trust funds to terminate not more than four years after the initial creation of the fund. Article III, section 19(f)(1) of the State Constitution requires a newly created or re-created trust fund to be adopted by three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating or re-creating the fund. This bill creates a trust fund; thus, it requires a three-fifths vote on final passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.