

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** SB 7030 Trust Funds/State Opioid Settlement Trust Fund/Department of Children and Families

**SPONSOR(S):** Appropriations Committee on Health and Human Services

**TIED BILLS:** **IDEN./SIM. BILLS:** HB 5301

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HB 5301 passed the House on April 4, 2023, as SB 7030.

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 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 (DCF). 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 DCF 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 abate the opioid epidemic in accordance with the settlement agreements reached by the state in opioid-related litigation or bankruptcy proceedings.

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.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2023.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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.<sup>1</sup> 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:<sup>2</sup>

- 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)(2) of the State Constitution.<sup>3</sup>

If a trust fund is terminated, all cash balances and income of the trust fund are deposited into the General Revenue Fund.<sup>4</sup> 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.<sup>5</sup>

##### Opioid Litigation Settlements

Attorney General Ashley Moody concluded Florida opioid-related litigation by settling with several manufacturers, distributors and dispensers (pharmacies) of opioids.<sup>6</sup> The state of Florida, counties and certain cities will receive approximately \$3.1 billion over the next 17 years.<sup>7</sup> 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.<sup>8</sup> The agreement also provides for oversight and use of settlement funds as well as a distribution scheme and calculation methodology.

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<sup>1</sup> Article III, s. 19(f)(1) of the State Constitution.

<sup>2</sup> S. 215.3207, F.S.

<sup>3</sup> Article III, s. 19(f)(3) of the State Constitution.

<sup>4</sup> S. 215.3206(2), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> 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 5, available at: [https://flsenate.gov/Committees/Show/AHS/MeetingPacket/5688/10137\\_MeetingPacket\\_5688\\_2.pdf](https://flsenate.gov/Committees/Show/AHS/MeetingPacket/5688/10137_MeetingPacket_5688_2.pdf) (last visited May 3, 2023). Settlement was reached with: Johnson & Johnson; Allergan; Teva Pharmaceuticals; Cardinal Health; McKesson; AmerisourceBergen; CVS; Walmart; and Walgreens. See, e.g., Florida Opioid Settlements Information Portal, available at: <https://app.smartsheet.com/b/publish?EQBC7=415e64f86a0c4df39302ed3f371915d9> (last visited May 3, 2023).

<sup>7</sup> 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 4, available at: [https://flsenate.gov/Committees/Show/AHS/MeetingPacket/5688/10137\\_MeetingPacket\\_5688\\_2.pdf](https://flsenate.gov/Committees/Show/AHS/MeetingPacket/5688/10137_MeetingPacket_5688_2.pdf) (last visited May 3, 2023).

<sup>8</sup> Florida Opioid Allocation and Statewide Response Agreement, dated November 15, 2021, available at: <https://www.dropbox.com/s/0f69chz6u7vey9h/FL%20Opioids%20Allocation%20%2BSW%20Resp%20Agreement%20with%20Exhibits.pdf?dl=0> (last visited May 3, 2023).

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, increasing to 55 percent over the life of the settlement.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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 (DCF).<sup>12</sup>

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.<sup>13</sup>

### **Effect of the Bill**

The bill creates the Opioid Settlement Trust Fund in the DCF. 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 abate the opioid epidemic in accordance with the settlement agreements reached by the state in opioid-related litigation or bankruptcy proceedings.

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.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>9</sup> Guard, *supra* note 7, at 9.

<sup>10</sup> Agreement, *supra* note 8. See Exhibit B and Exhibit A, respectively.

<sup>11</sup> Guard, *supra* note 7, at 12.

<sup>12</sup> Agreement, *supra* note 8, at 5.

<sup>13</sup> *Id.*

See Fiscal Comments.

2. Expenditures:

Creation and administration of a new trust fund will have insignificant costs to the DCF 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 to abate the opioid epidemic. 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.