

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SPB 2520

INTRODUCER: For consideration by Appropriations Committee

SUBJECT: Department of Financial Services Opioid Settlement Clearing Trust Fund

DATE: February 8, 2022

REVISED: \_\_\_\_\_

ANALYST

Sanders

STAFF DIRECTOR

Sadberry

REFERENCE

ACTION

**Pre-Meeting**

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## I. Summary:

SPB 2520 creates the Opioid Settlement Clearing Trust Fund within the Department of Financial Services (DFS). The bill:

- Creates the Opioid Settlement Clearing Trust Fund (trust fund) for payments received by the state from settlements reached with distributors as part of *In re Mallinckrodt PLC, No. 20-123522 (JTD)(Bankr. D. Del.)*<sup>1</sup> and any other such similar settlements in opioid related litigation or bankruptcy;
- Clarifies moneys received from such settlements and deposited into the trust fund are exempt from the service charges imposed under s. 215.20, F.S.;
- Requires monies dispersed or transferred from the Opioid Settlement Clearing Trust Fund to be used by the state, its agencies, its contractors and its subdivisions in accordance with any applicable settlement agreement;
- Requires the DFS to disburse funds by non-operating transfer from the Opioid Settlement Clearing Trust Fund to the opioid settlement trust funds of various agencies, in amount equal to the annual appropriations<sup>2</sup> made within the General Appropriations Act;
- Provides moneys in the trust fund may be not invested pursuant to s. 17.61, F.S., and any gains, profits, or interests accrued shall be deposited or retained in the trust fund; and
- Provides the trust fund is exempt from termination provisions of s. 19(f)(2), Art. III of the State Constitution.

The bill takes effect upon becoming a law.

## II. Present Situation:

Article III, s. 19(f), of the State Constitution requires that every trust fund be created or recreated by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the

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<sup>1</sup> *In re Mallinckrodt PLC*, 20-12522 (JTD) (Bankr. D. Del. Oct. 19, 2021), United States Bankruptcy Court, District of Delaware.

<sup>2</sup> The General Appropriations Act process is outlined in s. 19(a)-(e), Art. III, State Constitution (available at <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A3S19>).

sole purpose of creating that trust fund. The Constitution also provides that newly created trust funds terminate not more than four years after the initial creation unless re-created. However, trust funds that serve as clearing funds or accounts for the chief financial officer or state agencies are exempt from the termination requirement.<sup>3</sup>

### **Department of Financial Services (DFS)**

The Chief Financial Officer (CFO) is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>4</sup> The CFO serves as the head of the Department of Financial Services (DFS or department).<sup>5</sup>

### **Trust Fund Surcharges Paid to the General Revenue Fund**

Under s. 215.20, F.S., an eight percent service charge, representing pro rata share of the cost of the general government paid from the General Revenue Fund, is appropriated from all income from a revenue nature<sup>6</sup> deposited into all trust funds except those enumerated in s. 215.22, F.S. The service charge does not apply to the Citrus Inspection Trust Fund, the Florida Forever Program Trust Fund, the Market Improvements Working Capital Trust Fund, the Pest Control Trust Fund, the Plant Industry Trust Fund, or other funds collected in the General Inspection Trust Fund in the Department of Agriculture and Consumer Services.<sup>7</sup> The Governor is authorized to determine, under reasons mentioned in s. 215.24, F.S., whether a trust fund is exempt from the General Revenue surcharge.

### **Opioid Litigation**

Florida joined a multi-state coalition of 48 states and the District of Columbia to sue pharmaceutical companies, distributors, and dispensing companies that had major roles in producing or promoting opioid products that helped to fuel the nation's opioid epidemic.<sup>8</sup>

In July of 2021, three of the largest pharmaceutical companies settled litigation related to the opioid crisis. Based on the settlement agreement, the three companies collectively will pay up to \$21 billion over 17 and a half years, with Florida receiving a total of \$1.3 billion. Additionally, Johnson & Johnson will pay up to \$5 billion over nine years, with Florida receiving almost \$300 million from that agreement. Previous settlement funding generated more than \$300 million for Florida opioid abatement, which brings the collective opioid efforts for Florida to \$1.9 billion. The settlement funding must be used to support opioid treatment, prevention and recovery services.<sup>9</sup>

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<sup>3</sup> Fla. Const. Art. III, s. 19(f)(3).

<sup>4</sup> Section 17.001, F.S.

<sup>5</sup> The Department of Financial Services (DFS), <https://www.myfloridacfo.com/> (last visited Feb. 4, 2022).

<sup>6</sup> Section 215.20, F.S. - Income of a revenue nature includes all earnings received or credited by such trust funds, including the interest or benefit received from the from the investment of the principal of such trust funds as may be permitted by law.

<sup>7</sup> Section 215.20(2), F.S.

<sup>8</sup> See Attorney General, *Florida Opioid Settlements Portal*, <https://app.smartsheet.com/b/publish?EQBCT=415e64f86a0c4df39302ed3f371915d9> (last visited Feb. 6, 2022).

<sup>9</sup> Department of Children and Families, Florida's State Opioid Response Project, *available at* <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DBE8B56810857CB3852587CE00776C03> (last visited Feb. 4, 2022).

### III. Effect of Proposed Changes:

**Section 1** creates s. 17.42, F.S., to establish the Opioid Settlement Clearing Trust Fund (trust fund) within the Department of Financial Services (DFS). Funds credited to the trust fund shall consist of payments received by the state from settlements reached with distributors as part of *In re Mallinckrodt PLC, No. 20-123522 (JTD)(Bankr. D. Del.)*,<sup>10</sup> and any other such similar settlements in opioid related litigation or bankruptcy.

The section clarifies moneys received from such settlements and deposited into the trust fund are exempt from the service charges imposed under s. 215.20, F.S.

The bill requires monies dispersed or transferred from the trust fund to be used by the state, its agencies, its contractors and its subdivisions in accordance with any applicable settlement agreement. Furthermore, the DFS is required to disburse funds by non-operating transfer from the trust fund to the opioid settlement trust funds of various agencies, in amount equal to the annual appropriations<sup>11</sup> made within the General Appropriations Act.

The bill provides moneys in the trust fund may be retained for investment, however, the moneys may be not invested pursuant to s. 17.61, F.S.; any gains, profits, or interests accrued shall be deposited or retained in the trust fund. Under the bill, the trust fund is exempt from termination provisions of s. 19(f)(2), Art. III of the State Constitution.

**Section 2** provides the act shall take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

The Opioid Settlement Clearing Trust Fund (trust fund) is exempt from the General Revenue Fund surcharges in s. 215.20, F.S. and the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

#### D. State Tax or Fee Increases:

None.

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<sup>10</sup> *In re Mallinckrodt PLC*, 20-12522 (JTD) (Bankr. D. Del. Oct. 19, 2021), United States Bankruptcy Court, District of Delaware.

<sup>11</sup> The General Appropriations Act process is outlined in s. 19(a)-(e), Art. III, State Constitution (available at <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A3S19>).

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Financial Services (DFS) Opioid Settlement Clearing Trust Fund (trust fund) will provide non-operating transfers to opioid settlement trust funds of various agencies, as appropriated in the General Appropriations Act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 17.42 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.