

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 5013 PCB APC 22-07 Trust Fund/Opioid Settlement Clearing Trust Fund/DFS

SPONSOR(S): Appropriations Committee, Trumbull

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

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 5013 passed the House on February 16, 2022, and subsequently passed the Senate on February 17, 2022.

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.

Attorney General Ashley Moody announced two historic nationwide agreements with three settling opioid distributors totaling \$26 billion – AmerisourceBergen, Cardinal Health and McKesson will collectively pay up to \$21 billion over 17 years and Johnson & Johnson will pay up to \$5 billion over 9 years. The settlements and state-subdivision agreement with the local governments provide a distribution scheme for the funds and require the funds to be used towards the abatement of the opioid epidemic. It is anticipated that the state may receive funds related to the opioid settlements beginning in April 2022.

This bill creates the Opioid Settlement Clearing Trust Fund in the Department of Financial Services. The bill provides that funds credited to the trust fund shall consist of payments received by the state from settlements reached from opioid related litigation or bankruptcy. Moneys received from such settlements and deposited into the trust fund are exempt from the General Revenue Fund service charge. The bill specifies that the trust fund must be subdivided into specific subfunds to comply with nationwide settlement agreement terms. The bill authorizes the department to draw warrants for amounts that the Department of Legal Affairs notifies the Chief Financial Officer to draw warrants for and the amounts thereof from specified subfunds to pay counties in accordance with the state-subdivision allocation agreement or settlements. The bill specifies that the monies disbursed or transferred from the fund must be used to abate the opioid epidemic.

The bill was approved by the Governor on June 2, 2022, ch. 2022-161, L.O.F., and became effective on that date.

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.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:

- 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.²

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.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 Class Action Settlements

Attorney General Ashley Moody announced two historic nationwide agreements with three settling opioid distributors totaling \$26 billion – AmerisourceBergen, Cardinal Health and McKesson will collectively pay up to \$21 billion over 17 years and Johnson & Johnson will pay up to \$5 billion over 9 years.⁶ The settlements were contingent on a critical mass of states and local governments participating. To ensure a critical mass of local governments joined in the settlement, the Attorney General and local governments entered into a formal state-subdivision participation agreement (agreement) that allocates the funds received from the settlements to the state and local governments and provides for oversight and use of the funds.

The settlements and agreement provide that specified percentages of the funds be directed towards local governments to abate the opioid epidemic while leaving the largest share for the state to allocate towards a variety of opioid abatement strategies. Generally, the settlements and agreement require money to be disbursed directly to counties that have more than 300,000 people. Monies must also be disbursed to smaller counties through managing entity contracts with the Department of Children and Families. The agreement requires the establishment of a taskforce, commission, or council containing an equal number of city/county members and state members for purposes of reviewing expenditures and recommending how the money should be spent moving forward.

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 Florida Opioid Settlements Information Portal, available at:

<https://app.smartsheet.com/b/publish?EQBCT=415e64f86a0c4df39302ed3f371915d9> (last visited January 30, 2022).

It is anticipated that the state may receive funds related to the opioid settlements beginning in April 2022.

Effect of the Bill

This bill creates the Opioid Settlement Clearing Trust Fund in the Department of Financial Services (DFS). The bill provides that funds credited to the trust fund shall consist of payments received by the state from settlements reached from opioid related litigation or bankruptcy. Moneys received from such settlements and deposited into the trust fund are exempt from the service charge. The bill specifies that the trust fund must be subdivided into specific subfunds to comply with nationwide settlement. The bill authorizes the DFS to draw warrants for amounts that the Department of Legal Affairs notifies the Chief Financial Officer (CFO) to draw warrants for and the amounts thereof from specified subfunds to pay counties in accordance with the allocation agreement or settlements. The bill specifies that the monies disbursed or transferred from the fund must be used to abate the opioid epidemic.

Because the bill creates a clearing fund, the bill is exempt from the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

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 administrative costs on DFS 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 three settling opioid distributors are expected to pay Florida a total of \$26 billion – AmerisourceBergen, Cardinal Health and McKesson will collectively pay up to \$21 billion over 17 years and Johnson & Johnson will pay up to \$5 billion over 9 years. The settlements and agreement provide for the distribution of the funds, providing for the direct disbursement of a share to local governments and allowing the largest share to be disbursed by the Legislature through the General Appropriations Act. The terms of the settlement require the 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 nationwide settlements once the settlement funds are received and disbursed.

