



SB 558 - HB 1132

April 23, 2021

SUMMARY OF ORIGINAL BILL: Defines “drug” as a substance, other than food, intended to affect the structure or function of the body including, but not limited to, substances recognized in an official pharmacopoeia, for purposes of the Comprehensive Alcohol and Drug Treatment Act of 1973.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (007621): Deletes all language after the enacting clause. Creates the *Tennessee Opioid Abatement Act* for the purpose of facilitating statewide opioid settlement agreements that provide a coordinated resolution of state and local governmental claims against entities involved in the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, in order to generate funds for opioid abatement programs and remediation. Requires the funds obtained pursuant to a statewide opioid settlement agreement be distributed pursuant to the agreement and any relevant provisions of a state-subdivision opioid abatement agreement. Requires funds dedicated to abatement and remediation be paid into the Opioid Abatement Fund (OAF). Requires copies of statewide opioid settlement agreements, including any amendments to such agreements, be kept on the website of the Attorney General and Reporter.

Creates the OAF and requires funds be spent for: (1) prospective opioid abatement and remediation; (2) expenses incurred in administering and operating the Opioid Abatement Council; and (3) expenses associated with administering, investing, and disbursing funds held in the OAF. Requires the OAF operate as an irrevocable trust administered by the Treasurer. Establishes that funds in the OAF do not revert to the General Fund. Requires fund disbursements be made at the direction of the Opioid Abatement Council. Authorizes funds in the OAF be invested and reinvested by the Treasurer for the benefit of the fund. Authorizes all or a portion of the trust may be invested, reinvested, and coinvested with other funds, not a part of the trust, which are held by the Treasurer, including, but not limited to, assets of the state Pooled Investment Fund.

Creates the Tennessee Opioid Abatement Council (Council). Requires the Council to direct the disbursement of funds held in the OAF. Requires the Council submit an annual report to the Governor, the Speaker of the Senate, the Speaker of the House of Representatives, the Chairs of the Finance, Ways, and Means Committees of the Senate and the House of Representatives and the Chairs of the Government Operations Committees of the Senate and the House of Representatives, by September 30 each year for the prior fiscal year detailing the total funds

deposited into the OAF, the abatement strategies funded, and any disbursement or expenses paid from the OAF. Requires the Council be reviewed in accordance with Tennessee Governmental Entity Review Law.

Requires the Council disburse 35 percent of proceeds received from a statewide opioid settlement agreement with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, or Johnson & Johnson or affiliates or subsidiaries of these entities that are deposited in the OAF to counties that join the settlement, and 65 percent to statewide, regional, or local opioid abatement and remediation purposes. Sets out guidelines for how counties are required to allocate funds received.

Requires the Department of Mental Health and Substance Abuse Services (DMHSAS) serve as staff to the Council and recommend a candidate to serve as Executive Director of the Council. Requires the approved candidate for Executive Director of the Council be hired as a full-time position with the DMHSAS. Authorizes the Commissioner of the DMHSAS to: (1) recommend a current Department employee serve as the Director; (2) hire two additional full-time employees to staff the Council; and (3) hire additional staff upon approval of the Council. Requires the Commissioner of the DMHSAS to establish the Director's salary and other compensation to be no more than the Department's highest-paid assistant commissioner. Requires the salaries and compensation of the Director, Council staff and any DMHSAS employees the Commissioner deems necessary to administer the Council, be paid from the OAF. Requires all costs and expenditures related to the Council be paid by the OAF.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Increase State Expenditures – \$282,600/FY21-22/Opioid Abatement Fund
\$353,700/FY22-23 and Subsequent Years/
Opioid Abatement Fund**

Other Fiscal Impact – On February 4, 2021, approximately \$15,217,500 was awarded to the state by the settlement provided by *State of Tennessee, ex rel. Herbert H. Slatery III Attorney General and Reporter vs. McKinsey & Company, Incorporated*. Funds from this settlement will be deposited into the Opioid Abatement Fund for the purposes of this legislation.

In the event that the state enters into and reaches a settlement with any of the entities outlined in this legislation, there will be an increase in foregone state revenue and a corresponding increase in local revenue. The precise amount of any such settlement cannot be reasonably determined.

Assumptions for the bill as amended:

Assumptions relative to new positions:

- The proposed legislation requires the Council to hire an Executive Director.

- It is assumed the Executive Director will be paid as the equivalent position of an Assistant Commissioner 2, pursuant to the proposed language.
- The Council will also employ a Chief Administrator position to assist with the Council.
- The total one-time increase in state expenditures associated with the two new positions is estimated to be \$3,200 (\$1,600 computer x 2 positions) in FY21-22.
- The total recurring increase in state expenditures associated with the two new positions is estimated to be \$271,567 (\$217,884 salary + \$49,683 benefits + \$2,800 communications \$1,200 supplies) in FY22-23 and subsequent years.
- The total increase in state expenditures associated with the new positions is estimated to be \$274,767 (\$3,200 + \$271,567) in FY21-22.

Assumptions relative to the Tennessee Opioid Abatement Council:

- The DMHSAS is required to provide administrative services to the Council. Based on information provided by the DMHSAS, the recurring increase in state expenditures to the Department to provide administrative services to the Council is estimated to be \$7,800 in FY21-22 and subsequent years.
- The Council consists of 15 non-legislative members.
- Members serve without compensation but are authorized to receive reimbursement for travel and necessary expenses incurred to attend meetings.
- The Council is required to meet at least four times per year, in a location that rotates among each of the three grand divisions, with one meeting held in Memphis, one in Knoxville and two in Nashville each year.
- It is assumed the Council will meet quarterly, beginning in FY22-23.
- The total recurring increase in state expenditures associated with travel and per diem expenses for Council meetings is estimated to be \$48,266.
- To provide support and assist in accomplishing the goals of the Council, it is assumed two staff members of the DMHSAS will be required to travel once a month to each of the three grand divisions.
- The total recurring increase in state expenditures associated with staff travel is estimated to be \$26,029.
- The total increase in state expenditures associated with the Council is estimated to be \$7,800 in FY21-22.
- The total recurring increase in state expenditures associated with the Council is estimated to be \$82,095 (\$48,266 + \$7,800 + \$26,029) in FY22-23 and subsequent years.

Other Assumptions:

- The Attorney General and Reporter can accomplish the requirements of the proposed legislation within existing resources; therefore, any fiscal impact is estimated to be not significant.
- Any increase in state revenue dedicated to abatement as a result of a statewide opioid settlement agreement will be paid into the OAF for prospective opioid abatement and remediation and expenses associated with administering the Council.
- Funds in the OAF do not revert to the General Fund.

- The extent and timing of any funds obtained pursuant to a statewide opioid settlement agreement is unknown and cannot be determined.
- The Attorney General and Reporter announced on February 4, 2021, that a \$573,000,000 settlement was reached with McKinsey & Company, Incorporated. As this was a multi-state settlement, Tennessee's share is \$15,217,532.
- It is assumed that this money will be deposited into the OAF for the purposes outlined in this legislation.
- Additionally, the Attorney General and Reporter is currently seeking a multi-state settlement against McKesson Corporation, Cardinal Health, AmerisourceBergen Corporation, and Johnson & Johnson. Such settlement seeks up to \$21,000,000,000 in damages.
- The precise amount that may actually be settled, the share that Tennessee will receive, and the exact payout structure have not yet been determined; therefore, the precise impact, if any, cannot be reasonably determined.
- In the event that the state enters into and reaches a settlement with any of the entities outlined in this legislation, there will be an increase in foregone state revenue and a corresponding increase in local revenue.

Total Impact:

- The total increase in state expenditures is estimated to be \$282,567 (\$274,767 + \$7,800) in FY21-22.
- The total increase in state expenditures is estimated to be \$353,662 (\$271,567 + \$82,095) in FY22-23 and subsequent years.
- No expenses will be paid or incurred by the State until settlement funds have been placed in the OAF, and no general funds will be placed in the OAF unless specifically appropriated by the General Assembly.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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