

Legislative Analysis



OPIOID SETTLEMENT FUNDS AND LITIGATION

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House Bills 5968 and 5969 as introduced
Sponsor: Rep. Mary Whiteford

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5970 as introduced
Sponsor: Rep. Christine Morse

Committee: Judiciary
Revised 5-1-22

SUMMARY:

House Bills 5968 and 5969 would respectively amend the Michigan Trust Fund Act and the Legislative Council Act, while House Bill 5970 would create the Opioid Liability Litigation Act. Together, the bills would create legislation to manage the disbursement of settlement funds as a result of opioid-related lawsuits.

House Bill 5968 would amend the Michigan Trust Fund Act to create the Michigan Opioid Healing and Recovery Fund in the Department of Treasury. The state treasurer would be required to deposit into the fund all proceeds received by the state as a result of any judgment, settlement, or compromise of claims pertaining to violations, or alleged violations, of law related to the manufacture, marketing, distribution, dispensing, or sale of opioids. However, proceeds received under the Medicaid False Claim Act would not be deposited into the fund. The state treasurer could deposit money or other assets from any other source into the fund as allowed under law.

The bill also would require the state treasurer to direct the investment of the fund consistent with 1855 PA 105, which regulates the disposition of surplus funds in the treasury, and to credit to the fund interest and earnings from the investments. Money in the fund at the close of the fiscal year would have to remain in the fund and could not lapse to the general fund.

The Department of Treasury would be the administrator of the fund for audits and would be required to expend money from the fund, upon appropriation, in a manner and for purposes consistent with the opioid judgment, settlement, or compromise of claims from which the money was received. Money in the fund would have to be used to create or supplement programs or services and could not be used to replace any other governmental funds that would otherwise have been appropriated or expended for any other program or service.

Additionally, the Department of the Attorney General could expend money from the fund, upon appropriation, to pay for costs and reasonable attorney fees incurred in the pursuit of an opioid judgment, settlement, or compromise of claims, except for a pursuit under the Medicaid False Claim Act. However, if possible, the Department of the Attorney General would have to attempt to have costs and attorney fees paid by a defendant or source other than the fund.

MCL 12.252 and proposed MCL 12.153

House Bill 5969 would add Chapter 8A to the Legislative Council Act to create the Opioid Advisory Commission in the Legislative Council. The commission would consist of the following 14 members:

- 12 voting members who have experience in substance abuse prevention, health care, mental health, law enforcement, local government, first responder work, or similar fields, as follows:
 - Four members appointed by the Senate Majority Leader.
 - Four members appointed by the Speaker of the House of Representatives.
 - One member appointed by the Senate Minority Leader.
 - One member appointed by the House Minority Leader.
 - One member appointed by the Senate Majority Leader and the Speaker of the House of Representatives from a list of three individuals provided by the governor.
 - One member appointed by the Senate Majority Leader and the Speaker of the House of Representatives from a list of three individuals provided by the attorney general.
- The following two members to serve as ex officio members without vote:
 - The director of the Department of Health and Human Services or his or her designee.
 - The administrator of the Legislative Council or his or her designee.

In appointing the above voting members or providing a list from which members will be selected, the governor, Senate Majority Leader, Speaker of the House of Representatives, Senate and Minority Leader, House Minority Leader, and attorney general would have to ensure that the members, to the extent possible, reflect the geographic diversity of the state. A member of the commission would not be entitled to compensation for service on the commission, but the commission could reimburse a member for actual and necessary expenses incurred in serving.

All initial members would have to be appointed within 60 days after the effective date of the bill. The term of a voting member would be three years or until a successor is appointed, whichever is later, except that the first voting members would be appointed for staggered terms as determined by the Senate Majority Leader and Speaker of the House of Representatives.

If a vacancy occurred on the commission, an individual would have to be appointed in the same manner as the original appointment to fill the vacancy for the balance of the term.

The Senate Majority Leader and Speaker of the House of Representatives could concur to remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The administrator of the Legislative Council, or his or her designee, would have to call the first meeting of the commission. At the first meeting, the commission would have to elect a member as a chairperson and could elect other officers that it considered necessary or appropriate. The administrator of the Legislative Council, or his or her designee, would serve as secretary. The commission would have to meet at least quarterly, but could meet more frequently at the call of the chairperson or at the request of at least seven members.

Seven voting members of the commission would constitute a quorum for transacting business. A majority vote of the voting members present and serving would be required for any action of the commission.

The commission would have to conduct its business in compliance with the Open Meetings Act, and a writing prepared, owned, used, possessed, or retained by the commission in performing an official function would be subject to the Freedom of Information Act (FOIA).

The commission would be required to do all of the following:

- Adopt policies and procedures for the administration of the commission as allowed by law.
- Review local, state, and federal initiatives and activities related to education, prevention, treatment, and services for individuals and families affected by substance use disorders and co-occurring mental health conditions, and establish priorities to address substance use disorders and co-occurring mental health conditions, for the purpose of recommending funding initiatives to the legislature.
- By March 30 of each year, provide a written report to the governor, the attorney general, the Senate Majority Leader, the Speaker of the House of Representatives, and the chairs of the Senate and House of Representatives appropriations committees that includes all of the following:
 - A statewide evidence-based needs assessment that includes at least all of the following:
 - A summary of current local, state, and federal funding used to address substance use disorders and co-occurring mental health conditions.
 - A discussion about how to prevent overdoses, address disparities in access to health care, and prevent youth substance use.
 - An analysis, based on quantitative and qualitative data, of the effects on Michigan of substance use disorders and co-occurring mental health conditions.
 - A description of the most common risk factors associated with substance use disorders and co-occurring mental health conditions.
 - Goals and recommendations and their rationale, sustainability plans, and performance indicators relating to all of the following:
 - Prevention, treatment, recovery, and harm reduction efforts for substance use disorders and co-occurring mental health conditions.
 - Reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
 - An evidence-based assessment of the prior use of money appropriated from the Michigan Opioid Healing and Recovery Fund, including the extent to which such expenditures abated the opioid crisis in Michigan.
 - Recommended funding for tasks, activities, projects, and initiatives that would support the objectives of the commission.
 - If applicable, recommended additional legislation needed to accomplish the objectives of the commission.

Proposed MCL 4.1850 and 4.1851

House Bill 5970 would create a new act, the Opioid Liability Litigation Act, to prohibit certain public bodies in Michigan from commencing or maintaining certain legal actions related to opioid settlements.

Under the bill, a *political subdivision* of Michigan would not be able to commence or maintain an action as follows:

- After January 1, 2021, an action related to the released claims against the released entities, both as defined in the *distributor settlement*.
- After January 1, 2021, an action related to the released claims against the released entities, both as defined in the *Janssen settlement*.

Political subdivision would mean a public body corporate in Michigan, an agency of a public body corporate in Michigan, a nonincorporated body in Michigan of whatever nature, or an agency of a nonincorporated body in Michigan. The term would include a county, city, village, township, school district, or special district or authority of Michigan, but would not include the state of Michigan.

Distributor settlement would mean the master settlement agreement arising out of the *MDL* and entered into by Michigan with AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation.

Janssen settlement would mean the master settlement agreement arising out of the *MDL* and entered into by this state with Janssen Pharmaceuticals, Inc.

MDL would mean *In re Nat'l Prescription Opiate Litigation*, the multidistrict litigation consolidated in the United States District Court for the Northern District of Ohio, Case No. 1:17-MD-2804.

House Bills 5969 and 5970 could not take effect unless House Bill 5968 were also enacted.

FISCAL IMPACT:

House Bill 5968 would direct incoming opioid settlement proceeds revenue to a single state restricted fund to facilitate management and compliance of expenditures with the terms of court settlements with opioid distributors. Currently, funds would be deposited into certain state restricted funds that would best facilitate use of the funds for opioid use remediation, or to the Lawsuit Settlement Proceeds Fund. Revenues in the Lawsuit Settlement Proceeds Fund are designated state restricted funds until the close of the fiscal year, when they lapse to the general fund. The bill would divert settlement proceed revenues from these funds to the new restricted Michigan Opioid Healing and Recovery Fund, but would not otherwise affect eligible uses of the funds, as they would be restricted by the terms of the settlements, which requires that they be used for opioid remediation with a focus on future opioid remediation. Fund revenue would be available to the state government and subject to legislative appropriation in a manner consistent with the opioid judgment or settlement from which the money was received.

Michigan is anticipated to receive approximately \$776.0 million in proceeds over the next 18 years from settlements with three opioid distributors and one opioid manufacturer. These funds are to be split evenly between the state and eligible local units of government and subdivisions

over the 18-year period which begins in the current calendar year, with the state receiving approximately \$407.5 million. The state anticipates receiving two initial payments in the current calendar year, then a fixed payment each year after through the term of the settlement.

The bill would create marginal additional administrative costs for the Department of Treasury related to the creation, investment, and administration of the Michigan Opioid Healing and Recovery Fund. An estimate of the increased costs is unknown at this time.

The FY 2022-23 House recommended budget for the Department of Health and Human Services includes \$16.0 million to be appropriated from the Michigan Opioid Healing and Recovery Fund to create or supplement current opioid-related programs and services.

House Bill 5969 would increase costs for the Legislative Council by an indeterminate amount and would have no fiscal impact on local units of government. The amount of increased costs to the Legislative Council would depend upon factors concerning the Opioid Advisory Commission, such as any increased administrative costs and additional staff resources that may be required.

House Bill 5970 would have an indeterminate fiscal impact on local court funding units. Provisions of the bill are aimed at limiting the number of lawsuits likely to be filed. Any fiscal impact would be directly related to how provisions of the bill affected court caseloads, the complexity of lawsuits, and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.