



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 993 through 995 (as introduced 3-24-22)
Sponsor: Senator Michael D. MacDonald (S.B. 993)
Senator Mark Huizenga (S.B. 994)
Senator Betty Jean Alexander (S.B. 995)
Committee: Health Policy and Human Services

Date Completed: 4-13-22

CONTENT

Senate Bill 993 would amend the Michigan Trust Fund Act to create the Michigan Opioid Healing and Recovery Fund within the Department of Treasury and to require the State Treasurer to deposit into the Fund all proceeds received by the State as a result of a judgment or settlement pertaining to violations, or alleged violations, of law pertaining to the manufacture, marketing, and distribution of opioids.

Senate Bill 994 would add Chapter 8A (Opioid Advisory Council) to the Legislative Council Act to create the Opioid Advisory Commission within the Legislative Council and to prescribe its membership and duties and responsibilities.

Senate Bill 995 would enact the "Opioid Liability Litigation Act" to prohibit a political subdivision of the State from commencing or maintaining legal actions against specified entities related to opioid settlements.

Senate Bills 994 and 995 are tie-barred to Senate Bill 993.

Senate Bill 993

The bill would create the Michigan Opioid Healing and Recovery Fund within the Department of Treasury. The State Treasurer would have to deposit 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 into the Fund, except for proceeds received under the Medicaid False Claims Act. The State Treasurer could deposit money or other assets from any other source into the Fund provided by law.

The State Treasurer would have to direct the investment of the Fund and would have to credit to it 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 would not lapse to the General Fund.

The Department of Treasury would be the administrator of the Michigan Opioid Healing and Recovery Fund for auditing purposes. The Department would have to spend money from the Fund, on appropriation, in a manner and for purposes consistent with 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. The money could not be used to replace any other governmental funds that otherwise would have been appropriated or spent for any other program or service.

The Department of Attorney General could spend money from the Fund, on 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. If possible, the Department of Attorney General would have to attempt to have costs and attorney fees paid by a defendant or source other than the Fund.

Senate Bill 994

Membership & Meetings

The bill would create the Opioid Advisory Commission within the Legislative Council. The Commission would consist of 12 voting members that had experience in substance abuse prevention, health care, mental health, law enforcement, local government, first responder work, or similar fields appointed 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 selected from a list of three individuals provided by the Governor.
- One member appointed by the Senate Majority Leader and the Speaker of the House selected from a list of three individuals provided by the Attorney General.

The Commission also would consist of the Director of the Department of Health and Human Services, or his or her designee, and the Council Administrator, or his or her designee, who would serve as an ex officio members without vote.

In appointing members or providing a list from which members would be selected, the Governor, the Senate Majority Leader, the Speaker of the House, the Senate Minority Leader, the House Minority Leader, and the Attorney General would have to ensure that the members, to the extent possible, reflected the geographic diversity of the State.

All initial members would have to be appointed within 60 days after the bill's effective date.

Of the first voting members appointed, four would be appointed to one-year terms, four would be appointed to two-year terms, and four would be appointed to three-year terms, as determined by the Senate Majority Leader and the Speaker of the House. After the first appointments, the term of a voting member would be three years or until a successor was appointed, whichever was later. 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 the Speaker of the House could concur to remove a Commission member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The Council Administrator, 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, except as otherwise provided, could elect other officers that it considered

necessary or appropriate. The Council Administrator, or his or her designee, would have to serve as secretary. The Commission would have to meet at least quarterly and 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 Commission action.

The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

A Commission member would not be entitled to compensation for service on the Commission but could be reimbursed for actual and necessary expenses incurred in serving.

Duties & Responsibilities

The bill would require the Commission to adopt policies and procedures for the administration of the Commission as allowed by law and 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, the Commission also would have to provide a written report to the Governor, the Attorney General, the Senate Majority Leader, the Speaker of the House, and the chairs of the Senate and House Appropriations Committees that included all of the following:

- An evidence-based assessment of the previous use of money appropriated from the Michigan Opioid Healing and Recovery Fund, including the extent to which those expenditures abated the opioid crisis in the State.
- Recommended funding for tasks, activities, projects, and initiatives that would support the Commission's objectives.
- Recommended additional legislation needed to accomplish the Commission's objectives, if applicable.
- Goals and recommendations, including the rationale behind them, sustainability plans, and performance indicators relating to substance use disorder and co-occurring mental health conditions prevention, treatment, recovery, and harm reduction efforts and reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
- A statewide evidence-based needs assessment.

The statewide evidence-based need assessment would have to include 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 the State 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.

Senate Bill 995

Under the proposed Act, a political subdivision of the State could not commence or maintain an action as follows:

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

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

"Distributor settlement" would mean the master settlement agreement arising out of the MDL [i.e., multidistrict litigation] and entered into by the State with AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation; "MDL" would mean *In re Nat'l Prescription Opiate Litigation*, multidistrict litigation consolidated in the United States District Court for the Northern District of Ohio, Case No. 1:17-MD-2804.

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

MCL 12.252 et al. (S.B. 993)
Proposed MCL 4.1850 & 4.1851 (S.B. 994)

BACKGROUND

On February 25, 2022, Johnson & Johnson and the "Big Three" drug distributors, McKesson, Cardinal Health, and AmerisourceBergen, finalized a \$26.0 billion opioid settlement agreement resolving claims by state and local governments that the companies helped fuel the US opioid epidemic.

The deal aims to settle thousands of civil lawsuits filed against the companies by state and local governments that were consolidated in multidistrict litigation, *In re Nat'l Prescription Opiate Litigation*. (Multidistrict litigation is a legal proceeding under Federal law that allows civil actions in different district courts that involve one or more common questions of fact to be temporarily consolidated and transferred to a single district court for pretrial proceedings.¹)

Under the settlement, Johnson & Johnson will pay \$5.0 billion over nine years, with up to \$3.7 billion paid in the first three years, through Janssen, a pharmaceutical subsidiary, and the three drug distributors will pay a combined nearly \$21.0 billion over 18 years (McKesson will pay \$7.9 billion and AmerisourceBergen and Cardinal Health each will pay up to \$6.4 billion). Forty-six states, including Michigan, the District of Columbia, all eligible territories, and roughly 90% of eligible local governments signed on to the deal.

The companies started releasing funds to a national administrator on April 2, 2022, and the money will be distributed to state and local governments beginning in the second or third quarter of 2022. The terms of the settlement agreement require at least 85% of the money to go towards ending the opioid epidemic.

¹ 28 USC 1407.

Michigan is expected to receive approximately \$776.0 million over 18 years. Roughly half of the total will be paid directly to eligible local governments while the other half will go to the State.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

Senate Bill 993

The bill would have a minimal fiscal impact on the State and no fiscal impact on local units of government. The Department of Treasury would experience minor administrative costs to create and administer the Michigan Opioid Healing and Recovery Fund. The costs would be minimal and within current appropriations.

The Department of the Attorney General could receive additional appropriations from the Fund to support costs and reasonable attorney fees incurred in pursuit of opioid judgments, settlements, or compromise of claims. The amount of funding that could be provided to the Department of the Attorney General from the Fund would be subject to appropriations.

Senate Bill 994

The bill would have an indeterminate fiscal impact on the Legislative Council. The bill would create the Opioid Advisory Commission within the Legislative Council. A Council member would not receive a salary but would be eligible for reimbursement for necessary expenses incurred in the performance of his or her duties. The cost for reimbursing members for necessary expenses (based on other similar commissions and committees) would average less than \$50,000 annually.

Senate Bill 995

The bill would have no immediate fiscal impact on State or local government. The settlement agreements, and the formulas for determining State shares of settlement payments that will continue for the next 18 years, can be found on the National Opioid Settlement website.² These formulas include base-level and incentive-level payments to states and local governments. The incentives are achieved by making efforts to end litigation and prohibit future claims. Enacting the bill would allow the State and local governments that have settled to receive full incentives under the settlement payment plans.

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² "National Opioid Settlement", www.nationalopioidsettlement.com. Retrieved on 4-12-22.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.