
A BILL FOR AN ACT

RELATING TO OPIOID LITIGATION PROCEEDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, according to KFF
2 Health News, the State has received over \$19,000,000 as of April
3 2023 in litigation proceeds from legal claims made against
4 manufacturers and distributors of prescription opioids;
5 pharmacies that have dispensed opioids; and other related
6 parties for their alleged roles in contributing to the high
7 rates of drug overdoses and other drug-related harms. The
8 Hawaii department of the attorney general estimates that the
9 anticipated recovery of litigation proceeds will exceed over
10 \$156,000,000.

11 The legislature further finds that experience with the
12 1990s tobacco settlement funds suggests that without firm
13 commitment and transparent planning, opioid litigation proceeds
14 may not be directed toward preventing and addressing substance
15 use disorders, overdoses, and other drug-related harms. This
16 would be an unacceptable outcome, as substance use disorders,



1 "Council" means the Hawaii opioid litigation proceeds
2 council.

3 "Department" means the department of health.

4 "Director" means the director of health.

5 "Special fund" or "fund" means the Hawaii opioid litigation
6 proceeds special fund.

7 "Substance use disorder" means a pattern of use of alcohol
8 or other substances that meets the applicable diagnostic
9 criteria delineated in the most recent publication of the
10 Diagnostic and Statistical Manual of Mental Disorders of the
11 American Psychiatric Association, or in any subsequent editions.

12 **§ -2 Hawaii opioid litigation proceeds special fund.**

13 (a) There is established in the state treasury the Hawaii
14 opioid litigation proceeds special fund to be administered by
15 the council and into which shall be deposited the following
16 moneys:

17 (1) All opioid litigation proceeds received by the State,
18 regardless of whether the proceeds are received as a
19 lump sum or series of payments to be made over a
20 period of time;

21 (2) Appropriations made by the legislature;



1 (3) Gifts, donations, grants, bequests, and other moneys
2 received by the State on the fund's behalf; and

3 (4) All interest earned or accrued from the investment of
4 the moneys in the fund.

5 (b) The moneys in the special fund shall be expended for
6 the following purposes:

7 (1) Disbursement of funds allocated to the counties as
8 their share of opioid litigation proceeds;

9 (2) The administration and staffing of the council and
10 special fund; provided that no more than eight per
11 cent of the fund's annual balance, as determined on
12 December 31 of each year, shall be expended for this
13 purpose;

14 (3) The management, investment, and disbursement of moneys
15 from the special fund; provided that no more than two
16 per cent of the fund's annual balance, as determined
17 on December 31 of each year, shall be expended for
18 this purpose; and

19 (4) Subject to majority approval from the council, the
20 following substance use disorder abatement purposes:



- 1 (A) Statewide or community substance use disorder
- 2 needs assessments to identify structural gaps and
- 3 needs to inform expenditures from the fund;
- 4 (B) Infrastructure required for evidence-based
- 5 substance use disorder prevention, treatment,
- 6 recovery, or harm reduction programs, services,
- 7 and supports;
- 8 (C) Programs, services, supports, and resources for
- 9 evidence-based substance use disorder prevention,
- 10 treatment, recovery, or harm reduction;
- 11 (D) Evidence-informed substance use disorder
- 12 prevention, treatment, recovery, or harm
- 13 reduction pilot programs or demonstration studies
- 14 that are not evidence-based but are approved by
- 15 the council as an appropriate use of moneys for a
- 16 limited period of time as specified by the
- 17 council; provided that for all evidence-informed
- 18 pilot programs and demonstration studies, the
- 19 council shall assess:
- 20 (i) Whether the emerging evidence supports
- 21 distribution of moneys for these uses; or

1 (ii) Whether there is a reasonable basis for
2 finding such uses with the expectation of
3 creating an evidence base for such uses;

4 (E) Evaluations of effectiveness and outcomes
5 reporting for substance use disorder abatement
6 infrastructure, programs, services, supports, and
7 resources for which moneys from the fund were
8 disbursed, such as the impact on access to harm
9 reduction services or treatment for substance use
10 disorders, or a reduction in drug-related
11 mortality; or

12 (F) One or more data interfaces managed by the
13 department to aggregate, track, and report, free
14 of charge and available online to the public,
15 data on substance use disorder, overdoses, and
16 drug-related harms; spending recommendations,
17 plans, and reports; and outcomes of programs,
18 services, supports, and resources for which
19 moneys from the fund were disbursed.

20 (c) Moneys in the special fund that are allocated to the
21 counties as their share of proceeds shall be disbursed to the



1 respective counties within thirty days of receipt of the
2 litigation proceeds by the State. The counties' authority to
3 direct and determine how their respective shares are spent shall
4 be consistent with the litigation agreements and shall not be
5 subject to severability.

6 (d) Unless otherwise required by controlling court order
7 to refund to the federal government a portion of the proceeds,
8 moneys in the fund shall be used for prospective purposes and
9 shall not be used to reimburse expenditures incurred prior to
10 the effective date of this Act.

11 (e) All opioid litigation proceeds shall be spent, whether
12 by the state or counties, consistent with the settlement
13 agreements entered into by the State and any court orders.

14 **§ -3 Special fund disbursements; requirements;**
15 **restrictions.**

16 (a) Disbursements from the special fund shall be made
17 promptly by the director upon the approval of the council and no
18 later than thirty days after the approval of the council. The
19 director shall not make or refuse to make any disbursement
20 allowable under this subsection without the approval of the
21 council. The director shall adhere to the council's decisions



1 regarding disbursement of moneys from the fund so long as the
2 disbursement is a permissible expenditure under subsection (b).
3 The director's role in the distribution of moneys as approved by
4 the council shall be ministerial and not discretionary.

5 (b) Except for moneys disbursed pursuant to
6 section -2(b)(1), moneys expended from the fund for the
7 purposes of section -2(b) shall be supplemental to, and shall
8 not supplant or take the place of, any other funds, including
9 insurance benefits or federal, state, or county funding, that
10 would otherwise have been expended for these purposes.

11 (c) The director shall not disburse moneys from the fund
12 unless the governor, president of the senate, and speaker of the
13 house of representatives transmit to the council a letter
14 verifying that moneys appropriated and allocated in that fiscal
15 year's budget for substance use disorder abatement
16 infrastructure, programs, services, supports, and resources for
17 prevention, treatment, recovery, and harm reduction are no less
18 than the sums of the moneys for these purposes appropriated and
19 allocated in the state budget for the previous fiscal year.

20 (d) Subject to subsection (c), all moneys from the special
21 fund appropriated for substance use disorder abate



1 infrastructure, programs, services, supports, and resources for
2 prevention, treatment, recovery, and harm reduction shall be
3 made available for disbursement during the fiscal year for which
4 they are appropriated by the council; provided that if the
5 moneys are not fully expended, they shall be made available in
6 each subsequent fiscal year until fully expended.

7 § -4 **Special fund; investments.** The director shall have
8 the responsibility for the investment and reinvestment of moneys
9 in the fund. On or before December 31 of each year, the
10 director shall issue a public report, which shall be made
11 available online, specifying:

- 12 (1) An inventory of fund investments as of December 31;
- 13 (2) The net income the fund earned for the previous fiscal
14 year;
- 15 (3) The dollar amount and the percentage of the fund
16 balance incurred for expenses of administering and
17 staffing the fund and the council during the previous
18 fiscal year; and
- 19 (4) The dollar amount and the percentage of the fund
20 balance incurred for expenses associated with



1 managing, investing, and disbursing moneys in the fund
2 during the previous fiscal year.

3 § -5 Hawaii opioid litigation proceeds council. (a)

4 There is established a Hawaii opioid litigation proceeds council
5 to be placed in the department of health for administrative
6 purposes only.

7 (b) The purpose of the Hawaii opioid litigation proceeds
8 council shall be to ensure that the proceeds received by the
9 State pursuant to section -2 are allocated and spent on
10 substance use disorder abatement infrastructure, programs,
11 services, supports and resources for prevention, treatment,
12 recovery, and harm reduction; and to ensure robust public
13 involvement, accountability, and transparency in allocating and
14 accounting for moneys in the fund.

15 (c) The council shall be comprised of fifteen voting
16 members as follows:

- 17 (1) The director of health, or the director's designee;
18 (2) The director of corrections and rehabilitation, or the
19 director's designee;
20 (3) The superintendent of education, or the
21 superintendent's designee;



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- 1 (4) A member of the senate, designated by the president of
2 the senate;
- 3 (5) A member of the house of representatives, designated
4 by the speaker of the house of representatives;
- 5 (6) The dean of the John A. Burns school of medicine at
6 the university of Hawaii at Manoa, or the dean's
7 designee;
- 8 (7) The mayors of the counties of Hawaii, Kauai, and Maui,
9 and the city and county of Honolulu, or the mayors'
10 designees; and
- 11 (8) Five community members upon application to, and
12 approval by the governor; provided that these
13 community members shall include:
- 14 (A) A person who has experience in providing
15 substance use disorder prevention, treatment,
16 recovery, and harm reduction services;
- 17 (B) A person who has expertise, experience, or
18 education in public health policy or research;
- 19 (C) A person who has experience in mental health
20 services;



1 (D) A person who has experience in public budgeting;
2 and

3 (E) A person who has lived experience with substance
4 use disorder recovery.

5 (d) To the extent practicable, council members shall also
6 invite family members of persons who have, or decedents who had,
7 a substance use disorder, and representatives of communities
8 that have been disproportionately impacted by substance use and
9 disparities in access to care or health outcomes.

10 (e) The council shall elect a chair from among its members
11 on January 15 of each year.

12 (f) Council members shall serve two-year terms.

13 (g) The council shall be responsible for:

14 (1) Recommending and approving policies and procedures for
15 administration of the council and for the application,
16 awarding, and disbursement of moneys from the fund, to
17 be used for purposes set forth in section -2(b)(4);

18 (2) Recommending and approving goals and objectives and
19 their rationales, sustainability plans, and
20 performance indicators relating to:



- 1 (A) Substance use disorder prevention, treatment,
2 recovery, and harm reduction efforts;
- 3 (B) Reducing disparities in access to prevention,
4 treatment, recovery, and harm reduction programs,
5 services, supports, and resources; and
- 6 (C) Improving health outcomes in traditionally
7 underserved populations, including but not
8 limited to those who live in rural communities,
9 persons of color, and formerly incarcerated
10 individuals;
- 11 (3) Approval of awards of moneys from the fund exclusively
12 for permissible expenditures set forth in
13 section -2(b)(4); and
- 14 (4) Approving suspensions of allocations of moneys from
15 the fund to recipients found by the council or the
16 department to be substantially out of compliance with
17 council policies or procedures; the policies,
18 procedures, rules, or regulations of the department;
19 or to have used the awards for a purpose other than an
20 approved purpose. The council may resume approval of
21 allocations once the council or department has



1 determined the recipient has adequately remedied the
2 cause of the suspension.

3 (h) When approving an allocation of moneys from the fund,
4 the council shall consider, at a minimum, the following
5 criteria:

6 (1) The number of people per capita with a substance used
7 disorder in a community;

8 (2) Disparities in access to care in a community that may
9 preclude persons with a substance use disorder from
10 obtaining a diagnosis or receiving evidence-based
11 treatment;

12 (3) The number of overdose deaths per capita in a
13 community;

14 (4) The infrastructure, programs, services, supports, or
15 other resources currently available to individuals
16 with substance use disorders in a community; and

17 (5) Disparities in access to care and health outcomes in a
18 community.

19 (i) The council shall hold at least four meetings per
20 year. Members may attend meetings in person, remotely by



1 audiovisual means, or upon approval by the chair, by audio-only
2 means.

3 (j) A majority of council members shall constitute a
4 quorum for the transaction of business, and the affirmative vote
5 of a majority of the members present shall be necessary for any
6 action by the council. Each council member shall have one vote.

7 (k) Members shall disclose to the council, refrain from
8 participating in discussions, and recuse themselves from voting
9 on any matter before the council where the member has a conflict
10 of interest.

11 § -6 **Recipients; reports.** Any recipient who receives an
12 award of funds from the special fund shall prepare a report to
13 the council one year after the award of any funds, and for each
14 year thereafter that the recipient receives funds from the
15 special fund, detailing the effectiveness of infrastructure,
16 programs, services, supports, and resources funding. The report
17 shall include, at a minimum:

18 (1) How the recipient used the moneys for the intended
19 purpose;



1 (2) The number of individuals serviced by race, age,
2 gender, and other demographic factors reported in a
3 de-identified manner;

4 (3) A specific analysis of whether the infrastructure,
5 program, service, support, or resources reduced
6 mortality or improved prevention, treatment, harm,
7 reduction, or recovery outcomes, or both; and

8 (4) If a plan to ensure the sustainability of the
9 infrastructure, program, service, support, or
10 resources funded exists, a summary of the plan.

11 **§ -7 Department of health; program director; duties;**
12 **responsibilities.** The department shall:

13 (1) Employ a full-time program director of the council to
14 plan and support the meetings and functions of the
15 council and direct the day-to-day activities required
16 to ensure that all opioid litigation proceeds received
17 by the State and deposited in the special fund are
18 allocated and spent on substance use disorder
19 abatement infrastructure, programs, services,
20 supports, and resources for prevention, treatment,
21 recovery, and harm reduction; and to ensure robust



- 1 public involvement, accountability, and transparency
2 in allocating and accounting for moneys in the fund;
- 3 (2) Provide public health research and policy expertise,
4 support staff, facilities, technical assistance, and
5 other resources to assist the program director of the
6 council with the program director's duties;
- 7 (3) Utilize, where feasible, appropriations from the
8 general fund and existing infrastructure, programs,
9 services, supports, or other resources to address
10 substance use disorders, overdoses, and drug-related
11 harms in the State;
- 12 (4) Prepare for review and approval by the council goals
13 and objectives and their rationales, sustainability
14 plans, and performance indicators relating to
15 substance use disorder prevention, treatment,
16 recovery, and harm reduction efforts and reducing
17 disparities in access to prevention, treatment,
18 recovery, and harm reduction programs, services,
19 supports, and resources;



- 1 (5) Evaluate applications and recommend to the council
2 awards and disbursements of moneys from the fund that
3 meet the requirements of section -2(b)(4);
- 4 (6) Maintain oversight over the expenditure of moneys from
5 the fund to ensure fund moneys are expended in
6 accordance with the requirements of section -2(b);
- 7 (7) Recommend to the council any suspensions of
8 allocations of moneys from the fund to recipients
9 found by the department to be out of compliance with
10 council procedures; the department's policies,
11 procedures, rules, or regulations; or to have the
12 awards for a purpose other than an approved purpose;
- 13 (8) Implement and publish on the council's or department's
14 website the policies and procedures for administration
15 of the council and for the application, awarding, and
16 disbursement of moneys from the fund, to be used for
17 purposes pursuant to section -2(b)(4); and
- 18 (9) Create and maintain a website that shall include, at a
19 minimum,
20 (A) An annual report of the council's activities and
21 effectiveness pursuant to section -8;



1 (B) Council meeting attendance rolls and minutes,
2 including but not limited to records of all votes
3 on expenditures of moneys from the fund,
4 recipient agreements, and any reports made by a
5 recipient pursuant to section -6; and

6 (C) All policies and procedures approved by the
7 council and any council-related policies,
8 procedures, rule, or regulations adopted by the
9 department.

10 § -8 **Court orders; exceptions.** (a) The council shall
11 disburse moneys from the fund in a manner consistent with the
12 limitations on uses of litigation proceeds set forth in any
13 controlling court order.

14 (b) In the event a controlling court order permits
15 expenditures other than or in excess of expenditures authorized
16 under section -2(b), the council shall adhere to the
17 limitations on use of moneys set forth in section -2(b).

18 (c) In the event section -2(b) permits expenditures
19 other than or in excess of those authorized in a controlling
20 court order, the council shall adhere to the limitations on use
21 of moneys set forth in the court order.



1 (d) In the event a controlling court order allocates
2 litigation proceeds among counties, section -2(b)(1) shall
3 not apply, and the council shall disburse moneys from the fund
4 according to the allocations set forth in the court order.

5 **§ -9 Reporting.** (a) Beginning on December 31 one year
6 after the initial deposit of proceeds into the fund, and every
7 year thereafter, the department shall provide a written report
8 to the governor, legislature, and attorney general detailing the
9 council's activities during the previous calendar year.

10 (b) The report shall be published on the council's or
11 department's website and shall include, at a minimum:

12 (1) The opening and closing balance of the fund for the
13 calendar year;

14 (2) An accounting of all credits to and expenditures from
15 the fund;

16 (3) The name and a description of each recipient of moneys
17 from the fund, and the amount awarded to each
18 recipient;

19 (4) A description of each award's intended use, including
20 the specific program, service, or resource funded;



- 1 population served; and measures that the recipient
2 will use to assess the impact of the award;
- 3 (5) The primary criteria used to determine each recipient
4 and its respective award amount;
- 5 (6) A summary of the information included in the annual
6 report prepared by the recipient required under
7 section -6;
- 8 (7) All applications for an award of moneys from the fund
9 received during the calendar year;
- 10 (8) A description of any finding or concern as to whether
11 all moneys disbursed from the fund pursuant to
12 section -2(b)(4) supplemented, and did not supplant
13 or replace, any existing or future federal, state, or
14 county funding; and
- 15 (9) The performance indicators and progress toward
16 achieving the goals and objectives developed under
17 this Act, including metrics on improving outcomes and
18 reducing mortality and other harms related to
19 substance use disorders."

20 SECTION 3. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2024-2025 for
2 the purposes of drug policy and coordination the establishment
3 of the following positions within the alcohol and drug abuse
4 division of health:

5 (1) One full-time equivalent (1.0 FTE) program director
6 position exempt from chapter 76, Hawaii Revised
7 Statutes;

8 (2) One full-time equivalent (1.0 FTE) outreach
9 coordinator position exempt from chapter 76, Hawaii
10 Revised Statutes; and

11 (3) One full-time equivalent (1.0 FTE) administrative
12 assistant position exempt from chapter 76, Hawaii
13 Revised Statutes.

14 The sum appropriated shall be expended by the department of
15 health for the purposes of this Act.

16 SECTION 4. In accordance with section 9 of article VII of
17 the Hawaii State Constitution and sections 37-91 and 37-93,
18 Hawaii Revised Statutes, the legislature has determined that the
19 appropriations contained in H.B. No. , will cause the state
20 general fund expenditure ceiling for fiscal year 2024-2025 to be
21 exceeded by \$ or per cent. In addition, the



1 appropriation contained in this Act will cause the general fund
2 expenditure ceiling for fiscal year 2024-2025 to be further
3 exceeded by \$ or per cent. The combined total
4 amount of general fund appropriations contained in only these
5 two Acts will cause the state general fund expenditure ceiling
6 for fiscal year 2024-2025 to be exceeded by
7 \$ or per cent. The reasons for exceeding the
8 general fund expenditure ceiling are that:

- 9 (1) The appropriation made in this Act is necessary to
10 serve the public interest; and
11 (2) The appropriation made in this Act meets the needs
12 addressed by this Act.

13 SECTION 5. This Act shall take effect on July 1, 2024.

14

INTRODUCED BY:

Della A. Belotti

JAN 24 2024



H.B. NO. 2806

Report Title:

Opioid Litigation Proceeds; Hawaii Opioid Litigation Proceeds Special Fund; Hawaii Opioid Litigation Proceeds Council; Establishment; Appropriation; Expenditure Ceiling

Description:

Establishes the Hawaii opioid litigation proceeds special fund. Establishes the Hawaii opioid litigation proceeds council to administer the special fund. Establishes standards for expenditure of opioid litigation proceeds received by the State. Establishes and appropriates funds for three full-time equivalent positions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

