
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
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 overdoses, and drug-related harms have had a significant impact
2 throughout the State.

3 The purpose of this Act is to require transparency and
4 ensure accountability through the creation of the Hawaii opioid
5 litigation proceeds council to oversee the Hawaii opioid
6 settlement advisory committee's expenditure of all opioid
7 litigation proceeds received by the State as part of the
8 historic nationwide lawsuits holding entities responsible for
9 the opioid crisis devastating communities.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 **"CHAPTER**

14 **HAWAII OPIOID LITIGATION PROCEEDS**

15 § -1 **Definitions.** As used in this chapter, unless the
16 context otherwise requires:

17 "Council" means the Hawaii opioid litigation proceeds
18 council.

19 "Department" means the department of health.

20 "Director" means the director of health.



1 "HOSAC" means the Hawaii opioid settlement advisory
2 committee as described in the MOA.

3 "MOA" means the memorandum of agreement between the State
4 and local governments on proceeds relating to the settlement of
5 opioid litigation, also referred to as the State-Subdivision
6 Agreement, as amended.

7 "Opioid remediation" shall have the same meaning and uses
8 as set forth in exhibit "A" of the MOA.

9 "Special fund" means the Hawaii opioid litigation proceeds
10 special fund.

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

16 **§ -2 Hawaii opioid litigation proceeds special fund.**

17 (a) There shall be established in the state treasury the Hawaii
18 opioid litigation proceeds special fund to be administered by
19 the council and into which shall be deposited the following
20 moneys:



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

5 (2) Appropriations made by the legislature;

6 (3) Gifts, donations, grants, bequests, and other moneys
7 received by the State on the special fund's behalf;
8 and

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

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

13 (1) At least eighty-five per cent of the special fund to
14 address opioid remediation;

15 (2) Up to fifteen per cent of the special fund to address
16 remediation for other substance use disorders, not
17 limited to opioids;

18 (3) Moneys received into the special fund under subsection
19 (a) (2), (3), and (4) shall be utilized for any opioid
20 remediation purpose as deemed necessary by the
21 council;



- 1 (4) Disbursement of funds allocated to the counties as
2 their share of opioid litigation proceeds;
- 3 (5) The administration and staffing of the council, HOSAC,
4 and special fund; provided that no more than eight per
5 cent of the special fund's annual balance, as
6 determined on December 31 of each year, shall be
7 expended for this purpose;
- 8 (6) The management, investment, and disbursement of moneys
9 from the special fund; provided that no more than two
10 per cent of the special fund's annual balance, as
11 determined on December 31 of each year, shall be
12 expended for this purpose; and
- 13 (7) All spending with funds from the opioid settlement
14 moneys will be decided by majority approval of both
15 the council and HOSAC.
- 16 (c) Moneys in the special fund that are allocated to the
17 counties as their share of proceeds shall be disbursed to the
18 respective counties within ninety days of receipt of the
19 litigation proceeds by the State. The counties' authority to
20 direct and determine how their respective shares are spent shall



1 be consistent with the opioid remediation activities as stated
2 in the MOA and shall not be subject to severability.

3 (d) Moneys in the special fund shall be used for
4 prospective purposes and shall not be used to reimburse
5 expenditures incurred before the effective date of this Act.

6 (e) All opioid litigation proceeds shall be spent, whether
7 by the state or counties, consistent with the MOA, settlement
8 agreements entered into by the State, and any court orders
9 issued in relation to the MOA or settlement agreements.

10 **§ -3 Special fund disbursements; requirements;**
11 **restrictions.**

12 (a) Disbursements from the special fund shall be made
13 promptly by the director upon the approval of the council and no
14 later than ninety days after the approval of the council and
15 HOSAC and execution of all required state procurement
16 requirements. The director shall not make or refuse to make any
17 disbursement allowable under this subsection without the
18 approval of the council and HOSAC. The director shall adhere to
19 the council's decisions regarding disbursement of moneys from
20 the special fund so long as the disbursement is a permissible
21 expenditure under the MOA. The director's role in the



1 distribution of moneys as approved by the council shall be
2 ministerial and not discretionary.

3 (b) Moneys expended from the special fund for the purposes
4 of section -2(a) shall be supplemental to, and shall not
5 supplant or take the place of any other funds provided to the
6 department of health, including but not limited to insurance
7 benefits or federal, state, or county funding.

8 (c) The State and director of finance shall not deduct or
9 transfer to the general fund, or any other special fund or
10 account, any opioid settlement or special fund moneys, including
11 but not limited to a central service assessment, as allowed by
12 section 36-27, or under any other statute or rule.

13 § -4 **Special fund; investments.** The director shall have
14 the responsibility for the investment and reinvestment of moneys
15 in the special fund. On or before December 31 of each year, the
16 director shall issue a public report, which shall be made
17 available online, specifying:

18 (1) An inventory of special fund investments as of
19 December 31;

20 (2) The net income the special fund earned for the
21 previous fiscal year;



1 (3) The dollar amount and the percentage of the special
2 fund balance incurred for expenses of administering
3 and staffing the special fund and the council during
4 the previous fiscal year; and

5 (4) The dollar amount and the percentage of the special
6 fund balance incurred for expenses associated with
7 managing, investing, and disbursing moneys in the
8 special fund during the previous fiscal year.

9 § -5 **Hawaii opioid litigation proceeds council.** (a)

10 There shall be established a Hawaii opioid litigation proceeds
11 council to be placed in the department of health for
12 administrative purposes only.

13 (b) The purpose of the Hawaii opioid litigation proceeds
14 council shall be to ensure that the proceeds received by the
15 State are spent pursuant to the MOA and section -2(b).

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

18 (1) The director of health, or the director's designee;

19 (2) The director of corrections and rehabilitation, or the
20 director's designee;



- 1 (3) The superintendent of education, or the
2 superintendent's designee;
- 3 (4) The dean of the John A. Burns school of medicine at
4 the university of Hawaii at Manoa, or the dean's
5 designee;
- 6 (5) The mayors of the counties of Hawaii, Kauai, and Maui,
7 and the city and county of Honolulu, or the mayors'
8 designees;
- 9 (6) One member appointed by the governor from a list of
10 three nominees submitted by the president of the
11 senate;
- 12 (7) One member appointed by the governor from a list of
13 three nominees submitted by the speaker of the house
14 of representatives; and
- 15 (8) Five community members appointed by the governor, who
16 shall include:
 - 17 (A) A person who is a member of the Hawaii Substance
18 Abuse Coalition who has experience in providing
19 substance use disorder prevention, treatment,
20 recovery, and harm reduction services;



1 (B) A person who has expertise, experience, or
2 education in public health policy or research;

3 (C) A person who has experience in mental health
4 services;

5 (D) A person who has experience in public budgeting;
6 and

7 (E) A person who has lived experience with substance
8 use disorder recovery.

9 (d) To the extent practicable, council members shall also
10 invite family members of persons who have a substance use
11 disorder or family members of a decedent who had a substance use
12 disorder and representatives of communities that have been
13 disproportionately impacted by substance use disorders and
14 disparities in access to care or health outcomes.

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

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

18 (g) The council shall be responsible for:

19 (1) Recommending and approving policies and procedures for
20 administration of the council and for the application,
21 awarding, and disbursement of moneys from the special



1 fund, to be used for purposes set forth in
2 section -2(b); and
3 (2) Approving suspensions of allocations of moneys from
4 the special fund to recipients found by the council or
5 the department to be substantially out of compliance
6 with council policies or procedures; the policies,
7 procedures, or rules of the department; or to have
8 used the awards for a purpose other than an approved
9 purpose. The council may resume approval of
10 allocations once the council or department has
11 determined the recipient has adequately remedied the
12 cause of the suspension.

13 (h) When approving an allocation of moneys from the
14 special fund, the council shall consider, at a minimum, the
15 following criteria:

- 16 (1) The number of people per capita with a substance use
17 disorder in a community;
- 18 (2) Disparities in access to care in a community that may
19 preclude persons with a substance use disorder from
20 obtaining a diagnosis or receiving evidence-based
21 treatment;



1 (3) The number of overdose deaths per capita in a
2 community;

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

6 (5) Disparities in access to care and health outcomes in a
7 community.

8 (i) The council shall hold at least four meetings per
9 year. Members may attend meetings in person, remotely by
10 audiovisual means, or upon approval by the chair, by audio-only
11 means.

12 (j) A majority of council members shall constitute a
13 quorum for the transaction of business, and the affirmative vote
14 of a majority of the members present shall be necessary for any
15 action by the council. Each council member shall have one vote.

16 (k) Members shall disclose to the council, refrain from
17 participating in discussions, and recuse themselves from voting
18 on any matter before the council where the member has a conflict
19 of interest.

20 (l) For the purposes of this section, "conflict of
21 interest" means a financial association involving a council



1 member, HOSAC member, or the council or HOSAC member's immediate
2 family that has the potential to influence a council or HOSAC
3 member's actions, recommendations, or decisions related to the
4 disbursement of opioid litigation proceeds or other council
5 activity.

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

- 13 (1) How the recipient used the moneys for the intended
14 purpose;
- 15 (2) The number of individuals serviced by race, age,
16 gender, and other demographic factors reported in a
17 de-identified manner;
- 18 (3) A specific analysis of whether the infrastructure,
19 program, service, support, or resources reduced
20 mortality or improved prevention, treatment, recovery,
21 or harm reduction outcomes, or both; and



1 (4) If a plan to ensure the sustainability of the
2 infrastructure, program, service, support, or
3 resources funded exists, a summary of the plan.

4 § -7 Department of health; program director; duties;
5 responsibilities. The department shall:

6 (1) Employ a full-time program director of the council to
7 plan and support the meetings and functions of the
8 council and direct the day-to-day activities required
9 to ensure that all opioid litigation proceeds received
10 by the State and deposited in the special fund are
11 allocated and spent on opioid remediation and
12 substance use disorder abatement infrastructure,
13 programs, services, supports, and resources for
14 prevention, treatment, recovery, and harm reduction as
15 described in the MOA; and to ensure robust public
16 involvement, accountability, and transparency in
17 allocating and accounting for moneys in the special
18 fund;

19 (2) Provide public health research and policy expertise,
20 support staff, facilities, technical assistance, and



- 1 other resources to assist the program director of the
2 council with the program director's duties;
- 3 (3) Utilize, where feasible, appropriations from the
4 general fund and existing infrastructure, programs,
5 services, supports, or other resources to address
6 substance use disorders, overdoses, and drug-related
7 harms in the State;
- 8 (4) Prepare, for review and approval by the council, goals
9 and objectives and their rationales, sustainability
10 plans, and performance indicators relating to
11 substance use disorder prevention, treatment,
12 recovery, and harm reduction efforts and reducing
13 disparities in access to prevention, treatment,
14 recovery, and harm reduction programs, services,
15 supports, and resources;
- 16 (5) Evaluate applications and recommend to the council
17 awards and disbursements of moneys from the special
18 fund that meet the requirements of section -2(b);
- 19 (6) Maintain oversight over the expenditure of moneys from
20 the special fund to ensure special fund moneys are



- 1 expended in accordance with the requirements of the
2 MOA and this chapter;
- 3 (7) Recommend to the council any suspensions of
4 allocations of moneys from the special fund to
5 recipients found by the department to be substantially
6 out of compliance with council policies or procedures;
7 the department's policies, procedures, or rules; or to
8 have used the awards for a purpose other than an
9 approved purpose;
- 10 (8) Implement and publish on the council's or department's
11 website the policies and procedures for administration
12 of the council and for the application, awarding, and
13 disbursement of moneys from the special fund; and
- 14 (9) Create and maintain a website that shall include, at a
15 minimum:
- 16 (A) An annual report of the council's activities
17 pursuant to section -8;
- 18 (B) Council meeting attendance rolls and minutes,
19 including but not limited to records of all votes
20 on expenditures of moneys from the special fund,



1 recipient agreements, and any reports made by a
2 recipient pursuant to section -6; and

3 (C) All policies and procedures approved by the
4 council and any council-related policies,
5 procedures, or rules adopted by the department.

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

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

14 (1) The opening and closing balance of the special fund
15 for the calendar year;

16 (2) An accounting of all credits to and expenditures from
17 the special fund;

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



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



1 SECTION 3. There is appropriated out of the Hawaii opioid
2 litigation proceeds special fund the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2024-2025 for
4 the purposes of drug policy and coordination the establishment
5 of the following positions within the alcohol and drug abuse
6 division of health:

7 (1) Two full-time equivalent (2.0 FTE) program director
8 positions exempt from chapter 76, Hawaii Revised
9 Statutes;

10 (2) Two full-time equivalent (2.0 FTE) outreach
11 coordinator positions exempt from chapter 76, Hawaii
12 Revised Statutes; and

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

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

18 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Opioid Litigation Proceeds; Special Fund; Council;
Establishment; Appropriation

Description:

Establishes the Hawaii opioid litigation proceeds special fund. Establishes the Hawaii opioid litigation proceeds council to oversee the Hawaii opioid settlement advisory committee's expenditure of opioid litigation proceeds. Establishes standards for expenditure of opioid litigation proceeds received by the State. Establishes and appropriates funds from the Hawaii opioid litigation proceeds special fund for staff positions. Effective 7/1/3000. (HD2)

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

