

## **BILL ANALYSIS**

C.S.S.B. 1827  
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Appropriations  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Nearly all of the state attorneys general have filed lawsuit against opioid manufacturers and distributors in their respective state courts. In order to streamline the ongoing local litigation efforts, state attorneys general are reportedly working with the remaining defendants on a global settlement framework that is estimated to be worth roughly \$28 billion. Each state and municipality involved in the litigation will likely receive a share of the reported \$28 billion based on a formula that is not yet finalized. As a result of this ongoing litigation, the Texas attorney general's office created the Texas opioid abatement fund to collect and disburse money obtained through opioid litigation judgments and settlements. It has been suggested that the legislature should further these efforts and codify this fund as a general revenue account to ensure there is a dedicated source of funding for medications and treatment for opioid use disorder. C.S.S.B. 1827 seeks to do so.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas opioid abatement fund council in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 1827 amends the Government Code to require the attorney general and the comptroller of public accounts to maintain a copy of all settlement agreements and related documents entered into by the state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for the state and political subdivisions of Texas. The bill requires the attorney general and the comptroller to make a copy of each such statewide opioid settlement agreement available on their respective websites.

C.S.S.B. 1827 establishes the 14-member Texas opioid abatement fund council to ensure that money recovered by the state through a statewide opioid settlement agreement is allocated fairly and spent to remediate the opioid crisis in Texas by using efficient and cost-effective methods that are directed to regions of Texas experiencing opioid-related harms. The bill sets out the composition of the council and provides for the appointment of its members. The bill administratively attaches the council to the comptroller and requires the comptroller to provide the staff and facilities necessary to assist the council in performing its duties. The bill provides

for the operation of the council and subjects the council to state open meetings law and state public information law.

C.S.S.B. 1827 creates the opioid abatement account as a dedicated account in the general revenue fund administered by the comptroller. The account is composed of the following:

- money obtained from a statewide opioid settlement agreement and deposited in the account;
- money received by the state from any other source resulting directly or indirectly from an action by the state against an opioid manufacturer, an opioid distributor, or another person in the opioid industry relating to a violation of state or federal law on the manufacture, marketing, distribution, or sale of opioids, other than money distributed to a political subdivision in accordance with the terms of a settlement agreement or judgment;
- money appropriated or transferred to the account by the legislature;
- gifts and grants contributed to the account; and
- earnings on the principal of the account.

C.S.S.B. 1827 restricts the appropriation of money in the account to an applicable state agency for the abatement of opioid-related harms and restricts the actions an agency may take in abating those harms with money appropriated from the account to the following:

- preventing opioid use disorder through evidence-based education and prevention, such as school-based prevention, early intervention, or health care services or programs intended to reduce the risk of opioid use by school-age children;
- supporting efforts to prevent or reduce deaths from opioid overdoses or other opioid-related harms, including through increasing the availability or distribution of naloxone or other opioid antagonists for use by health care providers, first responders, persons experiencing an opioid overdose, families, schools, community-based service providers, social workers, or other members of the public;
- creating and providing training on the treatment of opioid addiction, including the treatment of opioid dependence with each medication approved for that purpose by the FDA, medical detoxification, relapse prevention, patient assessment, individual treatment planning, counseling, recovery supports, diversion control, and other best practices;
- providing opioid use disorder treatment for youths and adults, with an emphasis on programs that provide a continuum of care that includes screening and assessment for opioid use disorder and co-occurring behavioral health disorders, early intervention, contingency management, cognitive behavioral therapy, case management, relapse management, counseling services, and medication-assisted treatments;
- providing patients suffering from opioid dependence with access to all FDA-approved medications for the treatment of that dependence and relapse prevention following opioid detoxification, including opioid agonists, partial agonists, and antagonists;
- supporting efforts to reduce the abuse or misuse of addictive prescription medications, including tools used to give health care providers information needed to protect the public from the harm caused by improper use of those medications;
- supporting treatment alternatives that provide both psychosocial support and medication-assisted treatments in areas with geographical or transportation-related challenges, including providing access to mobile health services and telemedicine, particularly in rural areas;
- addressing the needs of persons involved with criminal justice and rural county unattended deaths; and
- furthering any other purpose related to opioid abatement authorized by appropriation.

The bill exempts the account from provisions governing the disposition of interest received from certain state investments.

C.S.S.B. 1827 establishes the opioid abatement trust fund as a trust fund established outside of the state treasury to be administered by the Texas Treasury Safekeeping Trust Company. The

trust fund consists of money obtained under a statewide opioid settlement agreement and deposited in the fund and interest, dividends, and other income of the fund. The trust company may authorize money from the trust fund to be invested with money from the state treasury.

C.S.S.B. 1827 requires the trust company to do the following:

- distribute to counties and municipalities to address opioid-related harms in those communities an amount equal to 15 percent of the total amount of money obtained under a statewide opioid settlement agreement and distributed to the trust fund and the account;
- allocate to the council an amount equal to 70 percent of the total amount of money obtained under a statewide opioid settlement agreement and distributed to the trust fund and the account; and
- distribute money allocated to the council at the council's direction.

The bill requires the council to provide to the trust company an annual forecast of money deposited and withdrawn from the trust fund and provide updates to the forecast as appropriate to ensure the trust company is able to achieve the council's directives. In investing money from the trust fund and subject to the council's direction, the trust company has the same investment authority with respect to the fund as the comptroller has with respect to the economic stabilization fund, otherwise known as the Rainy Day Fund.

C.S.S.B. 1827 requires 15 percent of money obtained under a statewide opioid settlement agreement to be deposited into the account and 85 percent deposited into the trust fund and requires that the money be further allocated in accordance with the applicable settlement agreement. For the purposes of a settlement agreement in relation to a bankruptcy plan for a released entity, money is distributed in accordance with the bankruptcy plan.

C.S.S.B. 1827 requires the council to allocate the money allocated to the council by the trust company as follows:

- one percent to the comptroller for administering the council and the bill's provisions;
- 15 percent to hospital districts; and
- the remaining money based on the opioid abatement strategy developed by the council.

The comptroller may spend money from the trust fund for those administrative purposes and, if the comptroller determines that the allocation for administrative purposes exceeds the amount that is reasonable and necessary, the comptroller may reallocate the excess money in accordance with the council's opioid abatement strategy.

C.S.S.B. 1827 requires the council to do the following:

- determine and approve one or more evidence-based opioid abatement strategies that include an annual regional allocation methodology to distribute 75 percent of money available for that purpose based on population health information and prevalence of opioid incidences as provided by law and an annual targeted allocation to distribute the remaining 25 percent of the money for targeted interventions as identified by opioid incidence information;
- wholly or partly reallocate the targeted money between regions if a region for which targeted money is allocated is unable to use all of the targeted money;
- develop an application and award process for funding;
- review grant funding applications and provide grant awards and funding allocations;
- monitor grant agreements and require each grant recipient to comply with the terms of the grant agreement or reimburse the grant to the council; and
- determine the percentage of money that may be used for development of education and outreach programs to provide materials on the consequences of opioid drug use and prevention and intervention.

The council may reallocate money between regions based on the funding needs of all regions if money allocated to a region lapses or is not used in the year that the money is allocated for use in the region. The bill establishes the vote threshold necessary to approve any decision or strategy.

C.S.S.B. 1827 requires the council to submit a written report to the legislature not later than October 1 of each year detailing all expenditures made by the council during the preceding state fiscal year. The bill authorizes the council to adopt rules to implement the bill's provisions.

Implementation of a provision of the bill by the comptroller is mandatory only if a specific appropriation is made for that purpose.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1827 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed required that the six regional members of the council either be from academia or be physicians, the substitute requires that they either be from academia or the medical profession with significant experience in opioid interventions. The substitute includes provisions not in the engrossed regarding the manner in which those regional members are to be appointed.

The substitute provides for money in the opioid abatement account to be appropriated to various state agencies, whereas in the engrossed the money was only to be appropriated to the comptroller. With respect to the account, the substitute also does the following:

- includes addressing the needs of persons involved with criminal justice and addressing rural county unattended deaths among the authorized uses of money appropriated from the account as set out in the engrossed; and
- includes a provision not in the engrossed exempting the account from provisions governing the disposition of interest on certain investments held by the comptroller.

With respect to the opioid abatement trust fund, the substitute revises the provisions of the engrossed as follows:

- includes an authorization for the trust company to authorize money from the trust fund to be invested with money from the state treasury;
- limits the political subdivisions to which the trust company may distribute money to counties and municipalities;
- includes a requirement for the trust company to distribute money allocated to the council at the council's direction;
- includes a requirement for the council to provide to the trust company an annual forecast of money deposited and withdrawn from the trust fund and provide updates to the forecast as appropriate to ensure the trust company is able to achieve the council's directives; and
- includes a provision granting the trust company the same investment authority with respect to investing money in the trust fund as the comptroller has with respect to the economic stabilization fund, subject to the council's direction.

Whereas the engrossed limited the administrative purposes for which one percent of the money allocated to the council is to be used by the comptroller to administering the council, the substitute also includes the administration of the bill's provisions. The substitute includes provisions not in the engrossed that do the following:

- authorize the comptroller to spend money from the trust fund for those administrative purposes; and
- provide for the reallocation of excess money if the amount allocated for administrative expenses exceeds the amount reasonable and necessary.

While the engrossed and the substitute both require the council to determine and approve one or more evidence-based opioid abatement strategies, the substitute includes requirements for the content of the strategies whereas the engrossed did not. The substitute includes the following among the council's powers and duties aside from determining and approving one or more such strategies:

- wholly or partly reallocating the targeted money between regions if a region for which targeted money is allocated is unable to use all of the targeted money;
- developing an application and award process for funding;
- reviewing grant funding applications and providing grant awards and funding allocations;
- monitoring grant agreements and requiring each grant recipient to comply with the terms of the grant agreement or reimburse the grant to the council; and
- determining the percentage of money that may be used for development of education and outreach programs to provide materials on the consequences of opioid drug use and prevention and intervention.

The substitute includes a provision not in the engrossed authorizing the council to adopt rules to implement the bill's provisions.

The substitute omits provisions of the engrossed regarding the release of certain claims in a statewide opioid settlement by a governmental entity.

The substitute expands the definition of "statewide opioid settlement agreement" from the engrossed to include certain agreements and related documents entered into by political subdivisions.