FISCAL IMPACT REPORT

		LAST UPDATED	3/9/2023
SPONSOR	HHHC	**ORIGINAL DATE**	3/6/2023
SHORT TITLE	Public Peace, Health, Safety & Welfare	**BILL NUMBER**	CS/House Bill 527/ec/HHHCS/aHAFC
		ANALYST	Gray/I. Torres

REVENUE*
(dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**		
	Between $5,000.0 and $11,000.0	Between $5,000.0 and $11,010.0	Recurring	Opioid Settlement Restricted Fund
	Between $5,000.0 and $10,000.0	Between $5,000.0 and $10,270.0	Recurring	Opioid Crisis Recovery Fund

Parentheses ( ) indicate revenue decreases.
* The FY24 appropriation range depends on pending settlements. See *Fiscal Implications*.

Relates to House Bill 29, Senate Bill 377
Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From
State Investment Council (SIC)
State Treasurer's Office (STO)
New Mexico Attorney General (NMAG)
New Mexico Corrections Department (NMCD)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HAFC Amendment to House Bill 527

The House Appropriations and Finance Committee (HAFC) amendment for House Bill 527 removes the appropriation because it duplicates an appropriations made in the HAFC substitute for House Bills 2 and 3 (General Appropriations Act).

Synopsis of HHHC Substitute for House Bill 527

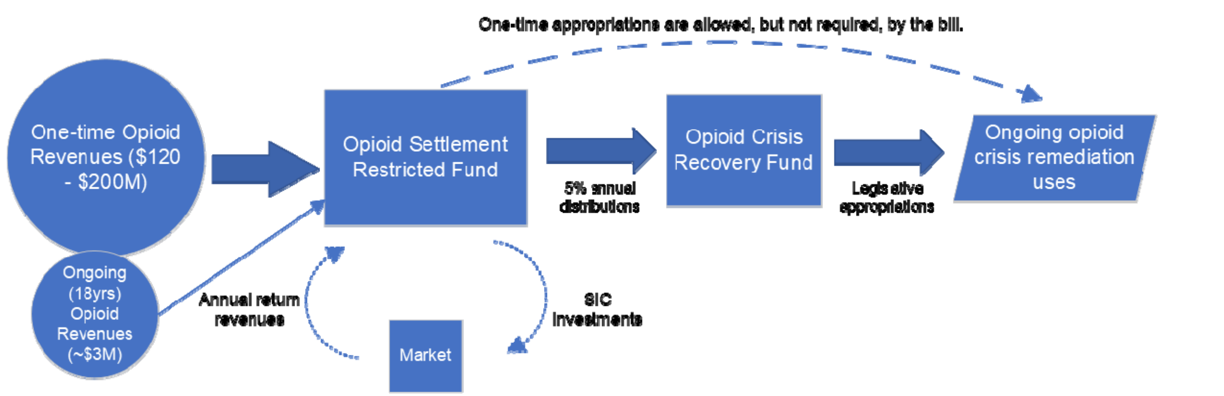
The House Health and Human Services Committee Substitute for House Bill 527 creates two funds:

- The opioid settlement restricted fund, which will house all opioid settlement revenues and receive future earnings on those revenues; and
- The opioid crisis recovery fund, which will receive distributions from the "opioid settlement restricted fund" and from which the Legislature will appropriate for remediation uses in subsequent years.

The bill provides a $20 million appropriation from the restricted fund to the recovery fund in FY23.

Under the bill, the two funds operate in tandem. The restricted fund is managed by the State Investment Council (SIC) and makes 5 percent annual distributions to the "opioid crisis recovery fund" in perpetuity. This allows a nonrecurring revenue source to provide for recurring uses.

HB527's Process for Using One-time Opioid Settlment Revenues for Recurring Uses



The opioid crisis recovery fund provides a list of allowable uses compatible with those identified in the settlement agreement. The bill specifies all appropriations made from the fund will be for opioid remediation expenditures and no other purpose. The bill also requires appropriations be prioritized for evidence-based uses.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The appropriation of $20 million contained in this bill is a nonrecurring expense to the opioid settlement restricted fund. Any unexpended or unencumbered balances shall not revert.

Each year, the bill makes 5 percent distributions from the restricted fund to the recovery fund which the Legislature can appropriate for opioid and behavioral health treatment allowable under the settlement agreement. Estimating the annual distribution is challenging two reasons. First, uncertain market conditions make estimates necessarily uncertain. Second, the state does not have final estimates for total opioid settlement revenues.

Below is a summary of current opioid settlement revenues received by the state, according to press releases made by the Office of the Attorney General (NMAG) in 2022. Of all settlement money, 45 percent are available to the state while 55 percent are available to local governments.

Estimated Opioid Settlement Revenues per NMAG Press Releases

Settling entity (PR date)	Total estimated revenue	State share
Kroger (12/1/2022)	$60 million	$27 million
Walmart, CVS, Albertsons (12/20/2022)	$132 million	$59 million
J&J, AmerisourceBergen, Cardinal, and McKesson (3/7/2022) *Note: this settlement will be paid out over a period of time*	$195.5 million	$88 million
Pending (12/20/2022)*	Unknown	Unknown
Total	**$387.5 million**	**$174 million**

*As of this analysis, some settlements are still pending, and pending settlements may add significant revenue to total opioid revenues.

Projected Revenue and Distributions. This analysis compares other state's revenues from settlements with pending settling entities to make an estimate for how much New Mexico will receive for that settlement. See *Methods* below.

Analysis from the State Investment Council (SIC) notes the risk/return investment profile for the restricted fund is more aggressive than the tax stabilization reserve and is likely closer to the early childhood education and care fund (5.7 percent), and more conservative than the Land Grant (7 percent) and Severance Tax (6.75 percent) permanent funds.

SIC projects a long-term rate of return of 5 percent, and notes the allocation could be adjusted. This analysis uses a 5 percent rate of return as the floor and 5.7 percent return as the ceiling for projections. The analysis also accounts for annual fluctuations on returns by incorporating a measure of risk–standard deviation–into the calculation. See *Methods* below.

Estimated Earnings and Baseline Distributions *
(in thousands)

Fiscal Year	Earnings*	Baseline distributions
FY25	$10,305 - $11,010	$10,238 - $10,270
FY26	$10,470 - $11,225	$10,320 - $10,370
…	…	…
FY36	$12,200 - $13,490	$11,950 - $12,364
…	…	…
FY46	$13,275 - $15,138	$13,182 - $14,061

*See *Methods* for assumptions used to calculate the earnings and distributions.

Methods. This analysis uses a range of long-term return targets to provide full context of anticipated earnings and distributions. Long-term estimates include risk and uncertainty. To account for this, standard deviations were included in the calculation to measure risk and a Monte Carlo simulation was used to capture uncertainty.[1]

By comparing New Mexico's settlements with other states' outcomes, the state will receive an estimated $80 million to $110 million from pending litigation. Because litigation is pending, no input was received from the NMAG on potential settlement revenues.

The fiscal impact tables on page one provide a range from a low-end SIC estimate–which does not consider future revenues–to a high-end estimate incorporating additional revenue.

[1]Monte Carlo simulations help describe risk and uncertainty in forecasts. An average rate of return of between 5 percent and 5.7 percent and a standard deviation of 0.072 was used. The average rate of return was utilized in alignment with SIC estimates. The standard deviation was used based on the calculated standard deviation of the tobacco settlement fund in the last three fiscal years.

SIGNIFICANT ISSUES

NMAG analysis noted several technical issues that can be resolved through language changes. See *Technical Issues.*

HB527 follows the practice of many states in creating a separate fund for opioid revenue expenditures. This prevents the comingling of revenues and ensures that all future appropriations are made for remediation of the opioid crisis. See below for a comparison of HB527 to other similar states.

Comparison of State Practices Related to Opioid Revenues

State*	Revenues held in distinct state fund	Fund has restricted uses	Has opioid revenues task force	Opioid revenues are invested
New Mexico (current)	✗	✗	✗	✗
New Mexico (proposed under HB527)	✓	✓	✗	✓
Kansas	✓	✓	✓	✗
Arkansas	✓	✗	✓	✗
Nevada	✓	✓	✓	✗
Nebraska	✓	✓	✗	✓
Idaho	✓	✗	✗	✗
New Hampshire	✓	✓	✓	✗

*States were selected based on population. Comparison criteria were based on common practices nationwide.

Possible Benefits. The Administrative Office of the Courts (AOC) notes that HB527 "would likely improve access to services for justice-involved individuals with substance use and co-occurring mental health disorders," and that this would have positive outcomes statewide. Analysis from the New Mexico Corrections Department (NMCD) noted similar benefits from the funds.

Implementation Concerns. SIC and the Office of the State Treasurer (STO) noted implementation of HB527's funds would be administratively manageable. However, SIC analysis notes it may be administratively simpler to appropriate the funds directly from their current location in the consumer settlement fund to the opioid crisis recovery fund to avoid possible timing concerns.

TECHNICAL ISSUES

NMAG analysis notes that HB527 defines "New Mexico opioid allocation agreement" and uses the date the agreement was entered into (March 7, 2022). NMAG analysis notes that, because of on-going litigation, it would be more accurate to make the language more inclusive. NMAG analysis suggests referencing opioid funds allocated out of the opioid abatement lawsuit in case number D-101-2017-02541 in Section 1(H)(3) on page 3, lines 22-25.

NMAG analysis also recommends that the legislation make a specific reference to the New Mexico opioid allocation agreement in Section 2(B) on page 4, lines 21-23.

Lastly, NMAG analysis notes that HB527 may be improved with the addition of language that codifies the audit requirements as outlined in the New Mexico opioid allocation agreement.
SIC analysis notes:

On page 2, starting at line 15, item E indicates: “On July 1, 2024, a distribution shall be made from the opioid settlement restricted fund to the opioid crisis recovery fund in an amount equal to five percent of the year-end market value of the opioid settlement restricted fund for the immediately preceding fiscal year.”

Though subsequent years will use calendar-year values to determine the amount of fiscal year distributions from the opioid settlement restricted fund to the recovery fund for the following fiscal year, the distribution for FY25 calls for a distribution on the first day of the fiscal year, July 1, based on the value of the opioid settlement restricted fund for the “…year-end market value…for the immediately preceding fiscal year.”

This is problematic because the restricted fund’s valuation will not yet be known, as the fiscal year ended just the day before, and a 5% calculation cannot yet be made. The SIC manages billions of dollars from several funds across a comingled, unitized investment structure. Investments from all of these funds are only separated into each individual fund’s specific dollar values on a monthly basis, a process that typically takes three, but no less than two weeks.

For this reason, we recommend an amendment changing the language on page 2, line 15 to:
“E. On July 1, 2024, **or as soon as practicable thereafter,** a distribution shall be made…”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB29 and SB377 which appropriate $1,300,000 from the “opioid settlement portion of the consumer settlement fund of the office of the attorney general” to the Local Government Division of DFA in order to fund integrated substance use disorder programs in San Miguel County.

Relates to HB2 which contains a $20 million appropriation of opioid settlement revenues.

OTHER SUBSTANTIVE ISSUES

New Mexico’s share of the national opioid settlement revenues is split between state and local governments in part to recognize the widespread harm the opioid crisis had on communities. It is essential the state work with local stakeholders to get the best value out of appropriations. Many states have created regional frameworks to ensure collaboration between local governments and the state.

The table below estimates how much each local government will receive. Note that this includes all revenues, including those paid out over time, and includes pending litigation.

Total Opioid Settlement Revenues to Local Governments*
(in thousands)

Region	Percent of Total	Estimated Revenue	Region	Percent of Total	Estimated Revenue
Albuquerque City	22.8%	$64,849	Curry County	1.4%	$4,006
Bernalillo County	18.6%	$53,058	Lincoln County	1.2%	$3,479
Dona Ana County	7.1%	$20,181	Sierra County	1.0%	$2,938
Rio Arriba County	4.6%	$13,105	Luna County	0.8%	$2,387
Sandoval County	4.6%	$12,988	Cibola County	0.77%	$2,201
Santa Fe City	4.5%	$12,942	Colfax County	0.74%	$2,123
Valencia County	3.8%	$10,911	Socorro County	0.73%	$2,098
San Juan County	3.8%	$10,883	Torrance County	0.71%	$2,015
Santa Fe County	3.5%	$10,016	Los Alamos County	0.59%	$1,686
Eddy County	2.6%	$7,404	Roosevelt County	0.54%	$1,538
Otero County	2.6%	$7,338	Quay County	0.47%	$1,349
Chaves County	2.5%	$7,227	Hidalgo County	0.20%	$560
Lea County	2.0%	$5,814	Mora County	0.19%	$543
Grant County	1.8%	$5,146	Guadalupe County	0.18%	$533
McKinley County	1.8%	$5,112	Catron County	0.112%	$322
Taos County	1.7%	$4,967	Union County	0.11%	$316
San Miguel County	1.7%	$4,748	De Baca County	0.07%	$185
			Harding County	0.01%	$29

*This estimate is based on settlements announced by the NMAG and estimates for pending settlements. The local government’s share of the revenue is determined by the New Mexico Opioid Allocation Agreement.

BG/ IT/al/ne