

# 2021 SPECIAL SESSION I

## SENATE SUBSTITUTE

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### HOUSE BILL NO. 2322

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology  
on February 17, 2021)

(Patron Prior to Substitute—Delegate Herring)

A *BILL to amend and reenact § 2.2-212 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-507.3, by adding in Chapter 22 of Title 2.2 an article numbered 12, consisting of sections numbered 2.2-2365 through 2.2-2376, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.40, relating to establishing an Opioid Abatement Authority.*

**Be it enacted by the General Assembly of Virginia:**

1. That § 2.2-212 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-507.3, by adding in Chapter 22 of Title 2.2 an article numbered 12, consisting of sections numbered 2.2-2365 through 2.2-2376, and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.40 as follows:

**§ 2.2-212. Position established; agencies for which responsible; additional powers.**

A. The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions, Department of Behavioral Health and Developmental Services, Department for Aging and Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, Virginia Department for the Deaf and Hard-of-Hearing, the Office of Children's Services, and the Assistive Technology Loan Fund Authority, *and the Opioid Abatement Authority*. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.

B. As requested by the Secretary and to the extent authorized by federal law, the agencies of the Secretariat shall share data, records, and information about applicants for and recipients of services from the agencies of the Secretariat, including individually identifiable health information for the purposes of (i) streamlining administrative processes and reducing administrative burdens on the agencies, (ii) reducing paperwork and administrative burdens on the applicants and recipients, and (iii) improving access to and quality of services provided by the agencies.

C. Unless the Governor expressly reserves such power to himself, the Secretary shall (i) serve as the lead Secretary for the coordination and implementation of the long-term care policies of the Commonwealth and for the blueprint for livable communities 2025 throughout the Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education, and the Commissioner of Insurance, to facilitate interagency service development and implementation, communication, and cooperation; (ii) serve as the lead Secretary for the Children's Services Act, working with the Secretary of Education and the Secretary of Public Safety and Homeland Security to facilitate interagency service development and implementation, communication, and cooperation; and (iii) coordinate the disease prevention activities of agencies in the Secretariat to ensure efficient, effective delivery of health related services and financing.

**§ 2.2-507.3. Cooperation with the Opioid Abatement Authority.**

A. As deemed necessary to comply with or effectuate the terms of a settlement, judgment, verdict, or other court order relating to claims regarding the manufacturing, marketing, distribution, or sale of opioids and in accordance with an agreement between the Attorney General and participating localities, as defined in § 2.2-2365, the Attorney General shall designate funds from such settlements, judgments, verdicts, or other court orders for deposit in the Opioid Abatement Fund (the Fund) established pursuant to § 2.2-2374. The Attorney General shall cooperate with and assist the Opioid Abatement Authority in its administration of the Fund.

B. If the terms of a settlement, judgment, verdict, or other court order, or any agreement related thereto between the Attorney General and participating localities, include a local apportionment formula dividing any part of a settlement, judgment, or verdict among participating localities, or if the terms of a settlement, judgment, verdict, or other court order, or any agreement related thereto between the Attorney General and participating localities, as defined in § 2.2-2365, authorize participating localities to agree upon a local apportionment formula dividing any part of a settlement, judgment, or verdict, any such locality may submit the agreed-upon local apportionment formula to the Attorney General.

Article 12.

Opioid Abatement Authority.

**§ 2.2-2365. Definitions.**

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As used in this article, unless the context requires a different meaning:

"Authority" means the Opioid Abatement Authority.

"Board" means the board of directors of the Authority.

"Community services board region" means a region as determined by the Department of Behavioral Health and Developmental Services for purposes of administering Chapter 5 (§ 37.2-500 et seq.) of Title 37.2.

"Fund" means the Opioid Abatement Fund.

"Historically economically disadvantaged community" means the same as such term is defined in § 56-576.

"Local apportionment formula" means any formula submitted to the Attorney General by participating localities pursuant to the provisions of subsection B of § 2.2-507.3.

"Participating locality" means any county or independent city that agrees to be bound by the terms of a settlement agreement entered into by the Attorney General relating to claims regarding the manufacturing, marketing, distribution, or sale of opioids, and that releases its own such claims.

"Regional effort" means any effort involving a partnership of at least two participating localities within a community services board region.

**§ 2.2-2366. Opioid Abatement Authority established.**

The Opioid Abatement Authority is established as an independent body. The purpose of the Authority is to abate and remediate the opioid epidemic in the Commonwealth through financial support from the Fund, in the form of grants, donations, or other assistance, for efforts to treat, prevent, and reduce opioid use disorder and the misuse of opioids in the Commonwealth. The Authority's exercise of powers conferred by this article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

**§ 2.2-2367. Board of directors; members.**

A. The Authority shall be governed by a board of directors consisting of 11 members as follows: (i) the Secretary of Health and Human Resources or his designee; (ii) the Chair of the Senate Committee on Finance and Appropriations or his designee and the Chair of the House Committee on Appropriations or his designee; (iii) an elected member of the governing body of a participating locality, to be selected from a list of three submitted jointly by the Virginia Association of Counties and the Virginia Municipal League; (iv) one representative of a community services board or behavioral health authority serving an urban or suburban region containing participating localities and one representative of a community services board or behavioral health authority serving a rural region containing participating localities, each to be selected from lists of three submitted by the Virginia Association of Community Services Boards; (v) one sheriff of a participating locality, to be selected from a list of three submitted by the Virginia Sheriffs' Association; (vi) one licensed, practicing county or city attorney of a participating locality, to be selected from a list of three submitted by the Local Government Attorneys of Virginia; (vii) two medical professionals with expertise in public and behavioral health administration or opioid use disorders and their treatment; and (viii) one representative of the addiction and recovery community.

The member appointed pursuant to clause (i) shall serve ex officio, and the members appointed pursuant to clauses (iii) through (viii) shall be appointed by the Governor. If the term of the office to which a member appointed pursuant to clause (iii) or (v) was elected expires prior to the expiration of his term as a member of the board, the Governor may authorize such member to complete the remainder of his term as a member or may appoint a new member who satisfies the criteria of clause (iii) or (v), as applicable, to complete the remainder of the term. The members identified in clause (ii) shall serve without voting privileges.

B. 1. After an initial staggering of terms, members of the Board shall serve terms of four years. No member shall be eligible to serve more than two terms. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy may be appointed to serve two additional terms.

2. Ex officio members shall serve terms coincident with their terms of office.

C. The Board shall elect annually a chairman and vice-chairman from among its membership. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Board.

D. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business.

E. The Board shall meet annually or more frequently at the call of the chairman.

**§ 2.2-2368. Duties of the Authority.**

The Authority shall:

1. Establish specific criteria and procedures for awards from the Fund;

2. Establish requirements for the submission of funding requests;

3. Evaluate funding requests in accordance with the criteria established by the Authority and the provisions of this article;

122 4. Make awards from the Fund in a manner that distributes funds equitably among all community  
 123 services board regions of the Commonwealth, including the establishment of mandatory minimum  
 124 percentages of funds to be awarded from the Commonwealth to each participating locality;

125 5. Evaluate the implementation and results of all efforts receiving support from the Authority; and

126 6. Administer the Fund in accordance with the provisions of this article.

127 **§ 2.2-2369. Powers of the Authority.**

128 In order to carry out its purposes, the Authority may:

129 1. Make grants and disbursements from the Fund that support efforts to treat, prevent, and reduce  
 130 opioid use disorder and the misuse of opioids or otherwise abate or remediate the opioid epidemic;

131 2. Pay expenditures from the Fund that are necessary to carry out the purposes of this article;

132 3. Contract for the services of consultants to assist in the evaluation of the efforts funded by the  
 133 Authority;

134 4. Contract for other professional services to assist the Authority in the performance of its duties and  
 135 responsibilities;

136 5. Accept, hold, administer, and solicit gifts, grants, bequests, contributions, or other assistance from  
 137 federal agencies, the Commonwealth, or any other public or private source to carry out the purposes of  
 138 this article;

139 6. Enter into any agreement or contract relating to the acceptance or use of any grant, assistance,  
 140 or support provided by or to the Authority or otherwise in furtherance of the purposes of this article;

141 7. Perform any lawful acts necessary or appropriate to carry out the purposes of the Authority; and

142 8. Employ such staff as is necessary to perform the Authority's duties. The Authority may determine  
 143 the duties of such staff and fix the salaries and compensation of such staff, which shall be paid from the  
 144 Fund. Staff of the Authority shall be treated as state employees for purposes of participation in the  
 145 Virginia Retirement System, health insurance, and all other employee benefits offered by the  
 146 Commonwealth to its classified employees. Staff of the Authority shall not be subject to the provisions of  
 147 Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

148 **§ 2.2-2370. Conditions and restrictions on financial assistance.**

149 A. The Authority shall provide financial support only for efforts that satisfy the following conditions:

150 1. The efforts shall be designed to treat, prevent, or reduce opioid use disorder or the misuse of  
 151 opioids or otherwise abate or remediate the opioid epidemic, which may include efforts to:

152 a. Support treatment of opioid use disorder and any co-occurring substance use disorder or mental  
 153 health conditions through evidence-based or evidence-informed methods, programs, or strategies;

154 b. Support people in recovery from opioid use disorder and any co-occurring substance use disorder  
 155 or mental health conditions through evidence-based or evidence-informed methods, programs, or  
 156 strategies;

157 c. Provide connections to care for people who have, or are at risk of developing, opioid use disorder  
 158 and any co-occurring substance use disorder or mental health conditions through evidence-based or  
 159 evidence-informed methods, programs, or strategies;

160 d. Support efforts, including law-enforcement programs, to address the needs of persons with opioid  
 161 use disorder and any co-occurring substance use disorder or mental health conditions who are involved  
 162 in, or are at risk of becoming involved in, the criminal justice system through evidence-based or  
 163 evidence-informed methods, programs, or strategies;

164 e. Support drug treatment and recovery courts that provide evidence-based or evidence-informed  
 165 options for people with opioid use disorder and any co-occurring substance use disorder or mental  
 166 health conditions;

167 f. Support efforts to address the needs of pregnant or parenting women with opioid use disorder and  
 168 any co-occurring substance use disorder or mental health conditions and the needs of their families,  
 169 including infants with neonatal abstinence syndrome, through evidence-based or evidence-informed  
 170 methods, programs, or strategies;

171 g. Support efforts to prevent overprescribing and ensure appropriate prescribing and dispensing of  
 172 opioids through evidence-based or evidence-informed methods, programs, or strategies;

173 h. Support efforts to discourage or prevent misuse of opioids through evidence-based or  
 174 evidence-informed methods, programs, or strategies;

175 i. Support efforts to prevent or reduce overdose deaths or other opioid-related harms through  
 176 evidence-based or evidence-informed methods, programs, or strategies; and

177 j. Support efforts to provide comprehensive resources for patients seeking opioid detoxification,  
 178 including detoxification services;

179 2. The efforts shall be conducted or managed by any agency of the Commonwealth or participating  
 180 locality;

181 3. No support provided by the Authority shall be used by the recipient to supplant funding for an  
 182 existing program or continue funding an existing program at its current amount of funding;

183 4. No support provided by the Authority shall be used by the recipient for indirect costs incurred in  
184 the administration of the financial support or for any other purpose proscribed by the Authority; and

185 5. Recipients of support provided by the Authority shall agree to provide the Authority with such  
186 information regarding the implementation of the effort and allow such monitoring and review of the  
187 effort as may be required by the Authority to ensure compliance with the terms under which the support  
188 is provided.

189 B. The Authority shall give priority to applications for financial support for efforts that:

190 1. Collaborate with an existing program or organization that has an established record of success  
191 treating, preventing, or reducing opioid use disorder or the misuse of opioids;

192 2. Treat, prevent, or reduce opioid use disorder or the misuse of opioids in a community with a high  
193 incidence of opioid use disorder or opioid death rate, relative to population;

194 3. Treat, prevent, or reduce opioid use disorder or the misuse of opioids in a historically  
195 economically disadvantaged community; or

196 4. Include a monetary match from or on behalf of the applicant, with higher priority given to an  
197 effort with a larger matching amount.

198 **§ 2.2-2371. Cooperation with other agencies.**

199 All agencies of the Commonwealth shall cooperate with the Authority and, upon request, assist the  
200 Authority in the performance of its duties and responsibilities.

201 **§ 2.2-2372. Form and audit of accounts and records.**

202 A. The accounts and records of the Authority showing the receipt and disbursement of funds from  
203 whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

204 B. The accounts and records of the Authority are subject to an annual audit by the Auditor of Public  
205 Accounts or his legal representative.

206 **§ 2.2-2373. Annual report.**

207 The Authority shall submit to the Governor and the General Assembly an annual executive summary  
208 of the interim activity and work of the Authority no later than the first day of each regular session of  
209 the General Assembly. The executive summary shall be submitted as a report document as provided in  
210 the procedures of the Division of Legislative Automated Systems for the processing of legislative  
211 documents and reports and shall be posted on the General Assembly's website. The executive summary  
212 shall include information regarding efforts supported by the Authority and expenditures from the Fund.

213 **§ 2.2-2374. Opioid Abatement Fund.**

214 A. There is hereby created in the state treasury a special, nonreverting fund to be known as the  
215 Opioid Abatement Fund, referred to in this section as "the Fund," to be administered by the Authority.  
216 All funds appropriated to the Fund, all funds designated by the Attorney General under § 2.2-507.3 from  
217 settlements, judgments, verdicts, and other court orders relating to claims regarding the manufacturing,  
218 marketing, distribution, or sale of opioids, and any gifts, donations, grants, bequests, and other funds  
219 received on the Fund's behalf shall be paid into the state treasury and credited to the Fund. Interest  
220 earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in  
221 the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund  
222 but shall remain in the Fund. Expenditures and disbursements from the Fund, which may consist of  
223 grants or loans, shall be authorized by majority vote of the Board.

224 B. Moneys in the Fund shall be used to provide grants and loans to any agency of the  
225 Commonwealth or participating locality for the purposes determined by the Authority in accordance  
226 with this article and in consultation with the Office of the Attorney General. The Authority shall develop  
227 guidelines, procedures, and criteria for the application for and award of grants or loans in consultation  
228 with the Office of the Attorney General. Such guidelines, procedures, and criteria shall comply with the  
229 terms of any applicable settlement, judgment, verdict, or other court order, or any agreement related  
230 thereto between the Attorney General and participating localities.

231 C. The Authority shall fund all staffing and administrative costs from the Fund. Its expenditures for  
232 staffing and administration shall be limited to those that are reasonable for carrying out the purposes of  
233 this article.

234 D. For every deposit to the Fund, the Authority shall allocate a portion to the following purposes:

235 1. Fifteen percent shall be restricted for use by state agencies;

236 2. Fifteen percent shall be restricted for use by participating localities, provided that if the terms of  
237 a settlement, judgment, verdict, or other court order, or any agreement related thereto between the  
238 Attorney General and participating localities, require this portion to be distributed according to a local  
239 apportionment formula, this portion shall be distributed in accordance with such formula;

240 3. Thirty-five percent shall be restricted for use for regional efforts; and

241 4. Thirty-five percent shall be unrestricted. Unrestricted funds may be used to fund the Authority's  
242 staffing and administrative costs and may be distributed for use by state agencies, by participating  
243 localities, or for regional efforts in addition to the amounts set forth in subdivisions 1, 2, and 3,  
244 provided that the Authority shall ensure that such funds are used to accomplish the purposes of this

article or invested under subsection F.

E. In distributing money from the Fund under subsection D, the Authority shall balance immediate and anticipated needs with projected receipts of funds to best accomplish the purposes for which the Authority is established.

F. The Board may designate any amount from the Fund to be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.40. The State Treasurer is not liable for losses suffered by the Virginia Retirement System on investments made under the authority of this section.

**§ 2.2-2375. Exemption from taxes or assessments.**

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Authority and the undertaking of activities in furtherance of the purpose of the Authority constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, including sales and use taxes on tangible personal property used in the operations of the Authority, and shall at all times be free from state and local taxation. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

**§ 2.2-2376. Exemption of Authority from personnel and procurement procedures.**

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power conferred under this article.

**§ 51.1-124.40. Investment of assets of the Opioid Abatement Fund.**

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage any assets of the Opioid Abatement Fund (the Fund) designated by the Opioid Abatement Authority for investment, reinvestment, or management by the Board. The Board shall maintain a separate accounting for the assets of the Fund. The Opioid Abatement Authority shall request a distribution of funds from the Board no more frequently than annually, and the Opioid Abatement Authority shall designate funds for investment by the Board no more frequently than annually.

B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

C. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in subsection B shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this section.

D. The provisions of §§ 51.1-124.32 through 51.1-124.35 shall apply to the Board's activities with respect to funds in the Fund.

E. The Board may assess the Opioid Abatement Authority a reasonable administrative fee for its services.

2. That the initial appointments of nonlegislative citizen members to the board of directors of the Opioid Abatement Authority shall be staggered as follows: (i) two nonlegislative citizen members appointed by the Governor shall be appointed for a term of one year, (ii) two nonlegislative citizen members appointed by the Governor shall be appointed for a term of two years, (iii) two nonlegislative citizen members appointed by the Governor shall be appointed for a term of three years, and (iv) two nonlegislative citizen members appointed by the Governor shall be appointed for a term of four years. For purposes of this enactment, "nonlegislative citizen member" means any member identified in clauses (iii) through (viii) of § 2.2-2367 of the Code of Virginia, as created by this act. Any nonlegislative citizen member appointed to an initial term of less than four years shall be eligible to serve two additional full four-year terms.