The House Committee on Judiciary offers the following substitute to HB 1321:

A BILL TO BE ENTITLED

AN ACT

To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce, so as to provide for legislative findings and intent; to provide for definitions; to provide for a litigation bar on governmental entities regarding certain state-wide opioid litigation; to create the Georgia Opioid Crisis Abatement Trust and establish the Opioid Recovery and Remediation Fund Advisory Council; to provide for a trustee; to provide for appropriations; to provide for the allocations of settlement funds; to provide for reporting; to provide for applicability; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 10 of the Official Code of Georgia Annotated, relating to commerce, is amended by adding a new chapter to read as follows:

"CHAPTER 13B

ARTICLE 1

10-13B-1.

The General Assembly finds that:

(1) There is an opioid epidemic occurring in the United States, and the State of Georgia has been greatly impacted;

(2) State-wide coordination surrounding and managing opioid addiction and related disorders is critical to the health and safety of all Georgians;

(3) Funding is needed in the state for the prevention and treatment of opioid addiction and related disorders; providing resources to law enforcement agencies to address the opioid crisis; increasing the number of professionals who provide treatment for opioid addiction; educating medical professionals regarding the safe and effective prescribing of, and then tapering off of, opioids; and prevention and treatment of opioid use disorder in incarcerated populations;

(4) It is imperative that the state receive the full amount of any opioid settlement, and to do so, the state must be able to release claims for all state and local public bodies and instrumentalities in the state; and

(5) While local governments generally have the authority to pursue and litigate claims against businesses and individuals to protect their own interests, in certain limited circumstances involving particular industries, the interests of the state as a whole are best served by having a unified settlement structure that benefits both the state and its local governments and brings full and complete closure to the claims that were asserted or could have been asserted and maximizes the state and local governments' potential recovery to address this extraordinary crisis.

10-13B-2.

(a) As used in this chapter, the term:

(1) 'Governmental entity' means:

(A) This state and each of its departments, agencies, divisions, boards, commissions, authorities, and instrumentalities; and

(B) A political subdivision or creation of this state, including a county, municipality, special district, county and independent school systems, community service board, authority, any county or state officeholder, and any other public officeholder or public entity that has asserted or could assert a claim for damages as a result of the manufacture, marketing, sale, dispensing, or distribution of opioids.

(2) 'Released claim' means a claim by a governmental entity that has been or could have been released under a state-wide opioid settlement agreement.

(3) 'Released entity' means an entity against which a claim has been released under a state-wide opioid settlement agreement.

(4) 'State-wide opioid settlement agreement' means any settlement agreement and related documents that:

(A) Are entered into by this state through the Attorney General with opioid manufacturers, distributors, retailers, labelers, marketers, pharmacies, or other entities concerning the use or prescription of opioid products;

(B) Relate to illegal or tortious conduct in the manufacturing, marketing, promotion, sale, distribution, or dispensing of opioids;

(C) Are entered into by the state on or after March 31, 2021;

(D) Provide a mechanism which permits governmental entities to join into such settlement agreement; and

(E) Are the subject of a memorandum of understanding or similar agreement entered into by both the Attorney General and at least 65 percent of the governmental entities which have active and pending litigation against one or more released entities identified in the settlement agreement as of the date when governmental entities are first permitted to join such settlement agreement.

10-13B-3.

(a) Entry into a state-wide opioid settlement agreement shall serve to bar any and all past, present, or future claims on behalf of any governmental entity seeking to recover against any business or person that is a released entity under the terms of the relevant settlement. Such bar shall apply to any and all released claims or suits by any governmental entity created by or pursuant to an Act of the General Assembly, the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive or any other relief. No such claim barred by this Code section shall be brought, threatened, asserted, or pursued in any way in any court, and any such claim shall be dismissed by the court in which the claim is brought.

(b) The bar provided for in subsection (a) of this Code section shall not apply to a bellwether claim of any governmental entity, provided that such claim:

(1) Is brought in the proceedings titled In *re: National Prescription Opiate Litigation*, Case No.: MDL 2804 as bellwether claims that are to be tried in a bellwether trial;

(2) Is selected by the court in In *re: National Prescription Opiate Litigation*, Case No.: MDL 2804 as a bellwether claim to be tried in a bellwether trial; and

(3) Is brought against defendants selected as bellwether defendants in a bellwether trial.

(c) The bar provided for in subsection (a) of this Code section shall become active and effective upon the filing of a consent order by the state that attests to and evidences that a state-wide opioid settlement agreement has been reached, and that the parameters of this chapter have been met.

ARTICLE 2

10-13B-10.

As used in this article, the term 'approved purposes' means those uses identified in any state-wide opioid settlement agreement.

10-13B-11.

(a)(1) There is created a segregated trust fund within the state treasury to be known as the Georgia Opioid Crisis Abatement Trust, which shall serve as a qualified settlement fund within the meaning of 26 C.F.R. Section 1.468B-1.

(2) The commissioner of the Department of Behavioral Health and Developmental Disabilities shall serve as the trustee of the Georgia Opioid Crisis Abatement Trust.

(b)(1) The Office of the State Treasurer shall deposit into the Georgia Opioid Crisis Abatement Trust any moneys allocated to or otherwise received by this state:

(A) As a result of any state-wide opioid settlement agreement or any other settlement agreement entered into with, or litigation undertaken against, opioid manufacturers and distributors related to claims arising from the manufacture, marketing, sale, distribution, or dispensing of opioids; or

(B) From public or private sources, including gifts, grants, donations, rebates, or other settlements received by the state and designated for the Georgia Opioid Crisis Abatement Trust.

(2) The Office of the State Treasurer shall invest moneys held in the Georgia Opioid Crisis Abatement Trust in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by moneys held in the trust fund shall be accounted for separately and shall be credited to the trust fund and shall be disbursed as other moneys in the trust fund.

(c)(1) No money shall be removed or expended from the trust fund except upon warrant of appropriation. Money from the trust fund shall not be used for any purpose that is not an approved purpose or in any manner that is not in alignment with the terms of the state-wide opioid settlement agreement. The trustee shall have final authority to determine that appropriations comply with the terms of any state-wide opioid settlement agreement.

(2) The General Assembly shall annually appropriate moneys from the trust fund to state agencies and departments providing the services, goods, and programs in accordance with the purposes described in subsection (d) of this Code section.

(d) All moneys in the trust fund shall be contractually obligated under the terms of settlements made in connection with claims arising from the manufacture, marketing, sale, distribution, or dispensing of opioids, as applicable, and dedicated for use only for approved purposes.

10-13B-12.

(a)(1) There is established the Opioid Recovery and Remediation Fund Advisory Council (ORRFA Council or council), which shall serve as the government participation mechanism.

(2) The ORRFA Council shall be composed of thirteen members to be appointed as follows:

(A) The commissioner of the Department of Behavioral Health and Developmental Disabilities or his or her designee;

(B) The commissioner of the Department of Public Health or his or her designee;

(C) The Attorney General or his or her designee;

(D) Four members of the public to be appointed by the Governor, of which one shall possess expertise in substance use disorder treatment, one shall possess expertise in harm reduction, one shall possess expertise in criminal justice, and one shall possess expertise in drug policy;

(E) Three members of the public to be appointed by the President of the Senate, of which one shall possess expertise in substance use disorder treatment, one shall possess expertise in behavioral health, and one shall possess personal experience with substance use and addiction issues; and

(F) Three members of the public to be appointed by the Speaker of the House of Representatives, of which one shall possess expertise in substance use disorder treatment, one shall possess expertise in behavioral health, and one shall possess personal experience with substance use and addiction issues.

(3)(A) Each appointee to the ORRFA Council shall have a background in the treatment of addiction or opioid use disorders, public health policy, mental health treatment or policy, or opioid related law enforcement.

(B) Any member who is appointed shall be subject to removal by the appointing authority.

(C) All appointments to the ORRFA Council shall be made no later than the sixty days after the effective date of this Act.

(D) Each appointed member shall serve a two-year term. Any vacancies in the membership of the council shall be filled in the same manner as the original appointments.

(4) As soon as practicable after all appointments to the council are completed, the council shall select a chairperson from among its number. The members shall also select a secretary who need not be a member of the council. The council may hold meetings at the times and places as it may designate. A majority of the authorized membership shall constitute a quorum. The council may conduct business without a quorum, but shall only vote on a recommendation when a quorum is present.

(5) The members of the council shall be paid for each meeting day at the same rate of per diem available for members of the General Assembly and shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available by the General Assembly to the council for its purposes.

(6) The council shall be entitled to receive assistance and services from any state, county, or municipal department, board, commission, or agency as may be made available to it for its purposes. The Department of Behavioral Health and Developmental Disabilities shall provide such staff and administrative support to the council as deemed necessary by the council to carry out its responsibilities.

(b) The ORRFA Council shall meet at least quarterly to review, oversee, and make recommendations for the disbursement of funds from the Georgia Opioid Crisis Abatement Trust for the purposes provided in subsection (d) of Code Section 10-13B-11.

10-13B-13.

(a) No later than 12 months after the effective date of this Act and annually thereafter the Department of Behavioral Health and Developmental Disabilities shall report to the Governor and the General Assembly the details of the allocations made with the funds from the Georgia Opioid Crisis Abatement Trust. Such report shall include, at a minimum:

(1) An accounting of any allocation providing details for each allocation regarding the recipient, amount awarded, program funded, goals of the program, disbursement terms, and outcome measures to be used to determine program efficacy;

(2) A full accounting of all amounts actually disbursed; and

(3) An assessment of how well resources have been used to abate opioid addiction overdose deaths and other consequences of the opioid crisis.

(b) The Department of Behavioral Health and Developmental Disabilities shall post the report provided for in subsection (a) of this Code section as well as the annual reports of participating local governments and regional advisory councils on its website for public review.

10-13B-14.

The Department of Behavioral Health and Developmental Disabilities shall be responsible for all provisions of any state-wide opioid settlement agreement.″

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.