

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 755 - A35**81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***

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Measure Description:

Modifies and provides for implementation of Ballot Measure 110 (2020).

Government Unit(s) Affected:

Department of Revenue (DOR), Department of Administrative Services (DAS), District Attorneys and their Deputies (DAs), Oregon Judicial Department (OJD), Public Defense Services Commission (PDSC), Secretary of State (SOS), Oregon Board of Pharmacy (OBOP), Oregon State Police (OSP), Department of Education (ODE), Oregon Government Ethics Commission (OGEC), Oregon Health Authority (OHA), Department of Human Services (DHS), Department of Justice (DOJ), Department of Public Safety Standards and Training (DPSST), Counties, Cities, Criminal Justice Commission (CJC)

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Summary of Expenditure Impact:

	2021-23 Biennium	2023-25 Biennium
Other Funds	852,643	898,461
Federal Funds	107,724	122,193
Total Funds	\$960,367	\$1,020,654
Positions	4	4
FTE	3.76	4.00

Analysis:

SB 755 - A35 makes form and style changes to portions of Ballot Measure 110 (2020); this measure declares an emergency and takes effect on passage.

This fiscal impact statement outlines the budgetary and programmatic impacts of SB 755 only, and is not inclusive of the total budgetary impact of Ballot Measure 110. Any budget modifications that are a direct result of Ballot Measure 110 will be captured in agency budgets or the end-of-session budget bill.

Oversight and Accountability Council; and Behavioral Health Resource Networks

Under SB 755, the director of the Oregon Health Authority (OHA) is required to establish an Oversight and Accountability Council (OAC) to oversee and approve grants and funding to implement Behavioral Health Resource Networks and increase access to community care. A Behavioral Health Resource Network is an entity that provides immediate screening of the acute needs of people who use drugs and assesses and addresses any needs through ongoing case management, harm reduction, treatment, housing, and linkage to other care and services. The term "Behavioral Health Resource Network" is used in SB 755 to replace the term "Addiction Recovery Center" that was used in Measure 110.

The Council and OHA must ensure that residents of each county have access to services, and networks must provide service 24 hours a day, seven days a week. Services are to be provided free of charge, and grantees are directed to seek reimbursement from insurance issuers, the medical assistance program, or any other third party responsible for costs of services provided to a client. Grantees may use funding provided by the Council for copayments, deductibles, or other out-of-pocket expenses incurred by a client. Grants and funding must be disbursed such that at least one Behavioral Health Resource Network is established and operational in each county by January 1, 2022. The OAC may award up to \$13 million in grants in calendar year 2021.

Measure 110 also requires that OHA establish a 24-hour statewide Behavioral Health Resource Network telephone line to provide screenings not later than February 1, 2021. SB 755 requires that the telephone hotline also be used to assess a caller's need for immediate medical care or treatment, identify other needs of the caller, and link the caller to other services. Under Measure 110 the telephone line is scheduled to sunset by October 1, 2021, but this sunset date is abolished in SB 755.

Class E Violations

Measure 110 allows fines for Class E violations to be waived. Under the SB 755, an enforcement officer issuing a citation for a Class E violation is to provide the person receiving the citation with information concerning how they may complete a screening. Once verification is received that the person has obtained a screening, the court must dismiss the fine.

SB 755 changes how Juvenile, Municipal, and Justice courts must proceed in the case of a Class E violation. It also allows a prosecuting attorney to treat as a Class E violation any offense that would constitute a Class E violation had the offense been committed on or after February 1, 2021.

Drug Treatment and Recovery Services Fund

Measure 110 created the Drug Treatment and Recovery Services Fund, which is separate and distinct from the General Fund; the total amount in the fund in the first year is to not be less than \$57 million. The Department of Revenue is to transfer to the Drug Treatment and Recovery Services Fund the savings to the State of Oregon from the implementation of Ballot Measure 110. Additionally, moneys in the Oregon Marijuana Account that exceed \$11,250,000 are to be transferred each quarter to the Drug Treatment and Recovery Services Fund before other transfers are made from the Account. Moneys in the Drug Treatment and Recovery Services Fund are to be allocated with not more than four percent to administration - which, under SB 755, does not include the expense to establish and maintain the telephone hotline required by Ballot Measure 110 - and the remainder to grants. Under SB 755, there is an additional requirement that all moneys deposited into the Criminal Fine Account as a payment of fines on Class E violations are also to be allocated to the Drug Treatment and Recovery Services Fund.

Under SB 755, if any moneys remain in the Drug Treatment and Recovery Services Fund after grants and funding to establish Behavioral Health Resource Networks have been committed, the OAC is to provide funding to other agencies, organizations, and service providers, including those affiliated with the nine federally recognized tribes. Funding may be used to increase access to substance use disorder treatment, peer support and recovery services, housing for persons with substance use disorders, harm reduction interventions, or incentives to expand the behavioral health workforce. OHA is directed to post grant and funding award information to its website.

Audit and Reporting Requirements

SB 755 requires that within 180 days of June 30, 2021 and every June 30 thereafter, the Department of Administrative Services must calculate the savings resulting from the reductions to Class E violations for offenses related to certain substances. Under Measure 110, this was a biennial reporting requirement.

SB 755 further clarifies and increases the requirements for audits by the SOS Audits Division. The Division is directed to conduct performance audits and financial reviews regarding the use and effectiveness of the Drug Treatment and Recovery Services Fund. The Division must monitor and report on the progress in implementing any recommendations not later than two years after completing an audit or financial review. No later than

December 31, 2023, SOS is to perform an audit of the relationship between OAC, OHA, and grant or funding recipients; and a financial review that assesses the functioning of the grants and funding system. No later than December 31, 2024, SOS is to conduct a performance audit with an assessment of whether citations resulted in connecting people with treatment; the functioning of law enforcement and the courts in relation to Class E violation citations, the telephone hotline, and entities providing verification of screenings; disparities in the demographics of the citation data; whether the measure reduces involvement in the criminal justice system for individuals with substance use disorders; and outcomes for individuals receiving treatment and social services.

SB 755 requires OHA to report to the Legislative Assembly each quarter starting no later than January 1, 2022, on how funds from the Drug Treatment and Recovery Services Fund have been spent.

OHA must also report to the interim subcommittee of the Joint Committee on Ways and Means related to human services and to the interim committees of the Legislative Assembly related to mental or behavioral health no later than January 31, 2022, on the number of applications for grants or funding awarded for Behavioral Health Resource Networks. OHA must report to these committees with certain information no later than 30 days after grants or funding have been awarded to entities serving every county in the state, and no later than 30 days after the grants or funding have been awarded for the biennium beginning July 1, 2021. These reporting requirements sunset on January 2, 2024.

Oregon Health Authority

As of the May 2021 Revenue Forecast, it is anticipated that \$249.36 million will be allocated to the Drug Treatment and Recovery Services Fund for the 2021-23 biennium from the Oregon Marijuana Account, not including potential unspent revenue from 2019-21. Of these funds, four percent (equivalent to approximately \$9,974,400) may be used for administration. The Oregon Health Authority (OHA) anticipates that these funds will be sufficient to cover all administrative costs stemming from both Ballot Measure 110 and SB 755.

OHA anticipates known costs of \$700,496 total funds in 2021-23 and \$760,783 total funds in 2023-25 as a result of SB 755. This includes three positions (2.76 FTE 2021-23 and 3.00 FTE in 2023-25). The costs and positions are primarily related to data collection. OHA will need to collect information from state agencies, Behavioral Health Resource Networks, and grantees, in order to meet audit and reporting requirements under this measure.

The OHA Health Systems Division anticipates needing two new permanent, full-time Operations and Policy Analyst 3s (1.76 FTE in 2021-23 and 2.00 FTE in 2023-25), to coordinate with Behavioral Health Programs and OHA processes to ensure that reporting requirements are being met. OHA's Health Policy and Analytics Division anticipates needing one new permanent, full-time Operations and Policy Analyst 3 (1.00 FTE in 2021-23 and 2023-25), to coordinate on data collection design and technical assistance, and to develop reports.

OHA Shared Services does not have a fiscal impact as a result of this measure, though this division will need to update existing IT infrastructure and stand up a data collection system to fulfill reporting requirements. However, this fiscal assumes that the OHA 2021-23 budget includes Policy Option Package 414 (MOTS/COMPASS). If this Package is not included in the OHA budget, then the agency will require additional resources, primarily in Shared Services, in order to implement this measure.

Additional Services and Supplies costs under this measure include \$1,222,426 Other Funds each biennium, to permanently fund the telephone hotline. This funding will come from the Drug Treatment and Recovery Services Fund operations revenues, and not from the four percent of monies allocated to administration from this Fund. Because expenditure limitation for funding from the Drug Treatment and Recovery Services Fund is already included in the OHA budget, this additional cost is not included in the fiscal impact numbers above.

There is an indeterminate fiscal impact for the Public Employees' Benefit Board (PEBB), the Oregon Educators Benefit Board (OEBB), and the Oregon Health Plan (OHP). Behavioral Health Resource Networks may seek reimbursement from health plans for services provided. PEBB and OEBB anticipate that this will increase

premium rates, though neither entity is able to provide an estimate of these costs given that Behavioral Health Resource Network services and reimbursements are not yet established, and utilization rates are unknown. Similarly, there may be additional costs for OHP that cannot be determined at this time. Costs related to PEBB impact the premiums paid by state agencies and universities, and the costs for OEBS primarily impact the premiums paid by the K-12 school system.

Department of Administrative Services

The Department of Administrative Services (DAS) anticipates hiring one permanent, full-time Project Manager 3 (PM 3, 1.00 FTE in 2021-23 and 2023-25) at a total cost of \$259,871 Other Funds. This position would take over contract management and other operational work within the DAS Office of Economic Analysis. This will allow existing Economists in this office to shift attention to the annual report on the savings resulting from the reductions to Class E violations for offenses related to certain substances.

Secretary of State

The Secretary of State (SOS) Audits Division is directed to perform various audits under this measure over the next two biennia. The Division estimates that the performance and financial audits that must be completed by December 31, 2023 and December 31, 2024, will require work equivalent of eight positions (1.88 FTE in 2021-23 and 5.63 FTE in 2023-25). SOS anticipates that this work can be done using existing staff and budgetary resources, but that this would decrease the staff hours available for other audits.

Oregon Judicial Department

The Oregon Judicial Department (OJD) anticipates that this measure may increase circuit court filings and creates some changes to court processes, but is generally anticipated to have a minimal fiscal impact.

There are two aspects of this measure that have an indeterminate fiscal impact for the agency. It is not clear what data OJD will be required to provide for the performance audit to be performed by the Secretary of State; this audit includes the functioning of law enforcement and the courts in relation to Class E violations. It is also not clear if there will be an impact related to requirement that, if the prosecuting attorney elects to treat certain criminal charges as a Class E violation, then as part of the same hearing, the prosecuting attorney will move to dismiss the original offense and simultaneously initiate a Class E violation proceeding. This may result in some criminal cases being resolved faster, but also requires courts to create a new case for the Class E violation.

OJD also notes that they are to receive verification that clients have completed screenings in order to dismiss Class E violations. However, because no timeline is provided for how soon screening information must be forwarded to the courts by OHA or OHA contractors, courts may receive verification of a screening after a judgement has already been issued. If this is the case, the court will need to modify the judgment of conviction and dismiss the citation.

Other state agencies

There is no fiscal impact for the Department of Public Safety Standards and Training, Public Defense Services Commission, Counties, Cities, Criminal Justice Commission, Oregon Board of Pharmacy, Department of Revenue, Department of Human Services, Department of Education, and Government Ethics Commission.

There is minimal fiscal impact for Oregon State Police (OSP) related to training for OSP Troopers on criminal classifications for certain drugs, and protocols for issuing citations on Class E violations.

The Department of Justice (DOJ) is directed to provide legal services to the OAC if requested, to assist the council in carrying out their duties and obligations. DOJ anticipates that this work can be absorbed using available resources.

The Legislative Fiscal Office notes that any allocations from the Criminal Fine Account to the Drug Treatment and Recovery Services Fund could have an impact on available General Fund revenues, as all undistributed funds in the Criminal Fine Account are deposited in the General Fund.