



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 501 of the 130th G.A.](#)

**Date:** May 27, 2014

**Status:** As Introduced

**Sponsor:** Reps. Smith and Sprague

**Local Impact Statement Procedure Required:** No

**Contents:** Adds the drug Zohydro to the list of schedule I controlled substances

### State Fiscal Highlights

- GRF-funded incarceration costs may increase, as additional felony offenders could be convicted and sentenced to prison due to adding Zohydro to the list of schedule I controlled substances.
- Annually, the state may gain a minimal amount of locally collected state court cost revenues from offenders that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

### Local Fiscal Highlights

- By adding Zohydro to the list of schedule I controlled substances, additional criminal cases may be generated for local criminal justice systems to investigate and process, potentially producing a minimal annual increase in their costs to investigate, prosecute, adjudicate, and sanction violators. A minimal annual amount of revenue in the form of court costs and fines may also be generated.

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## Detailed Fiscal Analysis

The bill adds the drug Zohydro (trade name) to the list of schedule I controlled substances.<sup>1</sup> A schedule I classification indicates the following: (1) the drug has a high potential for abuse, (2) it has no currently accepted medical use in treatment in the United States, and (3) there is a lack of accepted safety for its use under medical supervision. Ohio law prohibits a licensed health professional authorized to prescribe drugs from prescribing a schedule I controlled substance. Examples of schedule I controlled substances include marihuana, heroin, and LSD.

Zohydro ER (Extended Release) is the first single-entity (not combined with another analgesic such as acetaminophen) and extended-release hydrocodone product approved by the U.S. Food and Drug Administration (FDA). FDA approval was granted on October 25, 2013 and was classified as a schedule II controlled substance. Once a substance is placed on the federal CSA, it is automatically included in Ohio's schedule of controlled substances pursuant to current law.<sup>2</sup>

Zohydro is a hydrocodone product. At present, Ohio law classifies hydrocodone as a schedule II controlled substance. Although the bill adds Zohydro, a specific hydrocodone product, to the list of schedule I controlled substances, it does not modify the reference to hydrocodone, in general, that exists under schedule II.

It is unclear if Zohydro is available for purchase. In fact, according to the drug manufacturer's website, many insurance companies have yet to determine the drug's formulary status for their prescription plans. As such, its use in the state of Ohio is likely to be extremely limited at this time.

### Fiscal effect

Drug offenses related to schedule I controlled substances are generally felonies, most of which carry either a presumption for prison or a mandatory prison term. Since this drug is new and its use is extremely limited at this time, the number of criminal cases that might be created would likely be small immediately after the bill's enactment. It is possible that demand and related use of the medication could increase as it becomes more readily available on the market (as permitted by the FDA) and if other states allow its use. Predicting how widespread its use could subsequently become in Ohio or the number of resulting criminal cases that might be generated is problematic.

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<sup>1</sup> A controlled substance is a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V under federal or state law.

<sup>2</sup> R.C. 3719.43 states that when pursuant to the federal drug abuse control laws the Attorney General of the United States adds a compound, mixture, preparation, or substance to a schedule of the laws; transfers any of the same between one schedule of the laws to another; or removes a compound, mixture, preparation, or substance from the schedules of the laws then such addition, transfer, or removal is automatically effected in the corresponding schedule or schedules in R.C. 3719.41.

## **Criminal justice system expenditures**

It appears that, at least initially, the number of individuals that could be arrested, charged, and prosecuted in any given local jurisdiction for violating any number of drug-related offenses (i.e., possession, use, trafficking, and/or manufacturing), associated with the inclusion of Zohydro as a controlled substance will be small relative to overall criminal caseloads, at least initially after the bill's enactment. As such, the annual costs for any affected county or municipal criminal justice system (investigation, prosecution, adjudication, defense if the individual is indigent, and sanctioning) to resolve these cases seems unlikely to exceed minimal.

The bill's felony penalties raise the possibility that additional offenders could be sentenced to the state prison system administered by the Department of Rehabilitation and Correction (DRC). The marginal cost of adding one offender to that system costs DRC between \$3,000 and \$4,000 annually. Whether the number of additional prison-bound offenders in any given year will be large enough to increase DRC's annual incarceration costs in excess of minimal, or \$100,000, annually is uncertain.

## **Court cost and fine revenues**

In the matter of local revenues, as the likely number of cases that could be created by the bill in any given local jurisdiction appears to be relatively small, any resulting gain in annual court cost and fine revenues for any affected county or municipality would not be likely to exceed minimal.

With each additional conviction, the state might gain revenue in the form of locally collected state court costs that are forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The amount that might be generated per year is likely to be minimal at most. In the case of a felony, the court is generally required to impose state court costs totaling \$60, divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

## **Indirect effect to licensing boards**

By including Zohydro on the list of schedule I controlled substances, while approved by the FDA, there could be some instances where a licensed prescriber may either deliberately or inadvertently prescribe Zohydro to a patient. If this occurs after the bill is enacted, these prescribers could face disciplinary action by their respective licensing boards (e.g., the Ohio Medical Board or the Ohio Board of Nursing).