

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 15, 2008)

Drafting Number: LLS 08-1060	Date: April 25, 2008
Prime Sponsor(s): Sen. Romer	Bill Status: House Health and Human Services
Rep. McFadyen and	Fiscal Analyst: Clare Pramuk (303-866-2677)
Rep. Rice	

TITLE: CONCERNING LICENSURE OF MASSAGE THERAPISTS, AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Funds - Total*	<u>\$1,037,750</u>	<u>\$48,850</u>
Division of Registrations Cash Fund	780,000	36,000
Background Check Fees	256,750	11,850
Fines Collection Cash Fund	<1,000	<1,000
State Expenditures		
Cash Funds - Total	<u>\$534,359</u>	<u>\$227,673</u>
Division of Registrations Cash Fund	290,591	220,110
Background Check Fees	131,643	2,388
Background Check Pass-through to FBI	112,125	5,175
FTE Position Change	4.9 FTE	3.7 FTE
Effective Date: July 1, 2008.		
Appropriation Summary for FY 2008-2009: See State Appropriations section of fiscal note.		
Local Government Impact: See Local Government Impact section of the fiscal note.		

* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See **Expenditures Not Included** section of the fiscal note for these costs.

Summary of Legislation

The **reengrossed** bill creates the Massage Therapy Practice Act which requires the licensure of massage therapists by the Division of Registrations in the Department of Regulatory Agencies. The bill provides the director of the division the authority to regulate the profession, and specifies the requirements for licensure which include:

- ▶ successful completion of an approved massage program;
- ▶ passage of an approved competency exam;
- ▶ submission of an application and payment of a fee; and
- ▶ submission of fingerprints and payment for a criminal history record background check.

The director must issue a license to a massage therapist who holds an unrestricted license in good standing in a state with equivalent requirements.

The bill creates a massage therapist advisory committee to be appointed by the director, and defines the requirements for membership. Committee members are to be compensated for their service and reimbursed for actual and necessary expenses. The director is required to consult with the committee in promulgating rules.

The director has the authority to deny, refuse to renew or revoke a license, investigate complaints, and take enforcement action on violations including the issuance of cease and desist orders, civil and criminal penalties including a class 2 misdemeanor and a class 6 felony. A license may be denied if an applicant was convicted of, or plead guilty to a charge of a sex offense or a prostitution-related offense.

The bill authorizes the director to set fees to cover the direct and indirect program costs. The bill includes a sunset date of September 1, 2018.

State Revenue

State cash funds revenue is expected to increase by \$1,037,750 in FY 2008-09 and \$48,850 in FY 2009-10 from license and criminal background history check fees as shown in Table 1, and penalties as explained in the penalties section. The fiscal note assumes 6,500 massage therapists are currently practicing in Colorado and 300 additional massage therapists will apply for licensure in FY 2009-10.

Department of Regulatory Agencies, Division of Registrations — revenue to the Division of Registrations Cash Fund is expected to increase \$780,000 in FY 2008-09 and \$36,000 in FY 2009-10. The fiscal note assumes that 6,500 massage therapists will be licensed in FY 2008-09 and 300 in FY 2009-10.

Department of Public Safety, Colorado Bureau of Investigations (CBI) — criminal background history check fees are expected to increase by \$256,750 in FY 2008-09 and \$11,850 in FY 2009-10.

Fee Impact on Massage Therapists. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

Table 1. Fee Impact on Massage Therapists Under SB08-219							
Fiscal Year	2-Year License	Number Affected	Fee Impact	Criminal History Background Check	Number Affected	Fee Impact	Total Fee Impact
2008-09	\$120	6,500	\$780,000	\$39.50	6,500	\$256,750	\$1,036,750
2009-10	\$120	300	\$36,000	\$39.50	300	\$11,850	\$47,850

Penalties. Per Section 18-1.3-501, C.R.S., the penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Per Section 18-1.3-401, C.R.S., the penalty for a class 6 felony is 1 to 2 years imprisonment in a state correctional facility, a fine of \$1,000 to \$100,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$1,000 per year) is assumed under the bill.

State Expenditures

This bill is expected to increase expenditures by \$534,359 and 4.9 FTE for FY 2008-09 and \$227,673 and 3.7 FTE for FY 2009-10. Costs are incurred in the Departments of Regulatory Agencies, Public Safety, and Law as described below and shown in Table 2 on page 4.

Department of Regulatory Agencies, Division of Registrations — will license massage therapists beginning April 1, 2009, including the following activities:

- ▶ hiring and training staff;
- ▶ promulgating rules;
- ▶ developing the licensure process;
- ▶ responding to inquiries;
- ▶ coordinating criminal background checks with the CBI;
- ▶ coordinating outreach efforts;
- ▶ supporting advisory committee;
- ▶ investigating complaints; and
- ▶ taking enforcement actions for violations.

It is expected that temporary assistance will be required to handle the volume of original licenses during the first year of the program. Applicants are expected to take a national exam from a vendor and pay the exam fee directly to the vendor. Applicants will pay fees for criminal background checks directly to the CBI. Expenditures for the Department of Regulatory Agencies are expected to increase by \$290,591 and 3.5 FTE for FY 2008-09 and \$220,110 and 3.5 FTE for FY 2009-10.

Department of Public Safety, CBI — will perform fingerprint-based background checks which will include notification if a submitted fingerprint is a match for a criminal arrest. Of the \$39.50 fee collected per applicant, \$17.25 will be passed through to the FBI for the national background check. The CBI will require additional staff and equipment to match and analyze fingerprint cards, update criminal histories, submit cards to the FBI and provide responses to the Division of Registrations. Expenditures for the Department of Public Safety are expected to increase by \$243,768 and 1.2 FTE for FY 2008-09 and \$7,563 and 0.0 FTE for FY 2009-10.

Department of Law — will provide general counsel advice for rulemaking in FY 2008-09 and FY 2009-10. In FY 2009-10, the fiscal note expects that the department will issue 4 injunctions and handle 5 adjudications. Expenditures of \$18,008 and 0.2 FTE for FY 2008-09 and \$24,490 and 0.2 FTE for FY 2009-10 for legal services are shown in Table 2 in the Department of Regulatory Agencies.

Table 2. Expenditures Under SB08-219 by Department		
Cost Components	FY 2008-09	FY 2009-10
Department of Regulatory Agencies		
Personal Services	\$226,478	\$169,070
FTE	3.5	3.5
Operating Expenses	32,440	24,350
Capital Outlay (one-time cost)	10,365	0
Board Meetings	3,300	2,200
Legal Services	18,008	24,490
FTE	0.2	0.2
Subtotal	\$290,591	\$220,110
Department of Public Safety		
Personal Services	\$55,657	\$0
FTE	1.2	0.0
Operating Expenses	11,630	174
Capital Outlay (one-time cost)	10,146	0
FBI Background Checks	112,125	5,175
Automated Fingerprint Identification System Lease and Maintenance	54,210	2,214
Subtotal	\$243,768	\$7,563
TOTAL	\$534,359	\$227,673

Department of Corrections, Felony Offense. Second offenses by massage therapists for violations of SB08-219 are class 6 felonies. Per Section 18-1.3-401, the penalty for a class 6 felony may include a fine between \$1,000 and \$100,000 or 12 to 24 months imprisonment at a state correctional facility, or both. Information from the Judicial Branch indicates that no second offenses have been filed as either misdemeanors or felonies related to professions and occupations in the last five years. Thus, the number of cases filed against massage therapists is expected to be small, and convictions extremely infrequent. The fiscal note assumes that this bill will not create the need for additional prison space.

Judicial Branch — the bill will affect the courts either as part of the administrative disciplinary process or upon filing of criminal charges for violation of its provisions. The fiscal note assumes that these will be minimal and can be addressed within existing appropriations.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program. These total \$84,972 for FY 2008-09.

- group health, life and dental insurance (\$29,605)
- short-term disability (\$262)
- amortization equalization disbursements (\$3,222)
- indirect costs (\$49,759)
- supplemental amortization equalization disbursements (\$1,007)
- workers compensation (\$648)
- risk management (\$469)

Local Government Impact

The bill allows but does not require local law enforcement to inspect massage therapy licenses and the business premises where massage therapy is practiced. A first offense violation of SB08-219 is a class 2 misdemeanor. A second offense is a class 6 felony. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$49.69 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

To implement this bill, the following appropriations are required for FY 2008-09:

- ▶ The Department of Regulatory Agencies - \$290,591 and 3.5 FTE from the Division of Registrations Cash Fund;
- ▶ Department of Law - \$18,008 (reappropriated funds) and 0.2 FTE; and
- ▶ The Department of Public Safety - \$243,768 and 1.2 FTE from background check fees. Of the total, \$112,125 is a pass through to the FBI.

Departmental Differences

Due to the new class 6 felony, the Department of Corrections (DOC) anticipates a fiscal impact of \$149,034 General Fund over the next five years for one felony conviction during that period. Rather than defaulting to a general assumption of one in every five years for this new felony offense, the fiscal note analysis relies on historical rates of convictions for the regulation of professions and occupations. Please refer to the State Expenditures section of the fiscal note for more detail.

Departments Contacted

Corrections
Judicial

Public Safety
Law

Regulatory Agencies
Personnel and Administration