



# SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

## STATEMENT OF ESTIMATED FISCAL IMPACT

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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 3561	Introduced on January 12, 2021
<b>Author:</b>	Thayer	
<b>Subject:</b>	Massage Therapy Practice Act	
<b>Requestor:</b>	House Medical, Military, Public, and Municipal Affairs	
<b>RFA Analyst(s):</b>	Coomer and Gardner	
<b>Impact Date:</b>	December 14, 2021 Updated to Include Additional Agency Impact	

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### Fiscal Impact Summary

This bill includes revisions to the Massage/Bodywork Practice Act, creating the Board of Massage Therapy in place of the Panel for Massage/Bodywork under the administration of the Department of Labor, Licensing, and Regulation (LLR). The overall expenditure impact of this bill on LLR is undetermined. However, the bill will increase Other Funds expenditures of LLR by at least \$115,620 in FY 2021-22 and \$112,620 each year thereafter for the addition of 2.0 FTEs. This bill will increase Other Funds expenditures of LLR by an undetermined amount due to the development of appropriate forms and supporting IT infrastructure, the promulgation of regulations, potential increased inspections and investigations, additional training time for staff to review criminal background checks, and additional Board of Massage Therapy (board) meetings.

This bill is not expected to have an expenditure impact on the State Law Enforcement Division (SLED), as we anticipate that the requirements of the bill can be managed within the normal course of agency business.

This bill will increase the Other Funds revenue of LLR due to the issuance of new licenses for massage therapy establishments and sole practitioner establishments. Other Fund revenues of LLR are expected to increase by \$177,500 in FY 2021-22 and by \$270,000 biennially afterwards.

This bill may also increase General Fund revenue by a minimal amount because LLR is required to remit an amount equal to 10 percent of board expenditures to the General Fund. Due to the addition of 2.0 FTEs, an increase of approximately \$11,000 at minimum is expected in FY 2021-22 and each year thereafter. Further, the bill may increase General Fund revenue by approximately \$12,750 in FY 2021-22 and each year thereafter due to fees collected by SLED for state criminal records checks.

*This fiscal impact statement has been updated to include an agency impact for SLED and revised input from LLR.*

## Explanation of Fiscal Impact

**Updated to Include Additional Agency Impact on December 14, 2021**

**Introduced on January 12, 2021**

### **State Expenditure**

This bill includes revisions to the Massage/Bodywork Practice Act, creating the Board of Massage Therapy (board) in place of the Panel for Massage/Bodywork (panel) under the administration of LLR. This bill specifies the powers, duties, and terms of the board, related duties of LLR, necessary definitions in regards to the Massage Therapy Practice Act, and procedures and requirements for licensure. Under current law, the panel holds many of the same powers and duties of the new board but must also provide for or contract for the examination of applicants for licensure, keep an accurate record of each examination, and prepare and submit to the Governor an annual report on the administration of the Massage Therapy Practice Act. These provisions are removed by the bill but did not previously fiscally impact the agency.

**Department of Labor, Licensing and Regulation.** The bill requires the board to develop new license categories for massage therapy establishments and sole practitioner establishments, which will require the board to develop appropriate forms, develop the supporting IT infrastructure, and promulgate regulations. Additionally, this bill requires LLR to conduct a pre-licensing inspection of a proposed establishment, to conduct an inspection of an establishment with a lapsed license prior to reinstatement, and to investigate complaints of establishments. The bill also authorizes the department to conduct periodic inspections of establishments. Furthermore, the bill requires the board to require a state criminal history records check and a national criminal records check, both supported by fingerprints. The costs of conducting a criminal history background check must be borne by the applicant, but there may be related costs to LLR to have access to the records if they have been requested by an applicant. LLR expects additional training time for staff to review these criminal background checks and additional staff time to handle the expiration and renewal of new licenses. The expenditure impact of the above provisions is unknown.

Currently, to be licensed as a massage therapist an individual must be at least eighteen years of age; have received a high school diploma or graduate equivalency diploma; have completed a 500-hour course of classroom study at an approved school; and have passed the National Certification Exam for Therapeutic Massage and Bodywork, National Certification Examination for Therapeutic Massage, the Massage and Bodywork Licensing Examination, or any other examination provided for in regulation. In addition to the provisions listed in the previous paragraph, this bill makes updates to the licensure process by including an option to complete a program approved by the board in place of a high school diploma or graduate equivalency diploma; increasing the classroom study requirement from 500 to 650 hours or allowing for the completion of an approved massage therapy education program that is substantially equivalent to this classroom education time; updating the examination requirement to the Federation of State Massage Therapy Board examination or any other board-approved examination; requiring English language proficiency as a native language or board-approved English language test; and requiring a current photograph along with the licensure application, which the panel already requests with applications.

Approximately 4,700 individual massage therapists are licensed currently by the panel. There were 510 initial license applications in 2019 and 359 in 2020. Since the bill does significantly change the individual licensure process, LLR does not anticipate increased FTEs to process individual applications. However, this bill creates additional administrative and inspectional duties that cannot be managed by existing staff due to the creation of new licensure categories. Therefore, LLR anticipates that it will need at least one administrative assistant FTE to process applications for massage therapy establishments and sole proprietors and to assist with additional administrative duties, as well as at least one inspector III FTE to conduct pre-licensure and recurring establishment inspections. Salary and fringe benefits for the former are \$47,728 and for the latter are \$55,432. Recurring operating expenses for these positions are \$9,460, and non-recurring operating expenses are \$3,000. This portion of the bill will increase Other Funds expenditures of LLR by \$115,620 in FY 2021-22 and \$112,620 each year thereafter.

Expenditures are also expected as a result of additional board meetings and possibly committee meetings to develop the new license categories. The board typically meets four times a year, and additional meetings may be required. Each meeting of the board requires a court reporter at an estimated cost of \$2,156 per meeting. The board consist of seven members, each of whom is allowed a \$35 per diem and mileage reimbursement at 56 cents per mile. The number of additional meetings is unknown at this time.

The expenditure impact for the development of appropriate forms and supporting IT infrastructure, the promulgation of regulations, potential increased inspections and investigations, additional training time for staff to review criminal background checks, and additional board meetings is unknown. Therefore, the total expenditure impact on Other Funds of LLR is undetermined.

**State Law Enforcement Division.** We have not received a response from SLED regarding the expenditure impact of this bill. However, we anticipate that the bill will require SLED to perform activities that can be conducted in the normal course of agency business. Therefore, we do not expect that this bill will have an expenditure impact on the agency due to the provision requiring a state criminal history records check and fingerprinting for applicants to the board. *This section of the fiscal impact statement has been updated to include an agency impact for SLED.*

### **State Revenue**

This bill specifies penalties, provides requirements for licensure by endorsement, allows for temporary massage practice under a manner prescribed by the board, establishes fees for licensing massage therapy and sole practitioner establishments, and updates the maximum fee amounts of the licensure fee schedule. For a detailed listing of fee changes, see Figure 1. Administrative penalties for violations are increased from a maximum of \$1,000 under current law to \$5,000 per offense. Additionally, disciplinary fines are increased from a maximum of \$500 under current law to \$5,000 per offense. LLR is authorized to recoup its costs of investigation and prosecution from violators.

**Figure 1. Fee Table**

<b>Fee</b>	<b>Current “not to exceed” Amount in Statute</b>	<b>Proposed change in “not to exceed” amount”</b>
Initial license application fee*	\$50 (Actual: \$50)	\$150
Continuing education provider fee	\$50 (Actual: \$50)	\$100
Initial licensure fee*	\$100 (Actual: \$100)	N/A
Endorsement application fee	N/A	\$250
Reexamination fee	\$250	N/A
Application and provisional licensure fee	\$200	N/A
Reinstatement application fee for lapsed status of massage therapist license	\$250 (Actual: \$210)	\$250
Renewal fee for inactive status of a massage therapist license	\$250 (Actual: \$75)	\$250
Establishment initial license application fee	N/A	\$150
Biennial establishment license renewal fee	N/A	\$200
Establishment license reinstatement fee	N/A	\$250
Sole practitioner establishment initial license application fee	N/A	\$50
Biennial sole practitioner establishment initial license renewal fee	N/A	\$100
Sole practitioner establishment license reinstatement fee	N/A	\$150

\*Current law separates the initial application fee and the initial licensure fee. However, these two fees are collected as one in practice. The bill updates the law to reflect this current practice but does not make material changes to the total maximum amount collected from an initial applicant.

**Department of Labor, Licensing and Regulation.** Due to the small number of and the irregularity of cases, LLR is unable to estimate the exact amount of additional revenue from the disciplinary fines and to determine if increased penalties may discourage additional violations.

Additionally, LLR has indicated in a similar bill that there is no historical revenue, expenditure, or licensing data available regarding massage therapy establishments and sole practitioners. However, the agency had reported that comparable data from similar boards, such as the Board of Cosmetology and the Board of Barber Examiners, could be used to project fee revenue. LLR estimated that approximately 850 massage therapy establishments and approximately 1000 sole practitioners will seek licensure in accordance with new licensing guidelines. These numbers

were based on estimated proportions of the current number of approximately 4,700 total licensees. Given these amounts of new applications for establishment licensure and sole practitioner licensure, we estimate total initial licensing revenue of \$177,500 and biennial recurring renewal revenue of \$270,000. Biennial renewal revenue for establishments and sole practitioners would begin in year three of the new licensing guidelines. Therefore, we estimate this bill will increase the Other Funds revenue of LLR by \$177,500 in FY 2021-22 and by \$270,000 biennially thereafter. If any more information becomes available regarding this bill, we will update this fiscal impact statement as necessary.

Proviso 81.3 of the FY 2021-22 Appropriations Act requires LLR to remit 10 percent of expenditures of the Division of Professional and Occupational Licensing (POL) to the General Fund. Because the total increased Other Funds expenditure is undetermined, the exact impact on the General Fund is undetermined. However, due to expenditures related to 2.0 new FTEs, this bill will increase General Fund revenue by approximately \$11,000 in FY 2021-22 and each year thereafter. *This section of the fiscal impact statement has been updated to include additional input from LLR.*

**State Law Enforcement Division.** We have not received a response from SLED regarding the revenue impact of this bill. However, we anticipate that the bill may increase the number of state criminal records checks that SLED is required to perform. The total cost for a criminal records check is \$51.75, of which \$25 is retained by SLED. The vendor, Identogo, receives \$13.50, and the remainder of the fee, \$13.25, is remitted to the Federal Bureau of Investigation. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of \$4,461,000 must be deposited in the General Fund. Any revenue over that amount is retained by SLED.

Approximately 4,700 individual massage therapists are licensed currently by the panel. LLR indicates there were 510 initial license applications for massage therapy in 2019. If state background checks are performed on an average of 510 individuals a year, revenue would increase by approximately \$12,750 each fiscal year. In FY 2018-19, SLED generated approximately \$1,300,000 in total from state criminal records checks. As a note, we are not using FY 2019-20 data due to the impact of the COVID-19 pandemic on state background checks processing. We do not anticipate that the total increase in revenue due to state background checks will be more than the \$4,461,000 cap on revenue deposited to the General Fund. Based upon this, the increase in revenue of \$12,750 will be deposited to the General Fund in FY 2021-22 and each year thereafter, and there is no increase in Other Funds of SLED. *This section of the fiscal impact statement has been updated to include an agency impact for SLED.*

#### **Local Expenditure**

N/A

#### **Local Revenue**

N/A

## **Updated for Additional Agency Response on February 5, 2021**

**Introduced on January 12, 2021**

### **State Expenditure**

This bill includes revisions to the Massage/Bodywork Practice Act, creating the Board of Massage Therapy (board) in place of the Panel for Massage/Bodywork (panel) under the administration of LLR. This bill provides for the powers, duties, and terms of the board, related duties of LLR, necessary definitions in regards to the Massage Therapy Practice Act, and procedures and requirements for licensure. Under current law, the panel holds many of the same powers and duties of the new board but must also provide for or contract for the examination of applicants for licensure, keep an accurate record of each examination, and prepare and submit to the Governor an annual report on the administration of the Massage Therapy Practice Act. These provisions are removed by the bill but did not previously fiscally impact the agency.

**Department of Labor, Licensing and Regulation.** The bill requires the board to develop new license categories for massage therapy establishments and sole practitioner establishments, which will require the board to develop appropriate forms, develop the supporting IT infrastructure, and promulgate regulations. Additionally, this bill requires LLR to conduct a pre-licensing inspection of a proposed establishment, to conduct an inspection of an establishment with a lapsed license prior to reinstatement, and to investigate complaints of establishments. The bill also authorizes the department to conduct periodic inspections of establishments. Furthermore, the bill requires the board to require a state criminal history records check and a national criminal records check, both supported by fingerprints. The costs of conducting a criminal history background check must be borne by the applicant, but there may be related costs to LLR to have access to the records if they have been requested by an applicant. LLR expects additional training time for staff to review these criminal background checks and additional staff time to handle the expiration and renewal of new licenses. The expenditure impact of the above provisions is unknown.

Currently, to be licensed as a massage therapist an individual must be at least eighteen years of age; have received a high school diploma or graduate equivalency diploma; have completed a 500 hour course of classroom study at an approved school; and have passed the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation. In addition to the provisions listed in the previous paragraph, this bill makes updates to the licensure process by including an option to complete a program approved by the board in place of a high school diploma or graduate equivalency diploma; increasing the classroom study requirement from 500 to 650 hours or allowing for the completion of an approved massage therapy education program that is substantially equivalent to this classroom education time; updating the examination requirement to the Federation of State Massage Therapy Board (FSMTB) examination or any other board-approved examination; requiring English language proficiency as a native language or board-approved English language test; and requiring a current photograph along with the licensure application, which the panel already requests with applications.

Approximately 4,700 individual massage therapists are licensed currently by the panel. There were 510 initial license applications in 2019 and 359 in 2020. Since the bill does significantly change the individual licensure process, LLR does not anticipate increased FTE to process individual applications. However, this bill creates additional administrative and inspectional duties that cannot be managed by existing staff due to the creation of new licensure categories. Therefore, LLR anticipates that it will need at least one administrative assistant FTE to process applications for massage therapy establishments and sole proprietors and to assist with additional administrative duties, as well as at least one inspector III FTE to conduct pre-licensure and recurring establishment inspections. Salary and fringe benefits for the former are \$47,728 and for the latter are \$55,432. Recurring operating expenses for these positions are \$9,460, and non-recurring operating expenses are \$3,000. This bill will increase Other Funds expenditures by \$115,620 in FY 2021-22 and \$112,620 each year thereafter.

Expenditures are also expected as a result of additional board meetings and possibly committee meetings to develop the new license categories. The board typically meets four times a year, and additional meetings may be required. Each meeting of the board requires a court reporter at an estimated cost of \$2,156 per meeting. The board consist of seven members, each of whom is allowed a \$35 per diem and mileage reimbursement at 56 cents per mile. The number of additional meetings required is unknown.

The expenditure impact for the development of appropriate forms and supporting IT infrastructure, the promulgation of regulations, potential increased inspections and investigations, additional training time for staff to review criminal background checks, and additional board meetings is unknown. Therefore, the total expenditure impact on Other Funds of LLR is undetermined.

This fiscal impact has been updated for an additional response from LLR.

**State Law Enforcement Division.** The expenditure impact of this bill on SLED due to the provision for criminal history records checks and fingerprinting is pending, contingent upon a response from the agency.

## **State Revenue**

**Department of Labor, Licensing and Regulation.** This bill provides penalties, provides requirements for licensure by endorsement, allows for temporary massage practice under a manner prescribed by the board, establishes fees for licensing massage therapy and sole practitioner establishments, and updates the maximum fee amounts of the licensure fee schedule. For a detailed listing of fee changes, see Figure 1. Administrative penalties for violations are increased from a maximum of \$1,000 under current law to \$5,000 per offense. Additionally, disciplinary fines are increased from a maximum of \$500 under current law to \$5,000 per offense. LLR is authorized to recoup its costs of investigation and prosecution from violators. Due to the small number of and the irregularity of cases, the agency is unable to estimate the exact amount of additional revenue from these changes, and if increased penalties may discourage additional violations.

**Figure 1. Fee Table**

<b>Fee</b>	<b>Current “not to exceed” Amount in Statute</b>	<b>Proposed change in “not to exceed” amount”</b>
Initial license application fee*	\$50 (Actual: \$150)	\$150
Continuing education provider fee	\$50 (Actual: \$50)	\$100
Initial licensure fee*	\$100 (Actual: \$100)	N/A
Endorsement application fee	N/A	\$250
Reexamination fee	\$250	N/A
Application and provisional licensure fee	\$200	N/A
Reinstatement application fee for lapsed status of massage therapist license	\$250 (Actual: \$210)	\$250
Renewal fee for inactive status of a massage therapist license	\$250 (Actual: \$75)	\$250
Establishment initial license application fee	N/A	\$150
Biennial establishment license renewal fee	N/A	\$200
Establishment license reinstatement fee	N/A	\$250
Sole practitioner establishment initial license application fee	N/A	\$50
Biennial sole practitioner establishment initial license renewal fee	N/A	\$100
Sole practitioner establishment license reinstatement fee	N/A	\$150

\*Current law separates the initial application fee and the initial licensure fee. However, these two fees are collected as one in practice. The bill updates the law to reflect this current practice but does not make material changes to the total maximum amount collected from an initial applicant.

The agency and panel are unable to estimate the number of massage therapy establishments or sole practitioner establishments that currently exist or that will seek licensure, or the number of individuals who will seek licensure by endorsement. The agency will not be able to determine if the proposed fees for the massage therapy establishments and sole practitioner establishments will be sufficient to fund the new program under the panel. As required in Section 40-1-50(D), initial fees for revenue-funded boards must be established by each board and shall serve as the base for necessary administrative adjustments. Therefore, the new Other Funds revenue generated by this bill is undetermined.



Proviso 81.3 of the FY19-20 Appropriations Act requires LLR to remit 10 percent of expenditures of the Division of Professional and Occupational Licensing (POL) to the General Fund. Because the total increased Other Funds expenditure is undetermined, the exact impact on the General Fund is undetermined, yet minimal as LLR does not anticipate the potential deposit to the General Fund to exceed a few hundred dollars.

This fiscal impact has been updated for an additional response from LLR.

**State Law Enforcement Division.** This bill may increase the number of state criminal records checks that SLED is required to perform. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of \$4,461,000 must be deposited in the General Fund. Any revenue over that amount is retained by SLED. The revenue impact of this bill on the General Fund and the Other Funds of SLED is pending, contingent upon a response from the agency.

#### **Local Expenditure**

N/A

#### **Local Revenue**

N/A

#### **Introduced on January 12, 2021**

##### **State Expenditure**

This bill creates the Board of Massage Therapy (board) in place of the Panel for Massage/Bodywork (panel) under the administration of LLR. This bill provides for the powers, duties, and terms of the board, related duties of LLR, necessary definitions in regards to the Massage Therapy Practice Act, and procedures and requirements for licensure. Under current law, the panel holds many of the same powers and duties of the new board but must also provide for or contract for the examination of applicants for licensure, keep an accurate record of each examination, and prepare and submit to the Governor an annual report on the administration of the Massage Therapy Practice Act. These provisions are removed by the bill.

Additionally, this bill requires applicants to undergo a state criminal history records check, including fingerprinting, and a national criminal records check. The costs of conducting these checks shall be paid by the applicant.

**Department of Labor, Licensing and Regulation.** The department is required to provide administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board. Additionally, the board is composed of seven members who must meet at least twice a year. Under current law, there is no requirement for yearly meetings. Furthermore, new application processes are created for individual massage therapists, for massage therapy establishments, and for sole practitioner establishments. These provisions may increase LLR expenditures due to increased administrative and regulatory duties. The expenditure impact of this bill on LLR is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** The expenditure impact of this bill on SLED is pending, contingent upon a response from the agency.

### **State Revenue**

**Department of Labor, Licensing and Regulation.** This bill provides penalties, provides requirements for licensure by endorsement, allows for temporary massage practice under a manner prescribed by the board, and updates the licensure fee schedule. Administrative penalties for violations are increased from a maximum of \$1,000 under current law to \$5,000 per offense. Additionally, disciplinary fines are increased from a maximum of \$500 under current law to \$5,000 per offense. LLR is authorized to recoup its costs of investigation and prosecution from violators. LLR

For a detailed listing of fee changes, see Figure 1. LLR is required, pursuant to Section 40-1-50(D), to adjust fees biennially to ensure that fee revenue is sufficient, but not excessive, to cover expenses of each respective board.

**Figure 1. Fee Table**

<b>Fee</b>	<b>Original Amount</b>	<b>New Amount</b>
Initial license application fee	\$50	\$150
Continuing education provider fee	\$50	\$100
Initial licensure fee	\$100	N/A
Endorsement application fee	N/A	\$250
Reexamination fee	\$250	N/A
Application and provisional licensure fee	\$200	N/A
Establishment initial license application fee	N/A	\$150
Biennial establishment license renewal fee	N/A	\$200
Establishment license reinstatement fee	N/A	\$250
Sole practitioner establishment initial license application fee	N/A	\$50
Biennial sole practitioner establishment initial license renewal fee	N/A	\$100
Sole practitioner establishment license reinstatement fee	N/A	\$150

In addition, the board will fall under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2019-20 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures.

The revenue impact of this bill on the General Fund and the Other Funds of LLR is pending, contingent upon a response from the agency.

**State Law Enforcement Division.** This bill may increase the number of state criminal records checks that SLED is required to perform. Pursuant to Section 23-3-115(A), revenue generated by state criminal records checks performed by SLED up to an amount of \$4,461,000 must be

deposited in the General Fund. Any revenue over that amount is retained by SLED. The revenue impact of this bill on the General Fund and the Other Funds of SLED is pending, contingent upon a response from the agency.

**Local Expenditure**

N/A

**Local Revenue**

N/A



Frank A. Rainwater, Executive Director