

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 49 Massage Therapy

**SPONSOR(S):** Fresen

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt	Schoolfield
2) Business & Consumer Affairs Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill allows an individual to hold a temporary massage therapy permit for up to 6 months without taking the licensure exam if he or she attended a massage school accredited by an organization that specializes in massage therapy education. A temporary permittee can practice massage therapy only under the supervision of a licensed massage therapist. If the temporary permittee takes the exam and fails prior to the end of the six months, then the temporary permit expires at that time.

According to the U.S. Department of Education, the only organization recognized as a "specialized accrediting agency" for massage therapy education is the Commission on Massage Therapy Accreditation (COMTA). Currently, there are five schools located in Florida that are COMTA-accredited.

According to the Department of Health, there currently is no avenue for a massage therapist to apply for a temporary permit. Additionally, a qualified applicant for licensure may take a board approved massage therapy exam anytime since the examination is computer-based and is available on a daily basis. The department estimates that 240 applicants may apply for a temporary permit.

The bill has an insignificant positive fiscal impact to the Medical Quality Assurance Trust fund within the Department of Health and no fiscal impact to local governments. (See Fiscal Comments.)

The bill takes effect July 1, 2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The American Massage Therapy Association estimates that there are 280,000 to 320,000 massage therapists and massage school students in the United States.<sup>1</sup> Massage is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation<sup>2</sup>, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.<sup>3</sup>

Massage therapists are licensed and regulated by the Department of Health (department), Board of Massage Therapy (board). Currently, there are 26,127 individuals who hold an active in-state license as a massage therapist in Florida.<sup>4</sup> As of June 30, 2010, there were 4,661 in state delinquent massage therapy licenses.<sup>5</sup> And the Florida Board of Massage therapy received 208 complaints of unlicensed activity<sup>6</sup> from July 1, 2009 to June 30, 2010.<sup>7</sup> All massage therapists are required to renew their licenses on or before August 31 of each biennial year.<sup>8</sup> The fee for licensure is \$105, which also includes a fee for unlicensed activity.<sup>9</sup>

##### Effect of the Bill

Currently, an individual is qualified for an active license as a massage therapist in Florida if the individual:<sup>10</sup>

- Is at least 18 years of age;
- Submits a completed application on form DH-MQA 1115, "Application For Licensure," (Rev. 10/09);
- Pays the \$50 non-refundable application fee<sup>11</sup>;
- Completes the HIV/AIDS course requirement<sup>12</sup>;
- Completes a course relating to the prevention of medical errors<sup>13</sup>;
- Has completed a course of study at a board approved massage school or completed an apprenticeship program that meets the standards adopted by the board;
- Has received a passing grade on national examination approved by the board.

The board has approved the following national examinations:

- National Certification Board for Therapeutic Massage and Bodywork Examination;
- National Certification Examination for Therapeutic Massage;

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<sup>1</sup> American Massage Therapy Association, 2011 Massage Therapy Industry Fact Sheet, *available at*: <http://www.amtamassage.org/articles/2/PressRelease/detail/2320> (last viewed March 4, 2011).

<sup>2</sup> A method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water. *See* s. 480.033(6), F.S.

<sup>3</sup> s. 480.033(3), F.S.

<sup>4</sup> Department of Health, Division of Medical Quality Assurance, Annual Report for July 1, 2009 to June 30, 2010, *available at*: <http://www.doh.state.fl.us/mqa/reports.htm> (last viewed March 4, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> An individual may only practice a profession if the individual holds an active license. *See* s. 456.036(1), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Rule 64B7-28.001, F.A.C.

<sup>9</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.

<sup>10</sup> s. 480.041(1), F.S. and Rule 64B7-25.001, F.A.C.

<sup>11</sup> Rule 64B7-27.002, F.A.C.

<sup>12</sup> Rule 64B7-25.0012, F.A.C.;

<sup>13</sup> s. 456.013(7), F.S.

- National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork; and
- The Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards.

According to the department, an individual may take the massage licensure examination anytime since the examination is computer-based and is available on a daily basis.<sup>14</sup> After an individual completes all the application requirements for licensure, a license is issued by the department within 30 days of receiving the application and a passing score on the national examination.<sup>15</sup>

The bill allows an individual to hold a temporary massage therapy permit for up to 6 months without taking the licensure exam if he attended a massage school accredited by an organization that specializes in massage therapy education. A temporary permittee can practice massage therapy only under the supervision of a licensed massage therapist. If the temporary permittee takes the exam and fails prior to the end of the six months, then the temporary permit expires at that time.

According to the U.S. Department of Education, the only organization recognized as a "specialized accrediting agency" for massage therapy education is the Commission on Massage Therapy Accreditation (COMTA).<sup>16</sup>

According to COMTA, there are five schools located in Florida that are COMTA-accredited:<sup>17</sup>

1. Educating Hands School of Massage (Miami)
2. Florida Academy (Fort Meyers)
3. Florida College of Natural Health (Pompano Beach, Bradenton, Maitland, and Miami campuses)
4. Florida School of Massage (Gainesville)
5. Sarasota School of Massage Therapy (Sarasota)

The placement rates for COMTA accredited schools during 2009-2010 range from 42 percent to 90 percent, with an average placement rate of 69 percent. The total number of graduates from these schools during the same period was 668 students.<sup>18</sup>

According to the Florida Department of Education there are 76 licensed massage therapy schools in Florida.<sup>19</sup> According to the department, currently there is no avenue for a massage therapist to apply for a temporary permit.<sup>20</sup> The department estimates that 240 applicants may apply for a temporary permit.<sup>21</sup> But this number may increase if more schools or programs obtain accreditation.

The bill authorizes the department to set a fee for a temporary massage therapy permit not to exceed \$50.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 480.041, F.S., relating to massage therapist qualifications, licensure, and endorsement.

**Section 2.** Amends s. 480.044, F.S., relating to the disposition of fees.

**Section 3.** Provides an effective date of July 1, 2011.

<sup>14</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.

<sup>15</sup> *Id.*

<sup>16</sup> U.S. Department of Education, Office of Postsecondary Education, The Database of Accredited Postsecondary Institutions and Programs, available at: <http://www.ope.ed.gov/accreditation/Search.aspx> (last viewed March 4, 2011).

<sup>17</sup> Commission on Massage Therapy, Directory of Schools & Programs, available at: <http://www.comta.org/directory.php> (last viewed March 4, 2011).

<sup>18</sup> Email correspondence with DOE staff on file with the Health & Human Services Access Subcommittee staff (dated March 4, 2011).

<sup>19</sup> *Id.*

<sup>20</sup> Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.

<sup>21</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
See Fiscal Comments.
2. Expenditures:  
See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The department estimates that 240 individuals may apply for a temporary permit. The bill authorizes a fee not to exceed \$50 to be charged for a temporary permit resulting in a potential positive impact to the Medical Quality Assurance Trust Fund of \$12,000 annually.

There will be cost associated with updating the COMPASS licensure database to capture the temporary permit category; and issuing and monitoring the temporary permit for compliance with the six month time limitation. However, the authorized \$50 temporary permit fee will cover the projected costs.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:  
None.

### B. RULE-MAKING AUTHORITY:

The department has sufficient authority to promulgate rules to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 23, the bill provides exemptions for licensure qualifications and references s. 480.041(4)(b) and (c), F.S. The provisions in (4), provides the board the authority to adopt rules and does not address qualifications for licensure. Therefore, (4)(b), provides the department the authority to adopt rules to set the educational standards, examination, and certification for the practice of colonic irrigation.

Furthermore, (4)(c) provides the department the authority to specify licensing procedures individuals desiring to be licensed in this state via licensure by endorsement.<sup>22</sup>

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>22</sup> Licensees from another state, territory, or jurisdiction of the United States or any foreign national jurisdiction may be eligible for licensure by endorsement providing that the individual possesses credentials and qualifications which are substantially similar to, equivalent to, or more stringent than the standards required in Florida.