

FISCAL NOTE
Requested by Legislative Council
12/26/2018

Amendment to: HB 1071

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$2,000	\$0	\$3,000	\$0	\$3,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1071 is relating to a massage therapist's use of prescription medication in a massage, and regulations of the practice of massage therapy. Amendment proposed to establish an amount by rule compensation for board members not to exceed one hundred fifty dollars per day.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This would allow the board to establish in rule an increase of the board member compensation daily rate from one hundred dollars to one hundred fifty dollars. This would only impact special funds of the board as the board does not receive general funds. The only impact is the increase in board member compensation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No effect.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This would only impact special funds of the board as the board does not receive general funds. The only impact is the increase in board member compensation.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No effect.

Name: Nikki Owings

Agency: ND Board of Massage Therapy

Telephone: 7017128624

Date Prepared: 12/27/2018

FISCAL NOTE
Requested by Legislative Council
12/26/2018

Bill/Resolution No.: HB 1071

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$2,000	\$0	\$3,000	\$0	\$3,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1071 is relating to a massage therapist's use of prescription medication in a massage, and regulations of the practice of massage therapy. Amendment proposed to establish an amount by rule compensation for board members not to exceed one hundred fifty dollars per day.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This would allow the board to establish in rule an increase of the board member compensation daily rate from one hundred dollars to one hundred fifty dollars. This would only impact special funds of the board as the board does not receive general funds. The only impact is the increase in board member compensation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No effect.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This would only impact special funds of the board as the board does not receive general funds. The only impact is the increase in board member compensation.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No effect.

Name: Nikki Owings

Agency: ND Board of Massage Therapy

Telephone: 7017128624

Date Prepared: 12/27/2018

2019 HOUSE HUMAN SERVICES COMMITTEE

HB 1071

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1071
1/29/2019
31724

- Subcommittee
 Conference Committee

Committee Clerk Signature Nicole Klaman by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to a massage therapist's use of prescription medication in a massage

Minutes:

1

Chairman Weisz opened hearing.

Supportive testimony.

Gail Hovden, ND Board of Massage Therapy: (see attachment 1)

Representative Rohr: How many massage therapists are across the state?

Ms. Hovden: Approximately 750.

Representative Rohr: Increasing fees to \$150?

Ms. Hovden: No, our fees are staying the same, which are \$100 every year which we renew every 2 years. We're asking for the prediem for the board members to be \$100-150.

Opposed testimony.

Diane Hoffman: I think that CBD (cannabidiol) massages are very therapeutic and that they work very well.

Representative Ruby: When you had the CBD massage done, did the therapist wear gloves?

Ms. Hoffman: No, but it seemed to be fine.

No further testimony or questions. Meeting closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB1071
1/29/2019
31728

- Subcommittee
 Conference Committee

Committee Clerk Signature: Nicole Klaman by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to a massage therapists use of prescription medication in a massage.

Minutes:

Opened hearing.

Representative Porter: Motion for a do pass.

Representative Dobervich: Second.

Chairman Weisz: Discussion? It looks pretty straightforward.

Representative Rohr: Where are they getting the CBD lamp?

Chairman Weisz: They can get it over the internet.

Representative Rohr: It looks like they don't need to have gloves to apply it either.

Chairman Weisz: I will admit I liked their way of approaching it with just letting BCI (business continuity institute) deal with it to determine if it fell within our current laws. If it does, they will then let them take action.

Representative Fegley: Didn't we have a proposed amendment on this?

Chairman Weisz: I had it marked yes. The department of health would like line 26 to say or usable marijuana instead of any.

Representative Porter: I will withdraw my motion from before.

Representative Dobervich: I will withdraw too.

Representative Porter: I will make a motion to adopt amendment 19.8014.01001.

Representative Rohr: Second.

Voice Vote: motion carries.

Representative Porter: Do pass as amended.

Representative Dobervich: Seconded.

Chairman Weisz: Discussion?

Representative Westlind: Should we amend that? Or should we have amended to say medical marijuana instead of just marijuana?

Chairman Weisz: Chapter 19-24 will address that, so that is a statute.

Roll call vote: 13 Yes, 0 No, 1 Absent.

Motion carries.

Floor assignment: Representative Dobervich.

Meeting closed.

DA 1/29/19

19.8014.01001
Title.02000

Adopted by the Human Services Committee

January 29, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1071

Page 4, line 26, replace "including any" with "or"

Renumber accordingly

Date: 1-29-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1071

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. Doberovich

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Doberovich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson	<u> </u>				
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

** Motion withdrawn **

Date: 1-29-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1071

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.8014.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Vote Note

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

motion to adopt amendment carries.

Date: 1-29-19
Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1071

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. Dobervich

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman	X		Mary Schneider	X	
Dick Anderson					
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	X				
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Dobervich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1071: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1071 was placed on the Sixth order on the calendar.

Page 4, line 26, replace "including any" with "or"

Renumber accordingly

2019 TESTIMONY

HB 1071

JANUARY 29, 2019

TESTIMONY OF
THE NORTH DAKOTA BOARD OF MASSAGE THERAPY
HOUSE BILL NO. 1071

Mr. Chairman, members of the Committee. I am Gail Hovden, and I appear on behalf of the North Dakota Board of Massage Therapy. I am here today to walk you through the six sections of the bill.

Section 1 addresses qualifications and terms for board members. It is complicated and confusing to verify the previous requirement that a board member work five hundred hours in the past three years. Requiring, instead, that the license be in good standing clarifies the language and opens the field to more massage therapists who want to be members of the board. The final amendments clarify that a massage therapist can be on the board for two full consecutive terms.

Section 2 removes out of date and confusing language. Another section in chapter 43-25 addresses renewals of licenses needing to be made within two years, so this removes conflicting language. The new language clarifies the intent of the old language that the applicant has six months to complete the application process, but this can be extend with good cause, such as a school not getting the transcript in on time or medical or other hardship shown by the applicant. The penalty fee for the late renewal is moved to the appropriate section of the bill dealing with renewals.

Section 3 clarifies continuing education requirements for renewals by specifying that the continuing education and college credits that would be acceptable must be related to massage therapy, the section also replacing language of "actively practicing

massage” to a licensed therapist. The term “actively practicing massage” was not defined and difficult to verify with renewal applicants. The penalty fee for late renewals is moved to this section.

Section 4 hopes to increase the compensation paid to board members from one hundred dollars to one hundred and fifty dollars. The duties and time spent by board members have increased over the last few years. The board worked hard to implement policies and procedures to inspect massage establishments for safety and sanitation in accordance with new rules found in its administrative code. Board members are now performing these inspections which are time consuming. Other issues coming before the board on a regular basis are questionable applicants and the time it is taking the board to verify whether the applicants for licensure are qualified. The board has worked with other states and accrediting agencies regarding “diploma mill” schools and an influx of applications raising concerns on human trafficking. This has culminated into increased time spent by board members in board duties, taking board members away from their regular jobs. Massage therapists and board members are generally not salaried employees that can take leave and not have it affect their take home pay. Instead, the board members are giving up a days wages to come to board meetings and perform other required duties. The board therefore respectfully requests an increase in the per diem received performing their official duties.

Section 5 again takes out the “actively practiced” language that is not defined within the chapter to instead require the applicant for reciprocity to be licensed in the other jurisdiction. This makes the process for out of state applicants who are licensed

and in good standing in another jurisdiction to receive a North Dakota license easier and faster.

Section 6 deals with an issue that has come before the board this last year. Several massage therapists are asking about whether they can administer prescription ointments in the practice of massage. Of particular concern is whether massage therapists can apply medical marijuana oil during a massage. The board has several concerns with this including liability on massage therapists to administer the oil and the concern of the marijuana oil being absorbed by the massage therapist who does not have the medical marijuana license. Board members attended training on this subject during recent national association meetings and were able to get input from other states which already have the medical marijuana laws implemented. The board looked at the laws implemented by massage therapy boards in these other jurisdictions to come up with the proposed language, making adjustments to reference North Dakota law.

The board has received inquiries on massage therapists' use of CBD oil and whether the proposed language prohibits its use. The language used in this section does not include any reference to CBD oil; instead, the language refers to "usable marijuana" as defined in North Dakota State Law found in chapter 19-24.1, which requires a written certification by the Department of Health. Whether a specific CBD oil being used by a massage therapist is included within this definition is not for the Board to conclude or determine. The board reached out to BCI and law enforcement over the past year asking for guidance on how to appropriately handle reports of marijuana and CBD oils being used by massage therapists. It was the recommendation of BCI to report such uses to them so they could make the proper determination on whether the

#B1071
1/29/2019
#1

oils contain the properties that would be considered “marijuana” and a controlled substance. The board will continue to defer to BCI and law enforcement on this issue until advised otherwise and allow the proper authorities to make the determination on whether a substance can legally be used. In any event, because the language refers to 19-24.1 for the definition of “usable marijuana,” the board would not need to amend the proposed statute if this definition changes or there is a change in its interpretation.

As a side note, we have been contacted this morning by the Department of Health to amend and clarify some language found on the last page, page No. 4, line 26, to replace “including any” with “or.” The language that is in the proposed bill in front of you was amended by legislative council but we do not think there would be a problem with making that amendment. I would be happy to bring this suggestion before the full board for approval at our next meeting, which is actually scheduled for 3:00 p.m. today, and then formally submit that amendment to you thereafter.

Thank you for allowing me to testify before you today. I will be happy to answer any questions you may have.