



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0203	Date:	March 15, 2021
Prime Sponsors:	Sen. Gonzales Rep. Gonzales-Gutierrez	Bill Status:	Senate SVMA
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Bill Topic: **PROTECT PERSONAL IDENTIFYING INFORMATION KEPT BY STATE**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill creates protections for personal identifying information collected and maintained by state agencies. It increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$95.0 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under SB 21-131**

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	Cash Funds	\$9,053	\$14,489
	Total Revenue	\$9,053	\$14,489
Expenditures	General Fund	\$94,956,680	\$97,067,964
	Cash Funds	\$54,944	\$69,390
	Centrally Appropriated	\$96,854	\$65,785
	Total Expenditures	\$95,108,478	\$97,203,139
	Total FTE	5.5 FTE	3.9 FTE
Transfers			
TABOR Refund		-	-

Summary of Legislation

This bill creates protections for personal identifying information (PII) collected and maintained by state agencies. PII refers to a wide variety of information that may be used to identify a specific individual.

Prohibitions. Beginning January 1, 2022, a state agency employee is prohibited from providing PII that is not available to the public as part of immigration enforcement; or collecting information to ascertain a person's immigration status. A state agency is prohibited from collecting place of birth; immigration or citizenship status; or information from passports, permanent resident cards, alien registration cards, or employment authorization documents. The bill includes exceptions for requirements in state or federal law or as necessary to perform state agency duties.

Certification of third parties. The Department of Law is required to create a model certification form for third parties to annually submit to be granted access to PII that is not otherwise available to the public. A third party must certify that the PII will not be used for immigration enforcement.

Exclusions. Requests for the types following PII are not covered by the bill:

- open records requests;
- an inquiry made through a database or automated network;
- a request governed by a data-sharing agreement;
- a request related to elections;
- a request made to the Department of Public Safety; and
- a request that is protected by the Family Educational Rights and Privacy Act of 1974 or the Health Insurance Portability and Accountability Act of 1996.

Recording and reporting. Beginning January 1, 2022, state agencies are required to retain a written record of requests for PII, and report that information to the Governor's Office of Legal Counsel quarterly. The Governor's Office is required to provide quarterly and year-to-date summaries of the information to the Joint Budget Committee.

Penalties. A state employee who intentionally violates the provisions of the bill is subject to an injunction and a civil penalty of up to \$50,000 per violation.

State Revenue

This bill will increase revenue to the Records and Reports Cash Fund by \$9,053 in FY 2021-22 and \$14,489 in FY 2022-23. This will come from an increase in the cost of background checks that child care providers must request prior to hiring for child care and adult care facilities. The increase will be somewhere between \$1.00 and \$2.00 per check but will require action by the State Board of Human Services because the fee is currently set at its maximum of \$35.00. The fee revenue is required to cover costs incurred by the Department of Human Services.

In addition, the fiscal note assumes that state employees will follow the law and any revenue from penalties will be minimal. This revenue is subject to TABOR.

State Expenditures

This bill will increase state expenditures by \$95,108,478 and 5.5 FTE in FY 2021-22 and \$97,203,139 and 3.9 FTE in FY 2022-23 paid from the General Fund, cash funds, and reappropriated funds. These costs are shown in Table 2 and explained below.

**Table 2
 Expenditures Under SB 21-131**

Cost Components	FY 2021-22	FY 2022-23
Office of Information Technology		
Personal Services	\$430,037	\$234,098
Operating Expenses	\$6,750	\$4,050
Capital Outlay Costs	\$31,000	-
IT Contractors	\$94,224,000	\$96,824,000
Centrally Appropriated Costs ¹	\$88,910	\$51,181
FTE – Personal Services	5.0 FTE	3.0 FTE
OIT Subtotal	\$94,780,697	\$97,113,329
Department of Revenue		
Computer Programming – DRIVES	\$256,500	-
DOR Subtotal	\$256,500	\$0
Department of Labor and Employment		
Personal Services	\$21,535	\$43,070
Operating Expenses	-	\$810
Capital Outlay Costs	\$6,200	-
Computer Programming	\$9,200	-
Salesforce Expenses	\$8,955	\$11,020
Centrally Appropriated Costs ¹	\$4,949	\$9,897
FTE – Personal Services	0.3 FTE	0.6 FTE
CDLE Subtotal	\$50,839	\$64,797

**Table 2
 Expenditures Under SB 21-131 (Cont.)**

Cost Components	FY 2021-22	FY 2022-23
Department of Human Services		
Personal Services	\$7,609	\$13,045
Temporary Staff	\$5,000	-
DocuSign	\$1,444	\$1,444
Centrally Appropriated Costs ¹	\$1,689	\$3,181
FTE – Personal Services	0.1 FTE	0.2 FTE
DHS Subtotal	\$15,742	\$17,670
Department of Personnel and Administration		
Personal Services	\$3,393	\$5,816
Centrally Appropriated Costs ¹	\$1,307	\$1,526
FTE – Personal Services	0.1 FTE	0.1 FTE
DPA Subtotal	\$4,700	\$7,343
Total	\$95,108,478	\$97,203,139
Total FTE	5.5 FTE	3.9 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Office of Information Technology. The Office of Information Technology will have an increase in expenditures of \$94,780,697 and 5.0 FTE in FY 2021-22 and \$97,113,329 and 3.0 FTE. The majority of these expenditures are for 450 information technology contractors to review all 1,200 state applications to determine which agencies are collecting place of birth, immigration or citizenship status, or information from passports, permanent resident cards, alien registration cards, or employment authorization documents. This estimate of contractor time assumes that 200 applications will require reprogramming and will be revised after a review of applications is completed. Given the scope of work and complexity of allocating costs to individual agencies, the fiscal note assumes that General Fund will be used for this project, rather than having OIT bill individual agencies for work performed on their behalf.

Department of Revenue. The department will have an increase in General Fund expenditures of \$256,500 in FY 2021-22 only to update the DRIVES system to track and report on requests for PII. The department will provide training to staff to ensure compliance with the bill requirements.

Department of Labor and Employment. The Unemployment Insurance Division will have an increase in expenditures of \$50,839 and 0.3 FTE in FY 2021-22 and \$64,797 and 0.6 FTE in FY 2022-23 from the Employment Support Fund. The division will modify the Salesforce application to accommodate the changes required by the bill and add staffing to implement the new requirements. Costs are prorated in the first year to account for the January 1, 2022, start date.

Department of Human Services. This bill will increase expenditures for the DHS by \$15,742 and 0.2 FTE in FY 2021-22 and \$16,226 and 0.2 FTE in FY 2022-23. This includes a one-time \$5,000 General Fund expenditure for Adult Protective Services for temporary staff to have county staff complete certifications. The Administrative Review Division will have expenditures of \$9,053 in FY 2021-22 and \$13,045 in FY 2022-23 from the Records and Reports Cash Fund for 0.2 FTE of a program assistant and DocuSign document processing. Some costs are prorated in the first year to account for the January 1, 2022, start date.

Personnel. The Office of the State Archives will have an increase in General Fund expenditures of \$4,700 and 0.1 FTE in FY 2021-22 and \$7,343 and 0.1 FTE in FY 2022-23 to collect certifications and track and report on requests. Costs are prorated in the first year to account for the January 1, 2022, start date.

Governor's Office. The office is required to collect and report on the requests for PII and provide this to the JBC. This increase in workload can be accomplished within existing resources.

Law. The Department of Law will conduct outreach, research, drafting and review to finalize a certification form. This workload can be accomplished within existing appropriations.

All other state agencies. This bill will increase workload in all state agencies that will be subject to the requirements of the bill. They may also be required to provide reappropriated fund to OIT for its response to the bill requirements. Should this require additional resources, the fiscal note expects funding will be requested through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$96,854 in FY 2021-22 and \$65,785 in FY 2022-23.

TABOR refunds. Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Technical Note

The January 1, 2022, deadline for state agencies to stop collecting certain data, doesn't provide sufficient time for OIT to address all the state applications and drives a significant fiscal impact to complete the work in two years.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, the following appropriations are required:

\$94,956,680 from the General Fund as follows:

- Office of Information Technology - \$94,691,787 and 5.0 FTE;
- Department of Revenue - \$256,500;
- Department of Human Services - \$5,000; and
- Department of Personnel - \$3,393 and 0.1 FTE.

The Department of Human Services requires an appropriation of \$9,053 and 0.1 FTE from the Records and Reports Cash Fund.

The Department of Labor and Employment requires an appropriation of \$45,890 and 0.3 FTE from the Employment Support Fund.

State and Local Government Contacts

Agriculture	Corrections
Education	Governor
Health Care Policy and Financing	Higher Education
Human Services	Information Technology
Labor	Law
Local Affairs	Natural Resources
Personnel	Property Tax Division
Public Health and Environment	Public Safety
Regulatory Agencies	Revenue
State	Transportation