



**Legislative Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**Fiscal Note**

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|-------------------------|--|------------------------|---|
| <b>Drafting Number:</b> | LLS 24-0634  | <b>Date:</b>           | February 20, 2024                                     |
| <b>Prime Sponsors:</b>  | Sen. Pelton B.; Kolker<br>Rep. deGruy Kennedy; Frizell | <b>Bill Status:</b>    | Senate Business, Labor, & Tech.                       |
|                         |  | <b>Fiscal Analyst:</b> | Brendan Fung   303-866-4781<br>brendan.fung@coleg.gov |

**Bill Topic: NONPROFIT MEMBER DATA PRIVACY & PUBLIC AGENCIES**

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

The bill prohibits public agencies from collecting or disclosing member-specific data from nonprofit entities. It increases state expenditures and may decrease state revenue starting in FY 2024-25.

**Appropriation Summary:** For FY 2024-25, the bill requires an appropriation of at least \$230,436 to the Department of Law.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

**Table 1  
State Fiscal Impacts Under SB 24-129**

|                             |                      | <b>Budget Year<br/>FY 2024-25</b> | <b>Out Year<br/>FY 2025-26</b> |
|-----------------------------|----------------------|-----------------------------------|--------------------------------|
| <b>Revenue</b>              |                      | -                                 | -                              |
| <b>Expenditures</b>         | General Fund         | at least \$230,436                | at least \$230,436             |
|                             | Total FTE            | at least 1.0 FTE                  | at least 1.0 FTE               |
| <b>Transfers</b>            |                      | -                                 | -                              |
| <b>Other Budget Impacts</b> | General Fund Reserve | at least \$34,565                 | at least \$34,565              |

## **Summary of Legislation**

The bill prohibits public agencies from collecting, or requiring government contractors and grant recipients to disclose, member-specific data about members, supporters, volunteers, or donors of nonprofit entities.

Public agencies may collect member-specific data in limited situations, including if lawfully subpoenaed, voluntarily provided by the nonprofit entity, required by state, local, or federal campaign finance laws, sought by law enforcement personnel, or expressly permitted in statute, among other exceptions.

The bill creates a civil cause of action for nonprofit entities or members to file suit against public agencies that violate these provisions.

## **State Revenue**

Starting in FY 2024-25, state tax revenue collected by Department of Revenue may decrease from inaccurate tax information related to exemptions, income, gains, deductions, subtractions, credits, and other liabilities involving taxpayers who make donations and contributions to nonprofit organizations. The bill may also affect fees collected by a variety of agencies if licenses, permits, or other actions require a nonprofit to submit protected member-specific data. For example, nonprofits obtaining liquor/beer special event permits from the Department of Revenue may be required to provide information on members working or volunteering at an event. Given the level of uncertainty involving these potential impacts, the fiscal note cannot estimate the potential impact on tax or fee revenue.

## **State Expenditures**

The bill is expected to potentially impact numerous state agencies that currently obtain nonprofit member-specific data in the course of their work and for which there is not a specific statutory exemption to allow them to receive or use this information. At a minimum, the bill increases state expenditures in the Department of Law by at least \$230,000 starting in FY 2024-25 to provide legal services to state agencies. It may also have significant litigation and operational expenditures for other state agencies on an ongoing basis. These impacts are discussed below in more detail.

**Department of Law.** Starting in FY 2024-25, the Department of Law requires at least 1.0 FTE to provide legal services to state agencies. This work will include providing counsel about the allowable uses of nonprofit data as well as increased litigation and civil actions involving state agencies. Additionally, the department's consumer protection units may receive increased complaints of unfair or deceptive trade practices. Staff costs and FTE are preliminary and represent a baseline amount to provide legal services to agencies. This estimate will be updated if more information becomes available.

**Department of Personnel and Administration.** Starting in FY 2024-25, workload and expenditures in DPA will increase for the Division of Risk Management to respond to state agency liability claims and lawsuits regarding violations of the bill involving member-specific data by state agencies. Given that many agencies currently have processes that use nonprofit member-specific data, the potential impact for damage awards and costs under the bill may be significant. At this time, the potential liability and other costs to the state have not been estimated.

**State Auditor.** Starting in FY 2024-25, workload in the State Auditor's office will increase to identify and implement new methods of data collection for various state audits and evaluations that currently involve nonprofit member-specific data. Affected projects potentially include the Statewide Financial Audit, the Statewide Single Audit, tax expenditure evaluations, and nonprofit performance audits.

Specifically, workload will increase for audit planning, data collection, and coordination including adjusting Medicaid data received from the Department of Health Care Policy and Financing, unemployment insurance data received from the Department of Labor and Employment, financial data and NCAA compliance data received from the Department of Higher Education, manufacturing sales tax exemptions, and nonprofit insurance premium tax deductions, among other things. For informational purposes, these new audit and evaluation processes may increase workload, at minimum, by 1,050 hours and increase costs by at least \$123,000 per year.

**Department of Regulatory Agencies.** Starting in FY 2024-25, workload in DORA may significantly increase for various divisions to develop new data collection processes for programs and reporting. Costs for legal services will also likely increase.

- **Division of Financial Services.** Workload in the Division of Financial Services may increase to separate nonprofit credit unions from other nonprofit institutions such as charities and churches, establish new processes to review loans and Bank Secrecy Act (BSA) documents, and reevaluate the safety and soundness of nonprofit credit unions.
- **Division of Professions and Occupations.** Workload in the Division of Professions and Occupations may increase to determine new methods of data collection for Employee Assistance Professional Associations and Peer Assistance Services.
- **Division of Insurance.** Workload in the Division of Insurance may increase to refine regulatory activities for fraternal societies, association, welfare organizations, health cost sharing arrangements, and nonprofit insurers.
- **Division of Securities.** Workload in the Division of Securities of may increase to investigate securities fraud from nonprofits organizations.

**Department of Natural Resources.** Starting in FY 2024-25, workload and expenditures in the Department of Natural Resources will increase to adjust procedures for various programs or to pay litigation costs, fees, and fines when adjustments are not feasible. Various grant and loan programs in the department may be affected. For example, the Colorado Water Conservation Board's Water Project Loan Program collects nonprofit member-specific data when issuing loans to eligible nonprofits.

**Department of Labor and Employment.** Starting in FY 2024-25, workload and expenditures will increase in the Colorado Department of Labor and Employment to adjust procedures and for additional legal and liability costs. Affected programs include, among others, the Family Medical Leave Insurance Program and operations, grants issued from the State and Local Recovery Fund, and various labor statistics, reporting, and enforcement functions.

**Department of Public Health and Environment.** Starting in FY 2024-25, workload and expenditures in CDPHE will increase for various boards and programs for legal services and to adjust procedures and policies. The inability to obtain information about nonprofit membership may result in potential conflicts of interest involving board members and increased litigation/challenges to agency rules and actions.

**Department of Revenue.** Starting in FY 2024-25, workload in the Department of Revenue will increase to modify tax information collection processes, collect data for licenses and permits, determine qualifications for programs, and legal costs.

- **Tax Division.** Workload in the Tax Division will increase to modify member-specific data received from the Internal Revenue Service (IRS) for tax returns and develop alternative auditing processes for state contractors and grantees for tax exemptions, deductions, or claims.
- **Liquor Enforcement Division (LED).** Workload in LED will increase to collect data for the administration of club licenses, tavern licenses, special event permits, and festival permits to nonprofit entities, and conduct investigations related to licenses and permits.
- **Automotive Industry Division (AID).** Workload in AID may increase to modify procedures for providing licensee information for verification and consumer protection, determine qualification for an EV credit, and legal costs for violating the disclosure provisions.
- **Gaming Division.** Workload in the Gaming Division may increase to develop alternative processes to administer the Responsible Gaming Grant Program to nonprofit entities and legal cost for violating disclosure provisions.

## Technical Note

The bill exempts the collection and disclosure of member-specific data for activity that is expressly required by law, taken on behalf of law enforcement personnel, or voluntarily provided by the nonprofit. However, the scope and application of these exemptions on certain public agency activities are unclear. Fiscal impacts to state agencies may change depending on how these provisions are interpreted or if the bill is amended.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to the collection and disclosure of member-specific data on or after the bill's effective date.

## **State Appropriations**

For FY 2024-25, the bill requires a General Fund appropriation of at least \$230,436 to the Department of Law, and 1.0 FTE.

## **State and Local Government Contacts**

All State and Local Agencies

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).