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Fiscal Note

Drafting Number:	LLS 24-0800	Date:	February 13, 2024
Prime Sponsors:	Rep. Rutinel; Bradfield Sen. Buckner	Bill Status:	House Health & Human Services
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Bill Topic: SUPPORT FOR LIVING ORGAN DONORS

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

The bill creates the Care for Living Organ Donors Act. The bill decreases state revenue and increases state expenditure on an ongoing basis.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$288,945 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under HB 24-1132

		Current Year FY 2023-24	Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	General Fund	(\$5,466,825)	(\$15,058,800)	(\$19,103,850)
	Cash Funds	-	\$11,166	\$12,140
	Total Revenue	(\$5,466,825)	(\$15,047,634)	(\$19,091,710)
Expenditures	General Fund	-	\$280,200	\$124,580
	Cash Funds	-	\$8,745	\$8,909
	Centrally Appropriated	-	\$25,308	\$30,543
	Total Expenditures	-	\$314,253	\$164,032
	Total FTE	-	1.4 FTE	1.7 FTE
Transfers		-	-	-
Other Budget Impacts	TABOR Impact	(\$5,466,825)	(\$15,047,634)	(\$19,091,710)
	General Fund Reserve	-	\$42,030	\$18,687

Summary of Legislation

The bill enacts several measures to support living organ donation, including a tax credit, a voucher requirement for transplant centers, and labor protections for living organ donors.

Tax credit for organ donation expenses. The bill allows state income tax credits for living organ donor expenses, available for tax years 2024 through 2032. A tax credit may be claimed by a health care provider that provides a payment to a living organ donor, or, if no payment is provided, by the donor themselves. The credit amount is up to \$40,000 if claimed by donors or up to \$40,050 if claimed by providers, including \$50 allowed for the provider's administrative costs. The tax credits are refundable in the tax year when they are claimed and may not be carried forward to subsequent tax years. The bill specifies that the credits are not payments made in connection with valuable consideration, which are prohibited under federal law.

With regards to the tax credit for health care providers, the bill specifies that:

- providers must collect affidavits from donors to apply for the credit;
- if the Department of Revenue (DOR) determines before June 30, 2025, that the affidavits are insufficient to prevent fraud or abuse, the DOR may develop an alternative credit application process;
- providers may receive advance payments of the credit beginning in tax year 2025; and
- the DOR will provide technical assistance to ensure that healthcare providers are able to access financing in order to claim the credit.

Voucher program. The National Kidney Registry (NKR) family voucher program allows a person who donates a kidney to a stranger (nondirected living donation) to receive a voucher for priority access to kidneys donated through the NKR. At the time of donation, the donor can specify up to five family members who are eligible to redeem the voucher should the need arise.

The bill requires transplant centers that perform nondirected living organ recoveries to participate in a national program like the NKR if available for that organ. In place of the national program, the center may develop an equivalent internal program. The bill specifies that the internal program may offer vouchers to friends as well as family members.

Employer retaliation. The bill prohibits employers from demoting or otherwise taking adverse action against an employee 30 days before or 90 days after they become a living organ donor unless the employer has clear and convincing evidence that the action was not taken in response to the donation and was otherwise lawful. Violations may be addressed through civil court.

Other changes. The bill makes several other changes concerning organ donation including:

- requiring the Department of Public Health and Environment (CDPHE) to certify living organ donors;
- making April 11th Organ Donor Recognition Day; and
- creating the living organ donor license plate.

Background

Tax benefits for organ donors in other states. According to research by the National Kidney Foundation, as of 2022, 21 states offered some kind of income tax benefit to offset organ donor expenses. Nineteen states offered income tax deductions, of which the largest was in Georgia, \$25,000. Two states offered income tax credits, \$7,200 in Louisiana and \$5,000 in Idaho.

Colorado tax credit for employers of organ donors. [House Bill 18-1202](#) created an income tax credit for employers who grant an employee making less than \$80,000 paid leave of absence to donate an organ. The credit is equal to 35 percent of wages paid to the employee during the first 10 days of their leave and the amount paid to any temporary employee hired for the length of the leave. This credit has not been widely utilized, with zero claims for 2020 and 2022, and a number of claims for 2021 that fell below the Department of Revenue's reporting threshold due to taxpayer confidentiality requirements. The credit is scheduled to expire after tax year 2024.

DRIVES update. The Division of Motor Vehicles (DMV) in the DOR uses its Driver License, Record, Identification and Vehicle Enterprise Solution (DRIVES) information technology system for all driver license and motor vehicle transactions. The DRIVES system requires an extensive 18-month upgrade which is scheduled to take place from July 1, 2024, through March 31, 2026. As a result, the DOR has requested that any new legislation requiring DRIVES programming have an effective date of April 1, 2026, with roll-forward spending authority through FY 2026-27, noting that each programming requirement during the system upgrade period may increase the overall project timeline. Based on the current effective date in the bill, the fiscal note includes costs for the DRIVES programming to take place twice—in the existing and new system.

Assumptions

Organ donors. The U.S. Department of Health and Human Services reports that 166 organ donations were made by living donors in Colorado in 2023. The fiscal note assumes that, under current law, there will be about 165 living organ donors annually.

The \$40,000 payment in the bill is expected to incentivize additional organ donations. Based on a 2019 analysis of organ donor responses to incentives,¹ each \$1,000 incentive increased donations by 6.1 percent. Adjusted for inflation, the bill is assumed to increase donations by 185 percent, to about 480 per year. If the bill incentivizes fewer (or more) additional donations, the fiscal impact will be correspondingly less (or greater).

Tax credits. The fiscal note assumes that all living organ donors will be eligible for and receive the full \$40,000 payment, and that all tax credits will be claimed by healthcare providers, rather than individual donors. There are four transplant centers in Colorado, and this fiscal note assumes that this number will remain constant.

¹McCormick *et al.*, 2019. "Removing Disincentives to Kidney Donation: A Quantitative Analysis." *Journal of the American Society of Nephrology* 30: 1349-1357.

State Revenue

Tax credits. The tax credits in the bill are expected to reduce state General Fund revenue by \$5.5 million in the current FY 2023-24, \$15.1 million in FY 2024-25, and \$19.1 million in FY 2025-26 and later years. The impact for FY 2023-24 represents a half-year impact for tax year 2024 on an accrual accounting basis. The impact for tax year 2024, represented in the estimates for FY 2023-24 and FY 2024-25, is expected to be smaller than for later years, as organ donations are expected to increase only after the bill becomes law. The bill reduces income tax revenue, which is subject to TABOR.

License plates. The new license plate will increase state cash fund revenue by \$11,000 in FY 2024-25 and \$12,000 in FY 2025-26, as shown in Table 2. This revenue is subject to TABOR. Expected demand for the Living Organ Donor license plate is based on the actual demand for the Craig Hospital license plate.

Table 2
Increase in State Revenue Under HB 24-1132

	FY 2024-25	FY 2025-26
License Plate Sets Issued	186	200
DRIVES Cash Fund (\$25)	\$4,650	\$5,000
Highway Users Cash Fund (\$25)	\$4,650	\$5,000
License Plate Cash Fund	\$1,825	\$1,962
Total Revenue Increase	\$11,125	\$11,962

- **Standard license plate fees.** Upon registration, all vehicle owners must pay a plate and tab production fee of about \$10 for a digital passenger vehicle plate set. All specialty plates are manufactured as digital plates, and the fiscal note assumes motorcycle issuance will be minimal. Fees from plate and tab production are credited to the License Plate Cash Fund.
- **Special license plate fees.** Applicants for the new license plate are required to pay an additional \$50 in fees, of which \$25 is credited to the Highway Users Tax Fund (HUTF) and \$25 is credited to the Licensing Services Cash Fund.
- **Highway Users Tax Fund.** Of the HUTF revenue, 65 percent is credited to the State Highway Fund (SHF) for expenditure by the Department of Transportation, 26 percent is credited to counties, and 9 percent is credited to municipalities. Table 3 outlines the estimated HUTF revenue generated under this bill.

**Table 3
Expected HUTF Distributions Under HB 24-1132**

	FY 2024-25	FY 2025-26
State Highway Fund (65 percent)	\$3,023	\$3,250
Counties (26 percent)	\$1,208	\$1,300
Municipalities (9 percent)	\$419	\$450
Total HUTF Distribution	\$4,650	\$5,000

Filing Fees. To the extent that disputes around employer retaliation arise, state revenue may increase for the Judicial Department as a result of increased civil case filings with the trial courts; however, given the relative small populations of living organ donors and an assumed high compliance by employers, any revenue increase to the trial courts is expected to be minimal.

State Expenditures

The bill increases state expenditures in the DOR by about \$310,000 in FY 2024-25 and \$160,000 in FY 2025-26, paid from the General Fund, the DRIVES Cash Fund, and the License Plate Cash Fund. Expenditures are shown in Table 4 and detailed below.

**Table 4
Expenditures Under HB 24-1132**

	FY 2024-25	FY 2025-26
Department of Revenue		
Personal Services	\$96,419	\$115,076
Operating Expenses	\$1,792	\$2,176
Capital Outlay Costs	\$6,670	-
Computer Programming	\$172,225	\$6,769
Data Reporting	\$7,392	\$7,328
License Plates	\$1,866	\$2,140
Document Management (DPA)	\$2,581	-
Centrally Appropriated Costs ¹	\$25,308	\$30,543
FTE – Personal Services	1.4 FTE	1.7 FTE
Total Cost	\$314,253	\$164,032
Total FTE	1.4 FTE	1.7 FTE

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

Department of Revenue. The bill increases DOR expenditures as discussed below.

- **Personnel.** The bill requires 1.0 FTE to provide technical assistance and financing to healthcare providers that claim the tax credit. The fiscal note assumes an August 2024 start date for this employee. The bill also requires 0.7 FTE for tax examiners to review tax credit documentation and process tax credit claims. First-year costs for tax examiners are prorated to reflect a November 2024 start date. The fiscal note assumes standard operating and capital costs for these personnel.
- **Computer programming.** This bill requires one-time expenditures of \$171,183 in FY 2024-25 to program, test, and update database fields in the DOR's GenTax and DRIVES software systems. Programming costs are estimated at \$113,326 for 489 hours of contract programming in GenTax, and \$4,960 for 20 forms in DRIVES. Costs for testing at the department include \$36,225 for 1,035 hours of innovation, strategy, and delivery programming support at a rate of \$35 per hour, and \$16,672 for 521 hours of user acceptance testing at a rate of \$32 per hour. Finally, costs to update the legacy DRIVES system are expected to require \$792 for 8 hours of OIT programming support at \$99 per hour. Once the new DRIVES is deployed, the DOR will have programming costs of \$5,100 and testing and support costs of \$877 in FY 2025-26, with \$792 for OIT programming support.
- **Data reporting.** The Office of Research and Analysis must make changes in the related tax reports so that the department can access and document tax statistics related to the new tax policy. These costs are estimated at \$7,392, representing 231 hours for data management and reporting at \$32 per hour, with ongoing costs of \$7,328 annually thereafter.
- **License plates.** The bill is expected to require \$1,866 in FY 2024-25 and \$2,140 in FY 2025-26 for purchases of license plates, based on the assumption that about 400 plates will be purchased over two years. The bill requires a one-time fee payment of \$250 to Colorado Correctional Industries in FY 2024-25 only.
- **Document management.** The bill requires changes to one tax form at a cost of \$2,581. Changes to tax forms are accomplished in the Department of Personnel and Administration and paid using reappropriated DOR funds.

Department of Regulatory Agencies. Workload will minimally increase for the Department of Regulatory Agencies to conduct outreach and education regarding the voucher program and to approve any internal voucher program. Given that there are only four transplant centers in Colorado, no change in appropriations is required.

Judicial Department. To the extent that disputes around employer retaliation or non-compliance with any other provision of the bill arise, workload may increase as a result of increased civil case filings with trial courts; however, high compliance with the provisions of the bill is assumed, so any workload increase is expected to be minimal.

Department of Labor and Employment. While the bill does not grant the Department of Labor and Employment specific enforcement authority regarding the employer prohibitions outlined in the bill, workload may increase in the Division of Labor Standards and Statistics (DLSS) to receive and respond to additional complaints under the bill. It is assumed that this work can be accomplished within current resources.

Department of Public Health and Environment. Workload in CDPHE will increase to certify living organ donors. Given the limited number of donors and transplant centers, it is assumed that this work can be managed by existing staff using available resources.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

This bill increases local government HUTF revenue by the amounts shown in Table 3. HUTF revenue generated by license plate fees is distributed to counties (26 percent) and municipalities (9 percent) for transportation needs.

Technical Note

The fiscal note currently includes a duplicative programming cost for the DOR's DRIVES system, as discussed in the Background section. The duplicate cost would be removed if the bill is amended to make its license plate provisions take effect on or after April 1, 2026, when the DRIVES upgrade is complete.

Effective Date

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

State Appropriations

For FY 2024-25, the bill requires an appropriation of \$288,945 to the Department of Revenue, and 1.4 FTE. Of this appropriation:

- \$280,200 is from the General Fund, of which \$2,581 is reappropriated to the Department of Personnel and Administration;
- \$6,879 is from the DRIVES Cash Fund; and
- \$1,866 is from the License Plate Cash Fund.

Departmental Difference

The Department of Public Health and Environment estimates the cost of credentialing living organ donors at \$22,981 for 0.3 FTE annually starting in FY 2024-25. The FTE will be responsible for processing applications and storing information that contains sensitive, federally protected data. Given the limited number of transplant centers and organ donors, the fiscal note assumes that this can be accomplished within existing resources.

State and Local Government Contacts

Corrections	Counties	County Clerks
Health Care Policy and Financing	Higher Education	Information Technology
Judicial	Labor	Personnel
Public Health and Environment	Regulatory Agencies	Revenue
State Auditor	Transportation	

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](#).