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Analysis

NY AI Regulation Bill May Impede Tax Dept. Operations

By [Paul Williams](#) · 2024-11-15 16:49:27 -0500 · [Listen to article](#)

A pending New York bill that would create a first-in-the-nation oversight system for artificial intelligence usage in state agencies could present challenges for the state's tax department, which has long employed automated operations to flag suspicious returns and weed out fraud.



A bill proposing an oversight system for AI usage that passed the state Legislature in June could apply beyond AI and encompass some automated initiatives that New York's tax department uses to identify potential tax issues, former employees of the department said. (AP Photo/Hans Pennink)

The legislation, [S.B. 7543](#), would require state agencies to have human oversight of certain "automated decision-making systems" and to disclose any such operations to the state's top lawmakers and governor. This would be done through "impact assessments" that would evaluate, among other things, whether an automated system produces results that discriminate against a class of individuals, including by their race, gender or sources of income.

The bill's primary sponsor, Sen. Kristen Gonzalez, D-Queens, and [New York State AFL-CIO President Mario Cilento](#) said in an October opinion article in the Albany Times Union newspaper that the legislation would help ensure that state agencies adopt AI tools in an "ethical and responsible" manner. The bill passed the state Legislature in June and must be acted on by Democratic Gov. Kathy Hochul before the end of the year.

However, previous employees of the state Department of Taxation and Finance said the legislation could apply beyond AI and encompass some automated initiatives that the agency uses to identify potential issues with the millions of tax returns it processes annually.

The department "does use systems and processes that would fall within [the bill's] definition of

'automated decision-making system,'" said Argi O'Leary, a principal at [Ryan LLC](#) and a former deputy commissioner for the department's civil enforcement division. Those include "automated business rules that are used to process returns filed with the department, to issue refunds, to select taxpayers for audit, and to collect delinquent tax debts, among others," O'Leary said, adding that she wasn't aware of any AI processes the agency uses. She left the agency in 2021.

The immense volume of data that the department collects and analyzes could result in the agency expending a significant amount of resources to conduct assessments of its analytical tools, according to Bill Comiskey, a partner at [Hodgson Russ LLP](#) and a former deputy commissioner of tax enforcement at the department.

"This is overkill," Comiskey, who left the agency in 2010, said of the bill. "This would be an additional burden on the tax department that's not really necessary."

Darren Dopp, a spokesperson for the department, declined to comment on the legislation.

The bill, dubbed the Legislative Oversight of Automated Decision-Making in Government Act, or Loading Act, would require all state agencies to submit impact assessments of current automated decision-making systems within one year of the bill's enactment. Assessments of new systems or material changes to existing systems would have to be submitted at least 30 days before the new technology is used. Assessments would have to be repeated at least every two years.

The 30-day waiting period before rolling out new uses of automation could make the department less nimble in updating its tools to counter novel fraud tactics it uncovers, according to O'Leary.

"This process would repeat for each new fraud scheme identified and which the agency sought to remedy, potentially preventing the agency from processing any returns during the filing season," she said. "The alternative, which is unpalatable, is to continue processing without necessary changes, thereby sending taxpayer dollars to fraudsters."

The department's usage of automated tools has helped save billions of taxpayer dollars through halting fraudulent refund claims and improving the selection of audit candidates for more than 20 years, according to public statements from previous agency officials.

In 2003, the department began using a predictive intelligence system called the Case Identification Selection System, or CISS, to help crack down on tax fraud. CISS, combined with other statistical analysis programs and a specialized fraud detection team, helped the agency prevent more than \$400 million in incorrect refunds in 2013, the department said in a statement the following year. That led to the department winning a technology award from the [Federation of Tax Administrators](#) in 2014.

Comiskey said it's unclear how the bill's requirement for automated systems to undergo regular "meaningful human review" would apply to tax department processes. Even if an automated or AI system flags a tax return and automatically generates a form letter that asks a taxpayer for more information, department employees have the final say over whether an assessment is issued, and taxpayers have a chance to rebut it, he said.

"A machine can't make a final determination in connection with a tax liability without some sort of human oversight," Comiskey said. "Under state law, taxpayers have a bill of rights. They have an opportunity to be heard, and a machine can't stop that."

Additionally, O'Leary said that if the bill aims to require human oversight at certain levels in the decision-making process, the legislation's purpose doesn't align with how automated systems are used.

"To the extent the law intends to require a person to review the output of automated decision-making systems as those decisions are occurring and before the agency takes action based on such output, it is unworkable and inconsistent with how automated decision-making systems are deployed within agencies," she said.

A representative of Gonzalez, the bill's primary sponsor, did not respond to requests for comment. But in the opinion piece last month, she and Cilento said automated tools that result in "life-impacting outcomes," including those related to taxes, should be monitored closely.

"When these tools are making consequential decisions, they deserve heightened scrutiny, especially given that many have shortcomings, including bias, privacy concerns and cybersecurity risks," they said.

The legislation has not yet been sent to Hochul for consideration. Avi Small, a spokesperson for Hochul, said the governor is reviewing the bill.

The New York State Public Employees Federation, a union that represents about 56,000 public employees, is backing the Loading Act and has drafted a sample letter that members can send to Hochul that urges her to sign the legislation.

"While AI will likely prove to be a powerful tool to increase productivity, it comes with great responsibility and the need for human oversight," said the letter, located on the union's website. "Concerns over AI-generated discrimination and bias will continue, especially without the public knowing what programs are being used and how they are being utilized."

Patrick Lyons, the union's legislative director, said the bill is primarily a transparency measure that is designed to help agencies identify potential issues with automated decision-making processes before they become operational. It's easier to fix a potential discrimination problem with an algorithm or automated process preemptively instead of trying to address it after it's being used, he said.

"Our goal is to affirm that individual rights are protected," Lyons said. "I think we should all be concerned when the state is implementing these types of technologies because they are something that is supposed to be fair and equitable across all populations."

The bill incorporates [elements of a California law](#) and pending regulations that require large corporations to disclose certain AI tools and allow consumers to opt out of their usage, according to Michelle Merola, a partner at Hodgson Russ. California's rules have exceptions for opt-outs if individuals can appeal a decision made from an automated process. If New York proceeds with the Loading Act, she said the state could perhaps similarly exempt some tax department operations from the bill if taxpayers can appeal preliminary determinations they may generate.

The bill also creates some open questions for how state agencies would be expected to comply with the impact assessments, Merola said. She pointed to language requiring the assessments to state how individuals may be notified of how an automated decision-making system impacts them, but added that there's no requirement in the bill for agencies to publicly disclose the systems other than in the impact assessments.

"That creates an ambiguity for the agencies," Merola said. "Are they supposed to provide some sort of notice up front?"

Adam Thimmesch, a tax professor at University of Nebraska College of Law, said it might be

impractical for lawmakers to expect that the bill would eliminate all discrimination from automated systems, because any potential human biases that may be baked into a system's inputs would be reflected to some degree in its outputs. And if an automated system results in an outcome that is less discriminatory than actions taken by humans alone, that could arguably improve the services that an agency is providing to the public, he said.

"If you compare it against perfection, you're going to end up not adopting anything. And that could leave you in a worse place than where you otherwise could be," he said.

Thimmesch, who co-authored a forthcoming Tennessee Law Review article on the potential benefits of tax agencies using generative AI to communicate with taxpayers, said the bill's goals of ensuring that state agencies don't use automated systems in a discriminatory manner are laudable. But that oversight should be weighed against the risks of giving state agencies pause over whether to use a tool that could enhance their services, he said.

While the bill was written to apply to all state agencies, he shared the view that its definitions could sweep up certain automated systems that are currently being used in tax administration.

"As taxpayers are making use of these technologies to identify tax planning options and things of that nature, government utilization of them should be considered," Thimmesch said. "And to the extent there's uncertainty, it's going to slow down the deployment and development of this technology, which could be a bad thing."

--Editing by Aaron Pelc and Roy LeBlanc.

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