

SENATE BILL REPORT

E2SSB 5838

As Amended by House, February 29, 2024

Title: An act relating to establishing an artificial intelligence task force.

Brief Description: Establishing an artificial intelligence task force.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Nguyen, Conway, Dhingra, Frame, Hasegawa, Hunt, Keiser, Kuderer, Lias, Lovelett, Lovick, Muzzall, Nobles, Saldaña, Salomon, Stanford, Torres, Valdez and Wellman; by request of Attorney General).

Brief History:

Committee Activity: Environment, Energy & Technology: 1/10/24, 1/19/24 [DPS-WM, w/oRec].

Ways & Means: 1/30/24, 2/05/24 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 2/8/24, 31-18.

Passed House: 2/29/24, 68-28.

Brief Summary of Engrossed Second Substitute Bill

- Creates an Artificial Intelligence Task Force to assess uses, develop guiding principles, and make recommendations for the regulation of generative artificial intelligence.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5838 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Trudeau and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Adam Brunmeier (786-7357)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5838 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hunt, Keiser, Pedersen, Randall, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers, Assistant Ranking Member, Capital; Boehnke, Braun, Hasegawa, Muzzall and Torres.

Staff: Samuel Brown (786-7470)

Background: Artificial Intelligence. Artificial intelligence (AI) refers to technologies that use data to train statistical models for the purpose of enabling computer systems to perform tasks normally associated with human intelligence or perception, such as computer vision, speech or natural language processing, and content generation. Generative AI tools are a specific form of AI capable of creating new content or data based on a foundational model. Such tools are currently widely accessible to consumers and can perform a wide range of functions.

Summary of Engrossed Second Substitute Bill: Task Force Created. Subject to appropriations, a task force is created to assess current uses and trends by private and public sector entities and make recommendations to the Legislature regarding standards for the use and regulation of AI. The Office of the Attorney General must administer and provide staff support for the task force.

Executive Committee. The task force is composed of a nine-member executive committee including one member from each of the two largest caucuses in the Senate and the House of Representatives, and one member representing each of the following organizations:

- the Office of the Governor;
- the Office of the Attorney General;
- Washington Technology Solutions (WaTech);
- the state auditor;
- universities or research institutions that are experts in the design and effect of an algorithmic system;

- private technology industry groups or business associations;
- community advocate organizations that represent vulnerable communities;
- statewide labor organizations; and
- public safety.

Subcommittees. The executive committee may convene subcommittees comprised of experts and relevant stakeholders to advise the task force on designated topics on an ongoing, recurring, or one-time basis. Subcommittees must contain at least one member from an advocacy organization that represents communities that are disproportionately vulnerable to being harmed by algorithmic bias and at least one member with relevant industry expertise. Subcommittee meeting reports and summaries must be published on the Attorney General's website.

Executive committee or subcommittee members whose participation may be hampered by financial hardship may be compensated if they are low-income or have lived experience to support their participation.

Meeting and Reporting. The executive committee of the task force must investigate and submit reports on several enumerated areas of concern, including, but not limited to:

- a review of public policy issues and existing protections;
- identification of high-risk uses, racial equity, and civil liberty issues; and
- recommendations for guiding principles, regulatory structures, and opportunities to support innovation.

The executive committee must hold its first meeting within 45 days of final appointments to the task force and must meet at least twice each year thereafter. The first report must be delivered by December 31, 2024. An interim report must be delivered by December 1, 2025, and the final report must be delivered by July 1, 2026. Meeting summaries must be posted to the website of the Attorney General's Office within 30 days of any task force meeting.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: AI is quickly evolving and becoming increasingly more accessible and integrated into public life. It is important to approach this issue in a manner that includes

diverse perspectives and balances the potential benefits of innovation and economic opportunities with potential risks that need to be addressed. Add clear definitions. Ensure that there is an equitable composition of membership on the task force, including members with expertise. Make the task force smaller. The Task force should consider the potential impact on labor.

CON: AI is an important tool that benefits the public. The state should observe caution in regulating such a complex and far-reaching topic. Concerns were expressed as to whether the task force would be bi-partisan or neutral. If the task force is to be partisan in nature, it should include conservative representation.

OTHER: The timeline presented in the bill is too short. The bill needs clearer definitions and scope. There should be a neutral administrator, perhaps WaTech. The federal government is already looking into regulations and there are concerns for overlapping or conflicting regulations. The concerns related to AI can be adequately addressed by existing regulatory schemes, there is no need for regulations specific to AI. Regulations may stifle innovation and commerce. A standing officer commission to operate on an ongoing basis would be a superior method of addressing the technology as it evolves.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Joe Nguyen, Prime Sponsor; Joyce Bruce, Attorney General's Office; Matthew Lenz, BSA | The Software Association; Ashley Sutton, TechNet; Nicole Gomez.

CON: Julie Barrett, Conservative Ladies of Washington; Eric pratt, America.

OTHER: CRYSTAL LEATHERMAN, Washington Retail Association; Mindy Chumbley, Washington Collectors Association; Robert (Bob) Battles, Association of Washington Business (AWB); Kelly Fukai, Washington Technology Industry Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This will help put guardrails around the development of AI so we can help determine what's best for society. The substitute bill speeds up the timeline to achieve these discussions. People from every corner of the topic will come together to inform the state's response. This will help keep Washington at the cutting edge of the development of this technology. If not used in a supervised and regulated manner, AI algorithms have the potential to negatively impact the community, particularly with regard to security, privacy, and the protection of civil and intellectual rights. This will allow the use of the great power of AI with great responsibility.

CON: I am concerned about handing unchecked power over the development of this emerging technology to the Attorney General. This could lead to potential First

Amendment and privacy violations.

OTHER: We support the concept of the task force but are concerned that business groups are not consulted and are left out of the bill entirely. We want a bill with equitable representation and clear definitions that apply to all parties. It would be a wise investment to include stakeholders like those in the retail industry that are innovating with AI. The executive committee should include industry experts, community and business leaders impacted by the regulations that will be set forth. Appropriations should be made to secure their participation in the task force. I am concerned about the partisan nature of this task force. I wonder if its members will have proper credentials and expertise, rather than representing bureaucratic agencies. This is viewpoint discrimination. The state should just adopt the Office of Management and Budget recommendations. This should evolve into a longstanding committee to evaluate all emerging technologies. All executive and subcommittee members should be required to have industry or technical expertise.

Persons Testifying (Ways & Means): PRO: Senator Joe Nguyen, Prime Sponsor; Tathagata Pal, Legislative Liaison, Graduate and Professional Student Association at WSU; Rosa Mai, Attorney General's Office.

CON: eric pratt.

OTHER: Joy Gjersvold, Conservative Ladies of Washington; Robert (Bob) Battles, Association of Washington Business (AWB); Crystal Leatherman, Washington Retail Association; Montana Miranda, Washington Hospitality Association; Kelly Fukai, Washington Technology Industry Association; Ashley Sutton, TechNet.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Modifies the membership of the executive committee to also require:
 1. one member representing private technology industry groups and one member representing business associations separately, instead of a single member representing both interests;
 2. one member representing the LGBTQ+ community;
 3. one member from the retail industry;
 4. one member from the hospitality industry; and
 5. three members, instead of one member, representing community advocate organizations that represent communities disproportionately vulnerable to being harmed by algorithmic bias.
- Expands the findings and recommendations the task force must make, including findings and recommendations related to:
 1. recommending a definition for ethical artificial intelligence and guiding principles;
 2. recommendations relating to the appropriate and legal use of training data;
 3. recommendations for addressing algorithmic discrimination issues related to certain protected classes;

4. recommendations on minimizing unlawful discrimination;
5. recommendations on prioritizing transparency;
6. expanding recommendations on educating the public to include information about data privacy and security, use of individual data, and intellectual property considerations;
7. a review of legal remedies for addressing potential harms; and
8. recommendations for establishing an ongoing committee that must study emerging technologies not limited to AI.