

SENATE BILL REPORT

SB 5838

As Reported by Senate Committee On:
Environment, Energy & Technology, January 19, 2024
Ways & Means, February 5, 2024

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

Brief Description: Establishing an artificial intelligence task force.

Sponsors: 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].

Brief Summary of 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: Generative Artificial Intelligence. Generative artificial intelligence (AI) refers to technology that can mimic human ability to learn and create based on the underlying training data and guided by a user or prompt. Generative AI tools are therefore capable of performing complex decision-making or creative tasks typically performed by humans or with human oversight. Several forms of generative AI technology are currently widely accessible to consumers and can perform a wide range of functions.

Summary of Bill (Second Substitute): 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, in consultation with the Office of the Chief Information Officer.

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
- law enforcement.

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.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

Task Force Created. The Office of the Chief Information Officer must consult on task force staffing and administration.

Executive Committee. Members appointed to the executive committee by the attorney general must have experience in technology policy. Executive committee membership is expanded to include one member each representing:

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

Subcommittees. The executive committee has the authority to convene subcommittees,

define the scope of activity and subject-matter focus of subcommittees, and, in collaboration with the Attorney General, appoint members to subcommittees. Each subcommittee must contain at least one member with relevant industry expertise. Subcommittee meeting reports and summaries must be published on the Attorney General's website.

Meeting and Reporting. Reports must discuss protections of personhood, including voice or likeness, in contract structures and the use of artificial intelligence in employment decisions. Deadlines for reports are moved and an interim report is also required.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Establishes an executive committee to perform the functions of the task force.
- Narrows down the list of members to be appointed to a nine-member executive committee.
- Authorizes the Office of the Attorney General to convene subcommittees comprised of relevant stakeholders to advise the task force on specific topics of concern.
- Requires that subcommittees contain at least one member from an advocacy organization representing communities that are vulnerable to being harmed by bias.
- Modifies the meeting and reporting timelines of the committee.
- Requires meeting summaries to be posted to the website of the Attorney General's Office within 30 days of any meeting by the task force.
- Authorizes compensation for subcommittee members whose participation in the task force may be hampered by financial hardship in accordance with RCW 43.03.220.
- Establishes an emergency, allowing the act to take effect immediately.
- Modifies language throughout the act to address AI more broadly as opposed to generative AI specifically.

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.