

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 410 entitled “An act relating to the use and oversight of artificial
4 intelligence in State government” respectfully reports that it has considered the
5 same and recommends that the Senate propose to the House that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. FINDINGS; INTENT

9 (a) The General Assembly finds that:

10 (1) The Vermont Artificial Intelligence Task Force (Task Force),
11 established by 2018 Acts and Resolves No. 137, Sec. 1, as amended by 2019
12 Acts and Resolves No. 61, Sec. 20, met from September 2018 through January
13 2020 to investigate the field of artificial intelligence (AI) and make
14 recommendations for State action and policies with respect to this new
15 technology.

16 (2) The Task Force found that this technology presents tremendous
17 opportunities for economic growth and improved quality of life but also
18 presents substantial risks of loss of some jobs and invasions of privacy and
19 other impacts to civil liberties.

20 (3) Large-scale technological change makes states rivals for the
21 economic rewards, where inaction leaves states behind. States can become

1 leaders in crafting appropriate responses to technological change that
2 eventually produces policy and action around the country.

3 (4) The Task Force determined that there are steps that the State can
4 take to maximize the opportunities and reduce the risk, but action must be
5 taken now. The Task Force concluded that there is a role for local and State
6 action, especially where national and international action is not occurring.

7 (5) The final report of the Task Force presents a series of
8 recommendations for policies and actions consistent with the limited role of
9 Vermont to direct the path of AI development and use in the State. The final
10 report also concludes that Vermont can make a difference, maximize the
11 benefits of AI, and minimize, or adapt to, the adverse consequences.

12 (b) It is the intent of the General Assembly to carry out the work of the
13 Task Force by creating the Division of Artificial Intelligence within the
14 Agency of Digital Services to implement some of the specific
15 recommendations of the Task Force and require the Agency of Digital Services
16 to conduct an inventory of all automated decision systems that are being
17 developed, used, or procured by the State.

18 Sec. 2. 3 V.S.A. § 3303 is amended to read:

19 § 3303. REPORTING, RECORDS, AND REVIEW REQUIREMENTS

20 (a) Annual report and budget. The Secretary shall submit to the General
21 Assembly, concurrent with the Governor’s annual budget request required

1 under 32 V.S.A. § 306, an annual report for information technology and
2 cybersecurity. The report shall reflect the priorities of the Agency and shall
3 include:

4 (1) performance metrics and trends, including baseline and annual
5 measurements, for each division of the Agency;

6 (2) a financial report of revenues and expenditures to date for the current
7 fiscal year;

8 (3) costs avoided or saved as a result of technology optimization for the
9 previous fiscal year;

10 (4) an outline summary of information, including scope, schedule,
11 budget, and status for information technology projects with total costs of
12 \$500,000.00 or greater;

13 (5) an annual update to the strategic plan prepared pursuant to
14 subsection (c) of this section;

15 (6) a summary of independent reviews as required by subsection (d) of
16 this section; ~~and~~

17 (7) the Agency budget submission; and

18 (8) an annual update to the inventory required by section 3305 of this
19 title.

20 * * *

1 Sec. 3. 3 V.S.A. § 3305 is added to read:

2 § 3305. AUTOMATED DECISION SYSTEM; STATE PROCUREMENT;

3 INVENTORY

4 (a) Definitions. As used in this section:

5 (1) “Algorithm” means a computerized procedure consisting of a set of
6 steps used to accomplish a determined task.

7 (2) “Automated decision system” means any algorithm, including one
8 incorporating machine learning or other artificial intelligence techniques, that
9 uses data-based analytics to make or support government decisions, judgments,
10 or conclusions.

11 (3) “Automated final decision system” means an automated decision
12 system that makes final decisions, judgments, or conclusions without human
13 intervention.

14 (4) “Automated support decision system” means an automated decision
15 system that provides information to inform the final decision, judgment, or
16 conclusion of a human decision maker.

17 (5) “State government” has the same meaning as in section 3301 of this
18 chapter.

19 (b) Inventory. The Agency of Digital Services shall conduct a review and
20 make an inventory of all automated decision systems that are being developed,

1 employed, or procured by State government. The inventory shall include the
2 following for each automated decision system:

3 (1) the automated decision system’s name and vendor;

4 (2) a description of the automated decision system’s general capabilities,
5 including:

6 (A) reasonably foreseeable capabilities outside the scope of the
7 agency’s proposed use; and

8 (B) whether the automated decision system is used or may be used
9 for independent decision-making powers and the impact of those decisions on
10 Vermont residents;

11 (3) the type or types of data inputs that the technology uses; how that
12 data is generated, collected, and processed; and the type or types of data the
13 automated decision system is reasonably likely to generate;

14 (4) whether the automated decision system has been tested **for bias** by
15 an independent third party, has a known bias, or is untested for bias;

16 (5) a description of the purpose and proposed use of the automated
17 decision system, including:

18 (A) what decision or decisions it will be used to make or support;

19 (B) whether it is an automated final decision system or automated
20 support decision system; and

1 (C) its intended benefits, including any data or research relevant to
2 the outcome of those results;

3 (6) how automated decision system data is securely stored and
4 processed and whether an agency intends to share access to the automated
5 decision system or the data from that automated decision system with any
6 other entity, which entity, and why; and

7 (7) a description of the IT fiscal impacts of the automated decision
8 system, including:

9 (A) initial acquisition costs and ongoing operating costs, such as
10 maintenance, licensing, personnel, legal compliance, use auditing, data
11 retention, and security costs;

12 (B) any cost savings that would be achieved through the use of the
13 technology; and

14 (C) any current or potential sources of funding, including any
15 subsidies or free products being offered by vendors or governmental entities.

16 Sec. 4. AUTOMATED DECISION SYSTEM; STATE PROCUREMENT;
17 INVENTORY; REPORT

18 On or before December 1, 2022, the Agency of Digital Services shall
19 submit to the House Committee on Energy and Technology and the Senate
20 Committee on Finance a report on the inventory described in 3 V.S.A. § 3305.
21 The report shall include recommendations for any changes to the inventory,

1 including how it should be maintained, the frequency of updates, and
2 remediation measures needed to address systems deemed problematic.

3 Sec. 5. 3 V.S.A. chapter 69 is added to read:

4 CHAPTER 69. DIVISION OF ARTIFICIAL INTELLIGENCE

5 § 5011. DEFINITION

6 As used in this chapter, “artificial intelligence systems” means systems
7 capable of perceiving an environment through data acquisition and then
8 processing and interpreting the derived information to take an action or actions
9 or to imitate intelligent behavior given a specific goal. An artificial
10 intelligence system can also learn and adapt its behavior by analyzing how the
11 environment is affected by prior actions.

12 § 5012. DIVISION OF ARTIFICIAL INTELLIGENCE

13 (a) Creation. There is established the Division of Artificial Intelligence
14 within the Agency of Digital Services to review all aspects of artificial
15 intelligence systems developed, employed, or procured in State government.
16 The Division shall be administered by the Director of Artificial Intelligence,
17 who shall be appointed by the Secretary of Digital Services.

18 (b) Powers and duties. The Division shall review artificial intelligence
19 systems developed, employed, or procured in State government, including the
20 following:

1 (1) propose for adoption by the Agency of Digital Services a State code
2 of ethics for artificial intelligence in State government, which shall be updated
3 annually;

4 (2) make recommendations to the General Assembly on policies, laws,
5 and regulations for artificial intelligence systems in State government; and

6 (3) review the automated decision systems inventory created by the
7 Agency of Digital Services, including:

8 (A) whether any systems affect the constitutional or legal rights,
9 duties, or privileges of any Vermont resident; and

10 (B) whether there are any potential liabilities or risks that the State of
11 Vermont could incur from its implementation.

12 (c) Reports. Annually, on or before January 15 each year, the Division
13 shall report to the House Committee on Energy and Technology and the Senate
14 Committees on Finance and on Government Operations on the following:

15 (1) the extent of the use of artificial intelligence systems by State
16 government and any short- or long-term actions needed to optimize that usage
17 or mitigate their risks;

18 (2) the impact of using artificial intelligence systems in State
19 government on the liberty, finances, livelihood, and privacy interests of
20 Vermont residents;

1 (3) any necessary policies to:

2 (A) protect the privacy and interests of Vermonters from any
3 diminution caused by employment of artificial intelligence systems by State
4 government;

5 (B) ensure that Vermonters are free from unfair discrimination
6 caused or compounded by the employment of artificial intelligence in State
7 government;

8 (C) address the use or prohibition of systems that have not been
9 tested for bias or have been shown to contain bias; and

10 (D) address security and training on artificial intelligence systems;
11 and

12 (4) any other information the Division deems appropriate based on its
13 work.

14 § 5013. ARTIFICIAL INTELLIGENCE ADVISORY COUNCIL

15 (a) Advisory Council. There is established the Artificial Intelligence
16 Advisory Council to provide advice and counsel to the Director of the Division
17 of Artificial Intelligence with regard to the Division’s responsibilities to review
18 all aspects of artificial intelligence systems developed, employed, or procured
19 in State government.

1 **(b) Members.**

2 (1) The Advisory Council shall be composed of the following members:

3 (A) the Secretary of Digital Services or designee;

4 (B) the Secretary of Commerce and Community Development or
5 designee;

6 (C) the Commissioner of Public Safety or designee;

7 (D) the Executive Director of the American Civil Liberties Union of
8 Vermont or designee;

9 (E) one member who is an expert in constitutional and legal rights,
10 appointed by the Chief Justice of the Supreme Court;

11 (F) one member with experience in the field of ethics and human
12 rights, appointed by the Governor;

13 (G) one member who is an academic at a postsecondary institute,
14 appointed by the Vermont Academy of Science and Engineering;

15 (H) the Commissioner of Health or designee;

16 (I) the Executive Director of Racial Equity or designee; and

17 (J) the Attorney General or designee.

18 (2) Chair and terms. Members of the Advisory Council shall elect by
19 majority vote the Chair of the Advisory Council. Members of the Advisory
20 Council shall be appointed on or before August 1, 2022 in order to prepare as
21 they deem necessary for the establishment of the Advisory Council, including

1 the election of the Chair of the **Advisory** Council. Terms of members shall
2 officially begin on September 1, 2022.

3 (c) Meetings. The **Advisory Council** shall meet at the call of the Chair as
4 follows:

5 (1) on or before January 31, 2024, not more than 12 times; and

6 (2) on or after February 1, 2024, not more than monthly.

7 (d) Quorum. A majority of members shall constitute a quorum of the
8 **Advisory** Council. Once a quorum has been established, the vote of a majority
9 of the members present at the time of the vote shall be an act of the **Advisory**
10 Council.

11 (e) Assistance. The **Advisory Council** shall have the **administrative and**
12 **technical** support of the Agency of Digital Services.

13 (f) Reimbursement. Members of the **Advisory Council** who are not
14 employees of the State of Vermont and who are not otherwise compensated or
15 reimbursed for their attendance shall be entitled to compensation and expenses
16 as provided in 32 V.S.A. § 1010.

17 (g) **Consultation.** The **Advisory Council** shall consult with any relevant
18 national bodies on artificial intelligence, including the National Artificial
19 Intelligence Advisory Committee established by the Department of Commerce,
20 and its applicability to Vermont.

21 (h) **Repeal.** This section shall be repealed on June 30, 2027.

1 Sec. 6. ARTIFICIAL INTELLIGENCE ADVISORY COUNCIL;
2 IMPLEMENTATION

3 First meeting. The first meeting of the Artificial Intelligence Advisory
4 Council shall be called by the Secretary of Digital Services or designee. All
5 subsequent meetings shall be called by the Chair.

6 Sec. 7. DIVISION OF ARTIFICIAL INTELLIGENCE; REPORTS AND
7 RECOMMENDATIONS

8 (a) On or before January 15, 2023, the Council shall submit a report to the
9 House Committee on Energy and Technology and the Senate Committees on
10 Finance and on Government Operations on the following:

- 11 (1) the State code of ethics as described in 3 V.S.A. § 5012(b)(1); and
12 (2) what policies the State should have for a third-party entity to
13 disclose potential conflicts of interest prior to purchasing or using the entity's
14 technology and how the State should evaluate those conflicts with respect to
15 how the State intends to implement the technology.

16 (b) On or before January 15, 2024, the Agency shall develop and submit to
17 the House Committee on Energy and Technology and the Senate Committees
18 on Finance and on Government Operations recommendations for a clear use
19 and data management policy for State government, including protocols for the
20 following:

1 (1) how and when an automated decision system will be deployed or
2 used and by whom, including:

3 (A) the factors that will be used to determine where, when, and how
4 the technology is deployed;

5 (B) whether the technology will be operated continuously or used
6 only under specific circumstances; and

7 (C) when the automated decision system may be accessed, operated,
8 or used by another entity on the agency’s behalf and any applicable protocols;

9 (2) whether the automated decision system gives notice to an individual
10 impacted by the automated decision system of the fact that the automated
11 decision system is in use and what information should be provided with
12 consideration to the following:

13 (A) the automated decision system’s name and vendor;

14 (B) what decision or decisions it will be used to make or support;

15 (C) whether it is an automated final decision system or automated
16 support decision system;

17 (D) what policies and guidelines apply to its deployment;

18 (E) whether a human verifies or confirms decisions made by the
19 automated decision system; and

20 (F) how an individual can contest any decision made involving the
21 automated decision system;

1 (3) whether the automated decision system ensures that the agency can
2 explain the basis for its decision to any impacted individual in terms
3 understandable to a layperson, including:

4 (A) by requiring the vendor to create such an explanation;

5 (B) whether the automated decision system is subject to appeal or
6 immediate suspension if a legal right, duty, or privilege is impacted by the
7 decision; and

8 (C) potential reversal by a human decision maker through a timely
9 process clearly described and accessible to an individual impacted by the
10 decision; and

11 (4) what policies the State should have for a third-party entity to
12 disclose potential conflicts of interest prior to purchasing or using their
13 technology and how the State should evaluate those conflicts with respect to
14 how the State intends to implement the technology.

15 (c) On or before January 15, 2025, the Council shall submit
16 recommendations to the House Committee on Energy and Technology and the
17 Senate Committees on Finance and on Government Operations on the
18 following

19 (1) whether the scope of the Division should be expanded to include
20 artificial intelligence outside State government;

1 (2) whether there should be any changes to the structural oversight,
2 membership, or powers and duties of the Council;

3 (3) whether the Council should cease to exist on a certain date; and

4 (4) whether there are any other additional tasks the Division should
5 complete.

6 (d) As used in this section:

7 (1) “Automated decision system” means any algorithm, including one
8 incorporating machine learning or other artificial intelligence techniques, that
9 uses data-based analytics to make or support government decisions, judgments,
10 or conclusions.

11 (2) “Automated final decision system” means an automated decision
12 system that makes final decisions, judgments, or conclusions without human
13 intervention.

14 (3) “Automated support decision system” means an automated decision
15 system that provides information to inform the final decision, judgment, or
16 conclusion of a human decision maker.

17 Sec. 8. DIVISION OF ARTIFICIAL INTELLIGENCE; POSITION

18 The establishment of the permanent exempt position is authorized in fiscal
19 year 2023 in the Agency of Digital Services to manage and implement the
20 work of the Division of Artificial Intelligence, established in 3 V.S.A. § 5012,
21 and to serve as the State expert on artificial intelligence use and oversight

1 within State government. This position shall be transferred and converted
2 from existing vacant positions in the Executive Branch and shall not increase
3 the total number of authorized State positions. The position shall be funded
4 from existing resources within the Agency.

5 Sec. 9. EFFECTIVE DATE

6 This act shall take effect on July 1, 2022.

7

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9

10 (Committee vote: _____)

11

12

Senator _____

13

FOR THE COMMITTEE