Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 1576 (Calderon) – As Amended March 28, 2019

SUBJECT: Secretary of Government Operations: working group: technology

SUMMARY: This bill, until January 1, 2023, would require the Secretary of Government Operations to appoint an advisory artificial intelligence (AI) technology working group, compromised of certain participants, on or before July 1, 2020. The bill would require that the working group take input from a broad range of stakeholders, as specified, and evaluate all of the following: (1) the potential uses, risks, and benefits of, and the legal implications associated with, the use of AI technology by California-based businesses; and, (2) best practices for enabling the use of AI technology to benefit California-based businesses and California residents. This bill would require the working group to report to the Legislature on the potential uses, risks, and benefits of the use of AI technology by California-based businesses on or before July 1, 2021, as specified. Specifically, **this bill would**:

1) Require the Secretary of Government Operations to appoint an AI technology working group and designate the chairperson of that group on or before July 1, 2020.

2) Require that the working group serve in an advisory capacity and evaluate all of the following:

    • The uses of AI technology by California-based businesses.

    • The risks, including privacy risks, associated with the use of AI technology by California-based businesses.

    • The benefits associated with the use of AI technology by California-based businesses.

    • The legal implications associated with the use of AI technology by California-based businesses.

    • The best practices for enabling AI technology to benefit California-based businesses and California residents.

3) Require that the working group take input from a broad range of stakeholders with a diverse range of interests affected by state policies governing emerging technologies, including AI technology.

4) Require the working group to report to the Legislature, on or before July 1, 2021, in compliance with specified existing law, on the potential uses, risks, and benefits of the use of AI technology by California-based businesses. This bill would further specify that the report will be advisory only, and that there is no obligation or authority on the part of the state, or the parties meeting and conferring, to implement the working group's findings and recommendations without the enactment of subsequent legislation to implement the report.

5) Specify that the working group's report must include findings and recommendations for modifications to the bill's definition of AI technology, and recommendations for other findings related to AI technology.

6) Define for purposes of the above, AI technology to mean a collection of different technologies that allow smart machines to extend human capabilities and intelligence by sensing, comprehending, acting, and learning, thereby allowing humans to achieve much more than can be achieved without the technology.

7) Require that the working group consist of participants from all of the following:

- Three appointees from the technology industry.

- Three appointees from nontechnology-related industries.

- Three appointees with a background in law chosen in consultation with the Judicial Council.

- Two appointees representing privacy organizations.

- Two appointees representing consumer organizations.

- The State Chief Information Officer (State CIO), or their designee.

- The Director of Finance, or their designee.

- The CIOs of three other state agencies.

- One member of the Senate, appointed by the Senate Committee on Rules, and one member of the Assembly, appointed by the Speaker of the Assembly, to serve in ex officio capacity.

8) Sunset on January 1, 2023.

EXISTING LAW:

1) Establishes in the state government certain agencies, including the Government Operations Agency. (Gov. Code Sec. 12800.) Provides that each agency is under the supervision of an executive officer known as the secretary, appointed by, and holding office at the pleasure of, the Governor. The appointment of each secretary is subject to confirmation by the Senate. (Gov. Code Sec. 12801.)

2) Establishes the California Department of Technology (CDT) within the Government Operations Agency in state government. (Gov. Code Sec. 11545(a)(1).) Provides that unless the context clearly requires otherwise, whenever the term "State Chief Information Officer" or "Secretary of California Technology" appears in any statute, regulation, or contract, or any other code, it shall be construed to refer to the Director of Technology. (Gov. Code Sec. 11545(a)(2).) Specifies that the Director of Technology shall be the State Chief Information Officer. (Gov. Code Sec. 11545(a)(3).)

3) Enumerates the duties of the Director of Technology, which includes, among other things:

- advising the Governor on the strategic management and direction of the state's information technology (IT) resources;

- establishing and enforcing state IT strategic plans, policies, standards, and enterprise architecture, as specified;

- minimizing overlap, redundancy, and cost in state IT operations by promoting the efficient and effective use of information technology;

- providing technology direction to agency and department chief information officers to ensure the integration of statewide technology initiatives, compliance with IT policies and standards, and the promotion of the alignment and effective management of IT services;

- working to improve organizational maturity and capacity in the effective management of IT; and,

- establishing performance management and improvement processes to ensure state IT systems and services are efficient and effective. (Gov. Code Sec. 11545(b).)

4) Requires reports to the Legislature to be submitted in printed copy to the Secretary of the Senate, electronically to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel, as specified. (Gov. Code Sec. 9795.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of this bill**: This bill seeks to establish an advisory working group on AI technology, comprised of both State officials and private individuals, as specified, to study and report to the Legislature on the risks, benefits, and uses of AI by California-based businesses within the next two years. This is an author-sponsored bill.

2) **Author's statement**: According to the author:

   Artificial intelligence is a relatively new and emerging technology that needs to monitored, regulated, and understood. Given California's role as a leader in innovation and new technology, the state must identify risks associated in developing new products, applications, and business models that utilize artificial intelligence.

   Artificial intelligence has near limitless applications and could potentially upend society and our economy like the internet did in the '90s and '00s. By creating the Artificial Intelligence Working Group, tasked at examining potential uses, risks, and benefits of this technology, the working group would propose safe policy solutions to tackle potential issues that could affect California consumers.

3) **Background on the opportunities and challenges of AI**: Last spring, this Committee held a joint informational hearing with the Assembly Select Committee on Emerging Technologies

& Innovation on the topic of AI, to begin a preliminary discussion of the promises and challenges presented by AI. The overarching goal of the hearing was to bring members and staff a greater understanding of AI in order to engender more thoughtful public policy in the future. As recognized in the committees' background paper on AI, the opportunities and challenges posed by AI are significant, and in many ways still being uncovered:

> […] AI is frequently associated with technologies linked to our smartphones, or new gadgets like virtual assistants or smart speakers like Alexa or Google Home. In cinema, it is often portrayed as "robot apocalypse." For the Legislature, contemplating AI applications of the "future" frequently includes autonomous vehicles and concerns displacement of workers with the automation of jobs. Beyond such examples, however, it is not as obvious what AI looks like five years down the line, let alone [ten]. In the commercial space, it is easy to foresee many applications of AI from handheld phones to speakers to food delivery options to transportation options potentially in a matter of years but not as obvious how those commercial applications might have broader impacts. Similarly, it is not as readily foreseeable as to what the AI applications are in the social and governmental spaces and how exactly AI may play a role in shifting and changing our society and our economy in the next decade. […] (Citing Anwin, Larson, Mattu, and Kirchner, *Machine Bias*, ProPublica (May 23, 2016) [as of Mar. 4, 2018].)

Notably, at the same time that this Committee began this joint-endeavor to generate greater understanding of the opportunities and challenges of AI within the Legislature, the Little Hoover Commission (LHC) was simultaneously studying the same topic. The LHC began its process, which included both public hearings and roundtables, with a public hearing on January 25, 2018, entitled "Artificial Intelligence: Applications and Implications." At that first hearing, the LHC indicated that it ultimately intended to produce a report and policy recommendations about how the State of California can approach AI.

Indeed, in November 2018, the LHC produced its report, *Artificial Intelligence: A Roadmap for California*, wherein it similarly recognized the possible benefits and potential misuses of AI:

> Imagine using AI applications to predict where fires may occur, detect early-stage wildfires, or guide firefighters where best to fight a fire and save lives. Conceive of an environment where AI could promote biodiversity and water conservation, and protect endangered species. See educators using AI to improve student learning and increase graduation rates. Envision better detection of diseases, including cancer, and more finely-tuned effective treatments. Certainly, such visions must be tempered with appropriate privacy protections and robust laws aimed at preventing the misuse of data. In addition, this encouraging future, which is presently knocking at our door, will require not just foresight but insight, not just political will but political action, and not just one mind but a collaboration of minds in government, academia, and private industry. (*See* Chairman Pedro Nava Opening Letter, LHC Report #245, *Artificial Intelligence: A Roadmap for California* (Nov. 2018), p. 1; hereinafter "LHC Report.")

4) **Numerous bills on AI this year**: This bill is one of many bills on AI this year. This Committee previously heard and approved AB 976 (Chau), which was supported by the LHC, and sought to create the Artificial Intelligence in State Government Services Commission. This Committee also recently heard and approved AB 459 (Kiley) which seeks

to require the AB 976-proposed commission to develop various minimum standards for the use of AI in state government, and AB 594 (Salas) which, similar to AB 976 and this bill, seeks to establish a state advisory commission to help study and advise on the incorporation of AI, as well as requiring a Chief AI Officer within CDT. There are also bills in the Senate which could potentially address similar issues.

This bill, AB 1576, which seeks to establish an advisory working group comprised both of State officials and private individuals representing various industries, is focused on the use, benefits, and risks associated with the use of AI technology by California-based businesses. In that sense, the bill can be distinguished from, and complement, the AB 976 advisory commission, which would examine the use of AI in state government services specifically. In contrast, there may be some overlap with the AB 594 (Salas) bill, which establishes an advisory commission (as opposed to a working group) on the incorporation of AI, more generally. The authors of each of these and other AI bills should work together, to ensure that duplicative commissions and responsibilities are not created in state law.

5) **Better understanding the uses and implications of AI and AI technology within state government and by private companies**: As noted in Comment 3, above, this Committee recently recognized at an informational hearing on AI, that there is a great need to expand the Legislature's understanding of AI, with respect to commercial uses, as well as government and social uses. The ultimate goal of building such understanding is to engender more thoughtful public policy in the future, given that the opportunities and challenges posed by AI are significant, and in many ways still being uncovered. As recognized in the committees' background paper, "[a]s is often the case when framing public policy in relation to technology issues, the path forward is not a simple or straightforward one, and technology often outpaces the policy. Writing sound policy requires a thorough understanding of the universe being regulated, and emerging technologies rarely lend themselves to quick studies."

Similarly, the recent LHC Report encourages the Governor and Legislature to: (1) engage the public in broad conversations about the responsible use of AI; (2) identify the necessary training and other educational opportunities to build the human infrastructure required for an AI-fueled economy; (3) explore opportunities to form and leverage public private partnerships to use AI to address societal challenges; and (4) examine legislative and policy strategies to preserve and protect key public values: privacy, transparency and accountability. (LHC Report at p. 6.) The report also discusses how "[t]he possible benefits of AI are thus significant and should be broadly shared. […] A balance must be struck between AI investments by the private sector and AI training and education for workers. In the United States, spending on formal education has substantially outpaced spending on training. This is concerning because the advent of AI will require a much more nimble workforce. Without proper training, employees may find themselves without the skills necessary to succeed across a variety of sectors. California's future labor force therefore stands to benefit from additional worker training and education, and workforce transition programs." (*Id*. at 9.)

Notably, the LHC Report recognizes that "[AI] has the potential to change dramatically how governments do business, provide public services, predict and respond to natural disasters, conduct intelligence, improve national security and fight wars. More importantly, governments must implement strategies and policies to encourage the private sector to participate meaningfully in AI policy development." (*Id*. at 10.)

This bill would arguably encourage the private sector to participate in AI policy development by participating in a working group that is intended to inform the benefits, risks, and uses of AI technology by California-based businesses. That being said, recognizing that a great deal of the impact in the private sector is the impact on the workforce supporting those businesses, the author may wish to consider if the composition of the working group should also include at least one representative with a labor or workforce development perspective.

6) **AI technology definition**: As noted in this Committee's joint informational hearing on AI last year, "[t]hough first coined by a Dartmouth professor, John McCarthy, in the 1950s, there still does not appear to be any singular, consistent definition of [AI] in use today, over 60 years later." Staff notes that while this bill does not define "AI", it does define "AI technology." On the one hand, providing AI-related definitions for bills such as this, which seek to establish commissions or working groups to examine and provide recommendations on AI or AI technology uses, may help to provide helpful parameters and greater understanding of how the Legislature understood AI at the time of the commissions' or working groups' creation. On the other hand, given the varying definitions that exist even today, flexibility may be warranted, for example, to avoid any unnecessary limitations of the working group's understanding of what constitutes AI technology. Leaving the term "undefined" with respect to any specific understanding of what is or is not "AI" at this given moment, may provide the working group greater flexibility in making its recommendations.

Specifically, this bill defines "AI technology" to mean a collection of different technologies that allow smart machines to extend human capabilities and intelligence by sensing, comprehending, acting, and learning, thereby allowing humans to achieve much more than can be achieved without the technology. That being said, the identified concerns above with providing a too-narrow definition of AI or AI technology are tempered here insofar as the bill also asks the proposed working group to provide findings and recommendations for modifications to the bill's definition of AI technology.

7) **State CIO**: This bill would require that the working group consist of certain participants, including the State CIO or their designee. Staff notes that when CDT was first created in state government, it was established as the Office of the State Chief Information Officer (OCIO). The head of that office was the State CIO. Since then, the OCIO has been renamed as CDT, which is headed by the Director of Technology. While state law makes clear that any reference to the State CIO is the same as referencing the Director of Technology (*see* Gov. Code Sec. 11545(a)), to avoid confusion, the author has accepted the following amendment to reflect updated terminology for the department.

    Author's amendment:

    On page 3, line 10, strike "State Chief Information Officer" and insert "*Director of Technology*"

8) **Related legislation**: AB 459 (Kiley) would require the Commission proposed by AB 976, below, to report to the Legislature on its recommended minimum standards for the use of AI in state government, as specified, on or before November 1, 2020. That bill contains contingent enactment language to ensure that it would take effect only if AB 976 is enacted and effective before January 1, 2020. This bill is pending hearing in the Assembly Accountability and Administrative Review Committee.

AB 594 (Salas) would enact the California Artificial Intelligence Act of 2020. The bill, no later than January 1, 2021, would require the appointment of a Chief AI Officer within the Department of Technology to evaluate the uses of AI in state government and to advise the Director of Technology on incorporating AI into state information technology strategic plans, policies, standards, and enterprise architecture. The bill would establish an advisory commission on AI, as specified, to study the potential uses of AI and develop a policy framework to manage the use of AI, as specified, and to submit to the Legislature on or before January 1, 2022, a report containing the findings, advice, and recommendations of the commission. This bill is pending hearing in the Assembly Labor and Employment Committee.

AB 976 (Chau et al.) would establish the Artificial Intelligence in State Government Services Commission as an advisory commission comprised of six appointed members and two designated ex officio members with certain knowledge and expertise related to the field of AI. This bill would require the Commission to: (1) convene a public process to gather certain input; (2) provide a plan for soliciting and incorporating AI and data science related demonstration projects into state services, as specified; and (3) provide its recommendations to the Legislature and the Governor by November 1, 2020.   This bill is in the Assembly Appropriations Committee.

SB 348 (Chang) would require the secretaries of certain state agencies to devise a strategic plan, as specified, to utilize AI technology to improve state services. The bill would encourage the Governor to appoint a special adviser on AI to create a statewide strategic plan, as specified, to utilize AI technology to improve state services. The bill also would encourage certain entities to designate a chief AI officer. This bill is in the Senate Appropriations Committee.

SB 444 (Umberg) states the intent of the Legislature to enact legislation that would relate to civil actions and AI. This bill is currently in the Senate Governmental Organization Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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