

SUBJECT: Establishing regulations for use of AI systems by state government

COMMITTEE: Delivery of Government Efficiency — committee substitute recommended

VOTE: 11 ayes — Capriglione, Bhojani, Alders, Cain, Campos, Cook, Curry, L. Garcia, Rodríguez Ramos, Tinderholt, Troxclair

0 nays

2 absent — Bowers, Olcott

SENATE VOTE: On final passage (April 28) — 31 - 0

WITNESSES: For — Steve Kinard, AI Innovation Association; Greyson Gee, Texas Public Policy Foundation (*Registered, but did not testify*: Rick Ramirez, City of Austin; Steven Deline)

Against — None

On — Renzo Soto, TechNet (*Registered, but did not testify*: Jennie Hoelscher and John Hoffman, Department of Information Resources)

BACKGROUND: Concerns have been raised that existing state law does not sufficiently address the issues of transparency, accountability, and the protection of individual rights arising from government use of artificial intelligence systems.

DIGEST: CSSB 1964 would require the Department of Information Resources (DIR) to establish an artificial intelligence (AI) system code of ethics for state agency use and establish regulations and programs related to the use of AI systems by state agencies.

Definitions. The bill would establish several definitions for the purposes of Government Code provisions related to information resources. CSSB 1964 would define a “heightened scrutiny artificial intelligence system” as

an AI system specifically intended to autonomously make, or be a controlling factor in making, a consequential decision. The term would not include an AI system intended to:

- perform a narrow procedural task;
- improve the result of a previously completed human activity;
- perform a preparatory task to an assessment relevant to a consequential decision; or
- detect decision-making patterns or deviations from previous decision-making patterns.

"Principal basis" would mean the use of an output produced by a heightened scrutiny AI system to make a decision without human review, oversight, involvement, intervention, or meaningful consideration by a human. The bill also would define a "consequential decision" as a decision that had a material, legal, or similarly significant effect on the provision, denial, or conditions of a person's access to a government service. "Controlling factor" would mean a factor generated by an AI system that was the principal basis for making a consequential decision, or capable of altering the outcome of a consequential decision.

For the purposes of provisions related to artificial intelligence, "unlawful harm" would mean any condition in which the use of an AI system resulted in a consequential decision that caused harm to an individual who was a member of a state or federally protected class in violation of law. The term would not include a developer's or deployer's offer, license, or use of a heightened scrutiny AI system for the sole purpose of testing the system before deployment to identify, mitigate, or otherwise ensure compliance with state and federal law.

Code of ethics. DIR would be required to establish an AI system code of ethics for use by state agencies and local governments that procured, developed, deployed, or used AI systems, and state agencies would be required to adopt the code of ethics. At a minimum, the code of ethics would be required to include guidance for the deployment and use of AI systems and heightened scrutiny of AI systems that aligned with the

Artificial Intelligence Risk Management Framework published by the National Institute of Standards and Technology (NIST). The guidance would have to address:

- human oversight and control;
- fairness and accuracy;
- transparency, including consumer disclosures;
- data privacy and security;
- public and internal redress, including accountability and liability;
and
- frequency of evaluations and documentation of improvements.

Minimum standards. DIR by rule would be required to develop minimum risk management and governance standards for the development, procurement, deployment, and use of heightened scrutiny AI systems by a state agency or local government, and state agencies would be required to adopt these measures. The minimum standards would have to be consistent with the Artificial Intelligence Risk Management Framework published by the NIST Technology and would have to:

- establish accountability measures, such as required reports describing the use of, limitations of, and safeguards for the heightened scrutiny AI system;
- require the assessment and documentation of the system's known security risks, performance metrics, and transparency measures before deploying the system and any time a material change was made to the system, the data used, or the system's intended use;
- provide to local governments resources that advised on managing, procuring, and deploying a heightened scrutiny AI system, including data protection measures and employee training;
- establish guidelines for risk management frameworks, acceptable use policies, and training employees; and
- establish guidelines for mitigating the risk of unlawful harm by contractually requiring vendors to implement risk management

frameworks when deploying heightened scrutiny AI systems on behalf of state agencies or local governments.

Data management officer. The bill would authorize a state agency with 150 or fewer full-time employees to:

- designate a full-time employee of the agency to serve as a data management officer; or
- enter into an agreement with one or more state agencies to jointly employ a data management officer if approved by the DIR.

The bill would amend the requirement for a state agency's data management officer to post on the Texas Open Data Portal established by DIR at least three high value data sets to require the officer to post this information annually.

Educational outreach program. DIR would be required to develop educational materials on AI systems to promote the responsible use of the systems and awareness of the risks and benefits of system use, explain consumer rights in relation to the systems, and describe risk mitigation techniques.

DIR would be required to develop training materials for state and local government employees and the general public. The training materials would have to be made available on DIR's public website. DIR would have to host statewide forums and training sessions on AI systems best practices for state and local government employees.

DIR could use money appropriated to the department to produce the required materials and contract with a vendor to produce those materials.

Public sector AI systems advisory board. A public sector AI systems advisory board would be established to assist state agencies in the development, deployment, and use of AI systems. The advisory board would be required to:

- obtain and disseminate information on AI systems, including use cases, policies, and guidelines;
- facilitate shared resources between state agencies;
- consult with the department on AI systems issues;
- identify opportunities for state agencies to implement AI systems to reduce administrative burdens and to streamline the state procurement process for AI systems; and
- recommend elimination of rules that restrict the innovation of AI systems.

DIR would have to provide administrative support to the advisory board. The advisory board would be composed of eight members appointed by the governor or the governor's designee, six of whom would represent state agencies, including one member representing an agency with fewer than 150 employees, and two public members with expertise in technology. Members would serve two-year terms and could be reappointed.

Sandbox program. The bill would require DIR to establish a program designed to allow temporary testing of an AI system in a controlled, limited manner, without requiring full compliance with otherwise applicable regulations, in order to support eligible entities in contracting with vendors to engage in research, development, training, testing, and other pre-deployment activities related to AI systems to effectively, efficiently, and securely assist the entity in accomplishing its public purposes.

DIR would have to create an application process for vendors to apply to participate in the program. The application process would have to include:

- a detailed description of the AI system proposed for participation in the program and the system's intended use;
- a risk assessment of the system that addressed potential impacts on the public; and
- a plan for mitigating any adverse consequences discovered during the system's testing phase.

A vendor participating in the program would be required, with oversight by DIR, to provide eligible entities with secure access to an AI system used in the program. DIR would have to provide to vendors and eligible entities participating in the program detailed guidelines regarding the exemption from compliance with otherwise applicable regulations provided by the program. The eligible entities and vendors would be required to submit quarterly reports to the DIR that included:

- performance measures for the AI system;
- risk mitigation strategies implemented during system testing;
- feedback on program effectiveness and efficiency; and
- any additional information the department requested.

By November 30 of each even-numbered year, DIR would be required to produce an annual report and submit the report to the Legislature summarizing the number of eligible entities and vendors participating in the program and the program outcomes and recommendations for legislative or other action.

DIR would be authorized to operate the sandbox program as a statewide technology center.

DIR would be required to share information and resources for the program with any other DIR program established to allow a person, without holding a license or certificate of registration under state law, to test an AI system for a limited time and on a limited basis.

Disclosure. A state agency that procured, developed, deployed, or used a public-facing AI system would be required to provide clear disclosure of interaction with the system to the public as provided by the AI system code of ethics established under the bill. Disclosure would not be required if a reasonable person would know that the person was interacting with an AI system.

Impact assessments. A state agency that deployed or used a heightened

scrutiny AI system or a vendor that contracted with a state agency for that purpose would be required to conduct a system assessment that outlined risks of unlawful harm, system limitations, and information governance practices.

The state agency or vendor would be required to make a copy of the assessment available to DIR on request. An impact assessment conducted under the bill would be confidential and not subject to disclosure under the Public Information Act. The state agency or department would be authorized to redact or withhold information as confidential without requesting a decision from the attorney general.

DIR would be required to take actions necessary to ensure the confidentiality of information submitted, including restricting access to submitted information to only authorized personnel and implementing physical, electronic, and procedural protections.

Enforcement. If a state agency or vendor became aware of a violation of the bill, the agency or vendor would be required to report the violation to DIR, if applicable, and the attorney general. The attorney general would be required to:

- review a report submitted under the bill or a complaint reported through the web page established under the bill; and
- determine whether to bring an action to enjoin a violation of the bill.

If the attorney general determined that the complaint was substantial after consulting with DIR and that a violation occurred, the attorney general would be required to provide the vendor with a written notice of the violation.

If a vendor failed to respond or cure the violation within 31 days after the vendor received the written notice, the state agency would be required to provide the vendor with a notice of intent to void the contract. The vendor would be authorized to respond and seek to cure the violation within 31

days after the date the vendor received the notice of intent.

If the vendor failed to cure the violation within 31 days after receiving the notice of intent to void the contract, the state agency would have the authority to void the contract without further obligation to the vendor. If DIR determined that a vendor had more than one contract voided, DIR would have to refer the matter to the comptroller. The comptroller would be authorized to bar the vendor from participating in a state agency contract using procedures established by statute.

AI system complaint web page. The attorney general would have to, in collaboration with DIR, establish a web page on the attorney general's website that allowed a person to report a complaint relating to AI systems, including:

- instances of an AI system allegedly unlawfully infringing on the person's constitutional rights or financial livelihood; or
- the use of an AI system that allegedly resulted in unlawful harm.

A complaint submitted on the web page would have to be distributed to DIR. A person who submitted a complaint on the web page created could request an explanation from DIR. The attorney general also would be required to post on the attorney general's website information that educated persons regarding the risks and benefits of AI systems and explained a person's rights in relation to AI systems.

If the attorney general determined in consultation with DIR that a complaint was substantiated, the attorney general could seek enforcement under the bill.

Before November 30 of each even-numbered year, the attorney general would be required to submit to the Legislature a report summarizing the complaints received under the bill, the resolutions of the complaints, and any enforcement actions taken.

Standardized notice. Each state agency and local government that

deployed or used an AI system that was public-facing or that was a controlling factor in a consequential decision would have to include a standardized notice on all related applications, websites, and public computer systems.

DIR would be required to develop a form that agencies would have to use for the notice required by the agency if the agency used an AI system. The form would have to include:

- general information about the system;
- information about the data sources the system used; and
- measures taken to maintain compliance with information privacy laws and ethics standards.

Review requirements. The bill would require a state agency's biennial information resources deployment review to include an inventory and identification of the AI systems and heightened scrutiny AI systems deployed by the agency, including an evaluation of the purpose of and risk mitigation measures for each system and an analysis of each system's support of the agency's strategic plan.

The report also would have to include confirmation of compliance with state statutes, rules, and standards relating to AI systems, including the AI system code of ethics and minimum standards developed under the bill.

Local governments would be required to complete a review of the deployment and use of heightened scrutiny AI systems and, on request, provide the review to the department in the manner it prescribed.

The bill would amend the requirements of the DIR's biennial Information Technology Infrastructure Report on state agencies' use of technology to include an inventory of the agency's AI systems, including heightened scrutiny AI systems.

Efficient use of resources. DIR would be required to coordinate the activities under the bill and any other law relating to AI systems to ensure

efficient system implementation and to streamline the use of department resources, including information sharing and personnel.

CSSB 1964 would take effect September 1, 2025.

NOTES:

According to the Legislative Budget Board, CSSB 1964 would have a negative impact of about \$7.3 million on the general revenue related funds through the biennium.