

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. The Council, in consultation with the Director of the  
20           Division, shall also engage in public outreach and education on artificial  
21           intelligence.

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. Members of the Advisory Council shall elect by majority  
19 vote the Chair of the Advisory Council. Members of the Advisory Council  
20 shall be appointed on or before August 1, 2022 in order to prepare as they

1 deem necessary for the establishment of the Advisory Council, including the  
2 election of the Chair of the Advisory Council.

3 (3) Qualifications. Members shall be drawn from diverse backgrounds  
4 and, to the extent possible, have experience with artificial intelligence.

5 (c) Meetings. The Advisory Council shall meet at the call of the Chair as  
6 follows:

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

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

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

13 (e) Assistance. The Advisory Council shall have the administrative and  
14 technical support of the Agency of Digital Services.

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

19 (g) Consultation. The Advisory Council shall consult with any relevant  
20 national bodies on artificial intelligence, including the National Artificial

1 Intelligence Advisory Committee established by the Department of Commerce,  
2 and its applicability to Vermont.

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 This section shall be repealed on June 30, 2027.

4 Sec. 6. ARTIFICIAL INTELLIGENCE ADVISORY COUNCIL;

5 IMPLEMENTATION

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

9 Sec. 7. DIVISION OF ARTIFICIAL INTELLIGENCE; REPORTS AND

10 RECOMMENDATIONS

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

14 (1) the State code of ethics as described in 3 V.S.A. § 5012(b)(1); and

15 (2) what policies the State should have for a third-party entity to  
16 disclose potential conflicts of interest prior to purchasing or using the entity's  
17 technology and how the State should evaluate those conflicts with respect to  
18 how the State intends to implement the technology.

19 (b) On or before January 15, 2024, the Council shall develop and submit to  
20 the House Committee on Energy and Technology and the Senate Committees  
21 on Finance and on Government Operations recommendations for a clear use

1 and data management policy for State government, including protocols for the  
2 following:

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

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

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

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

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

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

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

17 (C) whether it is an automated final decision system or automated  
18 support decision system;

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

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

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

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

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

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

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

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

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

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

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

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

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

8           (d) As used in this section:

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

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

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

19          Sec. 8. DIVISION OF ARTIFICIAL INTELLIGENCE; POSITION

20          The establishment of the permanent exempt position is authorized in fiscal  
21          year 2023 in the Agency of Digital Services to manage and implement the

1 work of the Division of Artificial Intelligence, established in 3 V.S.A. § 5012,  
2 and to serve as the State expert on artificial intelligence use and oversight  
3 within State government. This position shall be transferred and converted  
4 from existing vacant positions in the Executive Branch and shall not increase  
5 the total number of authorized State positions. The position shall be funded  
6 from existing resources within the Agency.

7 Sec. 9. EFFECTIVE DATE

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

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12 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE

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